

17 June 2011

KPMG's Private Client update - residence

Statutory residence test

The current rules that determine tax residence for individuals are unclear and complicated. In the Budget on 23 March 2011, the Government said it would consult on the introduction of a statutory definition of residence to provide greater certainty for taxpayers, with a view to implementing the measure from 6 April 2012.

The results of the consultation were published today. Interested parties have until 9 September 2011 to respond.

The main changes proposed are:

(a) The statutory residency test may have three parts:

(1) Conclusive Non-Residence

An individual will not be resident in the UK if:

- they were not resident in the UK in any of the previous three tax years and they are present in the UK for fewer than 45 days in the current tax year
- they were resident in the UK in any of the previous three tax years and they are present in the UK for fewer than 10 days in the current tax year

The concept of full-time employment abroad continues to exist, however, this concept has been more clearly defined in the proposals.

(2) Conclusive Residence

An individual will be regarded as UK resident if they are present in the UK for more than 183 days a year, they only have one home and that home is in the UK; or they carry out full - time work in the UK.

Definitions of the terms used above have also been set out in the proposals.

(3) Other Connection Factors and Day Counting

When an individual does not fall within (1) or (2) above, part (3) of the proposals will apply. Where an individual spends less than 183 days in the UK, a combined test will apply taking into account days in the UK and other connection factors, which are:

- **Family** (spouse, civil partner or common law equivalent or minor children resident in the UK)
- **Accommodation** (accessible accommodation in the UK and makes use of it during the year)
- **Substantive work in the UK** (substantive but not full-time)
- **UK presence in previous year** (spent 90 days or more in the UK in either of the previous 2 tax years)
- **More time in the spent in the UK than in other countries**

Broadly the more connection factors that apply, the lower the number of days an individual can spend in the UK without becoming UK resident.

Other Comments

- The rules apply differently to individuals arriving in the UK to those leaving the UK, reflecting the fact that it is easier to obtain UK residency than lose it.
- Residency status will be considered on a self assessment basis.
- The concessionary split year rules (for individuals leaving or arriving part way through a tax year) will be given a statutory basis going forward.
- Anti-avoidance rules currently in place for individuals becoming "short-term" non-UK resident for Capital Gains Tax may be extended to include some forms of investment income, e.g. dividends paid by close companies.

(b) The Government believes there is a good case for reforming the concept of ordinary residence. Proposals include:

- Limiting the application of ordinary residence to non-UK domiciled individuals
- Abolishing ordinary residence for all tax purposes except overseas workday relief
- Retaining ordinary residence for all tax purposes and create a simple and objective definition in statute

(c) The practical application of overseas workdays relief is also being reviewed

17 June 2011

KPMG's Private Client update - residence

The next steps are:

1. To consider the current proposals in detail, KPMG LLP along with other commentators will provide comments and analysis to HMRC by 9 September 2011.
2. When the policies have been finalised, legislation will be drafted to enact the proposals. The current proposals are intended to apply from 6 April 2012.

It is essential that UK tax advice is taken before leaving the UK or if you are in any doubt about your residence status. No conclusion regarding your residence status should be taken based on this guidance alone. KPMG has a number of specialists throughout the UK who can assist. For more information, speak to one of the KPMG Private Client Advisers listed below, or your usual KPMG contact.

David Kilshaw
Partner – London
Tel. +44 (0)207 311 2841
david.kilshaw@kpmg.co.uk

Nick Pheasey
Director – Leeds
Tel. +44 (0) 113 231 3163
nick.pheasey@kpmg.co.uk

Jane Crotty
Director – Bristol
Tel. +44 (0) 117 905 4143
jane.crotty@kpmg.co.uk

Greg Limb
Partner – London
Tel. +44 (0)207 694 5401
greg.limb@kpmg.co.uk

Mark Patterson
Partner – Midlands
Tel. +44 (0)115 935 3441
mark.patterson@kpmg.co.uk

Narinder Paul
Partner – Birmingham
Tel. +44 (0)121 232 3357
narinder.paul@kpmg.co.uk

Daniel Crowther
Director - London
Tel. +44 (0) 207 694 5971
daniel.crowther@kpmg.co.uk

Emma Baylis
Partner – Birmingham
Tel. +44 (0)121 609 5843
emma.baylis@kpmg.co.uk

Beatrice Friar
Director – Glasgow
Tel. +44 (0)141 300 5768
beatrice.friar@kpmg.co.uk

Mike Walker
Partner – Manchester
Tel. +44 (0)161 246 4117
mike.walker@kpmg.co.uk

Maire Spencer
Director – Birmingham
Tel - +44 (0) 121 232 3627
maire.spencer@kpmg.co.uk

Roger Gadd
Director – Bristol
Tel.+44 (0) 117 905 4636
roger.gadd@kpmg.co.uk

Dermot Callinan
Partner – Leeds
Tel. +44 (0) 113 231 3358
dermot.callinan@kpmg.co.uk

Paul Spicer
Partner – Bristol
Tel. +44 (0)117 905 4040
paul.spicer@kpmg.co.uk



The views and opinions expressed herein are those of the author and do not necessarily represent the views and opinions of KPMG LLP (UK). The information contained is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.