

## **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. A consultation process is underway which will lead to the introduction of a 'Statutory Residence Test' (SRT) to determine residence from 6 April 2012. The legislation is likely to be in next year's Finance Bill but since it could affect plans being made now, 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.

### **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.

Satisfying any one condition in the first set of tests (Part A) will lead to the conclusion that an individual is not resident in the UK for a relevant tax year.

Under Part A, these 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 45 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 10 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 Part A test.

### **What if Part A does not apply?**

If Part A cannot be satisfied then Part B has to be considered. This determines that you are conclusively UK resident if any one of its three conditions is met:

- either you spend more than 183 days in the UK (this reflects the current situation) or
- you work full time 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 Part C. Here a distinction is made between 'arrivers' and 'leavers'.

The process in Part C 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 Part C works for arrivers

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        |
|-------------|--------------------------|
| <45         | Always not resident      |
| 45 - 89     | 4 factors to be resident |
| 90 - 119    | 3 factors to be resident |
| 120 - 182   | 2 factors to be resident |
| 183 or more | Always resident          |

The proposed factors can be summarised as follows:

- where spouse and 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 will be able to spend up to 182 days in your first year without triggering residence (unless you acquire property here) because you will only have one counting factor. If the employment continues then there will be 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 into account these proposed changes. Please contact us so that your individual position can be reviewed.