

## **Residence: Common Misconceptions (Lecture P1402 – 21.14 minutes)**

Recently in the press, there were reports about a member of the House of Lords who was looking to pay himself a large dividend whilst being non-resident in the UK: therefore, saving a substantial amount of tax. According to the press reports, this plan was defeated because as a member of the House of Lords, he is automatically resident in the UK. This may give his advisors or their professional indemnity insurers some sleepless nights!

It is now over ten years since the Statutory Residence Test (SRT) was introduced in the UK after 200 years without one. It is useful to remind oneself of some of the issues and common misconceptions.

It is often asked whether the old rules are still relevant after more than ten years of the SRT. They are because the deemed domicile test looks at 15 years out of the last 20 resident in the UK. Therefore, in order to test for deemed domicile, you need to look at the resident test under the old rules as well as the new.

There is still case law going through the courts which relates to the old residence rules. Most notably, the Charman case; but also, a case involving an Australian entertainer who was found to be UK resident under the old rules and consequently had a large UK capital gains tax liability. The old rules required that there needed to be a significant break in the pattern of life and a weakening of the taxpayer's ties to the UK. This requirement was not met in cases such as Gaines-Cooper and Peck.

Some taxpayers believe that becoming non-resident does not mean that one says goodbye to UK tax liabilities. That is not the case and non-residents remain subject to UK tax on most:

- UK source earnings
- UK property gains
- Temporary Non Residence rule

It is noteworthy that non-residents have been subject to UK gains on residential property since April 2015 and on commercial property since April 2019. Whenever they make a disposal of UK property, they are required to file the HMRC property return within 60 days of the date of the completion of the transaction. This is the case even if no CGT is payable.

The temporary non-resident rules catch remittances and chargeable gains within the 5 year period if the taxpayer resumes residence in the UK. For example, if the taxpayer left the UK in March 2023, made a chargeable gain in March 2025 and returned to the UK in March 2027, the chargeable gain made in 2025 would be reactivated in March 2027 and would therefore be a gain in the 2026/27 tax year.

Another common misconception is that when an individual is not resident in the UK that they do not need to be concerned if they exercise options over non-tax advantaged share schemes. Since April 2015, any gain is time apportioned for the time of residence in the UK as a percentage of the total period, normally to the vesting date. So, for example, Kirsty was granted options and spends 1 year in the UK, 1 year in Germany, 1 year in Singapore. She then exercises her options making a gain of £30,000, she will be chargeable to UK tax on £10,000 of the gain. If the shares are readily convertible assets, then any tax would need to be collected under PAYE.

Another common misconception is that tax and National Insurance work in the same way, but this is definitely not the case. Liabilities to tax are governed by residence rules, double tax treaties, and a liability can be apportioned between two countries. National Insurance, on the other hand, is normally only payable in one state and is on a strict receipts basis; whereas tax may be calculated on an earnings basis.

So, if I take an example of Ralph, a Ruritania national (for this example a country in the European Economic Area with a Double Tax Treaty with the UK) national spends two days working in the UK and three days in Ruritania per week for the same employer. Under the treaty, the UK will tax 40% of his earnings, assuming that he does not qualify under Article 15.2 for complete exemption. Under the social security agreement, 100% of the income would be subject to National Insurance in Ruritania.

Under a bilateral arrangement, such as the UK has with the United States, a UK person could remain subject to UK National Insurance for 5 years after leaving the UK.

Where there is no social security agreement, the UK would normally impose National Insurance on outbound persons for the following 52 weeks and would normally give an exemption for inbound assignees for 52 weeks when they come to the UK.

A further common misconception is that the tax year is always split in the year of departure and arrival into UK resident and non-resident periods. This is only the case where either an individual has left to work full-time abroad or is accompanying a partner to work full-time abroad or has abandoned their residence in the UK. One of the peculiarities is that non-residence only starts when the full-time working abroad starts. Therefore, if one has a gap before starting work abroad, then the date of departure from the UK would not necessarily trigger non-residence.

Finally, IHT liabilities are not determined by residence. Domicile is the important factor. If one dies domiciled in the UK, then one's worldwide assets are subject to UK IHT. If one dies non-UK domiciled, then only UK situs assets are subject to IHT. Residence is not relevant, although periods of residence either in the UK and outside may affect the domicile position.

*Contributed by Jeremy Mindell*