

UK Residency and property sale (Lecture P1175 – 13.34 minutes)

The following is a case study that looked at residency within the UK for tax purposes. It was particularly pertinent in this case as the individual had sold a property in the UK which would have resulted in a tax bill if she had been treated as resident during 2018/19 but would have been covered by reliefs if taxed under the Non-Resident CGT provisions.

Basic provisions of legislation

The statutory residency test is used to determine residence. There are three stages:

1. Is the individual automatically not resident? If the answer is yes, then that is conclusive and you have to go no further;
2. If not, are they automatically resident? If the answer is yes again you go no further;
3. If not, consider the number of ties and days in the UK and this determines residence.

If the answer to the above is that the individual is resident, then you may be able to claim split year treatment so that the person becomes resident for part of the year only and there are rules that govern:

- a) if you can claim it ;and
- b) the date at which you become resident. In this case, the property was sold after the individual returned to the UK so if split year treatment applied, then tax would have been payable.

The automatic NR tests are:

- Working FT overseas – this has to be judged over a whole tax year and if you leave part way through the year, you cannot meet this test;
- Spending insufficient time in the UK – it is either less than 46 days if you have not been resident in any of the previous 3 years or less than 16 days if you have been resident in one of the previous three years.

The automatic residency tests are

- Working FT in the UK – this is judged over a 365-day period of which at least one day must be in the tax year;
- Spending more than 183 days in the UK;
- Having a home in the UK and no home outside the UK (this is a complex test and has to consider a number of steps).

The connections that have to be considered if neither of the above apply are:

1. Family tie (if you have a spouse or minor children resident in the UK);
2. Available accommodation (basically somewhere to live);
3. Working for at least 40 days;
4. Spending at least 90 days in the UK in either of the two previous years.

There is a fifth connection which is whether you spend more time in the UK than any other country but that only applies for individuals who have been resident in at least one of the previous three tax years.

There is a table that then tells you whether you are resident or non-resident depending on the number of days you are present in the UK. There are actually two scales – one where someone is outbound (i.e. has been UK resident in at least one of the previous three years) or inbound (not UK resident in at least one of the previous three years).

Outbound individuals

<u>Days in the UK</u>	<u>UK ties needed to be resident</u>
16 – 45	At least 4
46 – 90	At least 3
91 – 120	At least 2
Over 120	At least 1

Inbound individuals

<u>Days in the UK</u>	<u>UK ties needed to be resident</u>
46 – 90	All 4
91 – 120	At least 3
Over 120	At least 2

Facts

Our taxpayer, Barbara, returned permanently to the UK on 20th December 2018. Her days in the UK in 2018/19 were:

<u>Month</u>	<u>Days</u>
April (from 6th)	Nil
May	Nil
June	Nil
July	2
August	26
September	30
October	4
November	Nil
December	12
January	31
February	28
March	24
April (to 5th)	5

The property was purchased in 1999. Barbara lived there until September 2010 when the family emigrated to Australia and the property was sold. It was sold on 28th January 2019. She worked in Australia up until December 2018 but has not worked since returning.

It should be noted that we do not need to consider the temporary non-residence rules which would bring the gain into charge to UK tax even if she was non-resident in 2018/19. These only apply if she was out of the UK for less than 5 years.

Analysis

Barbara is not automatically non-resident as she stopped working part way through the tax year so cannot meet the test relating to overseas employment. She has spent too many days in the UK to meet the other test.

If we look at the automatic residency tests, Barbara did not fall within (a) or (b) so it hinges on where she is living in the UK. This is a complex test and the one which is most often misunderstood.

To meet the second automatic UK test, the individual has to meet the following conditions:

- He spends at least 30 days in his UK home during the relevant tax year; and
- There is at least a 91-day period which the individual has that home, at least 30 days of which are in the relevant tax year, and throughout that 91-day period either the individual has no overseas home or, if the individual does, the

individual spends less than 30 days in the relevant tax year in each overseas home.

It is important to accurately understand this test. In particular:

- The 30-day period referred to in the first test does not have to fall within the 91-day period in the second test;
- In the second test, although the individual has to have a home in the UK on at least 30 days in the relevant tax year, he does not have to have any presence in during that 30-day period;
- If the individual meets the first condition and there is a 91-day period when he had no overseas home which meets the second set of conditions, it will not matter that the individual had over 30 days presence in an overseas home at another time during the relevant tax year.

Without going into detail, Barbara had not rented or bought a property in the UK as she had stayed with family and friends (but none for an extended period) or in hotels or been travelling abroad. She also retained a property in Australia which she spent time in during the year. As such she did not meet the home test because she had no home in the UK. If she had chosen to rent a property, then it would have been a different outcome.

We then have to look at the ties test. Barbara would need to have 2 ties to be resident in the UK based on the number of days she has been here. She definitely has available accommodation but as long as she was not in the UK in 2017/18 or 2016/17 for more than 90 days then she will be treated as non-resident on the basis that she has not worked.

Would split year have applied?

If it had not been possible to confirm that she was not resident, it is interesting to speculate whether split year treatment would have applied. For someone returning to the UK, there are five possible scenarios (with additional conditions needing to be met for each to apply):

- Case 4: where the individual does not meet the only home test at the start of the tax year but at some point in the tax year that ceases to be the case and then the individual continues to meet the only home test until the end of the tax year. The overseas part of the tax year starts at the beginning of the tax year and ends on the day before the earliest point at which the individual meets the only home test. The UK part of the tax year is the period from the end of the overseas part until the end of the tax year.
- Case 5: if they start to work full time in the UK and then meet the third automatic UK test over a period of 365 days. The overseas part of the tax year starts at the beginning of the tax year and ends at the point at which the third automatic UK test is met by working full-time in the UK and the UK part of the tax year is the period from the end of the overseas part until the end of the tax year.
- Case 6: if an individual is not resident in the previous tax year due to working full time overseas but full time work overseas ceases in the tax year. The overseas part of the tax year will be from the beginning of the tax year until the

last day of the latest period for which the sufficient hours test is met and the UK part of the tax year is the period from the end of the overseas part until the end of the tax year.

- Case 7: if they come to the UK with a partner who is returning or relocating to the UK after a period of working full-time overseas. The deemed arrival day is the later of the date that is the first day of the UK part of the year for the partner under Case 6 and the date on which the individual moves to the UK so that they can live with their partner. The overseas part of the tax year is the period from the beginning of the tax year until the deemed arrival day and the UK part of the tax year is the part of the year beginning with the deemed arrival day and ending at the end of the tax year.
- Case 8: if an individual has no home in the UK but at some point during the tax year the individual starts to have a home in the UK. The UK part of the tax year starts on the date that the individual has a home in the UK and continues until the end of the tax year and the overseas part of the year is from the beginning of the tax year to the start of the UK part of the year.

Cases 5, 6 and 7 are not applicable as Barbara did not work in the UK or return with a partner. Cases 4 or 8 could have applied and she could have been caught by these if she had acquired a home in the UK before she had sold the other property – importantly of course that could have included a rented property.

Contributed by Ros Martin