Residence
Moving The Goalposts

1 hour of Structured CPD

Kevin Igoe CTA
Director

John Craddock CTA
Senior Tax Consultant
Agenda

- History of Residence & Ordinary Residence
- Relevance of Residence to UK tax
- IR20 vs HMRC6
- Recent Cases
- Practical implications
- Future
History - Residence

- No Statutory Definition – Ordinary meaning

- Early Case Law:
  - Levene v IRC 1928
  - Lysaght v IRC 1928

- HMRC Practice – IR20/HMRC6
History – Ordinary Residence

- No Statutory Definition
- Longer term meaning than residence –
  - Lysaght & Levene cases

- Subsequent cases – foreign nationals & temporary UK residence:
  - Miesegaes v IRC (1957)
  - Genovese v R & C Commrs (2009)
Residence

- General test – 183 days in UK
- SP 2/81 Introduced ‘average of 91 days per annum over 4 years’
- Split year concession
- Total absence – Reed v Clark (1985)
Ordinary Residence

- General principle – settled in UK for continuous period (which could be temporary)

- Intention

- Arrival in UK – SP 3/81 – 3 year test
Income Tax Act 2007:

- **S.829** – Ordinary Residence unaffected by occasional residence abroad
- **S.830** – No account taken of UK accommodation where working abroad full-time
- **Ss 831 & 832** – Deemed non-residence where ‘temporary purpose’
Tax Liability

- UK Tax on UK Income/Gains

- UK residents – UK tax on worldwide income

- Not ordinarily resident (or non-dom) – Remittance basis

- Special legislation – Excluded income for non-residents – ITA 2007, S.811

- Remember Double Taxation Treaties!
HMRC Guidance

- IR20


- Links to other guidance via:
Residence – Basic rule:
- IR20 – 183 day & 91 average days rules – exclude days of arrival/departure (up to 5 April 2008)
- HMRC6 – many different factors – limitations to day counting – reference to frequency/length/purpose etc.

Ordinary Residence:
- IR20 – focus on place normally resided
- HMRC6 – expanded – list of basic ingredients – settled purpose/regular & habitual/voluntary etc.
Coming to UK:
- IR20 – R & OR if arriving permanently/3 years+
- HMRC6 – ‘Factors’ – history/pattern/purpose/family & social/accommodation. Detail also for students/temp. residents & regular visitors

Leaving UK:
- IR20 – Working abroad & whole tax year; also
  - Min 3 yrs absence to be neither R nor OR
- HMRC6 – expanded – similar rules, more emphasis on ‘definite break’ & ‘cutting ties’
Tests for Residence and Ord. Residence blurred!

HMRC6 – HMRCs intention to disregard basic time-based tests in favour of wider interpretation

Residence planning affected accordingly
Recent Cases: Gaines Cooper

- Residence one of various issues
- Mr Gaines-Cooper left UK in 1976 – subsequent UK tax liability declared in accordance with IR20
- Complex litigation process
- Underlying point: Goalposts have moved!
Recent Cases - Tuczka

- Austrian National – in UK to work, July 97
- Initially rented accommodation, then purchased in May 98
- Personal factors – living with fiancé/changes in employment contract
- Initial claim of not ordinarily resident challenged by HMRC
- First Tier Tribunal dismissed appeal, also dismissed by Upper Tier
Practical Implications

- HMRCs change in stance unfair, but approved by courts

- Residence planning – greater consideration to ‘severing links’ etc.

- Clients either non-resident or resident but not ordinarily resident - review UK connections?
The Future

- Existing cases: likelihood of HMRC challenges

- Statutory definitions?

- Residence will always be a matter of interpretation!
Residence
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Enquiries......

E: info@protaxconsult.com

T: 0845 854 3334

John Craddock CTA – Senior Tax Consultant