

A Guide for individuals Coming to the UK

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Contents

Scope	3
Why is my tax residency relevant?	3
How do I become non UK tax resident?	3
What is considered to be a habitual purpose?	
Error! Bookmark not defined.	
Once I have left the UK, for how many days can I return to the UK?	
Error! Bookmark not defined.	
Are there any exceptions?	
Error! Bookmark not defined.	
How would HMRC prove how many days I have spent in the UK?	4
What rules must I satisfy if I am leaving the UK to work?	4
What rules must I satisfy if I am not leaving the UK to work?	4
Can I be tax resident in more than one country?	4
Can I split the tax year when I leave the UK?	4
What is domicile status?	4
Why is my domicile relevant?	5
Domicile of origin	5
Domicile of choice	5
Deemed domicile for inheritance tax purposes	5
How can I lose my UK domicile status?	5
Do I still need a UK will?	5
How will my employment income be taxed in the UK?	6
Do I have to pay UK National Insurance contributions?	6
Will accommodation expenses that my employer pays for me whilst I am outside the UK be taxable in the UK	6
What about travel and subsistence expenses?	6
What about my relocation expenses?	6
What is the position if I am self employed and move abroad?	7
Will I qualify for a UK personal allowance?	7
How do I claim credit for the UK tax paid if I also have to pay tax in my home country?	7
What is the position if I rent out properties in the UK as a non UK resident?	7
What about my other UK investment income?	7
What about capital gains?	
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What about my non UK income?	7

Scope

The purpose of this guide is to provide a general response to the more frequently asked questions concerning direct taxes in the UK by those coming to the UK. To that end individuals coming to the UK should also acquaint themselves with the variety of indirect taxes that apply, such as VAT, business rates and council taxes.

The direct taxes dealt within this guide concern income tax, which is directed towards an individuals earned and unearned income, capital gains tax (CGT) which is applied to capital gains on the disposal or deemed disposal of capital assets, such as investments and property, and inheritance tax (IHT) which arises in relation to one's estate on death, and in connection with certain gifts into trusts.

How do I claim for the UK tax paid if I still have to pay tax in my home country?

If you are taxed twice in different countries in respect of the same income, you may be able to claim relief for any double taxation charge. Relief is generally limited to the lower of the foreign or UK tax charged.

Double taxation relief can only be claimed in respect of income subject to the RBA to the extent that it is brought into the UK. The rules are nonetheless complex.

The above FAQ's provide a very general response to some of the more common questions asked by individuals coming into the UK. In all cases clarity should be obtained, and where possible action can be taken to mitigate exposure to UK tax.

Scope

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Why is my tax residency relevant?

As a general rule while income tax will apply to UK source income, such as employment income, investment income and rental income, regardless of one's tax residency, if you are UK tax resident you will be liable to pay UK tax on all UK and worldwide income and capital gains.

How do I become non UK tax resident?

From 6 April 2013 a statutory definition of residence has been introduced. In order to be treated as non UK resident then you have to make a clean break from the UK and only come back for no more than 15 days in the first three years after you leave and then no more than 45 days after that.

A day is counted as having been spent in the UK if you are here at midnight.

There are 2 exceptions where HMRC will not include days spent in the UK:

- Exceptional circumstances – HMRC will allow days spent in the UK as a result of exceptional circumstances to be ignored in the day counting process. The suggestion is that these are limited to days when the individual is too ill to travel, days in the UK for essential unplanned medical treatment or days to attend a family funeral. It is also expected that this would include days resulting from the cancellation of a flight or closure of an airport.
- Transit days – where an individual arrives in the UK one day as a passenger and leaves the following day this can be excluded on the basis that it is a transit day. This will only be allowed in circumstances where the individual does not engage in activities which are substantially unrelated to their passage through the UK.

How would HMRC prove how many days I have spent in the UK?

The burden of proof lies with the individual to prove that they have not been present in the UK. It is very important that the individual keeps detailed records of their whereabouts on any particular day, along with copies of any travel documents when travelling to the UK.

It should be noted that HMRC may request copies of bank statements and credit card statements to substantiate non residency in the event of an enquiry. They also have the power to ask the airline to provide copies of your tickets for flights in or out of the UK.

What rules must I satisfy if I am leaving the UK to work?

If you leave the UK to work full time abroad under a contract of employment, you are treated as not resident and not ordinarily resident if you meet all the following conditions:

- your absence from the UK and your employment abroad both last for at least a whole tax year;
- during your absence any visits you make to the UK total less than 91 days

If your employment ceases within the period, the position regarding residency will need to be carefully reviewed, and will probably result in your claim for non UK resident to fail.

This treatment will also apply if you leave the UK to work full time in a trade, profession or vocation and you meet conditions similar to those above.

What rules must I satisfy if I am not leaving the UK to work?

Under the new rules it is possible to establish non residence without obtaining overseas employment. In order to do this:

1. You must actually leave the UK and return for no more than 16 days in each of the first three tax years;
2. After three tax years of non residence you can come back for up to 45 days; or
3. Sell your UK home (and retain no accessible UK accommodation) and remain non resident for the whole of the following tax year as well.

The number of days you can return increases the fewer ties you have with the UK (please see the flowchart at the end of this guide for further details).

Can I be tax resident in more than one country?

Yes, it is possible for you to be resident in more than one country at any one point in time. This is mainly due to the existence of non coterminous tax years in different countries.

In these circumstances the double tax treaty between the countries will usually aim to resolve any potential double taxation conflicts by the inclusion of a tiebreaker clause.

Can I split the tax year when I leave the UK?

Previously HMRC would only allow the tax year to be split by concession. Under the new rules split year treatment only applies where you obtain a full time job abroad or you sell your home and remain non resident for the whole of the following tax year.

Can I go abroad for a short period and receive UK source income tax free whilst overseas?

New rules have been introduced to prevent individuals manipulating their income to receive it free of UK tax whilst non resident in the UK. An individual will fall within these rules if they meet the following criteria:

- have been resident in at least four of the seven tax years prior to their departure from the UK
- receive certain types of UK source income (including capital gains and dividends) whilst non resident, and
- return to the UK within five years of leaving.

If all the criteria are met the income/gains are taxable in the year of return.

What is domicile status?

Whereas an individual can be resident in more than one country, an individual can only have one domicile.

An individual is domiciled in the country (or in some cases the state) of their origin, the country which they regard to hold their cultural and family roots, and where one has permanent habitual ties of a settled nature.

Why is my domicile relevant?

The worldwide assets of an individual who is UK domiciled, or deemed UK domiciled, are exposed to IHT on death irrespective of their residence status.

Conversely, in the case of a foreign domiciliary, only assets situated in the UK are subject to IHT on death again irrespective of their residence status.

Domicile of origin

This is acquired at birth, and is usually the domicile of your father (or mother if you were born outside marriage). Your domicile of origin is extremely hard to displace.

Domicile of choice

A domicile of choice may be acquired by taking identifiable and substantive steps to acquire another domicile in a country of choice. Habitual residence or citizenship in a particular country is not sufficient to demonstrate a change of domicile. One needs to demonstrate permanent residence with settled intent.

Deemed domicile for inheritance tax purposes

If you have been resident in the UK in 17 out of the last 20 years you will be deemed UK domiciled for inheritance tax purposes alone. A deemed UK domicile is of no relevance to income tax or CGT. When leaving the UK an individual will be deemed UK domiciled for three years.

Income tax and capital gains tax

Domicile is also relevant for income and capital gains tax purposes, and a non UK domiciled individual can apply the principles of the remittance basis of assessment and pay the remittance basis charge. Its effect is that payment of UK income tax and capital gains tax is limited to foreign income and gains remitted to the UK.

How can I lose my UK domicile status?

This will depend on your historic circumstances but will depend on whether you have a domicile of origin in the UK or have established a domicile of choice. If you have merely established a domicile of choice in the UK then the action of merely leaving the UK should trigger a reversion to your domicile of origin.

If you had a domicile of origin in the UK it is very difficult to lose that status. Firstly, you would need to establish a domicile of choice in another country, and secondly you would need to completely sever your ties with the UK. This is not an easy test to meet and extends far beyond just disposing of UK assets.

As discussed above you will continue to be UK deemed domiciled for three tax years following your departure from the UK.

Do I still need a UK will?

It is always wise to have a UK will prepared to provide authority for your appointed executor to deal with your UK assets. A foreign will may not provide the necessary legal capacity. One must not void the other.

How will my employment income be taxed in the UK?

Employment income tends to be taxed on the basis of where the individual is performing the duties rather than where they are resident.

An individual performing duties wholly outside the UK will not be chargeable to UK tax even if the company is based in the UK as long as their employment is full time and the period of non UK residence is for more than a complete tax year. The individual is allowed to perform duties in the UK which are merely incidental to the foreign duties. In many cases as long as the duties in the UK are minimal there will be no UK charge. For an employment which is partly performed in the UK and partly abroad there will be an apportionment on a working days basis.

For an individual who is seconded abroad they will normally be outside the scope of UK tax from their date of departure provided the secondment lasts an entire tax year. If payment is continuing from the UK it will be necessary to send the form P85 to the PAYE district along with a request for an NT code to be issued. This allows the individual to continue to be paid from the UK without a deduction of tax.

It should be noted that if the individual is a director of a UK company, HMRC may consider that the duties performed are UK duties even if they are performed outside the UK.

Do I have to pay UK National Insurance contributions?

There are also National Insurance (NI) implications of working abroad. If there is a Social Security agreement between the two countries then the individual may be able to (and may be forced to) continue to pay UK NI contributions during a short period of non residency.

The basic position, in the absence of such an agreement, will be that UK NI will continue to be payable for a period of 52 weeks.

If the individual leaves the UK to take up employment with a different employer then NI should not be payable. Will accommodation expenses that my employer pays for me whilst I am outside the UK be taxable in the UK? If you are seconded from the UK, and your visit is intended to be less than 24 months on departure, then the cost of accommodation can be paid by your employer without this benefit being taxable on you.

HMRC will also allow the cost of renting a property for you to live in whilst you are abroad. This is best achieved by having your employer rent the property on your behalf (or by paying you an allowance). There may of course be tax implications in your new country of residence.

What about travel and subsistence expenses?

If you are on secondment for less than 24 months, you can obtain relief for all subsistence costs paid by your employer whilst on that secondment. This may cover other costs associated with accommodation such as utility bills, and personal expenditure attributable solely to the business travel.

The cost of business travel paid by your employer, including that for you to travel from your home in the new country of residence to the workplace will not be taxable.

If you were to be provided with a car allowance, this would be taxable as if it were your salary.

There may be foreign tax implications of these payments.

What about my relocation expenses?

The first £8,000 of qualifying removal expenses and associated benefits are exempt from income tax, however there is no limit on qualifying expenses for NI purposes. That all said the exemptions and reliefs are subject to you being able to satisfy a number of conditions.

What is the position if I am self employed and move abroad?

In the event that an individual is self employed, this self employment will be deemed to have ceased on the date of departure from the UK. If the self employment continues to be wholly or partly a UK self employment it will continue to be taxed in the UK. If it is wholly a non UK self employment it will be not taxable in the UK.

Will I qualify for a UK personal allowance?

All UK tax resident individuals may claim personal allowances, with two exceptions:

- They are claiming the RBA, and their offshore income exceeds £2,000.
- Their net UK income exceeds £100,000, in which case the personal allowance starts to be reduced.

The following, while not UK resident may also claim UK personal allowances:

- Citizen of an EEA state.
- A present or former employee of the British Crown or a widow(er) of a British Crown employee.
- A resident of the Isle of Man or Channel Islands.
- A national and/or resident of a country with which the UK has a double tax treaty allowing such a claim.

How do I claim credit for the UK tax paid if I also have to pay tax in my home country?

If you are taxed twice in different countries in respect of the same income, you may be able to claim relief for any double taxation charge. Relief is generally limited to the lower of the foreign or UK tax charged.

What is the position if I rent out properties in the UK as a non UK resident?

Income from property in the UK will continue to be charged to UK tax following departure. It will be necessary to notify HMRC of departure and to apply under the Non-Resident Landlord scheme to receive rents gross. In the absence of applying under the scheme, an amount equal to the basic rate of tax (20%) needs to be withheld from the rent, and paid over to HMRC.

On the basis that the individual successfully registers with HMRC, the rent can continue to be received gross and tax paid on the profit (rent less allowable expenses) through the normal self assessment system.

What about my other UK investment income?

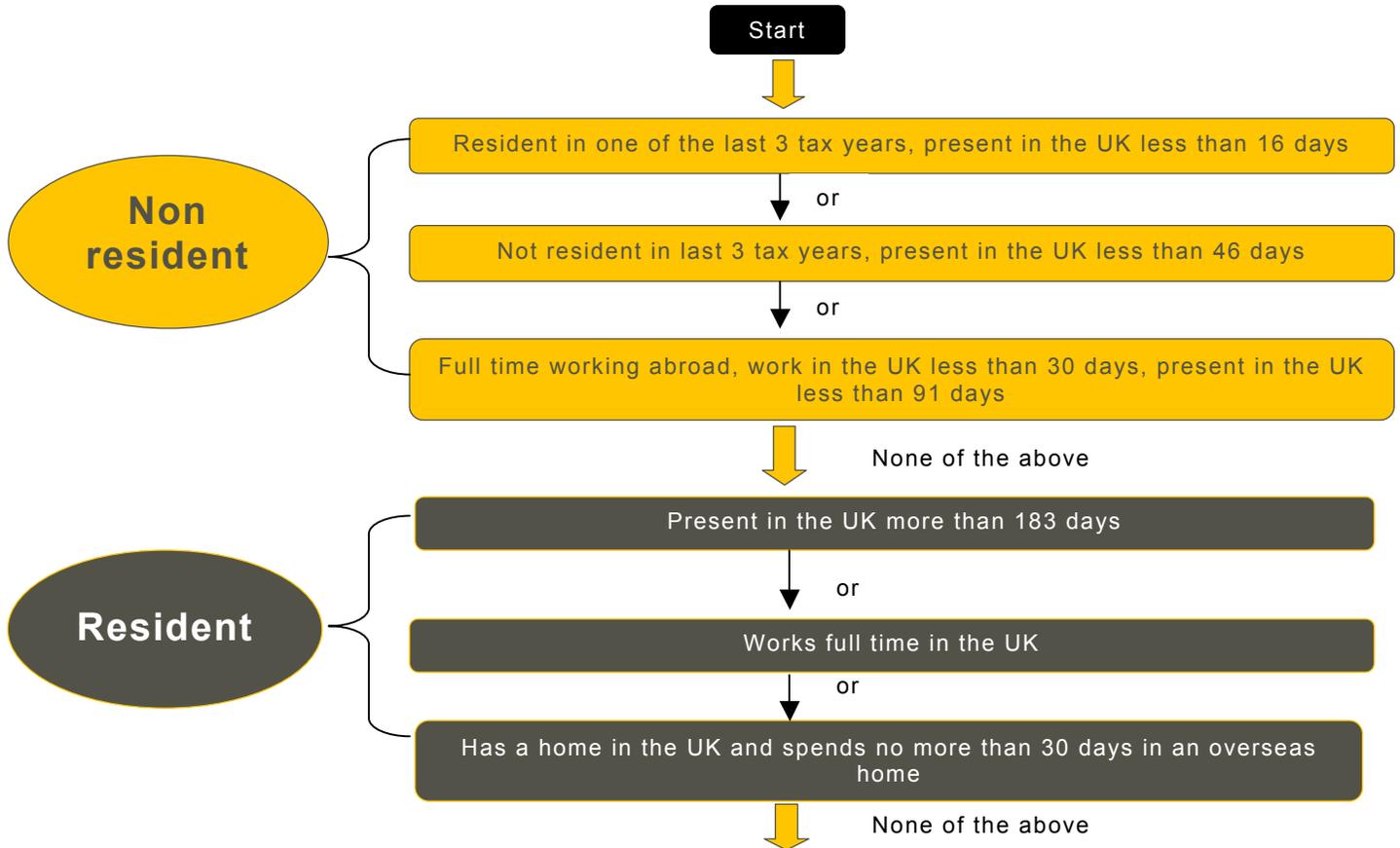
UK investment income will remain potentially taxable in the UK as it is a UK source. It is possible to exclude the income from a charge to UK tax in return for giving up the UK personal allowance. This decision is generally based upon the balance of UK investment income and other UK income (employment, self employment, rental income) which cannot be excluded from charge.

Once the individual is fully non UK resident (that is after the year of departure) it may be possible to apply to have bank interest paid gross as a non UK resident. Generally UK high street banks will do this but others and internet banks may not.

What about my non UK income?

This will not be taxable in the UK after your departure from the UK.

The above FAQ's provide a very general response to some of the more common questions asked by individuals coming into the UK. In all cases clarity should be obtained, and where possible action can be taken to mitigate exposure to UK tax.



CONNECTION	<input checked="" type="checkbox"/>
UK resident family	<input type="checkbox"/>
Accessible accommodation in the UK	<input type="checkbox"/>
Work in the UK more than 40 days	<input type="checkbox"/>
Present in the UK more than 90 days in either of the previous two tax years	<input type="checkbox"/>
Spend more time in the UK than any other country (do not tick if non resident for last 3 years)	<input type="checkbox"/>
Total connections	<input type="checkbox"/>

The table below shows the number of days you can spend in the UK and still be treated as non resident:

Connection factors	Been resident in the UK in any of the past 3 tax years	Not been resident in the UK in any of the past 3 tax years
1	Up to 120 days	Up to 182 days
2	Up to 90 days	Up to 120 days
3	Up to 45 days	Up to 90 days
4	Up to 15 days	Less than 46 days
5	Up to 15 days	N/A