

UK Tax residence – things are changing if you are planning to go abroad

Liability to UK income tax and capital gains tax is dependent, very significantly, on the residence status of the individual. The term 'residence' appears many times in UK tax legislation but until now this has never been properly defined in that legislation.

Instead, the determination of an individual's residence status can depend on a whole range of factors, particularly how long they spend in the UK in a tax year. For almost 200 years the courts have been establishing a range of other factors which can affect the position. Some recent high profile cases have highlighted just how difficult it can be to become not resident and how even short periods of time in the UK can be decisive. This makes tax planning very difficult and uncertain for individuals planning to leave the UK permanently or even just for periods of work outside the country.

New statutory proposals

Things are now about to change. Draft legislation has now been published which will lead to the introduction of a 'Statutory Residence Test' (SRT) to determine residence with effect from 6 April 2013. However, the proposals could affect plans being made now, so we wanted to let you know the basic changes as they relate to individuals planning to leave the UK.

We must stress however, that these rules may still change. Further, the proposals will not be used to determine residence or non-residence for any tax year prior to 2013/14. Any individual planning to leave the UK prior to the implementation of the new proposals should seek professional advice as to their status position.

One step at a time

The SRT will consist of a series of tests that need to be considered in sequence. If residence status can be determined by the first set of tests then there is no need to proceed to any further tests. A modification of the rules will determine residence in year of death but are not detailed further in this letter.

Satisfying any condition in the first set of tests (Automatic Overseas Test) will lead to the conclusion that an individual is not resident in the UK for a relevant tax year. The first condition that can be satisfied by an existing UK resident is that they spend less than 16 days in the UK in the relevant tax year. (A day counts as a day of presence if you are in the UK at midnight.)

An alternative route is available to an individual who plans to work overseas either as an employee or on a self-employed basis.

Full time work overseas

To initially qualify as not resident under this condition all of the following criteria must be met:

- the work must cover at least one complete UK tax year
- the work must amount to at least 35 hours per week on average over the whole period of absence from the UK
- when working full time outside the UK, any working days (defined as at least 3 hours whether or not a day of presence) in the UK must not exceed a total of 30 and
- the individual must not spend more than 90 days in the UK in any relevant tax year.

The significant difference in this new rule, compared to current practice, concerns the time spent in the UK. Currently return visits to the UK are allowed provided they do not exceed 90 days per year on average

during the period of employment abroad. The new limit is an absolute and so time back in the UK for whatever purpose must be carefully monitored.

What if the Automatic Overseas Test does not apply?

If the Automatic Overseas Test cannot be satisfied then the Automatic Residence Test has to be considered. This determines that you are conclusively UK resident if any one of three conditions is met:

- either you spend more than 183 days in the UK (this reflects the current situation) or
- you work full time for a period of twelve months in the UK whether employed or self-employed or
- your only home(s) is/are in this country.

What if the tests so far are not conclusive?

If a conclusion has not been reached on either of the two previous tests, it is necessary to move to the Sufficient Ties Test. Here a distinction is made between individuals who have not been resident at all in the UK in the previous three UK tax years and those who have had at least one year of residence in the UK in the same period.

The process in the Sufficient Ties Test is to look at a combination of the time an individual spends in the UK in a tax year and the factors that connect them to the UK. In simple terms, the greater the number of connecting factors which apply, then the smaller the number of days permitted in the UK before residence is triggered.

How The Sufficient Ties Test works for those with previous UK residence

Where an individual has been resident in the UK for at least one of the three previous tax years the combination of factors and days is as follows:

Days in UK	Number of factors
up to 15	Always not resident
16 - 45	4 factors to be resident
46 - 90	3 factors to be resident
91 - 120	2 factors to be resident
121 - 182	1 factor to be resident
183 or more	Always resident

The proposed connecting factors can be summarised as follows:

- where spouse or children under 18 are resident in the UK (there are special rules where the children are only at school in the UK)
- there is accessible residential accommodation in the UK which is actually used in the year
- you undertake substantive employment or self-employment in the UK covering at least 40 working days
- there are at least 90 days of presence in the UK in either of the two preceding years
- you spend more time in the UK than in any other single country.

Planning considerations

Clearly the presence of these factors can change from year to year and it will always be important to plan time in the UK with great care. There could be particular implications if you plan to work outside the UK but leave your family here. For example, if you spend more than 90 days in the UK (and so cannot satisfy the Automatic Overseas test) you will be treated as resident here if your spouse or children are here and you have accessible accommodation because those will constitute the two factors which trigger residence. Indeed the presence of a home in the UK without a home outside the UK (for example because you don't have a base outside the UK) could mean that the Automatic Residence Test is satisfied.

What should you do now?

If you have plans to make a move away from the UK either for work purposes or retirement or any other purpose then you need to take into account these proposed changes which we will be happy to discuss with you.