

# UK Taxation of Expatriates

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**U**nless you've been seconded to Saudi Arabia under a contract that provides for tax equalisation, the recent press coverage of HMRC's attempts to subject the earnings of UK expatriates to UK taxation is unlikely to have gone unnoticed.

This brief article attempts to shed light on the previous and current UK taxation position for expatriates working in Saudi Arabia. It assumes that you are a UK domiciled person (a general law concept affected by where your permanent home is and is normally determined by where your father was domiciled when you were born).

Furthermore, the article is intended to provide general guidance only and should not be relied upon without taking specific tax advice on your personal circumstances.

## Background

In broad terms, the UK charges tax on:

- Income arising in the UK, regardless of whether the person to whom it belongs is UK resident;
- Income of UK residents arising outside the UK (subject to certain reliefs for taxpayers claiming the remittance basis) to people resident in the UK; and
- Capital gains accruing on the disposal of assets anywhere in the world by a person resident or ordinarily resident in the UK.

Clearly, therefore, the meaning of UK tax residence is of prime importance. However, residence is not a term that has a comprehensive statutory definition. The Courts have considered what constitutes UK tax residence in various cases, many of the leading ones being decided at the end of the 19<sup>th</sup> and beginning of the 20<sup>th</sup> centuries when the concept of working abroad was not as commonplace as it is nowadays.

To bring the various legislative and case law provisions together, the Inland Revenue (as HMRC was then), in 1973, issued the first version of the IR20 booklet, with which many of us may be familiar. That booklet was designed to provide "general guidance" in relation to residence and ordinary residence of individuals.

Following a major reform of the remittance basis and amendments to the residence rules in the 2008 Finance Act and various case law decisions, HMRC formally withdrew IR20 and all existing guidance on residency with effect from 6 April 2009. The replacement guidance issued to date is mainly contained in HMRC 6, which is stated to be aimed at unrepresented taxpayers, rather than tax professionals, although more comprehensive guidance has been promised. It has aspects that are contradictory, and

despite representations to HMRC about it, remains subject to ongoing review and rewrite as of today.

HMRC has consistently refused to be drawn on when final guidance may be made available, which is unfortunate, as many of the tests of residency typically applied, although they derive from case law, exist only in that form in HMRC's guidance.

## The concept of residence and ordinary residence

### Tax year

Before looking at residence, I should clarify that the UK tax year for individuals runs from 6<sup>th</sup> April to 5<sup>th</sup> April.

### Residence

To be regarded as resident, you must normally be physically present in the UK at some stage in the tax year. If you are present for 183 days in any tax year, then you will always be resident for that tax year. You will also remain UK resident if you have been ordinarily resident in the UK and leave only for occasional residence abroad (leaving for employment is generally regarded as leaving for something more than occasional residence abroad).

### Ordinary residence

If you are treated as not resident in the UK, you may still be "ordinarily resident" in the UK. You will be ordinarily resident if you are resident in the UK year after year. If you have been ordinarily resident in the UK, but leave for occasional residence abroad, you could become non-resident for a tax year by not setting foot in the UK all year (again leaving for employment is generally regarded as leaving for something more than occasional residence abroad). However, you are likely to remain ordinarily resident (and so within the scope of Capital Gains Tax, for example) in this case.

Leaving or returning to the UK part way through a year Although a tax year cannot be split i.e. you are either resident or not resident for the whole of the tax year, by a long standing concession, and providing the relevant conditions are met, which include leaving the UK for full-time employment abroad that will encompass a complete UK tax year, you will be considered not resident for income tax from the day after you leave the UK and resident from the day that you return back to the UK.

## Working abroad – IR 20 guidance

Under the guidance in IR20, if you left the UK to work abroad on a full-time basis under a contract of employment, you should be treated as not resident and not ordinarily resident if you meet all the following conditions:

