

Are you still tax resident in the UK?

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Gibraltar has a long history of UK tax residents coming to live and work here. Whether these individuals come to Gibraltar under the Category 2, HEPSS or standard tax residency rules, they all have one thing in common: if they have not taken proper tax advice on leaving the UK they could still be treated as UK-tax resident and liable to UK tax on a worldwide basis. In this month's article we discuss the importance of the UK's tax residency rules for anyone moving from the UK to Gibraltar.

The tax year and year of departure

The tax year in the UK commences on the 6th April and ends on the following 5th April. Anyone leaving the UK (under the general rules) would normally be treated as tax resident for the whole of the tax year of departure.

There exists a 'concession that allows the year of departure to be split under certain circumstances (split year treatment). The two most common situations where split year treatment applies is if the individual leaves the UK permanently (i.e., for more than three years) or leaves the UK to take up permanent employment abroad.

Assuming you have exited the UK and are now living permanently in Gibraltar, you would need to make sure that you do not inadvertently become liable to tax in UK by being treated as UK-tax resident due either to a physical presence in the UK or to maintaining ties to the UK.

UK tax residency rules: overview

The most important factor in determining whether you have retained a UK tax-residency status is a physical presence test. This is a simple test as you just count how many days you have spent in the UK. Therefore, you are automatically UK-tax resident if:

- you spend 183 days or more in the UK in any tax year, or spend an average of 91 days or more per year in the UK over four years.

For the purposes of counting days you are treated as being present in the UK if you are there at midnight (other than passengers present in the UK due to being in transit between two places outside the UK).

If you are not UK-tax resident based on the above, then HM Revenue and Customs can also review any connections you have maintained with the UK since your departure (in particular, family, property, economic and social connections). These connections could mean that you are deemed to be UK-tax resident.

In addition to these residency rules, there is also a form of tax residency in the UK known as 'ordinary tax resident.' This is longer term residency and looks at where you habitually live.

Double tax treaty

A double tax treaty would normally guarantee that you are only resident in



one state; unfortunately, there is no double tax treaty between Gibraltar and the UK so it is possible to be a dual resident in both Gibraltar and the UK. Fortunately, both the UK and Gibraltar would usually allow a tax credit for any tax paid in the other state.

Administration

Anyone leaving the UK will need to inform HM Revenue and Customs of their move by completing form P85. This form advises HM Revenue and Customs that you have left the UK and that you no longer consider yourself to be UK-resident. This form can be downloaded from www.hmrc.gov.uk.

Summary

As touched on in this article, simply leaving the UK does not automatically mean you are no longer UK-tax resident. A number of factors affect your UK tax residency position, including the reason for the move, the number of visits you have made since your departure and the connections maintained with the UK (family, property, business and social connections). Due to the fact that each individual tax residency scenario is different it is always advisable that you seek the advice of a tax professional to help clarify your personal tax position.