

Changes to residence rules

The determination of an individual's residence status in the UK is of prime importance in establishing their liability to UK taxes. There is no legal definition of residence but it is accepted practice that if an individual spends more than 183 days in the UK in a tax year then they will be resident here. There is also a practice which applies when a person leaves the UK permanently under which they will be treated as resident if they visit the UK for an average of 91 days or more per tax year. This average is calculated on a rolling four year basis.

The key issue in applying these rules has been to determine what is meant by a day spent in the UK and it is on this point that there is a significant change in policy which will apply as from 6 April 2008.

Who are these changes likely to affect?

The changes will affect anyone who wishes to claim non resident status and who makes regular visits to the UK. It could be a person who has been resident in the UK and is currently working abroad on a full time employment contract or in full time business. It might be someone who has effectively emigrated but still wants to spend time back in the UK or it could be someone who is resident somewhere else but wants to spend time in this country.

A counting day

Until now it has been published HMRC practice to normally disregard days of arrival in and departure from the UK in counting days of presence. Last October it was announced that from 6 April 2008 that practice would cease and days of arrival and departure would be treated as days of presence in the UK. The Government have backed away from that position and have published, in the Finance Bill, proposals to count a day as being where the person is present in the UK at the end of it (midnight). A day of departure will not therefore count as a UK day. This means, of course, that if you actually arrive in the country very late in the day even an hour spent here could mean a whole day being counted and you may want to consider whether in some situations it may be better to arrive early in a morning.

Transit rules

There is a provision which will allow a day of arrival to be ignored if it is immediately followed by a day of departure and during the period between arrival and departure the individual does nothing of substance other than pass through the UK. This means that if you are arriving in the UK with the intention of leaving again the following day you must not plan any activities such as business meetings, social events, medical appointments or even visits to family members because HMRC have indicated that all of these will prevent the transit exemption from applying.

How could this affect you?

If you travel regularly in and out of the UK the new rules on counting days could cause a change in your residence status. For example, if you are working full time abroad and come home most weekends, say from Friday night to Monday morning, until now HMRC would only have counted two days on each of those trips because Friday would not count as a day of arrival and Monday would not count as a day of departure. Under the new rules Friday will be counted as you would be in the UK at the end of the day and so the weekend would count as three days in the country. If you visited for say 45 weekends each year, your days in the UK would increase from 90, which was not a problem, to 135 which would become a problem in calculating the 91 day average and you could find yourself treated as resident here.

The more visits you plan to make the greater the care you need to take as each visit will add one day on to the total.

Keep records

It is vital if you are travelling regularly in and out of the UK and you want to claim non resident status that you must have records to show the visits you have made. Without those records it would be very difficult to resist an argument from HMRC that you may be resident.

This is a complex area of tax and we would be happy to advise you on the implications of the new proposals in your situation.