ROBINSON REED LAYTON
CHARTERED ACCOUNTANTS and CHARTERED TAX ADVISERS

RESIDENCE IN THE UK - HOW CAN YOU TELL?

It is easy to make fun of the new legislation on UK residence for tax purposes, but a recent Tax Tribunal case is a reminder of how chaotic the position was before April 2013.

Since April 2013, the question of whether you are UK resident for tax purposes is a matter of law. The legislation prescribes a number of tests based on the number of days you spend in the UK in the tax year, whether you were resident here in the previous three tax years, and how many "ties" you have to the UK.

UK "ties" are:

- Family – do you have a spouse or minor child resident in the UK?
- Accommodation – do you have somewhere to stay in the UK (not necessarily because you own it) and did you spend at least one night there?
- Work – did you do 40 or more days work in the UK? (a day's work is more than three hours – you can tell this was written by civil servants)
- 90 days – did you spend more than 90 days in the UK in either of the two previous tax years?
- Country – did you spend more days in the UK than in any one other country during the tax year?

Depending on whether you were UK resident in any of the three previous tax years or not, the number of UK ties determines the number of days you can spend in the UK without becoming UK resident.

All this is summarised in a publication from HMRC: http://www.hmrc.gov.uk/international/rdr3.pdf and this can determine with some certainty how many days you can spend in the UK (that is, how many days you can be here at midnight at the end of a day) without becoming UK resident. It is possible to dream up artificial scenarios where the matter is still in doubt – usually revolving around the question of "available" accommodation – but in most normal circumstances the position can be clearly determined.

This contrasts with the situation for tax years earlier than 2013/14, when the question of UK residence was a mixture of limited and unhelpful legislation and HMRC guidance (that was definitely not clear).

A case was decided by the First Tier Tribunal this August (Healey v Revenue & Customs [2014] UKFTT 889 (TC)). The case related to whether Mr Healey was resident in the UK for the tax year 2007/08, which in itself tells you how cumbersome and uncertain the old rules were, given the time it took to get the matter before a Tribunal.

There is little point in rehearsing the details as they are no longer relevant, but the case had certain nostalgic features for those of us who had to wrestle with the old rules. There was the previous tax year, 2006/07, during which Mr Healey had "not set foot" in the UK, following the case of Reed v Clark (1985 STC 323) – which concerned Dave Clark, of the Dave Clark Five, who established that complete absence from the UK was a reliable way of not being resident.

The Tribunal hearing was a preliminary one on the sole question of whether Mr Healey had made a "distinct break" from the UK as a result of spending a whole tax year never "setting foot" on UK soil. This vague concept was important because it would affect whether he was UK resident in the following tax year. The Tribunal decided it was very unlikely that a "distinct break" had occurred.

Planning point

Under the old rules residence was too often a matter of opinion, not fact. For 2013/14 and later years, the legislation means you can work out exactly what is needed in order to avoid becoming (or cease being) UK resident.

This article by James Bailey first appeared in Business Tax Insider magazine December 2014 (www.taxinsider.co.uk)