HM
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KEY GUIDE

Living abroad – the residence and domicile rules

Introduction

While the thought of going abroad to work or retire may be exciting, the months prior to departure are likely to be highly stressful. Finding somewhere to live in your chosen country, arranging the necessary visas and booking a suitable removal firm are just some of the issues you are likely to have to deal with.

Nevertheless, during this mad rush, it is vital that you pay adequate attention to financial planning. In particular, the taxation considerations of leaving the UK are sufficiently complex to make it essential that you seek professional advice.

Domicile and residence are the main factors that determine your liability to UK tax. The issues are far from straightforward, and the rules changed radically from 6 April 2008 with the introduction of the annual charge for the use of the remittance basis. Further amendments were made from 6 April 2013, when the concept of 'ordinary residence' (meaning the country where you usually reside) was abolished and a 'statutory residence test' introduced.

It is worth gaining a basic understanding of these concepts, especially if you are planning to leave the UK and go abroad, or if you are originally from overseas and you are aiming to live in the UK.

Key definitions

Focus point

The new statutory test for residence/non-residence introduced from 2013/14 could affect your tax position while overseas.

- Your **domicile** is basically the country that is regarded as your natural or permanent home. You can only have one domicile, which is usually, but not always, the country of your birth. You can change your domicile, but usually with some difficulty. It is a general legal concept that governs matters such as capacity to marry or make a will. It is quite a technical area. Persons domiciled outside the UK (often referred to as 'non-doms') can have UK tax breaks. There is a deemed domicile rule for inheritance tax (IHT). If you are resident in the UK for 17 out of the last 20 years you are deemed domiciled in the UK for IHT but not other taxes. This is a trap for the unwary because transfers of value can attract UK IHT for three years after leaving the UK.
- **Residence** refers to the tax status of an individual for a given tax year and it is now determined using the new statutory residence test.

The statutory residence test

Finance Bill introduces a statutory residence test (SRT) from 6 April 2013, subject to any amendments in Finance Act 2013. The SRT has three main aspects: automatic non-residence; automatic residence; and the 'sufficient ties' test.

'Automatically non-resident in the UK'

You are automatically non-resident for a tax year if you meet any one of the following tests:

- You were resident in the UK for one or more of the three tax years preceding the tax year under review, and you spent fewer than 16 days in the UK in the tax year.
- You were resident in the UK for none of the three tax years preceding the tax year under review, and you spent fewer than 46 days in the UK in the tax year.
- You work full-time (on average at least 35 hours a week) overseas for the tax year under review without any significant breaks from that overseas work, and you

spent fewer than 91 days in the UK in the tax year, and fewer than 31 days were spent working in the UK (at least three hours' work comprises 'a working day').

'Automatically resident in the UK'

If you are not automatically a non-resident, you are automatically resident in the UK if you meet any one of the following tests:

- You spend 183 days or more in the UK in the tax year.
- You have a home in the UK for a period of more than 90 days and you are in that home on at least 30 days in the tax year and, broadly, it is your only home.
- You work full-time in the UK for 365 days or more with no significant break from UK work, all or part of that work period falls within the tax year, and more than 75% of the total number of days in the tax year are worked in the UK.

'Sufficient ties test'

If you do not meet either of the automatic tests, use the 'sufficient ties test' to decide your UK residence status for a tax year. This is combined with whether or not you were UK resident for any of the three tax years before the tax year under consideration. The sufficient ties test examines your ties to the UK in the areas outlined below, all of which have detailed rules.

If previously non-resident:

- **Family ties** – do you have a spouse, civil partner, and/or minor children in the UK?
- **Accommodation tie to the UK** – available for 91 days or more in the tax year and you spend at least one night here in the UK, or at least 16 nights if it is the home of a close relative.
- **Work tie to the UK** – 40 or more days, of at least three hours' work a day, during the tax year.
- **Number of days spent in the UK** – spending 90 days or more in the UK during either of the two previous years counts as a tie to the UK.

If previously resident:

- The above four ties; and
- **'Country' tie** – whether you spend more time in the UK in the tax year than in any other country.

You need to compare the number of days you spend in the UK with how many UK ties you have to decide your UK residence status, as set out on the table.

Days in the UK in the tax year	Previously non-resident	Previously resident
Fewer than 16		Automatically not resident
Fewer than 46		Automatically not resident
16 to 45		Resident if 4 UK ties
46 to 90	Resident if 4 UK ties	Resident if 3 UK ties
91 to 120	Resident if 3 UK ties	Resident if 2 UK ties
121 to 182	Resident if 2 UK ties	Resident if 1 UK tie

Focus point

Even if you stop paying UK income tax, it can be worth continuing to pay national insurance contributions to ensure that you are entitled to the full state pension at retirement age.

The impact of residence and domicile on the UK taxation of income

- If you are a UK resident, you pay tax on your income from any overseas trades, professions, property and investments. Your overseas income is calculated in much the same way as your UK income.
- If you are UK resident but are not domiciled in the UK, you are also liable to pay tax on your foreign income, whether or not you bring it into the UK, unless you opt to be taxed on the 'remittance basis.' If you make this election, only the income you bring into the UK will be taxed.

£2,000 or more of unremitted foreign income/chargeable gains

If the remittance basis is chosen, there is a £30,000 charge for adults after UK residence in at least seven of the previous nine tax years, or a £50,000 charge after residence in at least 12 of the previous 14 tax years. Personal tax allowances and the capital gains tax (CGT) annual exempt amount are not available.

Less than £2,000 of unremitted foreign income/chargeable gains

If the remittance basis is chosen, there is no remittance charge to pay and personal tax allowances and the CGT annual exempt amount are available.

Employees who are resident in the UK pay tax on their remuneration wherever the duties of their employment are carried out.

- Non-UK residents are not normally liable to UK tax on their overseas income.
- If you are a non-UK resident, you will generally pay tax on your UK income.
- Tax may be deducted at source from your UK property income.
- Only certain non-residents are entitled to personal allowances. They include all Commonwealth citizens, all nationals of European Union states, Norway, Iceland and Liechtenstein and all residents of the Channel Islands and the Isle of Man. In any event, if you opt for the remittance basis, you are not entitled to personal allowances if your foreign income and gains in a tax year total £2,000 or more.
- Your UK income tax liability as a non-resident is subject to an upper limit. The calculation is complex, but the broad effect is that no tax is charged on your UK bank and building society interest or state pension paid while you are not resident in the UK, provided you do not claim any personal allowances.

Focus point

You will remain UK domiciled unless you sever all links with the UK for several years and show no intention to return – but there are plenty of grey areas, as demonstrated by several high-profile court cases.

Capital gains tax liability

You are liable to CGT on your gains from disposing of assets wherever they are situated if you are a UK resident. You are still liable to CGT unless you have opted for the remittance basis if you are not a UK resident. In any event, if you are a temporary non-resident, or trade in the UK through a branch or agency and dispose of UK assets used for your trade you will be liable to CGT.

- You are normally liable to CGT on your return to the UK on disposals abroad of assets that you acquired before your departure (re-entry charge) if you are a resident of a country that is outside the UK for fewer than five tax years.

- There is no re-entry charge if you were not resident in the UK for four of the seven tax years before the year of your departure.
- Non-UK domiciled individuals who are resident in the UK or are temporary non-residents are currently taxable on non-UK gains, unless they opt for the remittance basis, in which case only gains remitted to the UK are taxable.

Inheritance tax

IHT applies to all the assets belonging to those who are domiciled in the UK, wherever those assets are situated. For people who are domiciled outside the UK, IHT only applies to their assets situated in the UK.

There are special domicile rules for IHT in addition to the 'permanent home' concept.

- You need at least three years' domicile to have been established outside the UK before you acquire foreign domicile for the purposes of IHT.
- You are treated as being domiciled in the UK for the purposes of IHT if you have been resident in the UK for at least 17 out of the previous 20 tax years before a transfer.
- The IHT exempt amount that a UK domiciled individual can transfer to their non-UK domiciled spouse or civil partner increased from £55,000 to £325,000 from 6 April 2013. Non-UK domiciled individuals married to, or in a civil partnership with, a UK-domiciled individual will be able to elect to be treated as UK domiciled.

UK property

If you are a UK homeowner, you must decide what to do with your property before going abroad. Even if you could afford to, simply leaving it empty could be in breach of your mortgage agreement and could invalidate your household insurance.

If you decide to sell it, you should allow plenty of time to do so – although if the sale has not been completed before you leave, you can give power of attorney to your solicitor or to a relative or friend.

If you decide to rent it out, you will normally still be liable for income tax if the rent (minus certain allowable deductions) exceeds your personal allowance – when combined with other UK source income. Your letting agent will normally be required to deduct tax at source and pay it to HMRC unless HMRC agrees otherwise.

Focus point

If you intend to be non-resident for less than five years, you will normally remain liable for CGT on assets you purchased before leaving the UK – but not normally on your main residence if you sell it within three years of becoming non-resident. Assets acquired and disposed of during complete tax years of absence may not be liable to CGT.

Banking, savings and investments

Even if you are moving abroad permanently, until you are well settled in your new homeland you should consider keeping a UK bank account open and keep at least one credit card, because in some countries it can be difficult to borrow before you have an established credit history there. It is also worth considering opening a local currency bank account in your country of residence and opening an offshore bank account in a well regulated offshore centre. The latter can provide tax breaks by paying interest gross, and may offer 24-hour internet banking, multi-currency facilities and mortgages.

Becoming an expatriate will also provide you with access to a range of new tax-efficient financial planning opportunities, from high-interest bank accounts to offshore pensions and investment bonds. But these should be considered in conjunction with professional advice to ensure that you pay due attention to currency and taxation issues, and achieve an appropriate level of risk, diversification and flexibility.

Insurance

If you have individual life assurance, critical illness cover or income protection insurance, it is essential that you establish whether it will remain valid overseas. Your insurer may decide to remove your cover or to increase your premium if it feels that your move makes you an increased risk.

Similarly, if you are going to be working overseas, you should check with your employer whether you will be covered for death in service and whether you have private medical insurance.

If you are not covered for private medical insurance through your employer, you may wish to consider taking out an individual international private medical insurance policy. Much will depend on local state medical facilities, because in some countries these are of a much higher standard and are far more accessible to expatriates than in others.

Focus point

Whether the country you are moving to has a 'double taxation treaty' with the UK can also have a significant impact on the amount of tax you are required to pay.

How we can help

This is a particularly complicated area where specialist help is essential. You will need the right advice about your potential liability to tax and the most appropriate ways to minimise the tax impact.

You may well need to set up specialist banking, investment and trust arrangements, especially if you are domiciled outside the UK and planning to become a UK resident. We can advise on investments and excluded property trusts if you are currently not domiciled in the UK for the purposes of IHT.

We can also help you with investment and tax planning advice if you are about to become a non-UK resident for tax purposes.

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