Losing UK Tax Residence

Simon Graham reviews a recent UK tax case.

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In this modern era of globalisation, people's lifestyles are increasingly becoming more mobile. It is no longer simply a case of leaving the city to work from home in the country. Home itself may no longer be in the UK for some people. When individuals do leave the UK, it is vital to address their ongoing UK tax status, as residence determines to a large degree the extent of one's ongoing liability to UK taxation. Whilst Guernsey is an attractive destination for both non-fiscal and fiscal reasons (Guernsey has no Capital Gains Tax, no Inheritance Tax, no VAT and a flat rate of Income Tax at 20%), it is not simply a case of acquiring Guernsey residence in order to escape the clutches of the UK taxman.

For such a fundamentally important issue it is perhaps surprising that there is still little UK legislation governing the issue of residence for UK tax purposes. Over the years much reliance has been placed on HM Revenue & Customs (HMRC) booklet IR20 that sets out the Revenue's interpretation and guidance on issues of residence. In particular IR20 states that "If you go abroad permanently, you will be treated as remaining resident …… if your visits to the UK average 91 days or more a year". Elsewhere in IR20 it is stated that these visits are calculated ignoring the days of arrival and departure.

In a recent tax case (Shepherd -v- CIR) before the Special Commissioners great reliance was placed on IR20 and the 91 day rule by the taxpayer. The decision however went against the taxpayer and highlighted that whilst IR20 is helpful guidance, it is unwise to place too much emphasis on this. This case makes it clear that IR20 reflects little more than a statement of HMRC's practice in general and is not a statement of law.

In this case, whilst the taxpayer was not spending 91 days or more in the UK, the Special Commissioner considered that the taxpayer had effectively remained in the UK for a settled purpose and that his lifestyle did not demonstrate a distinct break with the UK.

The guidance to be drawn from the Shepherd case would include the following:

- Evidence of a distinct break could be a relevant factor in treating the individual as non-UK resident.
- There are no statutory time limits and each case must be decided on the facts. This would include but is not restricted to duration of presence in the UK, family and business ties, nature of visits and ties with the country.
- Reduced presence in the UK due to employment (temporary absences) does not necessarily mean that the person is not regarded as UK resident.

Conclusions: the Shepherd case clarifies that non-residence for UK tax purposes is not simply a matter of counting days in and outside the UK. The overall circumstances of the individual must be fully considered and it is important that proper professional advice is taken, especially in cases where there may be an ongoing tax exposure in the UK due to UK source income, such as rental, employment, or pension income.

Should you wish to discuss any of the issues raised in this article, please contact Simon Graham or Jane Le Maitre of this office, or alternatively the Fortis Reads director or manager with whom you normally deal.

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