# The home front

Personal tax

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Sophie Nash outlines the UK residency rules advisers and employers need to know for those coming to work in the UK

## Key Points

### What is the issue?

HMRC are increasing their focus on people employed overseas coming into the UK to work, whether it be on a long term basis or just business trips

### What does it mean for me?

Employers are increasingly seeking support in this area to be compliant with the rules and to plan around their mobile workforce

### What can I take away?

This is a complex area with a lot at stake, so when advising on internationally mobile employees it's best to consult an expert if you are unsure of the rules

A combination of globalisation and a relaxation of national borders, particularly in Europe, has prompted greater scrutiny by HMRC of those who arrive in the UK to work. With the introduction of the statutory residence test for assessing UK tax residence and stricter rules for employers requiring monitoring of business travellers, there is more at stake than ever for new arrivals and their employers.

# Taxation

Just because an individual comes to the UK on a short-term basis may not absolve them from paying tax because this is driven by residence and domicile.

A UK resident is taxable here on their worldwide income and gains unless they are non-UK domiciled, in which case overseas income may be excluded. It is a common misconception that if a UK domiciled individual invests their money offshore there will be no tax to pay on the income accrued. For those who are non-UK residents, they are taxable in the UK only on UK-sourced income and gains.

In the UK, residence is determined by the statutory residence test (SRT) which came into force on 6 April 2013 as part of HMRC's tax simplification initiative. The test analyses how long an individual spends in the UK, their purpose for being in the UK and sometimes the extent to which they are 'tied' to the UK. Under the SRT, it has become easier for somebody moving into the UK, even short term, to become a UK resident. To determine an individual's residence position, the following tests are assessed in order until one of them is met:

- automatic non-residence/automatic overseas test;
- automatic residence/automatic UK test; and
- sufficient ties test.

The detail involved in each of the tests can be difficult to interpret, but HMRC have published a useful guide – RDR3 – which can be found on the HMRC website.

These tests determine an individual's UK domestic residence position; and it is possible, depending on an individual's situation, to be domestically resident in more than one country. In this instance, in order to avoid people being taxed twice, double tax treaties are in place between the UK and other countries. These contain provisions to determine which country the individual has closer ties with, and therefore, has the primary taxing rights. They also include provisions for each type of income and how it should be treated in each country. The aim here is to eliminate double taxation.

## Non-domiciled UK residents

Non-domiciled individuals who are resident in the UK can decide whether to be taxed on their worldwide income and gains, or just those sourced from the UK, as long as they keep any overseas income and gains outside the UK.

If they elect the latter, for their first three tax years as a UK resident these individuals could claim relief for the days that they work outside the UK if the income relating to those is paid and retained offshore. There are complex rules relating to bank account structuring and sometimes it is important to weigh up whether the relief available is worth the administrative burden that comes with claiming it. This is where tax advisers can add value to their clients by preparing estimated calculations on the level of the benefit available.

If a non-domiciled individual has remained in the UK for a long period and elects to be taxed on the remittance basis, they can become subject to a further charge from HMRC; potentially making this a more expensive option than being taxed on the arising basis. From 6 April 2015, the proposed charges are £30,000 for those who have been resident in the UK for seven of the previous nine tax years. This increases to £60,000 for those who have been resident for 12 of the previous 14 tax years and £90,000 for 17 of the previous 20 years.
Currently this is an annual election, but there are further proposed changes due to come into force on 6 April 2015 which are being consulted on. Under these proposals non-domiciled individuals who elect to be taxed on the remittance basis will have to make this election for a minimum of three tax years, making the charge payable for three consecutive years regardless of whether overseas income and gains are brought to the UK.

# Social security

When an employee is working in the UK, depending on the length of the move, where they have moved from and where their contract of employment is held, can affect where they pay social security.

Considering the most straightforward scenario first, if the employee moves to a UK contract of employment they will be liable in most cases for NICs and should cease to be liable for social security in their home country.

Employees who arrive in the UK to work temporarily but remain on their home country’s payroll and contract may not be liable for NICs. If they have come from an EEA country, as long as they are paying social security in that country, their employer can apply for an A1 certificate. This proves their liability to social security in their home country and keeps them outside the scope of UK NICs.

For anybody who has moved from a country outside the EEA, they may remain outside the scope of UK NICs. This applies if they have moved from one with which the UK has a reciprocal social security agreement and are continuing to pay contributions in their home country.

Employees who remain employed in any other country should continue to pay social security in that country for the first 52 weeks of their assignment to the UK. If they remain in the UK for longer than 52 weeks it is then that they should become liable to UK NICs. This is irrespective of the position in the home country, where they could remain liable to social security too.

# Compliance

It is important to be compliant with UK tax withholding rules when working in the UK because, under the real-time information (RTI) rules, failure to make pay as you earn (PAYE) withholding payments can lead to penalties. Even if an employee remains employed abroad and is paid through their home country payroll, there can be a requirement for a UK company benefiting from their work to account for PAYE should the individual’s earnings be taxable here.

In some circumstances, an individual working in the UK on a short-term basis who remains on their home country payroll but who is subject to UK PAYE can be added to a ‘shadow’ UK payroll, relaxing the requirements for real time reporting and allowing estimated PAYE to be withheld. Certain conditions need to be met for this to be available. A tax return must then be filed by the individual reconciling PAYE withheld and the tax liability.

## Business visitors

New rules have increased scrutiny in the UK on short-term business visitors and HMRC are introducing more stringent reporting requirements for these individuals. It has become a hot topic and is being examined in more depth as part of HMRC’s Know Your Customer visits to organisations.

To relax the withholding requirements for employees with an irregular presence in the UK, an organisation may agree an Appendix 4 arrangement with HMRC. They file a report detailing the number of days that employees who they do not expect to have a UK tax liability for that tax year have spent in the UK. Time spent in the UK must be tracked accurately and diligently. Typically, these reports would include those who are travelling to the UK from a country with which the UK has a double tax agreement.

## Other considerations

Depending on the circumstances in which an individual is sent to work in the UK, employers may apply different HR and compensation policies involving additional types of remuneration and benefits. It is important to understand the arrangement and ensure that tax is applied correctly.

Non-domiciled individuals can be considered to be UK domiciled for inheritance tax purposes if they have either been UK domiciled in the UK in the past three years or they have been resident in the UK for 17 of the past 20.

## Conclusion

Individuals coming to work in the UK can be a complex area of tax and raises the possibility for errors to be made, leading to enquiries, penalties and interest from HMRC. It is important to be confident of the advice provided to clients on this matter as HMRC more assiduously scrutinises individuals arriving in the UK to work temporarily or permanently.