

# Tax and Residency

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## Background

The following notes are meant to be used as a **reference guide for Tax and Residency**. Specific tax advice should be sought in relation to your own personal circumstances before implementing any of the guidance shown below.

## Residence and ordinary residence

### (i) Residence

An individual will be classed as resident in the UK for a tax year if he or she is present in the UK for 183 days or more.

It is also possible to be classed as UK resident where less than 183 days are spent in the UK based on the following criteria:

- Where an individual leaves the UK for short periods, but would usually be classified as living in the UK;
- Where an individual leaves the UK permanently, but visits average 91 days or more each year, over 4 complete tax years;
- Where visitors to the UK make regular visits and exceed the 91 days averaging test;
- Where short term visitors come to the UK for a period of at least two years for employment in the UK. In this scenario, UK residency begins on the date of arrival in the UK.

From 2008/09, days of arrival to and departure from the UK are counted as days spent in the UK, where they were previously discounted. The test which is applied is whether the individual concerned is in the UK at midnight on the days in question.

Where the 91 day averaging test is applied, days spent in the UK due to exceptional circumstances (such as sudden family emergencies) are discounted.

## **(ii) Ordinary residence**

Ordinary residence is deemed to be an individual's habitual place of residence. If an individual habitually lives in the UK, then they will be ordinarily resident under this test.

Where a person has been deemed to be ordinarily resident in the UK, they may appeal to the HMRC Special Commissioners within 3 months of the decision to have this overturned.

## **Taxation of income**

An individual who is resident in the UK is liable to UK tax on all sources of UK and foreign income.

A UK resident individual will be liable to tax after deduction of their personal allowance.

Where an individual breaks their UK residency, tax charged is restricted to UK sources of income only. For UK savings income, tax is limited to the tax deducted at source.

## **Splitting the tax year**

Each tax year is considered in its entirety, meaning that an individual is either UK resident for no part or all of the tax year. However, HMRC allow the tax year to be split by concession where:

- An individual leaves the UK for permanent residence abroad to take up a an employment which covers a complete tax year; and
- Interim visits do not exceed 183 days in one tax year or 91 days or more on average over a four year period.

The concession above will only apply where an individual is not ordinarily resident in the UK. If ordinary residence can be proved by HMRC, the individual will be classed as UK resident, and income received from the overseas employment will be assessable to UK tax.

Tax cases, in this area over recent years have tightened the criteria for individuals becoming non UK resident. It is now significantly more difficult for an individual to prove that the UK is no longer their habitual home.

HMRC have recently updated their Guidance Notes (IR20) as a result of the recent case law.

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## **Further information....**

Please contact Kirsty MacDonald at Sedulo for further details:

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