



NON RESIDENTS – DETERMINING WHETHER UK RESIDENT

H M Revenue & Customs's manual, called "HMRC6", sets out their rules for determining UK residence. These will apply until the new statutory rules come into force with effect from 6 April 2013.

Implications for you and relevant factors to determine UK residence status

A day is counted if you are in the UK at midnight. However, it is no longer possible to simply rely on the "day count-rule", i.e. that if you spend 90 days or less in the UK per year on average over a four year period then you will be treated as non-UK resident. This is because day-counting is no longer the sole factor considered by HMRC when ascertaining a person's residency status, except where an individual spends at least 183 days in the UK and is therefore automatically UK resident for that year.

If you have a pattern of visits to the UK for short periods of time year-on-year then HMRC will not only look at your day count over a four year period but also at a number of other factors in order to determine your residency status, which include:

- The availability of accommodation in the UK
- Business ties in the UK
- Social ties in the UK
- Family ties in the UK
- Reasons for UK visits

Consequently, it has become much easier for a short term visitor to the UK to become UK resident unintentionally, due to the number of visits and number of days spent in the UK each year and the extent of their UK social and business connections.

A day spent in transit will not count as a day of presence, even if it involves being in the UK at midnight, so long as during transit you do not engage in activities inconsistent with merely being in transit. For instance, if attending a business meeting then that midnight will be counted.

Ruling on your domicile status

It is no longer possible to obtain a ruling on your domicile status from HMRC. The form DOM1 (Domicile Status) has been withdrawn. This means an individual will now declare his/her non-UK domiciled status only when claiming the remittance basis in his/her UK Self-Assessment Tax Return.

Recommendations

We recommend that you (with advice from your tax advisers) prepare a Residency & Domicile Statement. If you are claiming to be non-UK resident then it should include details of the date you left the UK, dates of visits to the UK each year, your intentions and your connections to the UK.



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If you consider yourself to be non-UK domiciled, the statement should have details of your domicile of origin and include subsequent changes and evidence thereof. We recommend that the Statement be reviewed regularly.

Record-keeping and monitoring of your personal circumstances have never been so important and it is therefore highly recommended that you are prepared if and when a tax enquiry is opened.

If you would like to know more then please contact
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