

Tax considerations when leaving the United Kingdom

It is possible to write a book about the tax aspects for individuals who emigrate from the United Kingdom (UK). This article is intended as 'only' a general overview of the UK tax implications for an individual leaving the UK to live abroad. To keep the length manageable, much detail is omitted. **For reasons of simplicity, this article assumes that:**

- the individual was resident in the UK for at least one of the 3 previous tax years;
- the individual does not work on board a vehicle, aircraft, or ship; and
- the individual does not die during the tax year of departure.

Note that a **tax year** runs from 6 April to the following 5 April. Usually, under UK tax law, residence status is for a complete tax year.

To be a UK tax resident or not, that is the question

The first question is whether or when the individual ceases to be resident in the UK for UK tax purposes. Since 2013 the UK has had a "statutory residence test," which in fact consists of a hierarchy of tests.

1. An individual is resident in the UK for a tax year if the "automatic residence test" (see under 2-6) is met, or if the "sufficient ties test" (see under 7-8) is met. If the automatic residence test is met, it is not necessary to consider the sufficient ties test.

Automatic residence test

2. The automatic residence test in fact consists of several tests. There are 2 groups of these tests:
 - a. the "automatic UK tests"; and
 - b. the "automatic overseas tests".
3. If any one or more of the automatic overseas tests is met, the individual is non-UK resident for the tax year concerned come what may.
4. For purposes of this article, there are 2 automatic overseas tests.
 - a. The first of these tests applies where an individual spends less than 16 days in the UK during the tax year.
 - b. The second test applies if during the tax year the individual works "sufficient hours overseas," there are no "significant breaks" from overseas work, and certain other criteria are satisfied.
5. If none of the automatic overseas tests apply, then it is necessary to consider the automatic UK tests. If any of the automatic UK tests applies, then the individual is UK resident for the tax year concerned.
6. There are basically 3 automatic UK tests, covering:
 - a. days spent by the individual in the UK;
 - b. availability of a home to an individual in the UK; and
 - c. hours worked by the individual in the UK.

Sufficient ties test

7. If none of the automatic overseas tests or automatic UK tests apply, it is necessary to consider

the sufficient ties test.

8. Under the sufficient ties test, there is a sliding scale to the number of UK ties that is required for somebody to be regarded as UK resident, depending on the number of days spent by the individual in the UK in the tax year under consideration. The more days the individual spends in the tax year UK, fewer ties are needed for the individual to be regarded as UK resident.

The **relevant ties** are:

- a “family tie” – a member of the individual’s family (i.e. spouse or minor children) is UK resident;
- an “accommodation tie” – the individual has accommodation in the UK available for his or her use;
- a “work tie” – the individual performs more than 3 hours’ work in the UK on 40 or more days in the tax year;
- a 90-day tie – the individual spent 91 or more midnights in the UK in one or both of the 2 previous tax years; and
- a “country tie” – the individual spends more midnights in the UK in the tax year concerned than in any one other country.

Split tax year

9. As already noted, tax residence status is normally for a complete tax year (6 April to the following 5 April). In limited circumstances, however, it is possible to split a tax year in which an individual departs from the UK. Briefly these are:

- a. Case 1 – where the individual, having been UK resident in the previous tax year, starts work overseas and then stays in continuous work overseas for the remainder of the relevant tax year and the whole of the following tax year;
- b. Case 2 – where the individual is an accompanying spouse of someone who falls within Case one, who moves abroad to join him or her;
- c. Case 3: where
 - i. the individual has no home in the UK in the overseas part of the year;
 - ii. the individual spends fewer than 16 nights in the UK in the overseas part of the year; and
 - iii. within 6 months of leaving, the individual becomes tax resident in another country or establishes his or her only home there.

The overseas part of the year starts when the leaver first ceases to have a UK home.

10. Split year treatment does not mean that the individual is non-UK resident in the overseas part of the year for all purposes. It is necessary to check each charging provision individually to see whether split year treatment applies.

UK tax treatment of an individual who is not UK resident

UK tax legislation is, in general, subject to territorial limits. This means that either ‘what is taxed’ must have a UK source, or ‘the person who is taxed’ must be resident in the UK.

Someone who is not resident in the UK will generally remain taxable on income with a UK source.

Non-residents are generally not liable to capital gains tax (“CGT”), but:

- An individual who carries on a trade or profession in the UK through branch or agency is charged to CGT on gains arising on the disposal of assets in the UK used for the business or by the branch or agency. (TCGA 1992, section 1B.)
- A non-resident individual who disposes of UK property is liable to CGT. (TCGA 1992 section

1A.)

- An individual who emigrates but returns to the UK after a period of 5 or fewer tax years will be taxed on disposals made during his/her absence. (TCGA 1992, section 1M.)

Steps to be taken on departing from the UK

The simplest guidance is that someone leaving the UK should complete form P85 and submit it to HMRC. Depending on the detailed circumstances, this may well result in a tax refund. See <https://www.gov.uk/government/publications/income-tax-leaving-the-uk-getting-your-tax-right-p85>. It would be prudent, however, to seek professional advice before submitting this, especially because tax law and practice can change very fast. Such specific advice is likely to be essential to obtain before taking, or deciding not to take, any action.