

International Taxation Practice Group (ITPG)

UK Residency and domicile

New rules with a positive outcome

By **Sonal Shah**

The current rules on residency have been based on cases decided over a hundred years ago. The rules have never been easy to apply, they lack certainty and this has hindered international mobility. The UK government recognised that in order to safeguard the UK's attractiveness as a destination for individuals and businesses, the current rules of residency were unsustainable. We have good news!

The government has proposed to reform the rules in this area and to bring much needed clarity and certainty. In June 2012 draft legislation was published for the Statutory Residence Test (SRT) with the intention to bringing such legislation into force with effect from 6 April 2013.

There will be three tests to determine whether an individual is resident in the UK or not:

1. The automatic overseas test

2. The automatic residence test
3. The sufficient ties test

Day-counting

The number of days spent in the UK will be important for all three tests. Day counting will continue to be essential part of the residency rule, in that one will look at whether the individual was physically present in the UK at midnight. Therefore it will be possible for an individual to spend a day in the UK without the day being counted for SRT purposes.

The automatic overseas test

If an individual meets any of the following conditions he will automatically be treated as a non resident in the UK:

- He was present in the UK for fewer than 46 days in the current tax year and was not resident in the UK in any of the previous three tax years, or

- He was resident in the UK in one or more of the previous three tax years and is currently in the UK for less than 16 days in the current tax year, or
- He works overseas full time and :
 - Works in the UK for no more than 20 days (a day of work in the UK would be any day an individual works for more than three hours). The government is considering increasing either the number of workdays permitted to 25 days or increasing the number of permitted hours of work in a day to 5 hours.
 - Spends less than 91 days in the UK



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has with the UK. The connecting factors are:

The automatic residence test

If an individual meets any of the following conditions he will automatically be treated as resident in the UK:

- He spends at least 183 days in the UK in the tax year
- His only home is in the UK and it is available to be used for at least 91 days.
- He works full time in the UK.

The sufficient ties test

If the individual's residence position is not established by any of the above two tests, the sufficient ties test must be considered. This test looks at the number of connections an individual

- Family: the individual's spouse or civil partner or common law partner is resident in the UK
- Accommodation: the individual has accessible accommodation in the UK and makes use of it during the tax year.
- Substantive work in the UK: the individual does substantive work in the UK (but does not work full time)
- UK presence in previous years: the individual spent 90 days or more in the UK in either of the two previous tax years.
- More time in the UK than in other countries: the individual spends more days in the UK in the tax year than in any other single country.

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Linking residency rules to domicile:

The determination of UK residence is an important factor as it is a trigger for liability to UK taxation, the extent of which will also depend on the individual's domicile. The concept of domicile is completely different to that of residency. Whilst the above rules apply for residency, domicile is a different concept and relates to the country which you consider to be your home. The law of domicile recognises that people are able to come and live in the UK without necessarily considering UK to be their home.

There are many tax advantages a UK resident non domicile can enjoy. These include exemption from UK Income Tax on unremitted foreign income, exemption from UK Capital Gains Tax on gains arising from unremitted sales proceeds and exemption from UK Inheritance Tax on foreign assets.

In general UK resident non domiciled individuals have the opportunity to be taxed on the remittance basis. This means that individuals are taxed on overseas income and gains only when the income or proceeds are brought to the UK. However, individuals who have lived in the UK for seven years out of nine tax years would have pay an annual charge of £30,000 per year to benefit from the remittance basis of taxation. The annual charge is increased to £50,000 if an individual is resident in the UK for 12 years out of 14 tax years.

A further tax advantage for UK resi-

dent non domicile individuals is that such individuals can remit their overseas income or capital to the UK tax free, for the purpose of investing in companies which carry out trading activity on a commercial basis or undertake the development or letting of commercial property.

There are many factors to take into consideration, and we are happy to assist anyone who is concerned that the new rules is likely to impact their tax status – or indeed who want to see how the new rules can create opportunities that are tax efficient.

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