

Yes, I am just visiting, surely I don't need to worry about UK tax residence?

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The UK remains a popular destination with tens of millions of people visiting the UK each year. To accommodate this level of footfall, the UK has a moderately flexible immigration route, which allows individuals to spend time in the UK without needing to wade through the complexity of obtaining 'leave to remain' in the UK. This flexibility (explored briefly below) can lull an unsuspecting frequent traveller into a false sense of security. It can be mistakenly assumed that if one does not have express permission to remain in the UK beyond six months, that there is protection from HMRC's long arm.

Most visitors to the UK do not consider their tax residence (unless already well-advised). They board the plane because they are planning short-term visits to friends or family, or they want to visit some landmarks. However, those enamoured by their visits, and who then start to spend more and more time in the UK, may run the risk of inadvertently becoming a UK tax resident in a tax year. Or they may increase the possibility of becoming a UK tax resident in a subsequent tax year.

There are also those who visit more frequently, either because they really enjoy it, or commonly it will be because they have acquired a property in the UK and spend two to three months in it during the year.

Consider connections

The UK's test for determining UK tax residence is codified in tax law. There is a bright line test that will determine whether someone is conclusively tax resident, or not, in a given tax year, but the savvy traveller will be aware that the number of days that someone can spend in the UK may additionally be affected by the number of ties they have to the UK. This will affect the threshold number of days one can spend in the UK (by increasing or decreasing the days allowable) without acquiring a UK tax residence. This means that an individual with few or no ties will have greater freedom to spend time in the UK without triggering UK tax residence. Conversely, an individual with a UK property, who may spend time working remotely in the UK, who has minor children in education in the UK or who had, in previous tax years, spent 90 days or more in the UK, will have such ties. Therefore, it follows that the threshold number of days will decrease meaning that the total number of days that they can spend in the UK before becoming UK tax resident decreases significantly.

Over the years, a client who has increased connections to the UK may be unaware that this threshold is decreasing – as such, seeking advice before or when planning to spend time in the UK is essential to prevent any unexpected UK tax cost.

Immigration and tax

Immigration and tax are closely connected, albeit not interdependent. For example, it is entirely possible (and plausible) for someone to have long-term 'leave to remain' in the UK, but not be a UK tax resident. In previous years, when the Tier 1 (Investor) visa was used by individuals, there would be no requirement for them to remain in the UK, and there was no limit on the number of extensions given, relieving them of immediate pressure to remain within the days counts to obtain 'Indefinite Leave to Remain'. As such, if their plans allowed them to spend a lot of time outside the UK in a given tax year, their immigration permissions would remain intact (assuming they remained invested correctly) but they may not necessarily have met the criteria to be UK tax resident in that year.

There is no requirement in the Immigration Rules or in wider legislation that obliges an individual to become a UK tax resident in order to obtain 'leave to remain' in the longer term. In practice, a person's visa may well impact their UK tax residence. For instance, if an individual comes to the UK under a Skilled Worker Visa, then he or she may automatically become a UK tax resident as a full time worker in the UK, or even if not full time, the number of ties are likely to increase (accommodation and work for example), resulting in UK tax residence. As such, managing non-UK tax residence for someone who is employed in the UK can be difficult. It may also lead the Home Office to question the need for a Skilled Worker Visa if there is demonstrable evidence that the worker need not spend time in the UK.

Equally, the opposite result is possible. An individual who does not have any long-term permission to stay in the UK may become a UK tax resident. This is because the UK's tax rules are based largely on physical presence in the UK. There is no test of habitual residence (with the exception of some Double Tax Treaties); moreover, the intention of the individual is not relevant when determining whether or not they become UK tax resident. This is best demonstrated by way of an example:

George has recently sold his business in Hong Kong, and he is now left with cash and has a 'light-touch' consultancy agreement with the buyer of his business. His time is his own (and it has not been for a long while). The work up to the sale of his business was arduous and he wants to start enjoying his life again.

He loves London and the Cotswolds. As a young man he studied in London and when he did, he spent time exploring the countryside. He has a minor child in boarding school in the UK who he wants to visit regularly. He decides to buy a London apartment and a country retreat in the Cotswolds. George also sees these properties as investments. He thinks he will spend three months a year in the UK, maybe four. He cannot commit to living full-time in the UK for two reasons:

(1) he does not want to, and

(2) he has his consultancy agreement that requires him to attend meetings in Hong Kong following the sale of his business, so he has to spend time there.

He also has friends in Hong Kong and is comfortable living there. George has only been stopped once at Border Control and asked to explain his entry. He cheerfully explained to the Officer that he was visiting his son who is at boarding school, and that he was planning on some hikes. He also showed the officer his return flight, which had been booked in two weeks' time. The Border Officer was satisfied and waved him through (along with some hiking recommendations).

From a UK tax perspective, George has three ties: (a) accommodation (his two properties available to him), (b) family (his minor son) and (c) 90 days (having spent 90 days in the UK in one of the previous two tax years). This means that if he spends more than 90 days in the UK in the tax year in question he will become UK tax resident. George has not sought tax advice, but he remembers someone at a dinner party once saying that he could spend up to 183 days in the UK without becoming UK tax resident. He asked the Border Officer about how long he could stay, and the Border Officer said he could spend six months at a time.

What George has not really thought through are the following:

- a) The Visitor Visa is limited to six months per stay, however for immigration purposes there is no limit on the number of visits an individual can make to the UK. As such, as he travels between London and Hong Kong, he restarts his six-month clock each time. As long as he is not treating London as his main home or living here through successive visits, and genuinely just visiting, then he is unlikely to be warned on entry or prevented from entering at all. As he enjoys his time in London, he enjoys the ease of coming in when he pleases, and quickly he starts to spend closer to four or five months in the UK. He is not stopped at the border, and even if he is, he meets the requirements of a bona fide visitor.
- b) In fact, in a tax year, he spent 115 days in the UK, unaware he had become UK tax resident. There is no defence in UK tax law to ignorance of one's own residence. As such, he would have to report his income and gains in the UK and, assuming he is able to defend his non-domicile status, claim the remittance basis to protect his non-UK source income and gains. However, if George had more complex arrangements, then the matter can quickly spiral, and the rectification exercise can take on a life of its own.

The story, in this case, has a fortunate outcome. George was able to regularise his position having had to pay some UK tax with a heavy heart. He still continues to love London and the Cotswolds, but he is no longer relying on the assumption that he is visiting to ignore the real threat of UK tax residence when he spends too much time in the UK.

Think critically

It is important for clients and advisors alike to think critically about their time spent in the UK. There is no argument that can be proffered to the UK tax authorities that would allow them to accept that an individual is not a UK tax resident because of a mistake or their ignorance of the rules.

An individual is either a UK tax resident in a given tax year, or they are not. The determination as to whether someone is (or is not) can be fraught with complexities, but the end result should be a simple yes or no. Accordingly, any time spent in the UK, even when visiting, needs to be considered very carefully.

Equally, from an immigration perspective, an individual who has become a UK tax resident is also at risk of having difficulty explaining to the Border Force or the Home Office that they are not living in the UK. In fact, the Home Office takes the view that adoption of a UK tax residence by an individual is most likely a factor in determining that they are not, in fact, visiting.