

CHAPTER 40

DETERMINING RESIDENCE STATUS

All references in this chapter are to HMRC booklet HMRC6 "Residence, Domicile and the Remittance Basis" unless stated otherwise. This booklet is reproduced in Volume 2 of your Yellow Tolley Tax Handbooks under Miscellaneous Non Statutory material.

40.1 Introduction

This is the first of four chapters on overseas aspects of income tax. In these modules you will come across the terms "**residence**", "**ordinary residence**" and "**domicile**".

An individual's residence and domicile status will determine his liability to UK taxation. In this chapter we will look at the concept of residence. We will move on to ordinary residence and domicile later.

As a general principle, **if an individual is resident in the UK and domiciled in the UK** - as will be the case for the vast majority of UK nationals - that individual will be **liable to income tax on his worldwide income**. The rules are different if an individual is not resident in the UK, or he is not domiciled in the UK, particularly with regard to his overseas income. We will look at the taxation of overseas income later.

The terms 'residence', 'ordinary residence' and 'domicile' are **not defined in tax legislation**. Domicile is a concept of general law.

HMRC has issued a booklet - Booklet "HMRC 6" - which gives guidance on how an individual's residence and domicile status is determined and how his UK and foreign income is taxed. The booklet replaces the previous HMRC guidance on this subject - booklet IR20.

A number of cases relating to residence and domicile have shown that an individual's residence and domicile position must be **determined in accordance with the common law** rather than non-statutory guidance. HMRC 6 is therefore guidance only and does not have legal force. It simply contains HMRC's view and interpretation of legislation and case law.

However, HMRC 6 is still an extremely useful booklet as it sets out the **main factors** which HMRC take into account when determining an individual's residence and domicile status. It is used on a day to day basis by tax advisers working in the area of expatriate taxation and is also very helpful from an examination perspective. For those of you who have access to the Tolley tax statutes, booklet **HMRC 6 is reprinted in Yellow Part II of your handbooks**.

40.2 Residence

An individual's residence status is determined by reference to a tax year. An individual will either be resident for the tax year, or he will not.

There are special rules which enable us to split a tax year into resident and non-resident periods, but these only apply in very specific circumstances. We shall look at these later.

The term "residence" is not defined in the Taxes Acts, HMRC guidance is based largely on court rulings. Each person's status is determined by the facts of their particular case. It is not simply a question of the number of days spent in the UK.

An individual will always be resident in the UK if he is physically present in the UK for 183 days (6 months) or more. There are no exceptions to this rule. So the first thing to look at in determining a person's residence status is whether he been in the UK for more than 182 days in the tax year. If the answer to this question is "yes" the individual will be UK resident for that particular tax year.

Part 1
Para 1.5.22

Up until 5 April 2008, days of arrival and departure were usually ignored for the purposes of counting the number of days of presence in the UK.

From 6 April 2008 however, **an individual is treated as being present in the UK if he is physically in the UK at the end of the day** (ie, at midnight).

[ITA 2007,
S.831\(1A\)](#)

There are exceptions for "transit days". This ensures that visitors who are passing through the UK in order to reach a different destination (eg, via a port or airport) are not treated as being resident for a day in the UK, just because they happen to be in the UK at midnight.

[ITA 2007,
S.831\(1B\)](#)

Most of the time, short absences from the UK will not affect an individual's residence status. This means that if an individual goes on holiday, or spends a short period of time working abroad, he is very likely to remain resident in the UK for that particular year.

It is possible for an individual to be resident in the UK even if he spends less than 183 days here in a particular tax year. It is also necessary to consider the **pattern of the individual's lifestyle**. There are other factors which could make an individual resident in the UK, such as the location of their family, property, business and social connections.

Part 1
Para 1.5.22

40.3 Leaving the UK

If an individual, who has been resident and ordinarily resident in the UK, leaves the UK to go abroad, he does not automatically become not resident. His residence position will be determined by a number of factors including the reason he left the UK, visits made to the UK after he left and connections with the UK, including family, property, business and social connections. The individual will need to show a distinct change in his pattern of life in order to become non resident.

Part 8
Para 8.1

If an individual leaves the UK permanently or indefinitely, and has demonstrated a distinct break in his pattern of life **he will become not resident in the UK from the day after the date of departure**. This is one instance when we split the tax year into resident and non-resident periods.

Part 8
Para 8.2

By "**permanently**" we mean that the individual is leaving the UK to live abroad and will not return to the UK to live. By "**indefinitely**" we mean that the individual is intending to **stay away from the UK for a period of three years or more**. HMRC may **require evidence** that the taxpayer has left the UK for a period of three years or more. Such evidence may include the acquisition of a property abroad, or the permanent disposal of a property in the UK.

Taxpayers leaving the UK will be required to complete Form P85 - leaving the UK.

Assuming an individual has left the UK permanently or indefinitely and become non-resident, he will remain non-resident whilst he is abroad, provided his visits to the UK do not exceed certain limits.

First, **any return visits to the UK must not exceed 182 days in any tax year**. Remember that if an individual is physically present in the UK for more than 182 days of the tax year, he will be regarded as resident for that tax year.

Part 1
Para 1.5.22

The individual must also ensure **that return visits to the UK average less than 91 days per tax year**. The calculation looks at the visits in the **most recent four years** since the individual left the UK. For the purpose of this "91 day test", return visits to the UK for "**exceptional**" circumstances - for example, an illness which prevents the individual from travelling - **can be ignored**. The way in which the 91 day test is applied is clearly laid out in the booklet HMRC 6.

Part 8
Para 8.3

Part 2
Para 2.2

Illustration 1

Charles left the UK on 30 June 2005 to settle with his girlfriend in Dubai. Charles intends to be in Dubai for at least four years.

Charles' return visits to the UK between July 2005 and April 2010 are as follows:

2005/06	88 days
2006/07	44 days
2007/08	100 days
2008/09	108 days
2009/10	70 days

Charles returned to the UK and resumed residence on 31 May 2010.

We will consider the application of the "91 day" rule and see if Charles has become resident in the UK in any of the intervening tax years.

Charles is treated as not resident in the UK from the date of his departure, i.e. from July 2005. A review of his visits must be made at the end of each tax year after the year of departure, to see whether the "91 day" rule applies.

The booklet HMRC 6 tells us the formula to use for the **91 day test**:

$$\frac{\text{Total visits to UK}}{\text{Total days since leaving}} \times 365 = \text{Average visits per year}$$

If this formula gives us a figure in **excess of 90 days**, the individual will be treated as being **resident in the UK** since the date of departure. The effect of this will be to treat all income arising in the period as taxable in the UK.

If however the formula gives us a figure **below 91 days**, the taxpayer will remain **non-resident** throughout the period, and any income earned will not be charged to tax in the UK.

Let us now apply the 91 day test.

Charles left the UK in the tax year 2005/06. We therefore first apply the test at 5 April 2007:

$$\begin{aligned} &1 \text{ July 2005 to 5 April 2007} = 644 \text{ days} \\ &\text{UK visits} = 88 + 44 = 132 \text{ days} \\ &\frac{132}{644} \times 365 = 75 \text{ days} \end{aligned}$$

We test again at 5 April 2008:

$$\begin{aligned} &1 \text{ July 2005 to 5 April 2008} = 1,009 \text{ days} \\ &\text{UK visits} = 88 + 44 + 100 = 232 \text{ days} \\ &\frac{232}{1009} \times 365 = 84 \text{ days} \end{aligned}$$

We test again at 5 April 2009:

$$\begin{aligned} 1 \text{ July } 2005 \text{ to } 5 \text{ April } 2009 &= 1,375 \text{ days} \\ \text{UK visits} &= 88 + 44 + 100 + 108 = 340 \text{ days} \\ \frac{340}{1375} \times 365 &= 90 \text{ days} \end{aligned}$$

The final test will be at 5 April 2010. However, the maximum period of time over which the 91 day rule can be tested is four years. So here we take the number of days in the four years up to 5 April 2010:

$$\begin{aligned} 6 \text{ April } 2006 \rightarrow 5 \text{ April } 2010 \\ \text{UK visits} &= 44 + 100 + 108 + 70 = 322 \text{ days} \\ \frac{322}{1461} \times 365 &= 80 \text{ days} \end{aligned}$$

Charles returns to the UK in May 2010. We have checked his visits at the end of the tax years 2006/07 through to 2009/10. At each point, Charles' visits to the UK have not exceeded 91 days on average. This will mean that throughout the period in which Charles was in Dubai, he will be regarded as not resident in the UK. This means that any overseas income arising in this period will not be charged to UK tax.

Apart from being quite a fiddly rule to apply, this computation does rely on the individual keeping accurate records of any return visits to the UK. Tax advisers should therefore recommend that their clients keep a diary detailing the dates of any journeys to and from the UK in this period, along with any airline tickets etc., as proof of their return visits.

40.4 Coming to the UK

Taxpayers coming to the UK to live permanently or for three years or more will be treated as resident in the UK from the day of arrival.

Part 7
Para 7.2

There are different rules for individuals who are not coming to the UK permanently or for three years or more. Such individuals are visitors to the UK, who may be "long term" visitors or "short term" visitors.

40.5 Long term visitors

Long term visitors are those who have come to the UK indefinitely or for an extended period which might cover several tax years.

"Long term" visitors are treated as UK resident from the date of arrival if they intend to stay in the UK for at least two years.

Part 7
Para 7.7

For example, if the reason for their visit to the UK is to take up a contract of employment for more than two years, the individual will be regarded as a long term visitor and will be resident in the UK from the date of arrival.

If an individual coming to the UK is not intending to remain in the UK for at least two years, he will nevertheless be regarded as resident in a tax year if he spends more than 182 days in the UK in that tax year.

40.6 Short term visitors

Short term visitors are those who are not going to remain in the UK for an extended period and who will visit for limited periods in one or more tax years.

Part 7
Para 7.5

Such visitors are treated as resident in a tax year if they are physically present in the UK for more than 182 days in the tax year.

A short term visitor will also be regarded as UK resident, if his visits to the UK average 91 days or more per year over a four year period. Again, days spent in the UK due to exceptional circumstances can be ignored.

If it is discovered that visits to the UK in a four year period have averaged more than 90 days, the individual will be treated as resident in the UK from the start of year five.

If a short term visitor comes to the UK, and from the outset he intends that his visits to the UK will exceed the 90 day limit, he will be treated as resident from the tax year of arrival, providing that his visits do actually exceed the 90 day threshold.

Finally if a short term visitor comes to the UK with the intention of staying for less than 91 days a year, he will not be treated as UK resident. However, if the visitor subsequently changes his mind, and thereafter intends that future visits will be more than 90 days a year, he will be treated as resident in the UK from the start of the tax year in which his intentions change.

For example, if a taxpayer comes to the UK in May 2009 as a short term visitor, but in July 2010 he acquires a property in the UK, and intends to spend more than 90 days in the UK going forward, he will be resident from the start of the year in which that the property is acquired - i.e. from 6 April 2010.

40.7 Splitting the tax year

As we mentioned before, a taxpayer is strictly resident or not resident for the whole of a tax year. However there are three occasions when a tax year can be split into resident and non-resident periods.

Where an individual comes to the UK either permanently (or three years or more) or as a "long term" visitor for more than two years the tax year can be split into resident and non-resident periods. Such individuals are treated as resident in the UK from the date of arrival. This means that only income which arises in the resident period will be taxed in the UK.

Part 7
Para 7.4

Similarly, taxpayers who **leave the UK permanently, or intend to remain outside the UK for at least three years**, can also split the tax year. Such individuals will be treated as non-resident from the day after the date of departure. Again the tax year can be divided into resident and non-resident periods.

This means that only income arising up until the date of departure will be charged to tax. Income arising between the date of departure and the following 5 April, will not be taxed.

The third time in which a tax year can be split, is under **Extra Statutory Concession A11**. This enables a **tax year to be split where an individual leaves the UK on a full-time contract of employment**.

ESC A11
Part 8
Para 8.5

The individual will be regarded as not resident in the UK from the day after the date of departure. The individual will be treated as non-resident throughout the duration of the overseas contract, but only if the period abroad **spans a complete tax year**. This means that an individual must leave the UK on a full-time contract of employment before 6 April, and return to the UK after 5 April in the following tax year.

In addition, the individual's return visits to the UK between departure and return, must not exceed 182 days in any tax year or exceed 90 days per year on average. Any days spent in the UK because of exceptional circumstances, for example an illness which prevents the individual from travelling, are not normally counted for this purpose.

HMRC guidance specifically states that the taxpayer must have left the UK to take up the employment. It would not be possible to leave the UK for a holiday prior to 6 April and take up employment after this date.

If an individual's absence from the UK does span a complete tax year, he is regarded as not resident throughout, and any overseas income will not be charged to tax in the UK.

However, if the absence from the UK does not span a complete tax year, the individual will be treated as resident in the UK throughout the period, and all income will be taxable in the UK in the normal way.

Example 1

Brigitte arrived in London from Canada in January 2009 on a 6 week vacation. She intends thereafter to make short return visits to the UK every 6 months to see friends.

In September 2010 Brigitte took out a lease on a flat to use as a base to see her UK boyfriend. Thereafter she will spend 4 months a year in the UK.

What date will Brigitte be treated as resident in the UK with effect from?

Example 2

Roy accepted a full time job in Milan in December 2008 and left the UK. He returned in March 2010 as he discovered he was allergic to pasta.

Which of the following statements is true?

- a) Roy will be UK resident throughout the period
- b) Roy will be non UK resident from December 2008 to March 2010
- c) Roy will be resident in 2008/09 but not resident in 2009/10
- d) Roy will never eat pasta again.

Answer 1

The answer is 6 April 2010.

Short-term visitor - no intentions at outset so not resident from arrival.

Intentions change September 2010 - actual visits thereafter will exceed 90 days.

Therefore resident from start of tax year in which intentions change, i.e. from 6 April 2010.

Answer 2

The answer is **A**

ESC A11 only applies to split the tax year if Roy spends a complete tax year outside UK.

He leaves in 2008/09 but returns during 2009/10 and hence ESC A11 does not apply - Roy is treated as resident throughout.