

Desperately seeking residence



Heather Miller looks at what needs to be done to secure UK tax status

Over a relaxing gin and tonic with friends recently, we began discussing his upcoming CTA exams. Their mere mention brought a chill to my spine, and I was soon recalling the kind of horror questions that I had answered in my own papers. Residence and domicile has always been a staple of the syllabus, but I sure don't envy the students attempting to get their heads around the statutory residence test.

It was only when I thought back to the questions posed under the old rules that I realised they were all focused on establishing an individual's non-residence. Which is funny (well, about as funny as tax gets) because lately I've been doing nothing but advising people on how to secure UK residence.

Imagine, if you will, receiving a call from a young Spanish chap. Let's call him Carlos (obviously), who explains that he is looking to secure UK tax residency and break Spanish tax residency.

Having explained that you can only advise on the UK side of residency and being confused as to why anyone might want to leave sunnier climes, you press a little further to discover that he is a professional poker player. You see, in the past couple of years, Spain has started taxing gambling winnings and so poor old Carlos is about to lose a significant cut of his winnings to his homeland's government. So not only did he want to get the heck out of there ASAP, he wanted to become resident somewhere he knew would not tax his gambling winnings; and that's where we came in.

During the next 30 minutes or so (his English is pretty broken), you ascertain the following:

- Carlos moved to the UK in April 2014 and rents a room in a flat in London. He has no family in the UK.
- Before this, he was splitting his time between France, where his girlfriend lives, and Spain, where he was resident.
- He has not been resident in the UK at any time during the previous three UK tax years.
- He is a professional player and this accounts for most of his income.
- He also has a small income coaching poker and he can do as much or as little of this as he likes.

Now, it would seem that the simplest thing to do would be to advise Carlos to spend at least six months here. The trouble is, he's not overly keen on that idea. In fact, he wants to know the fewest number of days he can spend here and still be UK resident.

Under the statutory residence test (SRT), you are resident in the UK for a tax year if:

1. you do not meet any of the overseas automatic tests; and
2. you meet:
 - (a) one of the automatic UK tests; or
 - (b) the sufficient ties test.

This means that we must first look at whether Carlos is automatically not resident before we look at the rules that determine whether he is resident.

Automatic non-residence

You are automatically non-UK resident if:

1. you were resident in the UK in one or more of the previous three tax years and you spend fewer than 16 days in the UK in the current tax year or;
2. you were not resident in the UK in one or more of the previous three tax years and you spend fewer than 46 days in the UK in the tax year or;
3. you work full time overseas throughout the tax year without any significant breaks and:
 - (a) you spend fewer than 91 days in the UK in the tax year; and
 - (b) the number of days in the tax year in which you work for more than three hours is fewer than 31.

Is Carlos automatically non-resident?

It is clear from the list above that rule 1 and rule 3 do not apply to his circumstances, although rule 2 may.

The first piece of advice for Carlos is that he must ensure that he spends at least 46 days in the UK in the 2014/15 tax year.

Automatic residence

If you meet any one of these conditions you will be automatically UK resident:

1. You spend 183 days or more in the UK in the tax year.
2. You have a home in the UK during all or part of the tax year. You will meet this test if there is at least one period of 91 consecutive days (30 days must fall in the 2014/15 tax year) when you have a home in the UK in which you spend a sufficient amount of time and either you:



Key points:

• What is the issue?

Clients from overseas are beginning to seek advice on how to secure UK tax residence, but we as professionals are far more used to advising on how to break it!

• What does it mean for me?

Residence continues to be a lifestyle choice so it is important to get to know your client, their personal and financial aims, and how flexible they are with key issues such as days spent here and abroad, accommodation, and the location of their family members

• What can I take away?

Securing UK residence is no different in approach from securing non-UK residence; it just seems counterintuitive

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- (a) have no home overseas; or
- (b) have an overseas home in which you spend no more than the permitted time (ie you are present in that home on fewer than 30 days).

3. You (broadly) work full time in the UK for 365 days, with no significant break.

Is Carlos automatically resident?

Ideally Carlos would just spend six months here and have done with it, but we know he's not too keen on that.

Rule 2 is the more complicated one to achieve. To meet this test, Carlos would have to be present in his London home for at least 30 days, ensure that he does not spend more than 29 days living with his girlfriend in France, or at his family home in Spain. So where is he supposed to go in the meantime? Clearly, it isn't practical.

Having established that we're not kicking him out with the automatic non-residence tests, but we can't definitely get him in under the automatic residence tests, we must consider the last resort: the sufficient ties test.

The sufficient ties test

As we know that Carlos was not resident in the UK in the previous three tax years, we need to consider whether he has any of the following four ties when deciding on the minimum number of days he must spend in the UK to be treated as UK resident:

- 1. family tie;
- 2. accommodation tie;
- 3. work tie; or
- 4. 90-day tie.

Family tie

You have a family tie to the UK if you have a wife, a partner you are living with, or a child who is resident in the UK.

Accommodation tie

You have an accommodation tie if you have a place to live in the UK and it is available to you for a continuous period of 91 days or more during the tax year and you spend more than one night there during the tax year.

Work tie

This is incumbent on you working more than three hours a day for at least 40 days in the tax year.

90-day tie

This applies if you have spent more than 90 days in the UK in either or both of the previous two tax years.

How many ties does Carlos have?

Based on the initial fact-finding conversation, we know he definitely doesn't have a family tie, nor does he have the 90-day tie. We also know that he definitely has the accommodation tie because is renting a room here and has been in that room for at least one night since April.

Based on one tie alone, Carlos would have to spend at least 183 days here to be treated as UK resident, meaning we are no further forward. However, if he can fulfil the work tie, he would need only spend 121 days in the UK to be treated as UK resident. This would free up more time to visit his family in Spain and his girlfriend in France. Split the remaining time equally and it looks like he has managed to break Spanish residency, though he would have to confirm the position with his adviser in Spain.

Given that he has a sideline in poker coaching and a 'can do' attitude when it comes to adjusting his lifestyle to secure residency here, this seems entirely possible. It is, after all, a fairly easy-going three hours a day for 40 days a year.

In essence, we all know that the SRT guidance is vast and, at times, pretty overwhelming. But as long as you pin down exactly what it is your client is trying to achieve, you'll probably find the answer presents itself significantly sooner.

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