

- Your absence from the UK and the employment both span at least a complete UK whole tax year;
- During your absence, any visits made to the UK:
 - Total less than 183 days in any tax year;
 - Average less than 91 days a tax year (taken over the period of absence up to a maximum of 4 years – periods spent in the UK due to circumstances beyond your control are normally excluded)

This treatment also applied to those here to work in a trade, profession or vocation on a full-time basis for a period encompassing at least a complete UK tax year. By concession, if the terms above were met, an accompanying spouse may also be treated as not resident.

Full-time employment was described in IR20 as being determined on the particular facts of each case, although where the employment involved a standard pattern of working hours it would be regarded as full time if the hours worked clearly compared with those of a typical UK working week.

I should also mention that there are complex “temporary non-resident” rules for UK capital gains tax that can apply where any period of residence does not encompass at least 5 complete UK tax years.

So what’s changed?

The Court of Appeal has recently decided in a Judicial Review case that, despite HMRC’s assertions to the contrary, IR20 was guidance on which the general public should be able to rely and therefore HMRC was bound to apply that guidance to taxpayers, even if that guidance made it easier for taxpayers to break residence than it would have been for them to do so under statute and case law alone. Therefore, provided that we met the terms of IR20, those of us who left the UK before 6 April 2009 (the point at which IR20 was withdrawn) should be able to rely on the IR20 provisions.

The case also highlighted an important distinction in the IR20 guidance in terms of how it applied to taxpayers leaving the UK for full-time employment abroad. For those leaving for full-time employment abroad the only test was that the terms of the concession mentioned above were met exactly, and so retaining ongoing links with the UK would not prevent you from becoming non-resident in the same way as it would do for other taxpayers. By contrast, taxpayers leaving the UK either permanently or indefinitely were required to sever ties with the UK, such as disposing of any UK accommodation, to show they had really left the UK, if they wished to show they were non-resident.

Although HMRC 6 retains similar guidance to that noted above in relation to becoming non resident, it contains several statements to the effect that the document is general guidance only and cannot be relied upon by taxpayers, so it is doubtful if the Courts would regard it as binding on HMRC as they have with IR20. The commentary on what constitutes full-time working abroad has also evolved, and while the guidance remains subject

to review it is difficult to know how far taxpayers now leaving the UK could rely on it. Hence, for those of us who left the UK on or after 6 April 2009, the position is certainly not free from doubt, particularly where you retain links with the UK which might prevent you from being regarded as non-resident in law, or where you have ongoing UK duties that might cast doubt on the full-time nature of your employment abroad.

Summary of main considerations

As a quick guide, I think it would be useful to list the main considerations that should point to non-residence and hence to legitimately avoiding a liability to UK taxation on your income earned from your Saudi Arabian employment:

1. Are you working here full-time with the duties of employment being substantially carried on outside the UK?
2. Has your employment abroad encompassed at least a complete UK tax year? Both your time abroad and your employment must cover this period at a minimum. There is also a test of spending less than 183 days in the UK although you are unlikely to reach this limit if you are working full-time employment.
3. Will you average less than 91 days a year in the UK over the period of your absence, or 4 years if longer? From 6 April 2009 a day will count as a day of UK presence for this purpose if you are in the UK at the end of the day.
4. Did you leave before 6 April 2009?

Where you are able to answer the above positively, you should be regarded as not resident.

However, where you left the UK on or after 6 April 2009 the position is much less clear and you may wish to take professional advice.

Finally, there has been a double tax treaty in force between the UK and Saudi Arabia since 1 January 2010. The terms of that treaty deal with the position where you are resident in Saudi Arabia as a consequence of local rules and also where you remain tax resident in the UK. To determine the country of which you are tax resident, the treaty will look at the factors below in the order shown until there is clarity:

- Where you have a permanent home;
- Where your personal and economic interests are closer;
- Where you have your habitual abode;
- The country of which you are a national;
- Failing any of the above being conclusive, the competent authorities of each country shall agree between themselves where you are regarded as treaty resident.

So even if you remain UK resident under UK domestic rules you may be a treaty resident of Saudi Arabia and be able to use the double tax treaty to limit your exposure to UK tax.

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