

A great deal of attention has been directed in recent years to the meaning of residence for UK for tax purposes.

HMRC abandoned their long-standing practice known as IR20 and the whole subject was thrown into confusion with the result that since April 2013, we have a special statutory test for determining UK residence. The idea was that the test should be clear, unambiguous and simple to use. I think the current expression is: are you having a laugh? I don't think even its most fervent supporters would regard the legislation as clear; it certainly is not simple and it is spectacularly ambiguous.

One example may suffice. It has always been the case that a person cannot be resident for part of the tax year and non-resident for the remainder. Residence is a status which applies for the year as a whole. However, for decades, HMRC had a concessionary practice whereby they divided the year between resident and non-resident periods and this was both sensible and helpful. It took two paragraphs of IR20 to explain it. This has now been enshrined in statute — but it takes 25 pages of legislation.

One of the key features in the determination of a person's residence is whether they have a home in the UK — and sometimes whether they have a home overseas. Unfortunately, HMRC explained that it would too difficult to define "home" in the legislation. We thought therefore we might get some HMRC guidance on what it means; unfortunately not. HMRC said that this was also too difficult to explain in the guidance. So we have this crucial term and nobody knows what it means. Clear or unambiguous are not exactly the mots justes.

Now when considering UK residence we must forget all the old ideas of 90 days, days of arrival and departure, rolling four year periods and all that. None of those things apply anymore. You just have to count your days (actually, nights) spent in the UK. If you spend less than 16 days in the UK, you will definitely be non-resident for the tax year. If you spend more than 182 days in the UK, you will definitely be resident for the year. It is of course for those who spend more than 15 and less than 182 where all the problems lie. If you are working full-time outside the UK then you are almost certainly going to be non-resident; similarly, if you work full-time within the UK you are almost certainly going to be resident. What is full-time work? Best not to enquire — because you need to work your way through many pages of legislation and a number of different formulae to find out.

A few people will fall within the automatic UK residence test or the automatic non-UK residence test but most people will have their residence determined by what are known as "UK ties" — these are factors which connect them with the UK:

- (a) Having a spouse or minor child resident in the UK.
- (b) Having a place to live in the UK (not necessarily a home).
- (c) Working in the UK for more than 40 days during the tax year.
- (d) Being in the UK for more than 90 days last year or the year before.

The number of days you are allowed in the UK without becoming UK resident depends on how many of these tests you satisfy — and whether you have been resident in the UK for any one of the last three years. (If you have, there is another UK tie to consider — whether you spend more 1 days in the UK than in any other single country.)

For somebody who trips two of these ties (perhaps they have a place to live in the UK and spent more than 90 days in the UK last year) they would be allowed up to 120 days in the UK without becoming resident, providing they had not been resident in the UK in any of the previous three years. If they had been UK resident in any of the last three years then they would be allowed up to 90 days in the tax year without being UK resident.

What you must avoid at all costs, if you have been resident in any of the last three years, is to trip three of these tests. If you do, there is a special deeming rule whereby days of presence (and not only nights) will be counted. Once that happens, it becomes virtually impossible to lose UK residence unless you volunteer for Voyager III.

Until April 2013 we had a system where residence was determined by the common law rule supplemented by an HMRC Practice which was a mixture of law, practice and concession. Now we have a statutory test supplemented by HMRC Guidance which is a mixture of law, practices and concessions. I think this is called progress. The millions that have been spent in devising, drafting and enacting these rules and the millions which will be spent by taxpayers in trying to find out what it all means will no doubt be very helpful in stimulating the economic recovery.

Peter Vaines

Partner

T +44 20 7655 1780

E peter.vaines@squiresanders.com

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