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Should I go?

Losing UK residency status

Christopher Groves

Partner, Wealth Planning

withersworldwide



How do I go?

- Losing UK residency for tax purposes is not as easy as it might seem
- *Levene v IRC* [1928]
 - “The legislature partially transfers ... the function of imposing taxes on individuals, ...in powers and terms so general that no one can certainly be advised in advance whether he must pay or can escape payment”
- Committee on Codification of Income Tax Law (1936)
 - “The present state of affairs under which an enquirer can only be told that the question of whether he is resident or is not is a question of fact for the Commissioners and that by the study of the effect of the large body of case law he may be able to make an intelligent forecast of their decision is intolerable and should not be allowed to continue.”



The statutory rules

Income Tax Act 2007

- **S831 (1) (b) & s 832 (1) (b)**
 - Taxed in the UK if you are resident for more than 183 days, even if only for a temporary purpose
- **S829 (2)**
 - Persons who have been UK resident and ordinarily resident are treated as UK tax resident during any year during the whole or part of which they remain non-UK resident if for the purpose only of occasional residence abroad.



HMRC's approach

- IR20 – guidance only, no statutory authority.
 - Gaines-Cooper
- HMRC6 (31 March 2009)
 - HMRC's interpretation of the law only
 - Of no legal effect and cannot be relied on!
- Extra statutory concessions
 - Split year treatment



The day count test

- There is no statutory basis for a 91 day day-count, it has evolved from case law. (Lysaght v IRC [1927])
- Being in the UK for less than 91 days:
 - is not a 'safe harbour'; but
 - is a line you need to be on the right side of.
- The day count in your new home is also important.
- From 6 April 2009, a 'day' is presence at midnight, unless you arrive and leave on the next day and are in transit.



How long do I have to go for?

- In all circumstances for at least one tax year (6 April to 5 April)
- Temporary non-residents
 - Deemed domicile (17 out of 20 years) and remittance basis (7 out of 10 years) 'clocks' set back to zero after three complete tax years of non-UK tax residency
 - For capital (and offshore income) gains purposes if you were UK resident (or ordinarily resident) for 4 out of the 7 tax years immediately prior to the tax year in which you leave the UK you need to spend five complete tax years outside the UK otherwise you are taxed on gains arising on the disposal of assets acquired while UK resident.

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Principles to bear in mind (1)

(Shepherd v IRC 2006)

- “that the concept of residence and ordinary residence are not defined in the legislation; the words therefore should be given their natural and ordinary meanings;
- that the word ‘residence’ and ‘to reside’ mean ‘to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place’;
- that the concept of ‘ordinary residence’ requires more than mere residence; it connotes residence in a place with some degree of continuity; ‘ordinary’ means normal and part of everyday life or a regular, habitual mode of life in a particular place which has persisted despite temporary absences and which is voluntary and has a degree of settled purpose”

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Principles to bear in mind (2)

(Shepherd v IRC 2006)

- “that the question whether a person is or is not resident in the United Kingdom is a question of fact for the Special Commissioners;
- that no duration is prescribed by statute and it is necessary to take into account all the facts of the case; the duration of an individual's presence in the United Kingdom and the regularity and frequency of visits are facts to be taken into account; also, birth, family and business ties, the nature of visits and the connections with this country, may all be relevant;
- that a reduced presence in the United Kingdom of a person whose absences are caused by his employment and so are temporary absences does not necessarily mean that the person is not residing in the United Kingdom”



Principles to bear in mind (3)

(Shepherd v IRC 2006)


- “that the availability of living accommodation in the United Kingdom is a factor to be borne in mind in deciding if a person is resident here;
- that the fact that an individual has a home elsewhere is of no consequence; a person may reside in two places but if one of those places is the United Kingdom he is chargeable to tax here;
- that there is a difference between the case where a British subject has established a residence in the United Kingdom and then has absences from it and the case where a person has never had a residence in the United Kingdom at all”



Principles to bear in mind (4)

(Shepherd v IRC 2006)

- “that if there is evidence that a move abroad is a distinct break that could be a relevant factor in treating an individual as non-resident;
- that a person could become non-resident even if his intention was to mitigate tax.”



Leaving for a year and not coming back (Catch us if you can!)

- Reed v Clark [1986]
- Staying out of the UK for a whole tax year does not necessarily mean that you will be non-UK resident.
- Still have to establish a base abroad!

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Taking up a full time contract of employment abroad

- If you leave the UK to work abroad full-time under a contract of employment, HMRC normally treat you as not resident and not ordinarily resident in the UK from the day after his departure to the day before his return, provided the following conditions are satisfied:
 - your absence from the UK covers a complete tax year;
 - you leave the UK to work abroad under a contract of employment for at least a whole tax year;
 - you physically leave to begin the employment abroad not to take a holiday before beginning that employment; and
 - any interim visits to the UK do not amount to either:
 - 183 days (6 months) or more in any tax year, or
 - an average of 91 days or more per year over 4 years.

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What about the wife and kids?

- The residence and ordinary residence of one spouse or civil partner is not dependent on that of the other.
- Each party to a marriage or a civil partnership is normally treated as a separate taxpayer for capital gains tax and income tax purposes.
- A question of fact and degree!

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It is a lot harder to leave than to arrive

- It is easier to demonstrate that you have not acquired UK residency than that you have given it up

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A statutory residence test?

- Called for in representations to 2008 Finance Bill
- Don't hold your breath!



Beware the traps of double tax treaty positions!

- Double tax treaties often help to determine which country a dual resident is taxed in:
 - ‘Permanent home’ and ‘centre of vital interests’ often act as a tie-breaker
- Such treaties are only effective in respect of the taxes they cover:
 - Dual residents may remain taxable on income from a 3rd country
 - Dual residents may still have to pay the £30,000 remittance basis charge

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Have somewhere to go!

- No one is resident nowhere!



Practical advice (1)

- Sell or let home(s) in the UK;
- Resign all UK directorships
- Do not work in the UK;
- Do not carry out business in the UK;
- Avoid making regular visits to the UK for a specific purpose;
- Limit, as far as possible, return visits, particularly in the first tax year, and after that, stay well within the 91 day average limit;
- Record days spent in the UK, in the new jurisdiction and elsewhere;
- Take your spouse or civil partner and dependent children, if any, with you;
- Transfer main bank accounts outside of the UK;
- Resign from all UK clubs and inform any professional bodies that you are no longer UK resident;
- Give up any licence or permit which is granted on the basis of being UK resident;
- Ensure that the electoral register is amended to entitle you to vote from abroad.

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Practical advice (2)

- Make a new home in a new country and live there!
- Change the pattern of your life (and that of your family).
- Sweat the small stuff.



A final thought?

Apocalypse Now (1979):

“Sell the house.

Sell the car.

Sell the kids.

Find someone else.

Forget it.

I'm never coming back.

Forget it.”