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Tax Planning for Non-Residents & Non Doms 2017/18

Including all Tax Changes from the March 2017 Budget

By Nick Braun PhD

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TAX GUIDE - 'Tax Planning for Non-Residents & Non Doms'

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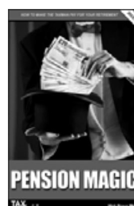

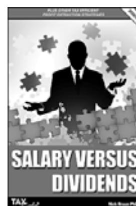

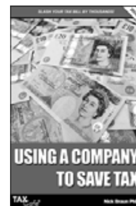

About the Author & Taxcafe

Dr Nick Braun founded Taxcafe in 1999, along with his partner Aileen Smith. As the driving force behind the company, they aim to provide affordable plain-English tax information for private individuals, business owners and professional advisors.

Over the past 16 years Taxcafe has become one of the best-known tax publishers in the UK and has won several prestigious business awards.

Nick has been a specialist tax writer since 1989, first in South Africa, where he edited the monthly *Tax Breaks* publication, and since 1999 in the UK, where he has authored several tax books including *Small Business Tax Saving Tactics* and *Pension Magic*.

Nick also has a PhD in economics from the University of Glasgow, where he was awarded the prestigious William Glen scholarship and later became a Research Fellow.

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Introduction

This guide will show you how to reduce your tax bill if you are non-UK resident or non-domiciled.

We kick off in Part 1 with the new Statutory Residence Test which will help you determine whether you are UK resident or non-resident for tax purposes. The test replaces HMRC's old (and somewhat vague) guidance.

The test has three components:

- **The automatic overseas tests.** You can become automatically *non-resident* if you spend few enough days in the UK during the tax year (15 or 45 depending on your circumstances) or by working overseas.

- **The automatic UK tests.** If you do not satisfy any of the automatic overseas tests you move on to the automatic UK tests. You will be automatically UK *resident* if you spend too much time in the UK during the tax year (more than 182 days), or if you have a home in the UK or work in the UK for a certain length of time.

- **The sufficient ties test.** If you do not meet any of the automatic overseas or UK tests you use the sufficient ties test to determine your residence status. This test takes account of your UK ties (e.g. whether you have accommodation in the UK or work here) and the number of days you spend in the country. The more ties you have, the more difficult it is to become non-UK resident.

When you first leave the UK you may qualify for *split-year treatment* which means the tax year will be split into a UK part (when you will be taxed as a UK resident) and an overseas part (when you will be taxed as non-resident). New rules govern who qualifies for this special tax treatment and these are explained in detail.

The Statutory Residence Test is supposed to be simple but can get quite complicated, so lots of examples are used to explain how it

works in practice and what you have to do to achieve your desired residence status.

Alongside the Statutory Residence Test, anti-avoidance rules have been introduced to prevent individuals leaving the country for a short space of time (five years or less) and realizing tax-free capital gains. The rules also clamp down on individuals who wish to pay themselves tax-free dividends and certain other types of income after becoming non-resident. These rules are also explained in detail.

Income Tax Planning

In Part 2 we move on to income tax planning for non-UK residents. There are nine different chapters that show you how to minimise the tax payable on different types of income after becoming non-resident, including:

- Rental income
- Dividend income
- Interest income
- Pension income, and
- Employment income

The chapter on rental income explains how property investors are taxed when they become non-resident, how the Non-Resident Landlord Scheme operates and how you can minimize your income tax after becoming non-resident.

The chapter on dividends explains how non-residents can pay themselves tax-free dividends. However, this exemption comes at a price and you could end up paying more tax on your other UK income, for example your rental income. If you're not careful you could also end up paying more tax on your dividends in the country you move to than you would as a UK resident.

In the chapter on interest income we look at how non-residents can enjoy tax-free interest (and again the potential danger for those with other types of UK income). We also look at how various double tax treaties can limit the amount of tax HMRC can levy on your income.

Retiring Abroad & Working Abroad

The chapter on pensions is pretty detailed and should be of interest to anyone thinking of retiring abroad. It covers Government pensions, private pensions and state pensions which are all taxed differently if you are non-resident.

For example, under many tax treaties UK occupational pensions and other private pensions are exempt from UK tax, i.e. they are only taxed in the overseas country where you live. Having your UK pension taxed overseas only could be extremely tax efficient if the country you move to has lower tax rates than the UK.

We also take a look at why it may be worth making voluntary national insurance contributions if you live overseas so that you can qualify for a bigger state pension and why it may be worth taking your tax-free pension lump sum before you leave the UK to avoid paying tax on it overseas.

There is also a separate chapter on the pros and cons of transferring your pension abroad to a QROPS. Some of these transfers will be hammered by a new 25% tax announced in the March 2017 Budget.

Many individuals go abroad to work so this part of the guide also contains a detailed chapter on employment income, including how to avoid UK income tax if you work in the UK, how to enjoy tax-free relocation costs and whether you will pay UK national insurance or social security contributions in another country.

We end with a chapter covering how income is taxed in other countries, including tax havens, countries with top tax rates of 20% or less, countries that are popular with UK expats and countries that do not tax foreign income (i.e. UK income).

Capital Gains Tax Planning

Part 3 covers capital gains tax planning.

The first chapter covers UK capital gains tax, including:

- The rules for temporary non-residents
- How business assets are taxed
- The new tax (from April 2015) on non-residents who sell UK residential property
- Why it may be worth selling assets before you become non-resident
- How to enjoy an unlimited capital gains tax exemption on your UK home if you work overseas

The second chapter covers overseas capital gains tax, including a list of countries that do not tax capital gains and how capital gains are taxed in various countries popular with UK expats.

Tax Saving Tactics for Non-Doms

In Part 4 the focus is taxpayers who are non-UK domiciled. Non doms can choose to be taxed on the remittance basis which means they only pay tax on their overseas income and capital gains when the money is brought into the UK.

However, making a claim to pay tax on the remittance basis can be very costly. Not only will you lose your personal allowance and annual capital gains tax exemption, you may also have to pay the £30,000 or £60,000 remittance basis charge if you've been living in the UK for a certain length of time.

The first chapter in this part of the guide explains how your domicile is decided and what you need to do to lose your UK domicile or avoid acquiring a UK domicile if you are currently non-domiciled.

In the chapters that follow we examine:

- The new rule (from 6 April 2017) that makes you deemed UK domiciled for all tax purposes once you've been UK resident for 15 years

- The tax benefits of offshore trusts and how they can still be used by non doms to roll up family wealth tax free

- Concessions that allow non-domiciled individuals with small amounts of overseas income to benefit from the remittance basis without paying any penalty

- When it does and does not make sense to claim the remittance basis

- How to avoid the £30,000/£60,000 remittance basis charge

- The rules for non-domiciled employees who use dual contracts to avoid UK income tax

- Tax-free remittances you can make, including the new Business Investment Relief for those investing in UK companies

- Inheritance tax planning, including using excluded property trusts and new rules to tax UK residential property held in offshore companies.

I hope you enjoy reading the guide and find it useful!

Using This Guide & Limitations

This guide was created to explain, in plain English, how individuals are taxed when they are non-UK resident and non-UK domiciled. Please note that it is NOT supposed to be a do-it-yourself ('DIY') tax planning tool. If you are planning to take any action based on the contents, I strongly recommend that you obtain professional advice.

Although the guide covers a fair amount of ground, it does not cover every possible scenario and angle. The subject is simply too large. Furthermore, individuals come in many different shapes and sizes, so it's possible that the information contained in this guide will not be relevant to your circumstances.

There are also non-tax factors that have to be considered and these may be as important or more important than the tax issues.

Tax rates and tax laws (including HMRC's interpretation of those laws) are continually changing. The reader must bear this in mind when reading the chapters that follow.

For all of these reasons, it is vital that you obtain professional advice before taking any action based on the information contained in this publication. The author and Taxcafe UK Ltd cannot accept any responsibility for any loss which may arise as a consequence of any action taken, or any decision to refrain from action taken, as a result of reading this guide.

Part 1

The Statutory Residence Test

Chapter 1

The Old Rules

Before the introduction of the Statutory Residence Test your residence status for tax purposes depended largely on HMRC guidance derived from case law. This guidance was published in a document known as IR20 (later HMRC6).

Although IR20 was not legally binding, many tax advisors relied heavily on its content when advising their clients.

IR20 provided two main ways of becoming non-resident:

- Going abroad under a full-time contract of employment
- Leaving the UK permanently or indefinitely

Leaving the UK to work full-time abroad was generally not controversial. To become non-resident your absence from the UK and your overseas job had to last for at least one whole tax year and you had to keep your UK visits within certain limits:

- Less than 183 in any tax year, and
- Less than 91 days per tax year on average

Leaving the UK Permanently

Becoming non-resident the second way – leaving the UK permanently or indefinitely – became the main problem area following some high-profile court cases.

According to IR20, if you went abroad permanently or indefinitely (or for a period of three years or more) you were generally treated as non-UK resident if your UK visits averaged 90 days or less per year. Many taxpayers relied heavily on day counting alone to remain non-resident.

However, HMRC felt that some taxpayers were 'fiddling the system' – living outside the UK for most of the year BUT maintaining strong personal and social ties here.

The Gaines-Cooper Case

It all came to a head with the Supreme Court case involving HMRC and Robert Gaines-Cooper. Robert Gaines-Cooper was a wealthy businessman who went to live in the Seychelles in 1976. He argued that he kept his UK visits within the limits and was therefore non-resident.

However, HMRC argued that its guidance also required taxpayers to make a distinct break from the UK by severing their ties – day counting alone was not enough.

Robert Gaines-Cooper's wife and child lived in the UK and he owned a substantial house here plus a collection of classic cars and paintings. Thus HMRC argued that he had not made a clean break from the UK and was therefore UK resident.

Although expert witnesses argued that HMRC was performing a u-turn, the court sided with the taxman and found that Robert Gaines-Cooper had not left the UK permanently or indefinitely and was UK resident for tax purposes.

The Statutory Residence Test

This case and others created a huge amount of uncertainty. It became virtually impossible for many taxpayers to know for sure whether they were UK resident or non-resident.

Thus a decision was made to introduce a new Statutory Residence Test which would provide a clear-cut formula to allow taxpayers to determine their residence status.

After a lengthy period of consultation and a huge amount of tweaking the test finally arrived and has been in operation since 6 April 2013 (i.e. the start of the 2013/14 tax year).

Although the new test provides greater certainty for some taxpayers it can get quite complex and some taxpayers will struggle to apply it in practice.

Chapter 2

Introduction to the Statutory Residence Test

This chapter contains a brief overview of the Statutory Residence Test. The test tells you whether you are UK resident or non-resident for tax purposes.

It's all about the number of days you spend in the UK – the more days you spend here, the harder it is to become non-resident.

Another important factor is work. If you get a full-time job overseas, it is relatively easy to become non-resident.

If you wish to 'push the envelope' and increase the number of days you spend in the UK, you may have to reduce your UK ties in order to demonstrate that you have genuinely left the country.

The test applies on a tax year by tax year basis. In other words, if you are non-resident this year, that doesn't mean you are automatically non-resident next year.

The devil is in the detail and in the chapters that follow we will take a closer look at each component of the test and what terms like "days", "home" and "work" mean in practice.

It is also important to point out that the Statutory Residence Test only decides your residence position under UK law. If the UK and the country you move to both treat you as resident at the same time, you may have to rely on the tie-breaker clause in the relevant double tax treaty, if there is one.

In other words, you could be UK resident under the Statutory Residence Test but non-resident under a double tax treaty.

Leavers and Arrivers

The Statutory Residence Test distinguishes between two groups of individuals, namely those who were:

- UK resident in *any* of the previous 3 tax years ("leavers")

- UK resident in *none* of the previous 3 tax years ("arrivers")

If you were UK resident in *any* of the previous three tax years you will find it harder to become non-resident than someone who was not.

Automatic Overseas Tests

You start with the automatic overseas tests. You will be automatically *non-resident* for the tax year if you meet *any* of the following tests:

- You spend fewer than 16 days in the UK during the tax year. This test is used if you were UK resident in *any* of the previous 3 tax years.

- You spend fewer than 46 days in the UK during the tax year. This test is used if you were UK resident in *none* of the previous three tax years.

- If you work sufficient hours overseas (generally 35 hours or more per week on average) without a significant break, and during the tax year:

    - You spend fewer than 91 days in the UK, and
    - You spend fewer than 31 days working in the UK (a work day means more than three hours work).

If you do not meet any of these automatic overseas tests, you should move onto the 'automatic UK tests'.

Automatic UK Tests

You will be automatically *UK resident* for the tax year if you meet *any* of the following tests:

- You spend 183 days or more in the UK during the tax year.

- You have a home in the UK and are present in that home on 30 or more days during the tax year. This test only applies if you do not have an overseas home or, if you do have an overseas home, you are present in that home on fewer than 30 days during the tax year.

- You work full time in the UK for any period of 365 days (all or part of which falls into the tax year) with no significant break.

If any of the automatic UK tests apply to you for a particular tax year and none of the automatic overseas tests apply, you are UK resident for tax purposes for that tax year.

If you do not meet any of the automatic overseas tests and do not meet any of the automatic UK tests you have to use the sufficient ties test to determine your residence status for the tax year.

Sufficient Ties Test

This test takes into account your UK ties and the number of days you spend in the UK. The more ties you have, the more likely it is that you will be UK resident for tax purposes:

- **Family tie** – your spouse (unless separated) or partner (if you are living together as husband and wife) or children under 18 (with some exceptions) are UK resident.

- **Accommodation tie** – you have a place to live in the UK that is available for a continuous period of 91 days or more during the tax year. You don't have to own the property but must spend at least one night there during the tax year to have an accommodation tie. If it is the home of a close relative, you must spend 16 or more nights there to have an accommodation tie.

- **Work tie** – you do more than three hours work a day in the UK for a total of at least 40 days. Includes employment and self-employment.

- **90-day tie** – you have spent more than 90 days in the UK in either or both of the previous two tax years.

- **Country tie** – the UK is the country in which you were present for the greatest number of days during the tax year. This tie only applies if you were UK resident in any of the previous three tax years.

These ties are then combined with days spent in the UK to determine your residence status.

The scoring is different for people who have recently left the UK (i.e. were UK resident in any of the previous three tax years) and those who have recently arrived (i.e. were not resident in any of the previous three tax years).

UK Resident in Any of Previous 3 Tax Years – Leavers

UK ties are combined with days spent in the UK as follows:

Days in UK	Residence status
Fewer than 16 days	Always non-resident
16 – 45 days	UK Resident if 4 or more ties
46 – 90 days	UK Resident if 3 or more ties
91 – 120 days	UK Resident if 2 or more ties
121-182 days	UK Resident if 1 or more ties
183 days or more	Always UK resident

Not Resident in All 3 Previous Tax Years – Arrivers

UK ties are combined with days spent in the UK as follows:

Days in UK	Resident Status
Fewer than 16 days	Always non-resident
16 – 45 days	Always non-resident
46 – 90 days	UK resident if all 4 ties
91 – 120 days	UK resident if 3 or more ties
121-182 days	UK resident if 2 or more ties
183 days or more	Always UK resident

International Transport Workers

The third automatic overseas test (the one that can make you non-resident if you work abroad) does *not* apply if, at any time during the tax year, you have what's called a "relevant job" – i.e. you work on board aircraft, ships or in vehicles while they are crossing international boundaries – and at least six of the trips you make during the tax year are cross-border trips that begin in the UK, end in the UK or begin and end in the UK.

Similarly, the third automatic UK test (the one that makes you UK resident if you work here) does *not* apply to these workers.

Those affected must use the other tests to determine their residence status. Affected persons include pilots and cabin crew, cross channel ferry staff, mariners and lorry drivers where "substantially all" the trips they make are cross-border trips.

According to HMRC guidance you are likely to be considered to have a "relevant job" if 80% or more of your trips are cross-border trips.

Death during the Tax Year

There are different rules for people who die during the tax year. These rules are not covered in this tax guide.

Summary

The Statutory Residence Test will make it very easy for some people to become non-resident.

When you first leave the UK all you have to do is spend fewer than 16 days per tax year in the UK and you will definitely be non-resident.

After three tax years you can increase the amount of time you spend in the UK – as long as you spend fewer than 46 days per year in the country you will definitely be non-resident.

However, it becomes more complicated if you wish to spend more time in the UK.

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