

## Alert to all non-UK residents

**Beware – the UK residency rules may have changed.**

**As of 6 April 2009, HMRC withdrew their previous guidance which set out their practice for determining an individual's UK residence status and have replaced it with a new draft manual.**

### How does this affect you?

In short, it is no longer possible to rely on the "day count rule" 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. Day counting is no longer the sole factor in ascertaining someone's residency status except where the individual spends more than 182 days in the UK, in which case he or she becomes UK resident automatically.

### What factors are relevant when establishing UK residency?

If you have a pattern of coming to the UK for short periods of time year-on-year (perhaps your annual summer visit) then HMRC will not only look at your day count over a four year period but also at other factors in order to determine your residency status; these are:-

- availability of accommodation in the UK
- business ties in the UK
- social ties in the UK
- family ties in the UK

As a result, it has become more difficult for those leaving the UK for the first time to become non-UK resident (particularly if they continue to return to the UK and maintain ties here) and much easier for short term visitors to become UK resident unintentionally, due to the habitual number of days they spend in the UK on an annual basis and the extent of their UK connections.

### Changes in HMRC attitudes

HMRC have renewed their efforts to clamp down on undisclosed offshore accounts owned by UK residents. Recently cases against four UK-based financial institutions were found in favour of HMRC, with the banks now required to produce the identities and addresses of thousands of their clients.

Furthermore, a New Disclosure Opportunity, a type of "tax amnesty", is due to commence in the autumn; in the meantime it appears HMRC are gathering as much information as possible to enable them to prosecute those who do not come forward. HMRC have made an application to the Tax Tribunal to obtain a "blanket" notice against hundreds of banks to disclose customer details. Consequently, HMRC enquiries are likely to increase.

It is no longer possible to obtain a ruling on your domicile status from HMRC by filing a DOM1 or P86 form. Form DOM1 has been withdrawn entirely and form P86 is to be withdrawn and replaced by a new form. Individuals will now claim non-UK domiciled status when claiming the remittance basis on their Self-Assessment Tax Return.

All of the above leads us to believe that in future there is likely to be an increase in enquiries and tax investigations by HMRC. Furthermore, it will now be even easier to fall foul of the new residency rules; as a result, it is anticipated that there will be an increased number of individuals becoming UK resident and inadvertently bringing themselves into the UK tax net.

## So what should you be doing to preserve your position?

We would recommend that all those claiming to be non-UK resident or non-UK domiciled put in place a **“Residency & Domicile Statement”** prepared by a specialist tax lawyer. This document should be reviewed regularly and at least on an annual basis. Record-keeping and monitoring of personal circumstances have never been so important and it is paramount that advisers and clients are prepared if and when a tax enquiry is opened.

We would be happy to assist with the preparation of a statement for you or your clients. It is our view that such documents will be crucial when evidencing a client’s residency and domicile status for UK tax purposes which will not only assist those faced with a tax investigation but also those carrying out any tax mitigation or avoidance planning.

**Should you have any queries regarding this update, please do not hesitate to contact your usual adviser within the private client team at Wedlake Bell or a member of our offshore team:-**

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