



Julia Casimo

Taxman gets tough on Non-Residents

Thousands of people who work abroad and claim Non-Resident status, thus avoiding UK income tax, will have their affairs put under the spotlight by the Taxman following a recent court ruling. The Court of Appeal found that a taxpayer who had claimed to be resident in the Seychelles had never 'left the UK' because England had remained the 'Centre of gravity of his life'. This was mainly because his wife and son continued to live here.

Q. I have worked out of the UK for several years as a contractor, and have always claimed non-residence and made sure I was in the UK for less than 90 days. Loads of my colleagues do the same, but one of them is now being investigated by the Revenue who are saying that he has been resident in the UK all along. What is the position?

A. There have been a number of recent changes in the way that HMRC will assess someone's residence. The long standing practice of many people like yourself and your colleagues to rely on the '90 day' rule is now under severe threat.

Firstly for 2007/8 onwards HMRC changed the rules for day-counting, so that days of arrival and departure in the UK which had previously been ignored in counting towards your UK days, were brought in. This makes a real difference for people who make frequent short trips to the UK.

Secondly and much more importantly on 6 April 2009 HMRC withdrew their old IR 20 Booklet and replaced it with more detailed guidance including HMRC 6, a new manual. Buoyed up by victory in a couple of recent high profile cases, this new booklet provides a flavor of how an Inspector will tackle a residence enquiry.

Q. So does the 90 day rule still apply?

A. Yes, but only if you are judged to have left the UK first. Critically HMRC are placing much more emphasis on this test. To decide whether an individual has left the UK they will consider, for example

- availability of accommodation in the UK (i.e. have you kept any property in the UK?)
- business ties in the UK (particularly if the business is the main source of income)
- social ties in the UK (i.e. have you retained membership of clubs, season tickets etc)
- family ties in the UK (i.e. have your immediate family, spouse/partner and children remained here)

...If you have not left the UK, under these criteria, then all your income from when you began to work abroad is potentially subject to UK tax. It is clear that non-UK residence can no longer be established by carefully structured holidays and business trips, and HMRC intend to look at the 'bigger picture' and the pattern of an individual's life. People who have left the UK but still visit often and retain family, social or financial ties will now become the focus of the Taxman's attention.

As with many decisions you really do need to take independent financial and tax advice. If you would like our help call Julia on 0151 228 8977 at **John Kerr Chartered Accountants** 369-375 Eaton Road, West Derby, Liverpool L12 2AH. Authorised and regulated by The Financial Services Authority

