Expatriate Taxation (UK)
The Latest Changes

Presented by: Kemp Munnik
Monday 27th July 2009
Source: BDO Stoy Hayward LLP

BDO

BDO Spencer Steward
Chartered Accountants
A relationship at work

www.bdo.co.za

Contents

- Introduction
- Tax Residency and Taxation Employment Income
- Importance of Domicile
- Impact of Changes

Introduction

- Legislation introduced for the 2008/09 UK tax year increased the complexities of how the UK residency and domicile rules operate.

- The April 2009 Budget announced significant changes to the UK tax rates to be introduced from April 2010.

- Application of UK residency and domicile rules remains very reliant on non-statutory Revenue guidance and accepted practices.

Recap on UK tax residency and taxation of employment income

- Non resident (NR)– in the UK for less than 183 days in tax year, do not average 91 days/annum. Not intending to be in the UK 2 years or more. **Taxed only on UK source income.**

- Resident but Not Ordinarily Resident (RNOR) – intend to be in the UK for less than 3 tax years and do not own a UK home. **Taxed on UK source income but not income relating to non-UK workdays paid and retained offshore (‘Overseas workdays relief’).**

- Resident and Ordinarily Resident (ROR) **–** intend to be in the UK 3 years or more or own a home. **Taxed in the UK on worldwide employment income (exception if valid offshore contract but subject to extreme Revenue scrutiny).**

Importance of domicile

- Domicile is broadly where an individual views as there long term home and intends to live for the rest of their life.

- UK domiciled – generally taxable on worldwide income, gains and assets (arising basis).

- Non UK domiciled – generally taxable on UK source income and gains, remitted income and gains and UK sited assets (remittance basis).

Domicile rules – ‘short term’ residents of UK (less than 7 tax years)

- Introduced from 6 April 2008.
- If resident in the UK for less than 7 out of last 9 tax years, have option:
- To be taxed on the arising basis with credit for foreign tax paid, OR
- To be taxed on the remittance basis, but will lose* personal allowance (IT cost - £2,414 and potential CGT cost - £1,778 for higher rate taxpayer (08/09)).

  *Do not lose if foreign income is less than £2,000 (includes pre and post assignment earnings).

Impact of the rule change – 'short term' residents (example)

- Based on an individual in the UK on a 2 year secondment that spends 10% of his time working outside the UK (RNOR). Total employment income of £100,000.

- Under previous rules (prior to April 2008), individual could save £4,000 by being paid offshore (£10,000* x top rate of 40%).

- Under current rules, individual can now save only £1,586 ((£10,000* - £6,035 ('lost' personal allowance -2008/09) & 40%).

*£10,000 represents the 10% of income relating
to non UK workdays.

Domicile rules – long term residents of more than 7 year

- If resident for 7 or more of last 9 tax years, have option:
- To be taxed on the arising basis with a credit for foreign tax paid, or
- Pay annual charge of £30,000 and be taxed on the remittance basis. Will also lose personal allowance and potentially annual exemption for CGT (IT cost - £2,414 & CGT cost - £1,778 for higher rate taxpayer (08/09).

Paying the £30,000 tax charge

- An election is made on an annual basis as to whether to pay the charge.
- Individual still remains taxable on income remitted to the UK. Will only receive benefit of £30,000 if all income is remitted.
- Unless £30,000 payment direct from overseas account to HMRC, payment itself will be a remittance.
- Income on which charge is paid will need to be nominated (e.g. nominate income from a bank account) to try to categorise as a tax for double tax purposes.
- If remit from nominated account will have adverse tax implications.

Impact of rule change – 'long term' residents

- Only the very wealthy would still benefit from claiming the 'remittance basis' if long term residents.

- Take a 'long term' resident assignee (higher rate taxpayer*) with £20,000 of bank interest that has not been taxed in their home country. Assume no capital gains.

- They have the option of either being:

  a. Taxed on arising basis - paying UK tax of £8,000 (£20,000 x 40%), or

  b. Taxed on remittance basis - paying annual charge of £30,000 and losing personal allowance resulting in additional tax of £2,414 (4% of £6) (total cost - £32,414).

  Untaxed offshore income would need to exceed £81,035 (£32,414 x 100)/40) to make the remittance basis preferable. Clearly would need to be far higher if the income has already been taxed in the home country

*Higher rate of tax of 40% applied to income in excess of £40,835 during 08/09.

10

Change of onus in determining if RNOR

- RNOR status is valuable as it allows ‘overseas workdays’ relief to be claimed.

- HMRC in their latest non – statutory guidance, HMRC 6 (draft document) have indicated that the relief stops from the start of the tax year in which the assignee’s 3rd anniversary falls. Previously guidance that in many cases would lose relief from the tax year after the 3rd anniversary.

- Recent court case (HMRC v Genovese) –seen Special Commissioners of HMRC look increasingly at assignee’s life style in the UK as opposed to simply intentions when determining tax residency status.

Change to tax rates - proposed

- Proposed introduction of 50% tax rate from April 2010 on income in excess of £150,000 (currently the top rate of income tax is 40% and applies on income exceeding £43,875 (2009/10)).

  Would mean a gross up (if employer bears the tax) rate of 100% for income taxed at this level.

- Proposed ‘phase out’ of personal allowance from April 2010 on income between £100,000 and approximately £113,000 (personal allowance is £6,475 (2009/10).

12

Change to pension rules proposed

- UK currently has generous provisions allowing contributions to a pension scheme up to level of taxable earnings (capped at £235,000). Tax relief at 40% for higher rate earners.

- From 6 April 2011, proposal that tax relief is gradually restricted to basic rate (currently 20%) for those earning £150,000 or more.

- Transitional rules have been introduced to prevent high earners making increased pension contributions prior to April 2011.

- Transitional and proposed rule changes apply to foreign pension schemes treated as ‘corresponding’ to a UK pension scheme.

Kemp Munnik

kmunnik@bdo.co.za

Tel: 011 488 1850

BDO Spencer Steward
Chartered Accountants
A relationship at work