

UK Tax residence – things are changing if you are planning to come to the UK

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, for almost 200 years the courts have been establishing a range of factors which can affect the determination of an individual's residence status. How long an individual spends in the UK in a tax year is important to this decision as well as the principle of whether they are coming to the UK temporarily.

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) 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 come to 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 come to 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 one 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.

Under the Automatic Overseas Test, the alternative conditions for an individual arriving in the UK are:

- an individual coming to the UK will be treated as not resident if they have been not resident in all of the three preceding tax years and in the relevant tax year spend less than 46 days in the UK or
- if they have been resident in one of those years then they will only be not resident if they spend less than 16 days in the UK in the relevant tax year.

This means that even if you are coming to the UK for the very first time, where you plan to spend more than 45 days in the UK then you will not be able to satisfy the Automatic Overseas Test.

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:

- 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 at least one year of residence in the UK in that 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 no recent UK residence

Where an individual has been not resident in the UK in each of the three previous tax years then the combination of factors and days is as follows:

Days in UK	Number of factors
up to 45 days	Always not resident
46 - 90	4 factors to be resident
91 - 120	3 factors to be resident
121 - 182	2 factors 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 tax years.

Planning possibilities for those returning to the UK

The proposed new rules do open up the possibility of being able to spend a significant amount of time in the UK without triggering residence in your first year back. For example, if you are a single person who has always kept visits below 90 days in the past then even if you have a residential property in the UK, you could spend up to 182 days in the UK and not trigger residence in the year of return.

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. For example, if you did spend 182 days in the UK in your first tax year back then in the following tax year there would be two counting factors (accessible accommodation and 90 days in the UK in the previous tax year). You would have to spend less than 120 days in the UK in the following tax year to maintain not resident status.

Similarly, if you are coming into the UK to work, never having spent more than 90 days in the UK in any previous tax year, you may be able to spend up to 182 days in your first year without triggering residence (depending on the type of accommodation available to you) because you will only have one counting factor. If the employment continues then there will be at least two counting factors in the following year. This could have implications for your employer as well.

What should you do now?

If you have plans to make a move into the UK then you need to take these proposed changes into account. Please contact us so that your individual position can be reviewed.