NEW UK TAX RESIDENCY TEST

WHAT DOES IT MEAN FOR PEOPLE LIVING BETWEEN FRANCE AND THE UK

Article written in collaboration between Elthos Conseil SELARL and PWT Advice

The purpose of the present article is to give an overview of the new proposed tax residency rules in the UK for income tax purposes.

Increasingly, for personal and professional reasons, our clients live between France and the UK. Our mission is to bring them peace of mind by offering legal and tax solutions to the financial considerations arising out of their lifestyle choices. Through the strength of our network and the breadth of our competence, we are able to support them along their journey.

Our multicultural and bilingual team understands the cultural needs of all regardless of citizenship and country of arrival. The situations we encounter vary in as many ways as there are individual life projects. The decision by a French business to open a branch in the UK, although commercial by nature, may result in personal consequences. Inversely, some of our Francophile British clients may wish to live in France whilst working in the UK. The existence of assets spread across several jurisdictions increases legal complexity whilst increasing risks of double taxation both in the UK and in France as the tax payer may be considered a tax resident in both countries.

Whatever the situation may be, we recommend that our clients clarify the financial consequences of their lifestyle choices at least 6 months prior to initiating any change. Anticipating on future commitments will ensure that resulting changes in tax residency status carry the desired financial outcomes.

NEW UK RESIDENCY RULES

The move by the UK HMRC to clarify the definition of UK tax residency comes as a relief. Indeed, at present there is no full definition of tax residency in UK tax law. Existing tax residency rules are vague, complicated and based on contradictory court decisions leaving tax payers in doubt. To close this grey hole, a Statutory Residence Test (SRT) is being proposed for individuals (not companies) for tax purposes. From a cross border point of view, the main consequences of this new SRT are the following:

- It is much harder to become a UK tax resident when entering the UK
- It is much harder to lose the status of UK tax resident when exiting the UK

In the application of the SRT, distinctions are made between:

- “Entrants” – these are individuals who were not UK tax residents in any of the previous 3 tax years; and
- “Leavers” – these individuals who were UK tax residents in any one or more of the previous 3 tax years.

The SRT is made up of 3 parts:

Part A – Individuals always deemed non- residents of the UK for income tax purposes

Individuals will always be deemed non-residents of the UK for a tax year if:

- For "Entrants", they are in the UK for fewer than 45 days in the tax year;
- For "Leavers", they are in the UK for fewer than 10 days in the tax year; or
- For "Leavers", they leave the UK for full-time work abroad. In such a case, the taxpayer must be in the UK for fewer than 90 days and can spend no more than 20 days working in the UK in the tax year.

Part B – Individuals always deemed residents of the UK for tax purposes

Regardless of whether they are "Entrants" or "Leavers", individuals will always be deemed UK residents for the tax year if:

- They are in the UK for 183 days or more in a tax year; or
- They have only one home and that home is in the UK (or they have two or more homes and these are all in the UK); or
- They carry out full-time work in the UK.

If both Part A and Part B can apply to the same person, Part A (non-residency) takes priority. For example, if the taxpayer has a UK home but spends less than 10 days in the UK in a tax year, the taxpayer will be deemed a non-resident for tax purposes. Such taxpayers could, nonetheless, fall in the category of "non-dom" and be taxed accordingly.

Part C – Other Connecting Factors

Where neither Part A nor Part B applies, each individual's situation with regards to income tax in the UK will be determined by identifying the number of factors connecting the tax p ayer to the UK. There are a limited number of connecting factors listed by law; which are:

- **Family** – the individual's spouse/civil partner (or equivalent) or minor children are resident in the UK;
- **Accommodation** – the individual has accessible accommodation in the UK and makes use of it during the tax year;
- **Substantive work** - the individual is employed or self-employed and works more than 40 days per year in the UK (at least 3 hours per day);
- **UK prior presence** – the individual spent 90 days or more in the UK in either of the previous 2 tax years; and
- **More time in the UK than in other countries** - for Leavers only, if they spend more time in the UK than anywhere else.

The number of connecting factors will determine the maximum number of days a taxpayer is allowed to remain in the UK without becoming a tax resident of the UK. Basically, the more connecting factors an individual has with the UK, the less time he/she can spend in the UK without being considered a tax resident.

Application of the "maximum stay criteria" – Incoming individuals

Number of connection factors	**Maximum number of days in UK (without being deemed a tax resident of the UK)**
4 factors	Less than 45 days
3 factors	Less than 90 days
2 factors	Less than 120 days
1 or no factors	Less than 183 days

Application of the "maximum stay criteria" – Leavers

Number of connection factors	**Maximum number of days in UK (to be non-resident)**
4 factors	Less than 10 days
3 factors	Less than 45 days
2 factors	Less than 90 days
1 factor	Less than 120 days
No factors	Less than 183 days

Conclusion

Once in place, these rules will provide much needed clarity in the assessment of taxpayers' situation with regards to the UK HMRC. Regardless of his/her tax treatment with regards to UK internal regulations, a taxpayer with personal or professional links to France could be considered a French tax residents under the rules of Article 4B of the French General Tax Code. In these instances of dual residency, the tax residency rules contained in the OECD model tax treaty concluded between France and the UK will take precedence over internal rules in the determination of each individual's tax residency status.

It is proposed that the new UK tax rules apply as from the financial year starting 6 April 2012.

Please contact us for more information.

This document is for information only and shouldn't be relied upon to undertake financial decisions.