



Residence of Individuals and Income Tax

Introduction

When establishing whether you are liable to pay UK tax on any particular income source or capital gain, your country of tax residence is an important factor.

For individuals and partnerships (where the partners' country of residence is effectively the partnership's country of residence) the concepts of residence, ordinary residence and domicile are key to whether they have a liability to UK income and capital gains tax.



Residence

While there is no definition of "residence" in our tax laws, generally speaking if an individual is physically present in the UK for 183 days in any tax year, s/he will be resident in the UK for tax purposes. There are no exceptions to this. "Resident" for this purpose, broadly means living or visiting the UK for that period. It is usually enough to be in the UK for the 183 days in any one tax

year to meet this requirement and the period need not be a series of consecutive days.

In addition to the "183 days test" a person can still be treated as "resident" in the UK if s/he lives abroad but makes regular visits to the UK which average 91 days per year in the UK, over a period of four tax years.

Ordinary Residence

This is a woollier concept but it considers year on year where you actually live.

It is perfectly possible to be ordinarily resident in the UK but not resident if for example, you are working on a 9 month

placement overseas. Being either resident or ordinarily resident in the UK will usually be enough to bring you within the UK tax net and liable to UK taxation on your worldwide income and capital gains.

The rules are complex regarding whether to count days of arrival and days of departure into and out of the UK within the number of days spent in the UK, and also whether days spent merely transiting through the UK to another country should count within that total. Advice should always be sought if a taxpayer is unsure.



Domicile

The concept of domicile has been described as the country where the individual's permanent home is located, not perhaps in terms of where s/he permanently resides, but in the sense of where s/he "belongs".



Domicile of origin is acquired at birth, in the case of a legitimate child it will be the domicile of their father, otherwise that of their mother.

It is possible to change domicile to a domicile of choice, by taking up residence in another country with the intention of permanently residing there. It is necessary to sever ties with the domicile of origin, and demonstrate both residence and intention to permanently reside in the domicile of choice. Therefore it is not possible to maintain a residence in the individual's domicile of origin and claim a domicile of choice.

The third and final domicile is that of domicile of dependency, in that a dependent person (under the age of 16) carries the same domicile of the person on whom s/he is dependent

Interaction of Residence, Ordinary Residence and Domicile

An individual who is resident OR ordinarily resident in the UK and domiciled here will be liable to UK income and capital gains tax on his or her worldwide income and gains for that particular tax year.

An individual who is NOT resident OR ordinarily resident in the UK, even if they are domiciled here, will NOT generally be liable to UK income and capital gains tax on his or her worldwide income and gains for that particular tax year.

Important changes to the way non UK domiciled individuals are taxed in the UK in respect of offshore income and gains came into force on 6 April 2008. Before that date an individual who was resident OR ordinarily resident in the UK, but not domiciled here was generally only liable to UK income and capital gains tax on income and gains arising in the UK, plus any overseas income and gains that are remitted into (or otherwise enjoyed in) the UK.

From 6 April 2008 this changed so that a non UK domiciled individual who has been UK resident for more than 7 of the past 10 years, and has remitted income and gains into the UK in excess of £2,000 a year, will have to pay a £30,000 annual tax charge in respect of foreign income and gains they leave outside the UK.

This £30,000 charge is in addition to any tax due on UK income and gains or foreign income and gains remitted to the UK.

In addition any non UK domiciled individual opting to retain this "remittance" basis will also have their annual income tax allowance and capital gains exemption taken away from them.

Inheritance tax is more focussed towards an individual's domicile and, if applicable, deemed domicile, but falls outside the scope of this helpsheet.



Summary

The rules surrounding residence, ordinary residence and domicile are complex and if an individual is unsure of their residence position and the effect it may have on their tax affairs they should seek professional advice.

Further Information

For more information please contact **Dominic Bourquin** who will be pleased to help on **01225 472800** or e-mail **dominicb2@monahans.co.uk**