

UK RESIDENCE – CHANGES FROM 6th APRIL 2008

The Budget Report last autumn contained two proposed changes relating to residence. The first introduced the concept of temporary non-residence in connection with the rules for remittance of income by non-domiciled individuals, the second envisaged that days of arrival in and departure from the UK would be taken into account in determining residence for tax purposes. The second proposal has since been modified as set out below.

Temporary non-residence

This provision applies where:

- (i) an individual is resident or ordinarily resident (and not treated as resident outside the UK for double tax treaty purposes) in a tax year,
- (ii) was not so resident or ordinarily resident (or was treated as resident outside the UK for double tax treaty purposes) for at least one but not more than four years immediately before that year and after a previous year of residence or ordinary residence (“the year of departure”),
- (iii) was so resident or ordinarily resident (and not treated as resident outside the UK for double tax treaty purposes) for at least 4 of the 7 years before the year of departure.

Foreign income falling within specified categories, including interest and dividends, for the year of departure or an earlier year which is taxable on a remittance basis and which is remitted during the years of non residence is treated as remitted in the year of return. The provision thus prevents the avoidance of tax by deferring remittance until a year for which the taxpayer is temporarily not resident.

Days to be counted in determining residence

The Press Release “Residence and Domicile Review” published at the time of the Pre-Budget Report last autumn stated that, on and after 6 April 2008, days of arrival and departure would be counted as days of presence in the UK for residence test purposes. This was probably in response to the reaction to Gaines – Cooper (decision published January 2007), in which HMRC had taken account of the days of the taxpayer’s arrival in and departure from the UK in deciding whether he had ceased to be resident in the UK.

The Budget Notes published on 12th March 2008 indicate that the legislation to be introduced in the Finance Bill 2008 will be more limited than that originally envisaged. From 6th April 2008, any day on which an individual is present in the UK at midnight will be treated as a day of presence in the UK for residence test purposes. It is thus only the day of arrival which will be counted, and not even that if the individual leaves before midnight on the same day.

The exemption for days in transit is also more generous than was originally intended. Days on which passengers are in transit between two places outside the UK are not to be counted as days of presence so long as the individual does not during transit engage in activities substantially unrelated to their passage through the UK, such as a business meeting, even if his transit involves a change of airports or terminals, or even a change in the mode of transport.

This note is intended for general guidance only and it is important to consider the effect of the provisions with reference to the facts of each particular case. For further information or advice please contact **Chris Cooke, Gerald Chappell, Karen Methold or Lawrie Kearns.**

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Whilst every effort has been made to ensure that the information contained in this briefing is correct it is intended as a guide only and should not be relied upon when embarking on any tax or estate planning exercises. Specialist legal advice should always be sought so that all the factors specific to your circumstances can be taken into account.