Welcome

“My accountants have told me that I can have one foot in Jersey, my left elbow in the Isle of Man and my right foot in Zurich and pay little or no tax”

Lord Alan Sugar
Welcome

Overview

• Why are residence rules important?
• Current rules
• New rules
• Potential issues
• How can we help
UK taxes

Why are residence rules important?

Impact on....

• Income tax
• Capital gains
• Inheritance tax
• Corporate situations
  - Sole director of corporate?
Residence for individuals

Current rules

Contentious and subjective

Guidance in HMRC 6

• Resident
• Breaking residence
• “Ordinarily Resident”
Residence, Ordinary Residence and Domicile

UK tax implications - the current position (i.e. pre 6 April 2013)
**Residence for individuals - resident**

**Current rules**

- Day counts tests.
- 183 days or more in UK in tax year.
- 91 days or more in UK on average over a 4 year rolling period.
- ‘Cinderella test’ and ‘transit rule’.
- Year of departure and ‘split – year’ treatment (IT not CGT unless short term resident 4 of 7 rule).

No statutory definition of residence

*Guidance in HMRC 6*
Residence for individuals - breaking residence
Current rules

Breaking UK residence

1. Working full-time abroad.
2. Evidence of a definite break.
Residence for individuals
Current rules

Ordinarily resident

Limited concept

• “Your residence is typical of you, not casual”.
• Settled purpose – business employment and family.
• Regular and habitual mode of your life for time being, if come to UK with intention of staying 3 years or more.
• Voluntarily (employment is voluntary).
• Pattern of presence important factor.
• Can be ordinarily resident in two jurisdictions.
Residence for individuals
New rules

• Statutory test to come into force from 6 April 2013.
• Concept of being ordinarily resident abolished from April 2013.
• Applies to income tax, capital gains tax and inheritance tax.
• Draft legislation was released in December 2012 and incorporated in Finance Bill 28 March 2013.
• Concept of leaver – slightly more onerous rules if resident in any of previous 3 tax years.
Residence and Domicile - UK tax implications
The position from 6 April 2013 – the statutory residence test

Notes
- Ordinary residence abolished.
- Transitional rules not considered here
# Residence for individuals

## New rules

<table>
<thead>
<tr>
<th>Test for Automatic Non-Residence</th>
<th>Test for Automatic Residence</th>
<th>Sufficient ties and days count</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>non resident</strong> if satisfy any condition</td>
<td><strong>resident</strong> if satisfy any condition</td>
<td>for complicated cases - comparing time spent in the UK and connection factors</td>
</tr>
</tbody>
</table>
Residence for individuals
New rules

**Test for automatic non-residence**

- Not resident for the previous three tax years and <46 UK days in the current tax year.
- Resident in the UK in one or more of the previous three tax years and <16 UK days in the current tax year.
- Full time working abroad, <91 UK days and <31 UK workdays in the tax year.
- Self employed individuals will need to carefully consider the implications of their working pattern if they hope to fall within the full time working abroad test.
Residence for individuals

Test for automatic residence

• 183 UK days or more in a tax year.
• Has at least one home in the UK, and is present there for at least 30 days and either for 91 continuous days has no overseas home or any overseas home where less than 30 days is spent, - this raises the question of what is a home?
• Full time work in the UK*

*75% of working days (3 hours) in the UK, no significant breaks
Residence for individuals

Sufficient ties and day count test

The number of ties you have, determine the number of days that can be spent in the UK without becoming resident

Factors:

- UK resident family.
- Accommodation.
- Substantive work in the UK.
- >90 days spent in the UK in the previous 2 tax years.
- As many days in the UK as in any other country*

*only applicable for leavers
**Residence for individuals**

Not resident in the previous 3 years

<table>
<thead>
<tr>
<th>Days spent in the UK</th>
<th>Factors</th>
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<tr>
<td>&lt; 46</td>
<td>non resident</td>
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<tr>
<td>46-90</td>
<td>resident if 4 factors</td>
</tr>
<tr>
<td>91-120</td>
<td>resident if 3 factors</td>
</tr>
<tr>
<td>121-182</td>
<td>resident if 2 factors</td>
</tr>
<tr>
<td>183+</td>
<td>resident</td>
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## Residence for individuals
Resident in any of the three previous years

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<tr>
<td>121-182</td>
<td>resident if 1 factor</td>
</tr>
<tr>
<td>183+</td>
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</tr>
</tbody>
</table>
Residence for individuals

New rules

Issues arise where there is a relevant relationship with a UK resident

• Children – boarding school / day school (Up to 20 days in UK outside of term time).

• Children – divorced parents (Up to 60 days or visits in UK).

• Children at university – children over the age of 18 years do not create a family tie.

• Starting to live together.

• Separating / divorcing.

• An individual’s residence status does not impact the residence of a family member when considering this tie for that particular individual’s residence position (co-dependency).
Residence for individuals
New rules

An individual has an accommodation tie in the UK if they have:

• A place to live which is available for at least 91 consecutive days, and in which they spend at least 1 night

A place to live includes:

• A home
• Holiday house
• Hotels (be careful!)
• Staying with family (15 nights allowed)
Residence for individuals
New rules

Factors

Substantive work in the UK

- Working for 40 days - 3 hours or more.
- Travel time.
- What is work?
- Mixed use visits?
Residence for individuals
New rules

Factors

Prior year presence

• 90 days in UK in either of the previous 2 tax years.
Residence for individuals
New rules

Factors

Country tie

• More time spent in the UK than other countries.
• Only relevant if tax resident in any of the previous 3 years.
Residence for individuals
New rules

Factors

Deeming Rule

- Resident in any of the previous 3 years.
- The individual has at least 3 ties.
- The number of days when the individual is present in the UK, but not at the end of the day is greater than 30.
- All subsequent days where the individual is not present at the end of the day will be treated as a day in the UK.
- Beware – transit days and custody visits.
Residence for individuals
New rules

Factors

Exceptional circumstances

• If an individual is present in the UK at the end of a day, that day counts as a day spent in the UK, unless:
  • They arrive on that day, and leave the following day, with no substantive activities which are unrelated to passage through the UK – the transit rule.
  • Circumstances outside of the individuals control, such as a sudden or life threatening illness or injury, or national or local emergencies.
Residence for individuals
New rules

Factors

Temporary non-residence

Where an individual leaves the UK but returns before 5 complete UK tax years have elapsed, the following income will be taxable in the UK:

- Distributions from closely controlled companies.
- Lump sum benefits from employer financed retirement benefit schemes.
- Chargeable event gains from life assurance plans.
Residence for individuals
New rules

Split year treatment

Split-year treatment will apply if:

• The individual is resident in the UK for that year.
• The individual starts full time work overseas.
• Accompanies a spouse moving abroad.
• Leaves the UK to live abroad (must spend less than 16 days in the UK in the remainder of the tax year).
• Comes to the UK to live or start full time work.
• Starts to have a home in the UK.
Residence for individuals
New rules

Death

• Leaver – 75% of working days in the UK.
• Leaver and have a UK home.
• Days spent in the UK are pro-rated based upon month of death, therefore you could be “caught out”.
• Meeting the automatic residence test in the previous 3 years.
• Death during the first year of working full time abroad may result in failing this test.
• Potential CGT and/or IHT implications.
**Residence for individuals**
New rules

**Factors**

**Additional considerations**

- No change to transit rule.
- No change to night test.
- Be careful of leavers with 3 connections – deeming rule.
Summary

• Disclaimer.
• Contentious area.
• Subjective – not many identical situations.
• New test – no case law.
• Objective standard for inherently subjective area.
How can we help?

• Reviews
• Enquiries
• Ongoing advice
Contact details

Garry Bell
01534 838361
garry.bell@je.pwc.com

Rebecca Turnbull
01534 838345
rebecca.turnbull@je.pwc.com
Any questions?

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