



THE PRACTICAL A – Z OF RESIDENCE AND DOMICILE

**DISCLOSURE AND MULTI-FACTORIAL CRITERIA
IN DOMICILE AND RESIDENCE**

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COMPLIANCE

Self-Assessment Tax Return

1.1 An individual will, when completing his self-assessment tax return, need to state if he is not resident in the UK for the relevant fiscal year and will have to complete the relevant additional pages.

1.2 Question 8 on SA100 the self-assessment return, asks:-

‘Residence, remittance basis etc.

Were you, for all or part of the year to 5 April 2014, one or more of the following – not resident or not domiciled in the UK and claiming the remittance basis, applying split year treatment, or dual resident in the UK and another country?’

1.3 If the answer is yes, then a taxpayer will complete form SA109.

1.4 On signing his tax return a taxpayer makes the following declaration:-

‘I declare that the information I have given on this tax return and any supplementary pages is correct and complete to the best of my knowledge and belief. I understand that I may have to pay financial penalties and face prosecution if I give false information.’

THE RESULT OF MAKING AN INCORRECT TAX RETURN

2.1 Before discussing the completion of the tax return it is helpful to consider the implications of not completing a tax return correctly.

Penalty for making an Inaccurate Return

2.2 A penalty is payable by a person who, *inter alia*, gives HMRC a return under s.8 of TMA 1970 which contains an inaccuracy:-

- (a) which amounts to, or leads to an understatement of a liability to tax, ...
- (b) and was careless ... or deliberate.¹

Careless or Deliberate?

2.3 For this purpose an inaccuracy in the document is:-

- (a) careless if the inaccuracy is due to the failure by the taxpayer to take reasonable care;
- (b) deliberate but not concealed if the inaccuracy is deliberate on the taxpayer's part but he does not make arrangements to conceal it; and
- (c) deliberate and concealed if the inaccuracy is deliberate on the taxpayer's part and he makes arrangements to conceal it.²

¹ FA 2007 Sch. 24 para. 1

² FA 2007 Sch. 24, para. 3(1)

2.4 What is more an inaccuracy in a document given by the taxpayer to HMRC which is neither careless nor deliberate when the document was given is to be treated as careless if the taxpayer:-

- (a) discovered the inaccuracy at some later time; and
- (b) did not take reasonable steps to inform HMRC.³

The Amount of the Penalty

2.5 The amount of the penalty is a percentage of the additional amount due or payable in respect of tax as a result of correcting the inaccuracy or assessment.⁴ The percentage varies according to whether or not the action is deliberate, deliberate but not concealed or both deliberate and concealed. It also varies according to which one of three categories⁵ (Categories 1, 2 or 3 where Category 1 receives the lowest penalty) the withheld information falls into. The various percentages are:-

CATEGORY	CARELESS BUT NOT DELIBERATE %	DELIBERATE BUT NOT CONCEALED %	DELIBERATE AND CONCEALED %
1	30	70	100
2	45	105	150
3	60	140	200

2.6 There is no penalty unless the failure is careless or deliberate.

³ FA 2007 Sch. 24, para. 3(2)

⁴ FA 2007 Sch. 24 paras. 4 & 5(1)

⁵ The categories reflect the territories to which the inaccuracy relates. Onshore matters fall within Category 1 (FA 2007 Sch. 24 para. 4A)

Reductions in Penalties

2.7 These percentages may be reduced to reflect the quality of the disclosure made by the taxpayer concerned but not below certain percentage minima. These minima depend on whether the taxpayer's disclosure of the inaccuracy in his return is prompted or unprompted. For Category 1 inaccuracies the minima are:-⁶

	PROMPTED %	UNPROMPTED %
Careless but not deliberate	15	0
Deliberate but not concealed	35	20
Deliberate and concealed	50	30

Lack of Reasonable Excuse not an Element

2.8 There is no defence of reasonable excuse to a penalty under FA 2007 Sch. 24 para. 1 because such a penalty can apply only to behaviour which is careless or deliberate.

Discovery Assessments

2.9 TMA 1970 s.29 provides that an assessment can be raised by HMRC if it discovers:-

- (a) that any income which ought to have been assessed to income tax, or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or
- (b) that an assessment to tax is or has become insufficient, or

⁶ FA 2007 Sch. 24, para. 10

(c) that any relief which has been given is or has become excessive.

2.10 The assessment can be of an amount, which ought in HMRC's opinion to be charged in order to make good to the Crown the loss of tax. However, such an assessment can only be made if one of the following conditions is satisfied:-

- (1) the loss of tax was brought about carelessly or deliberately by the taxpayer or a person acting on his behalf.
- (2) an officer of the Board could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the facts leading to the potential loss of tax.

Cheating the Public Revenue

2.11 The common law offence of cheating the public revenue encompasses any form of fraudulent conduct which results in HMRC being deprived of money to which they are lawfully entitled. The offence does not require a positive act of deceit and so an act of omission such as the failure to make a return to the appropriate public authority may be sufficient where the purpose of the omission is to avoid the payment of money which is due to that authority.⁷

Action for Negligence

2.12 Where an adviser does not include information which he has in his possession, it is possible that an action for negligence could be brought against him by his client.

⁷ *R v Mavji* [1986] STC 508

DISCLOSURE

General

- 3.1 It is a truism to say that the disclosure that should be made by a taxpayer on his self-assessment return will depend on the circumstances.

Keeping Records

- 3.2 When considering disclosure it is also useful to consider the records that a taxpayer has to support his residence status and any negative issues affecting the taxpayer's residence status at the time. This will allow an adviser to evaluate the evidence and, without misrepresenting the factual situation, to present the taxpayer's position in the most positive light rather than having to react to a challenge at a later stage.
- 3.3 There is a basic obligation for a taxpayer to keep records for the purposes of delivering a correct and complete return.⁸ The legislation does not, however, specify the nature of the records to be kept.
- 3.4 Although residence is now determined under the SRT it is still to a large extent a question of fact. In the past, it has always been prudent for individuals to keep accurate and detailed records to support their residence status. The residence cases under the law ruling in the years before 2013/14 give some indication of the detailed examination made of an individual's situation by the Tribunal.⁹ This will not change under the SRT. Indeed, it is probable that the burden of HMRC's enquiries into individuals'

⁸ TMA 1970 s.12B

⁹ For example, *Gaines-Cooper v HMRC* [2008] EWHC 2617, Ch; *Grace v HMRC* [2011] UKFTT 36, TC; *James Glyn v HMRC* (2013) TC03029

residence status will increase because HMRC, in an effort to maximise the tax it collects, will conduct enquiries of greater depth and length.

HMRC's Guidance

3.5 In respect of record-keeping generally the Guidance says:-

‘What records should I keep for SRT purposes?’

...You will need to keep records and documents to support the statements you make when you are:

- considering the statutory residence test, or
- giving specific responses to questions in the Tax Residence Indicator (TRI) tool.

In many cases your circumstances will be straightforward and you will not need to retain paperwork over and above any documentation you might normally be expected to keep for your own or your employer's purposes.’¹⁰

3.6 HMRC then goes on to state what type of information, in its view, would ‘help establish the facts,’ as follows:-

‘Home

...When considering whether you had a home in the UK or abroad, HMRC would look for evidence to establish your presence at a particular home and

¹⁰ HMRC Guidance. Para. 7.1

whether or not a home existed. The following information would help establish the facts.

- General overheads - utility bills which may demonstrate that you have been present in that home, for example, telephone bills or energy bills, which demonstrate usage commensurate with living in the property.
- TV/satellite/cable subscriptions.
- Local parking permits.
- Membership of clubs, for example sports, health or social clubs.
- Mobile phone usage and bills pointing to your presence in a country.
- Lifestyle purchases pointing to you spending time in your home – for example, purchases of food, flowers and meals out.
- Presence of your spouse, partner or children.
- Engagement of domestic staff or an increase in their hours.
- Home security arrangements.
- Increases in maintenance costs or the frequency of maintenance, for example having your house cleaned more frequently.
- Insurance documents relating to that home.
- SORN notification that a vehicle in the UK is 'off road'.
- Re-directed mail requests.
- The address to which you have personal post sent.
- The address to which your driving licence is registered.
- Bank accounts and credit cards linked to your address and statements which show payments made to utility companies.
- Evidence of local municipal taxes being paid.
- Registration, at your address, with local medical practitioners.

- What private medical insurance cover you have, is it an international policy?
- Credit card and bank statements which indicate the pattern and place of your day by day expenditure.

...The above list is not definitive; no one piece of evidence will demonstrate the existence of your UK or overseas home with the requisite time spent there. HMRC will consider the weight and quality of all the evidence as, taken together, a number of pieces of evidence may be sufficiently strong to demonstrate your presence in a particular home.

...Where your home has changed from a holiday home to your home for the purposes of the SRT, the change in occupation could be evidenced by, amongst other things:

- utility bills which may show an increase in usage,
- changes you have notified to
 - local municipal authorities, or
 - the company providing your buildings and contents insurance.

Working hours and location of work done - records

...Where your residence status is determined by the automatic tests relating to working full-time in the UK or overseas, you should keep information and records relating to:

- the split in your working life between the UK and overseas, particularly noting days where you worked (including training, being on stand-by and travelling) for more or less than three hours
- the nature and duration of your work activities - a work diary/calendar or timesheet is likely to indicate this. You may find that it would be beneficial to ensure your diary is sufficiently detailed, maybe reflecting hours worked³ and the nature of your work, for example reviewing and responding to emails, meetings, or filing travel claims

³ Details of the hours worked by an individual will need to be kept to support the number of hours worked and its location.

- breaks you had from working, for example between jobs, and why
- your periods of annual, sick or parenting leave
- time you spend visiting dependent children (those under the age of 18) when they are in the UK
- time you had to spend in the UK owing to exceptional circumstances,
 - what your circumstances were
 - what you did to mitigate them where that was possible, for example making alternative travel arrangements
- your contracts of employment, and documentation/communications which relate to these, particularly to curtailment or extension of these or other changes to them.

The sufficient ties test

...Where you have connections to the UK, such as family, accommodation, work or time spent here, you should keep information and records that will allow you to work out:

- in which countries you have spent your days and midnights, for example
 - your travel details
 - booking information, or
 - tickets, and boarding cards
- if you left the UK to live or work abroad,
 - the date you left the UK
 - visa or work permit applications, etc if you had to make them
 - contracts of employment
- if you come to live or work in the UK
 - the date you arrive here
 - visa or work permit applications
 - documentation relating to you taking up employment or ceasing your previous employment
- when you were present at your home or homes, or other available accommodation
- how long you owned or rented those homes, for example when you purchased, sold or leased those homes
- the time your home was unavailable for your use, for example because it was rented out.¹¹

¹¹ HMRC Guidance, paras. 7.2 – 7.6

3.7 It can be seen that the amount and type of information that HMRC considers that an individual should retain is significant. This is clearly inconsistent with its statement that an individual ‘will not normally need to retain paperwork over and above any documentation [he] might normally be expected to keep for [his] own or [his] employer’s purposes.’¹²

ONLINE TAX RESIDENCE INDICATOR

4.1 HMRC has produced an online Tax Residence Indicator (‘TRI’) which ‘will give [an individual] an indication of [their] tax residence status after answering a few straightforward questions such as how many days [the individual] spent in the UK, where [the individual has] a home and if [the individual has] family ties.’ HMRC acknowledge the TRI can be used ‘to predict what [an individual’s] residence status will be in future years, however HMRC will not be bound by the results.’

4.2 The question is how useful is the TRI? As its name suggests, it is only an indicator and so an individual should not rely on its results. Where an individual’s factual circumstances are very straightforward it may be of some limited use. In respect of individuals with more complex circumstances it is likely to be dangerous. In such cases, one might use the TRI to see whether its result was the same as that arrived at after working through the SRT Legislation but that is really the limit of its usefulness. HMRC advise that where an individual uses the TRI, its results should be kept ‘for future reference in case of enquiry by HMRC’.

¹² HMRC Guidance, para. 7.1

DOMICILE

5.1 In respect of disclosure in relation to domicile, HMRC say:-

‘The list below shows the types of information that might be requested during an enquiry. It should not be regarded as either prescriptive or comprehensive, and the individual may offer other relevant information or evidence for consideration too.

Any information request should be tailored to the particulars of the individual’s claim, and their present circumstances. It is always important to think about the relevance of particular items of information to the detailed subject matter of each enquiry. An information request need not be limited only to the items listed here, nor will all items listed necessarily be appropriate in all cases. It may not be possible for some individuals to provide some of the items on the list, even if they would be useful to an understanding of their domicile status. Given the inevitable passage of time in many cases, HMRC and the individual may need to consider how best the facts can be checked and tested.

Information

- Date of birth.
- Full name at birth.
- Parents’ full names, including mother’s maiden name, and places of birth.
- Place of birth, identifying the relevant law territory.

- Background to the place of birth, if this was not in the same territory as the parental home at the time.
- Details of any name changes, and where, if at all, such changes were registered.
- Nationality (citizenship) at birth, including an explanation of its basis where this is not obvious from the context.
- Details of any changes in or additions to the nationality (citizenship) at birth, with explanations of the relevant background.
- Family background, including marital status of parents during the period of derived domicile.
- Information about any adoption proceedings.
- If parents were not living together at any time during the period of derived domicile, an explanation of the background to this matter and how parental responsibilities were exercised.
- Information about relationships entered into by parents following their separation during the period of derived domicile.
- Details of siblings.
- List of places of residence from birth to the time of the enquiry, including home addresses.
- An explanation of the reason for residence at each place on the list.
- Details of legal rights of residence in respect of each place and a summary of any visas, permits or other official documents required.
- Summary of educational background, including places of education, periods of attendance and qualifications obtained.
- Details of military service.

- Details of governmental or diplomatic service.
- Summary of employment and/or business history.
- Explanation of employment and/or business plans, including anticipated retirement, and any arrangements that are in place in respect of these matters.
- A detailed summary of properties that have been available for use other than as short-term holiday lettings. This should include the addresses of all the properties, a description of them, details of their ownership, the periods during which the properties have been available, and an explanation of how they have been used when not occupied by the individual.
- Details of all marriages, civil partnerships, separations and divorces, including information relating to other relationships involving long-term cohabitation. These should cover the full names of any relevant parties, their dates, places of birth and nationalities, the periods during which the relationships existed, the dates of any formal acts or ceremonies, information relating to the domicile of the other parties, and explanations of any periods during which the parties to the relationship did not live together.
- Information about transfers of property, including those between spouses or civil partners.
- A summary of the names, dates of birth and nationalities of the children of the individual.
- Details of where any children were or are being educated.
- The current locations of any children and the relevant background.

- Information relating to the exercise of political rights in any territory, as either a voter or a representative.
- Membership of any political parties, or participation in campaigns or lobbying groups, and the extent of any activities.
- Details of professional qualifications, membership of professional bodies and active participation in these, including offices held.
- Summary of membership of clubs, societies, associations, organisations and other bodies, and details of the level of participation in these.
- Information about any representative activities undertaken on behalf of a country, territory, or any political, territorial or other sub-division thereof.
- The location of personal papers and any items of financial, sentimental or other value. If such items are moveable, the place where they are usually kept and details of any insurance policies in respect of them.
- Details of any wills, including an explanation of the law by which the will is intended to be construed and upon which it relies for its formal validity.
- Summary of any deeds, declarations, covenants and similar documents created, including those relating to dependants. Information relating to any legal proceedings or other matters in which domicile was relevant, either as a basis for any action or as an evidential point.
- Locations of members of the extended family, including a description of the relationship between the individuals.
- Details of religious, cultural and social connections, including the degree of religious observation, the level of participation in social and cultural life, and ability to speak, read and write relevant languages.

- Information about charitable and voluntary activities, including the foundation of charitable trusts, donations to charities and good causes, and active participation in the administration or fund-raising activities of third-sector organisations.
- Summary of professional and personal advisers, including their locations and details of the nature and extent of the services that they provide.
- An explanation of the individual's intentions for the future. What plans have been made? What contingencies have been taken into account? What would cause a change of residence? What provision has been made for the future? What has the individual actually done that provides evidence for the answers to these questions?
- A summary of any connections not specifically mentioned above that the individual has with various territories. When did these begin and precisely what form have they taken over the years? How much time has the individual spent in each territory during the relevant period? What was the reason for such presence?

Documents

5.2 The list below deals with the types of documentary evidence that might be requested during an enquiry. Again, it is important to think about the relevance of particular documents to the detailed subject matter of each enquiry. Also, consider the extent to which corroborative documentary evidence of particular aspects of an individual's lifestyle or background is needed.

In some cases it might be necessary to request applications and other documents relating to the acquisition, loss or withdrawal of the items listed below:

- Birth certificates
- Adoption papers
- Registrations of name changes
- Marriage certificates
- Civil Partnership certificates
- Passports and identification documents
- Social security documents
- Applications for nationality (citizenship)
- Documents renouncing nationality (citizenship)
- Visas, residence permits, work permits and similar documents
- Driving, firearms and other licences
- Practising certificates and authorisations from professional or regulatory bodies
- School records and reports
- Examination certificates
- Military service records
- Employment contracts
- Business accounts, reports and planning documents
- Conveyances, leases, tenancy agreements and other documents relevant to the ownership, occupation or use of property
- Mortgage and loan agreements
- Health insurance policies

- Property, motor and other insurance policies
- Life assurance policies
- Documents relating to savings, retirement and pension plans
- Wills, expressions of wishes, deeds of covenant and other legal documents
- Personal financial records, including bank account and credit card statements and documents relating to investments
- Documents confirming membership of or participation in organisations and activities
- Personal correspondence, photographs or electronic records relating to an individual's background, lifestyle and intentions.'