



BDO Seidman, LLP
Accountants and Consultants

January 2008

Expatriate Tax Alert

Subject:

UK Treasury Proposes New Rules for Determining Residence

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Issue

Foreign nationals who frequently travel to the UK for business could find themselves considered UK residents for tax purposes under the UK Treasury's proposed new rules for determining residence.

Details

Days of Arrival and Departure No Longer to be Ignored

An individual is generally regarded as resident in the UK in any tax year in which he or she is present in the UK for 183 days or more. Similarly, individuals averaging more than 90 days each tax year over a four-year period are regarded as resident and ordinarily resident. Until now, under a non-statutory practice of the tax authorities, days of arrival and departure have been ignored in applying this rule, so that only full days spent in the UK counted towards the total.

The pre-budget report released in October 2007 announced changes to be introduced by Finance Bill 2008, which would have effect from April 6, 2008, which would mean that the day on which an individual arrives in the UK and the day on which he or she leaves the UK are both normally to be counted as days of presence, although there will continue to be an exception for UK days in exceptional circumstances beyond the individual's control (such as illness). There is also expected to be an exception for time spent in transit at UK airports.

This change would bring additional nonresidents into UK residence and is expected to force other nonresidents to adjust their patterns of visits in order to remain nonresident.

Domicile Rules

Under current UK law, an individual is domiciled, broadly speaking, in the jurisdiction that he or she regards as a permanent or ultimate home. As regards foreigners coming to reside in the UK, as long as they retain links with their home country and intend ultimately to return there, no matter how far in the future, they will generally be regarded as having retained their foreign domicile and not have acquired UK domicile.

As non-domiciliaries, they are taxed only on their UK-source income or capital gains and on any foreign income or gains that they remit to the UK (remittance is quite widely defined). This regime is known as the 'remittance basis.' Any foreign-source income or gains they keep outside the UK are not subject to UK tax. Normally, individuals who are resident or ordinarily (habitually) resident in the UK pay income tax and capital gains tax on their worldwide income and gains.

The UK Government had been reviewing these rules and, in the same pre-budget report that outlines the new residence test, announced measures designed to come into effect on April 6, 2008 (for the tax year 2008-09). A consultation document has been published and draft legislation is expected early in 2008. As they currently stand, the proposals include the following:

- Individuals who are not domiciled in the UK but have been UK-resident for at least seven out of the last ten tax years will lose their right to the remittance basis, unless they agree to pay an annual charge of GBP 30,000. As this charge is not a tax on income, it will not be creditable for the purposes of the foreign tax credit calculation for U.S. citizens. The 10-year period is retrospective, so it appears that any individual who has been resident in the UK for seven or more of the ten tax years up to 2007-08 will be immediately affected from April 6, 2008. Individuals with unremitted income or gains of less than GBP 1000 (EUR 1400; USD 2025) will be exempt from the charge.
- A higher charge may be introduced for individuals resident for ten or more years; alternatively, non-domiciliaries who have been resident for at least 17 out of the last 20 tax years may be deemed to have acquired a UK domicile for tax purposes (this is already the rule for inheritance tax).
- Payment of the charge will not exempt any foreign income or gains remitted to the UK from the normal charge to income tax or capital gains tax.
- Individuals opting to keep the remittance basis and paying the charge will lose entitlement to personal income tax allowances (chiefly a deduction – in 2008-09 equal to GBP 5435 for those under 65 – in computing taxable income), subject to the GBP 1000 de minimis exception for unremitted income and gains.

It is essential that all non-UK domiciliaries who are, or potentially are resident in the UK, seek appropriate professional advice now, to understand the potential impact of and plan for, the new rules. If a non-domiciliary simply leaves the UK, this will also require careful planning. Employers who either send temporarily assigned employees to the UK or who have frequent travelers to the UK and reimburse host country tax costs incurred by such employees should also evaluate the potential tax cost impact.

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