



HM TREASURY



HM Revenue
& Customs

Statutory definition of tax residence: a consultation

June 2011



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Subject of this consultation	The Government announced at Budget 2011 its intention to introduce a full statutory definition of tax residence for individuals. Its objective is to replace the current uncertain and complicated residence rules with a clear statutory residence test that is simple for the taxpayer to use.
Scope of this consultation	The consultation seeks responses from interested parties on the design and implementation of the proposed new test to determine tax residence. As part of this consultation, the Government is also seeking views on options to reform the concept of ordinary residence.
Who should read this	Individuals, advisors, businesses and representative groups affected by, or with an interest in, the current rules on tax residence.
Duration	The consultation will run for 12 weeks from 17 June 2011. The closing date for responses is 9 September 2011.
Enquiries	All enquiries should preferably be sent via e-mail to: SRT@hmtreasury.gsi.gov.uk A postal address is also provided below.
How to respond	Mail address (e-mail above is preferable): James Hood Statutory residence test consultation Personal Tax Team HM Treasury 1 Horse Guards Road London SW1A 2HQ
Additional ways to be involved	The Government will consider meeting a range of interested parties on the issues raised in this consultation. The timing, format and venue for these meetings will be decided in due course. Confirmation will be provided to relevant parties during the consultation process.
After the consultation	The Government will publish a summary of the responses to this consultation in the autumn. Responses will inform the draft legislation which will be published for further consultation before Budget 2012.
Getting to this stage	This consultation document reflects joint analysis carried out by HM Treasury and HM Revenue and Customs. It has also been informed by informal discussions with external bodies and representative groups. It is the first public consultation on tax residence for individuals under this Government.

1

Introduction

- 1.1** The Government believes there is a strong case for introducing a statutory definition of tax residence for individuals: a statutory residence test.
- 1.2** Tax residence has a significant bearing on an individual's UK tax liability, especially if they have non-UK ("overseas") income or capital gains. In most circumstances residents are liable to tax on some or all of their overseas income and capital gains whereas non-residents are not liable. Residence can also affect how much tax is paid on income and capital gains from UK sources. Annex B provides a more detailed description of how residence affects tax liability.
- 1.3** At present there is no full statutory definition of tax residence. There is some very limited legislation but the definition largely rests on legal cases decided in the courts over a very long period of time and based on facts arising in a very different world from today's globalised economy, technology, travel and working patterns. Court decisions have not provided clear or specific principles that are applicable to all taxpayers.
- 1.4** The result is that the residence rules are vague, complicated and perceived to be subjective. In certain circumstances it is not possible for a person to be sure whether they are tax resident in the UK or to know what activities or circumstances would make them tax resident. Tax and professional bodies and other interest groups have long argued that this is unsustainable and unfair to the taxpayer.
- 1.5** Given that tax residence is an essential prerequisite for determining an individual's tax liability, the Government agrees that this lack of certainty is unsatisfactory. It undermines its wider ambition of developing a tax system that is more certain, efficient, and easy to comply with.
- 1.6** It is also a deterrent to individuals and businesses looking to invest in the UK. Investors seek certainty and predictability. The current rules fail to provide this and can leave them unclear about the tax consequences of their presence and activities in the UK. This runs counter to the Government's commitment to making the tax system more supportive of growth and the UK's international competitiveness.
- 1.7** The Government is therefore committed to introducing a statutory test that is transparent, objective, and simple to use. This will enable taxpayers to assess their residence status in a straightforward way. It also intends that the tax residence status of the vast majority of people will be unaffected by the introduction of a statutory test.
- 1.8** A statutory test will have the further benefit of enabling those who come to the UK on business, as employees or as investors to have a clear view of their tax treatment. This will create a more conducive environment for investment and add to the UK's reputation as a good place to do business.
- 1.9** While the Government intends that the introduction of clear residence rules should increase the attractiveness of the UK for the internationally mobile, the statutory test should also continue to ensure that those with close connections to the UK pay their fair share of tax and that the rules do not give rise to unfair outcomes or opportunities for tax avoidance.
- 1.10** This consultation proposes a framework for a statutory residence test to define tax residence in line with these objectives and seeks views on the design and implementation of this

framework. The consultation is Stage 2 of the five stages of tax policy making set out in the Tax Consultation Framework at Annex A.

1.11 As part of this consultation, the Government is seeking views on options to reform the concept of ordinary residence, which also has a bearing on tax liability and currently lacks a statutory definition. These options are outlined in Chapter 6.

1.12 A summary of responses to this consultation will be published by the Government in the autumn. Draft legislation will be published for comment later in 2011 with a view to final legislation in Finance Bill 2012. It is intended that the proposals outlined in this consultation will take effect from 6 April 2012.

1.13 The Government is consulting separately on reforms to the taxation of non-domiciled individuals. This consultation document can be found on HM Treasury's website at http://www.hm-treasury.gov.uk/consult_nondom_tax_reform.htm. The issue of tax residence is relevant to many non-domiciled individuals and the Government would welcome views on both consultations.

2

The current residence rules

Current residence rules

2.1 The circumstances in which individuals are treated as UK resident for tax purposes include where they:

- spend 183 days or more in the UK in any tax year;
- come to the UK with the intention of living here permanently or to work here for an extended period, or with no particular end date;
- come to the UK temporarily and spend 91 days or more per year in the UK on average over a four-year period;
- come to the UK for a purpose, such as employment, that will mean that they remain in the UK for at least two years (whether or not, in a particular year, they spend 183 days or more in the UK); or
- usually live in the UK and go abroad for short periods, for example on business trips or holidays.¹

2.2 Whether an individual is resident in the UK is not solely dependent on the amount of time that they spend here. The nature and quality of an individual's connections with the UK are important factors in determining whether they are resident in the UK. For example, family, accommodation, and economic interests can be relevant.

2.3 These rules and their impact on an individual's liability to UK tax are explained in leaflet HMRC6 which provides a comprehensive statement on HM Revenue and Customs' (HMRC) interpretation of the application of the rules in practice. HMRC6 is available at: <http://www.hmrc.gov.uk/cnr/hmrc6.pdf>

How this creates uncertainty

2.4 While for many people it is clear whether they are resident in the UK, for others this is not the case. This is because some of the key concepts within the rules are not defined. For example, no certainty exists over the concept of coming to the UK temporarily. While some will clearly be here on a temporary basis – for example a foreign tourist on a short holiday in the UK – for many others the answer can be less clearcut.

2.5 There is particular difficulty about the extent to which an individual can make and retain connections with the UK and still be considered to be non-resident. This affects those who visit the UK and gradually build up connections, such as employment, business, accommodation and social ties. There are no clear rules to indicate the point at which these connections are sufficiently strong to constitute being in the UK permanently or otherwise to make an individual resident.

¹ S829 Income Tax Act (ITA) 2007

2.6 Decisions in court cases have indicated the connections that may be considered relevant to residence status but this does not provide certainty on whether these connections apply in all cases, what weighting should be given to different factors or precisely how they influence residence status.

3

Proposed framework for a statutory residence test

3.1 This Chapter sets out the Government’s proposed framework for a statutory residence test (SRT) and the principles underlying it.

Principles

3.2 The SRT is designed to provide a simple process and clear outcome for the vast majority of people whose circumstances are straightforward. Indeed, for the majority of individuals the SRT will have no impact whatsoever on their residence status. They will remain either clearly resident in the UK or clearly not resident in the UK. The benefit for them of an SRT will be that, if they want to do so, they will be able to confirm that status quickly and easily.

3.3 The uncertainty of the current rules predominantly affects people with complicated circumstances, such as those who travel to and from the UK frequently or who have connections with a number of different countries.

3.4 To provide a fair way of determining residence for those with more complicated affairs the Government proposes that the SRT should take into account both the amount of time the individual spends in the UK and the other connections they have with the UK. However, to avoid the complexity of current case law:

- the test should not take into account a wide range of connections;
- relevant connections should be simply and clearly defined; and
- the weight and relevance of each connection should be clear.

3.5 The Government wants to ensure that introducing a statutory test does not lead to situations where individuals can become and remain non-resident without significantly reducing the extent of their connection with the UK. Equally, the Government is clear that individuals should not be resident if they have little connection with the UK.

3.6 The Government also believes it is beneficial to encourage individuals to come to the UK and spend a limited amount of time here without necessarily becoming resident, such as investors assessing investment opportunities. The proposed test has been designed so that it is harder to become non-resident when leaving the UK after a period of residence than it is to become resident when an individual comes to the UK. Once an individual has become resident and built up connections with the UK, they should be required to scale back their ties to the UK significantly or spend far less time here or a combination of the two before they can relinquish residence. This is consistent with the principle, reflected in case law, that residence should have an adhesive nature.

3.7 Therefore, there are parts of the test where a distinction will be made between:

- **Arrivers** – defined as individuals who were not UK resident in all of the previous three tax years; and
- **Leavers** – defined as individuals who were resident in one or more of the previous three tax years.

3.8 The Government has considered alternative ways to design a statutory test, including a test based purely on the amount of time spent in the UK. However, it believes that where someone is resident is more than just a question of where they spend their time. Most importantly, it believes a definition based purely on time spent in the UK would lead to outcomes that cannot be justified. For example, it would enable individuals to become non-resident simply by reducing their number of days in the UK below the relevant threshold without any requirement to reduce their other connections with the UK.

3.9 Therefore, the Government intends to introduce a test based on the framework outlined in the following paragraphs. The Government seeks views on the detailed design of this framework and would welcome comment from interested parties to ensure it is clearly defined, simple and does not produce unintended or unreasonable outcomes.

Framework

3.10 Interested parties should note the following points about the scope and application of this test:

- it will define tax residence for individuals and it will not cover the residence of companies;
- it will apply for the purposes of income tax, capital gains tax (CGT) and inheritance tax (IHT);
- it will not apply for non-tax purposes or other Government services where residence is separately defined, such as National Insurance Contributions (NICs); and
- the new statutory definition will supersede all existing legislation, case law and guidance for tax years following its introduction.

3.11 To enable the SRT to provide both for those with straightforward affairs and those whose tax residence position is more complicated, the Government proposes that the test will have three parts:

- **Part A** contains conclusive non-residence factors that would be sufficient in themselves to make an individual not resident.
- **Part B** contains conclusive residence factors that would be sufficient in themselves to make an individual resident.
- **Part C** contains other connection factors and day counting rules which will only need to be considered by those whose residence status is not determined by Part A or Part B.

3.12 In using the test, an individual will need to consider which part of the test is applicable to their personal circumstances:

- If an individual satisfies any of the conditions at Part A for a tax year they will definitely be not resident in that tax year.
- If Part A does not apply but the individual satisfies any of the conditions in Part B, they will definitely be resident in that tax year.
- If none of the conditions at Part A or Part B are satisfied, the individual should consider Part C.

3.13 In the rare situations where an individual satisfies one of the conditions in both Part A and Part B, for example someone whose only home is in the UK but who spends very few days in the

UK in a particular tax year, Part A will take precedence and the individual will definitely be not resident in that year.

3.14 Detailed definitions of the terms used in describing the framework, including the relevant connection factors, are provided in Chapter 4.

Part A: conclusive non-residence

3.15 In some circumstances an individual should have certainty that they are not tax resident in the UK without having to take account of the connections they have with the UK. This is particularly the case when they are present in the UK for only a small number of days in a tax year.

3.16 In addition, as under the current rules, the Government believes a UK resident individual who leaves the UK to work abroad full-time should be non-resident for the duration of this work irrespective of the connections with the UK they leave behind, subject to certain conditions. This provision is important to employers and business as it significantly reduces administration relating to employees being sent abroad.

3.17 Therefore, Part A of the test will conclusively determine that an individual is not resident in the UK for a tax year if they fall under any of the following conditions, namely they:

- were not resident in the UK in all of the previous three tax years and they are **present in the UK for fewer than 45 days** in the current tax year; or
- were resident in the UK in one or more of the previous three tax years and they are **present in the UK for fewer than 10 days** in the current tax year; or
- leave the UK to carry out **full-time work abroad**, provided they are present in the UK for fewer than 90 days in the tax year and no more than 20 days are spent working in the UK in the tax year.

3.18 Definitions of “full-time work abroad” and “working day” can be found in Chapter 4.

3.19 An individual who does not fall within Part A would not necessarily be UK resident. They would instead need to consider Part B or Part C of the test.

Box 3.A: Illustrative example of how Part A determines residence status

Situation	Outcome
<p>Mrs A owns businesses in several countries. She has never previously been resident in the UK but she owns a flat in London. In 2012-13 she identifies a possible opportunity to expand one of her businesses into the UK. She visits the UK several times to assess the opportunity and to recruit personnel to manage the business. She is present in the UK for only 40 days in the tax year.</p>	<p>Mrs A is not resident in 2012-13 under Part A of the test. This is because she:</p> <ul style="list-style-type: none"> • was not resident in all of the previous three years; and • spends fewer than 45 days in the UK during that tax year. <p>If she had spent 45 days or more in the UK she would need to consider Part B or Part C of the test.</p>
<p>Mr B is the captain of a cruise ship. He is married with two children who live in the family home in Southampton, which is his only home.</p> <p>Mr B captains a cruise liner that sails mostly out of Southampton. Sometimes these cruises can last many months, and merge into the next cruise (passengers embark and disembark as the ship sails to various places), so his employer will pay for his wife and family to join him on the ship a few times a year.</p> <p>He has been tax resident in the UK for the past ten years but in 2012-13 he spends only 5 days in the UK due to the nature of the cruises and the illness of a colleague for whom he agrees to cover.</p>	<p>Mr B is not resident in 2012-13 under Part A of the test. This is because he:</p> <ul style="list-style-type: none"> • was resident in one of the previous three years; and • spends fewer than 10 days in the UK during that tax year. <p>If he had spent 10 days or more in the UK he would need to consider Part B or Part C of the test.</p>

Question 1

Do you think there are any other circumstances in which an individual should be conclusively non-resident? If so, what are those circumstances?

Part B: conclusive residence

3.20 There are a large number of people who are clearly tax resident in the UK because they:

- spend almost all their time in the UK;
- work exclusively or predominantly in the UK; or
- have their home in the UK and base their life and family here.

3.21 The SRT should provide a clear answer for such individuals, including those who come to the UK part way through the tax year. The purpose of Part B is to provide certainty for this group, including the many expatriate employees who come from abroad to work on posts in the UK.

3.22 Provided Part A of the test does not apply, an individual will be conclusively resident for the tax year under Part B if they meet any of the following conditions, namely they:

- are **present in the UK for 183 days or more** in a tax year; or
- have **only one home and that home is in the UK** (or have two or more homes and all of these are in the UK); or

- carry out **full-time work in the UK**.

3.23 The terms “only home”, “full-time work in the UK” and “days of presence in the UK” are defined in Chapter 4.

3.24 The Government considers that these factors are simple to apply and would provide certainty for many individuals as well as for employers who bring employees to the UK on secondment.

3.25 An individual who does not meet any of the conditions in Part B would not necessarily be non-resident; instead they would need to consider Part C of the test.

3.26 As outlined in paragraph 3.13 in cases where an individual satisfies a condition in both Part A and Part B, the individual would be non-resident.

Box 3.B: Illustrative example of how Part B determines residence status

Situation	Residence outcome
<p>Mrs C is married and lives in New York with her husband and young children. She works for an international company with offices in London, Paris and Madrid.</p> <p>In 2012-13 she is asked to work on a project in the London office and spends 200 days in the UK. The project lasts for fewer than 9 months. She stays in a hotel and is joined by her husband and family during the summer. She retains her home in the US.</p>	<p>Mrs C is resident in the UK under Part B of the test because she spends 183 days or more in the UK.</p> <p>If she spent fewer than 183 days in the UK, she would need to consider Part C of the test. None of the other criteria in Part B apply to her.</p>

Question 2

Do you think there are any other circumstances in which an individual should be conclusively resident? If so, what are those circumstances?

Part C: other connection factors and day counting

3.27 Part C would apply only to those individuals whose residence status is not determined by Part A or Part B and, therefore, whose circumstances are less straightforward.

3.28 Part C reflects the principle that the more time someone spends in the UK, the fewer connections they can have with the UK if they want to be non-resident. It also incorporates the principle that residence status should adhere more to those who are already resident than to those who are not currently resident.

3.29 Under Part C an individual would simply need to compare the number of days they spend in the UK against a small number of clearly defined connection factors. Individuals who know how many days they spend in the UK and how many relevant connection factors they have would find it straightforward to assess whether they are resident.

3.30 The Government proposes that the following connection factors should be relevant to an individual’s residence status, but only when linked to the amount of time the person spends in the UK. These factors are defined in detail in Chapter 4:

- **Family** – the individual’s spouse or civil partner or common law equivalent (provided the individual is not separated from them) or minor children are resident in the UK;
- **Accommodation** – the individual has accessible accommodation in the UK and makes use of it during the tax year (subject to exclusions for some types of accommodation);

- **Substantive work in the UK** – the individual does substantive work in the UK (but does not work in the UK full-time);
- **UK presence in previous year** – the individual spent 90 days or more in the UK in either of the previous two tax years;
- **More time in the UK than in other countries** – the individual spends more days in the UK in the tax year than in any other single country.

3.31 All of these factors are a strong indication of where the centre of a person’s life is and all are relevant under current case law. Including these factors provides clarity on the residence status of individuals who ‘leave’ the UK but keep their family and home here; these situations account for much of the uncertainty in the current rules.

3.32 These connection factors would be combined with days spent in the UK into a “scale” to determine whether the individual is resident or not.

3.33 It is proposed to have separate “scales” for arrivers and leavers, reflecting the principle that it should be harder for leavers to relinquish residence than for new arrivers to acquire it. These are described in detail below.

(i) Individuals not resident in all of the previous three tax years (arrivers)

3.34 If the individual was not resident in all of the three tax years preceding the year under consideration, the following connection factors may be relevant to their residence status, if they occur at any point in the tax year, namely the individual:

- has a UK resident **family**;
- has substantive UK **employment** (including **self-employment**);
- has accessible **accommodation** in the UK;
- spent **90 days or more** in the UK in either of the previous two tax years.

3.35 The way these connection factors are combined with days spent in the UK to determine residence status is as follows:

Days spent in UK	Impact of connection factors on residence status
Fewer than 45 days	Always non-resident
45 – 89 days	Resident if individual has 4 factors (otherwise not resident)
90 – 119 days	Resident if individual has 3 factors or more (otherwise not resident)
120 – 182 days	Resident if individual has 2 factors or more (otherwise not resident)
183 days or more	Always resident

(ii) Individuals resident in one or more of the previous three tax years (leavers)

3.36 If the individual was resident in one or more of the three tax years immediately preceding the tax year under consideration, the following connection factors may be relevant to their residence status, if they occur at any point in the tax year, namely the individual:

- has a UK resident **family**;
- has substantive UK **employment** (including **self-employment**);
- has accessible **accommodation** in the UK;
- spent **90 days** or more in the UK in either of the previous two tax years;
- spends **more days in the UK** in the tax year than in any other single country.

3.37 The way these connection factors are combined with days spent in the UK to determine residence status is as follows:

Days spent in UK	Impact of connection factors on residence status
Fewer than 10 days	Always non-resident
10 - 44 days	Resident if individual has 4 factors or more (otherwise not resident)
45 – 89 days	Resident if individual has 3 factors or more (otherwise not resident)
90 – 119 days	Resident if individual has 2 factors or more (otherwise not resident)
120 – 182 days	Resident if individual has 1 factor or more (otherwise not resident)
183 days or more	Always resident

Box 3.C: Illustrative examples of how Part C determines residence status

Situation	Residence Outcome
<p>Mr D is a wealthy businessman with homes in various countries. He has not been resident in the UK prior to 2012-13.</p> <p>He has business interests in the UK and owns a house in London but, until 2012-13, he spends only a few days in the UK each year.</p> <p>In 2012-13 his wife moves to the UK to live in the London house with their two children. His wife and children become resident in the UK. The children enrol in local schools and Mr D visits whenever he can. He spends 95 days in the UK in 2012, 80 of them working. He stays in the London house on days when he is in the UK.</p>	<p>Mr D is resident in 2012-13 under Part C of the test. This is because he spends 90 days or more in the UK and has 3 relevant connection factors:</p> <ul style="list-style-type: none"> • a UK resident family; • accessible accommodation in the UK; and • substantive UK employment. <p>This answer is provided by the table at paragraph 3.35 for individuals who have not been resident in any of the previous three tax years.</p>
<p>Mrs E has been UK resident for several years, always spending more than 250 days in the UK in those years. She has successfully built up an IT company and now decides to create a new branch of the business in France. In 2012-13 she buys a house in France and spends a large amount of her time there. However, until the new branch is established her family remain resident in the UK and continue to live in the family home. She commutes back to the UK when she can, staying with her family when she does. Her family sometimes visit her in France on weekends.</p>	<p>In 2012-13 Mrs E is resident in the UK under Part C as she spends 90 days or more in the UK and has 3 connection factors:</p> <ul style="list-style-type: none"> • a UK resident family • accessible accommodation in the UK; and • spent 90 days or more in the UK in the previous tax year.

In **2012-13** she spends 95 days in the UK but spends only 35 of them working.

In **2013-14** the family decide to move to France permanently and Mrs E sells the family home in the UK. She still needs to visit the UK for business meetings and spends 25 days in the UK.

In **2013-14** Mrs E is **not resident** under Part C because she spends 25 days in the UK and has only 1 connection factor:

- spent 90 days or more in the UK in the previous tax year.

This answer is provided by the table at paragraph 3.37 for individuals who have been resident in one of the previous three tax years.

Question 3

(a) Do you think that these connection factors are appropriate and are there other connection factors that should be included?

(b) Does this part of the test provide a fair outcome? If not, why not?

Self assessment of residence status

3.38 The Government believes the framework outlined above will allow individuals to assess their residence status simply and without the need to resort to specialist advice.

3.39 To ensure the test is as easy to operate as possible, HMRC is considering the possibility of providing an interactive online tool to allow individuals to self assess their residence status. This would enable an individual to determine their residence status immediately by answering a small number of simple questions.

3.40 A prototype of a self assessment tool, based on the framework proposed in this consultation document, is available now on HM Treasury's website at http://www.hm-treasury.gov.uk/consult_statutory_residence_test.htm and interested parties are encouraged to make use of this tool to assess how this statutory test could operate in practice.

Other aspects of the proposed test

Split years

3.41 Under the current rules an individual is either resident or not resident in the UK for the whole of a tax year. However, by Extra Statutory Concession (ESC) A11, the tax year can be split into periods of residence and non-residence in certain circumstances when an individual comes to, or leaves, the UK part way through a tax year. This prevents some individuals being taxed as if they were resident for the parts of the year before they came to the UK or after they left.

3.42 Split year treatment can apply where an individual:

- comes to the UK to take up permanent residence; or
- leaves the UK to take up permanent residence abroad; or
- loses UK residence when leaving to work full-time outside the UK.

3.43 As part of introducing an SRT, the intention is broadly to recreate the circumstances in which split year treatment currently applies and to put it on a statutory footing. This will mean that Extra Statutory Concessions A11, D2 and A78 (which applies where an individual is accompanied, or later joined, by his or her spouse who is not in full-time employment abroad) will be withdrawn and replaced by legislative rules.

3.44 It is not possible to recreate the conditions of the current extra statutory concessions exactly because they rely on the subjective and imprecise concept of becoming 'permanently' resident in the UK or elsewhere. Therefore, in keeping with the intention of introducing clear and objective rules, the statutory provisions on split years will be linked to the conditions contained in the SRT. This means the new rules will treat a tax year as being split into periods of residence and non-residence if a person:

- becomes resident in the UK by virtue of their only home being in the UK;
- becomes resident by starting full-time employment in the UK;
- establishes their only home in a country outside the UK and becomes tax resident in that country and does not come back to the UK in that tax year;
- loses UK residence by virtue of working full-time abroad; or
- returns to the UK following a period of working full-time abroad.

3.45 A tax year will not be treated as split where an individual's residence status changes due to changes in the number of connection factors under Part C, such as the arrival or departure of their family.

3.46 If a person becomes not resident by virtue of leaving the UK to work full-time abroad and is accompanied by their spouse or civil partner, split year treatment would also apply to the spouse or civil partner provided their sole or main home is outside the UK.

Anti-avoidance provisions

3.47 Ceasing to be UK resident means that an individual is no longer liable to UK tax on income from non-UK sources. In many instances there can also be a reduced tax liability on income from UK sources. This can result in people finding it advantageous to become not resident for a short period of time if they expect substantial amounts of income to arise which otherwise would be liable to tax in the UK. This leads to a cost to the Exchequer.

3.48 A similar position used to arise for capital gains tax (CGT). It was possible for individuals to leave the UK temporarily and realise capital gains in the period of non-residence and therefore be exempt from liability to UK tax on those gains. Legislation was enacted in Finance Act 1998 to counter such avoidance of CGT.

3.49 Introducing a statutory definition will make it clearer when a person is tax resident or not resident in the UK. This could enable those who want to avoid liability on substantial amounts of income to plan short periods of temporary non-residence with more certainty.

3.50 The SRT rules will therefore need to counteract the risk of individuals creating artificial short periods of non-residence, during which they receive a large amount of income (which accrued during periods of UK residence) free of UK tax and then bring the income back into the UK tax-free. This activity would undermine the effectiveness of an SRT and present an unacceptable risk to the Exchequer.

3.51 The existing anti-avoidance provision to prevent individuals avoiding CGT in this way works broadly as follows:

- it applies where an individual has been resident in four out of the seven tax years prior to the tax year in which they become non-resident; and
- if the individual becomes resident again in any of the following five tax years then, with certain exceptions, chargeable gains or allowable losses that arose during the

years of non-residence are treated as arising instead in the tax year in which the individual becomes resident again.

3.52 This treatment has the effect of making such gains liable to tax; any losses can be set off in arriving at the net amount chargeable to CGT.

3.53 The SRT will include an anti-avoidance rule for some forms of investment income along the lines of the model of the CGT rule described above. In particular, it will apply to dividends paid by closely controlled companies that reflect profits that have built up during a period of residence and which are then taken out during a short period of non-residence.

3.54 The rule would not apply to all types of income that are received when a person is non-resident. For example, it would not apply to earnings from employment or self-employment or to normal types of regular investment income, such as bank interest or dividends from listed companies.

Transitional rules

3.55 The SRT will provide a complete set of rules for determining whether a person is tax resident in the UK or not. It is intended that these will broadly recreate the outcome of the current residence rules and, therefore, it is not envisaged that there will be any need to provide transitional rules to cover any change in residence status for individuals between the old rules and the new ones.

3.56 The current rules will continue to apply for the assessment of tax liability in tax years prior to the introduction of the statutory test, including 2011-12. It is not proposed to allow individuals to apply the new definition retrospectively to calculate tax for prior years.

3.57 As set out in the proposed framework, the application of some elements of the test for years after the introduction of the new definition would depend on whether or not an individual was resident in previous tax years. In particular, an individual would need to know whether they had been resident in any of the previous three years to decide which element of Part C to use. The Government has considered whether there is a case for introducing a transitional rule enabling individuals to elect to apply the new statutory definition of residence to prior years in these specific situations. However, despite the uncertainty of the current rules, the individual will have needed to know what their residence status was in prior years to determine their tax status in the UK and many will have filed a Self Assessment (SA) tax return for those years declaring either that they were resident or not resident. It therefore does not propose to offer such a transitional rule but would welcome views on this point.

Question 4

Would the lack of a transitional rule as described in paragraph 3.57 leave significant uncertainty?

4

Definitions for the statutory residence test

4.1 As outlined in Chapter 3, there are three parts to the proposed framework for the test. This Chapter defines the terms used in each section of the test. These definitions are not final and there will be scope to refine them, if appropriate, when legislation is drafted.

Part A: conclusive non-residence test

Full-time work abroad

4.2 A person has full-time work abroad (FTWA) if they leave the UK to perform work abroad and are:

- employed abroad under one or more contracts of employment (including consecutive employments) or hold offices which have combined total hours of 35 hours per week or more; or
- carrying on one or more trades or professions wholly abroad where 35 hours of work per week or more is undertaken on average.

4.3 In either of these cases the work must be carried out for at least one full tax year if it is to be classed as full-time work abroad.

4.4 When a person is working full-time abroad, no more than 20 working days can be performed in the UK in any one tax year. This limit will be reduced pro rata if the individual is treated as being not resident for part of a year under the split year rules.

4.5 The person must be present in the UK for fewer than 90 days. This limit will be reduced pro rata if the individual is treated as being not resident for part of a year under the split year rules.

4.6 Individuals who do not meet all the criteria for full-time work abroad, for example if they have more than 20 working days in the UK, will not necessarily be resident; they may still be non-resident under Part C.

Working day

4.7 A working day is any day on which three hours or more of work is carried out.

4.8 If an individual carries out fewer than three hours of work, the day will not count towards the threshold of 20 working days for the purposes of FTWA.

4.9 Even if an individual is not present in the UK at the end of the day, they will still be treated as working in the UK on that day if they have worked in the UK for three hours or more.

4.10 Where individuals work in the UK for less than three hours on a particular day, they would be expected to have sufficient records to demonstrate this fact.

Day of presence in the UK

4.11 The definition of a day of presence in the UK will remain unchanged and is described in paragraphs 4.16 and 4.17.

Part B: conclusive residence test

Only home

4.12 If a person has only one home and that is in the UK or they have more than one home and all of these are in the UK, this will constitute an 'only home'.

4.13 Residential accommodation is not treated as an individual's home if that accommodation is being advertised for sale or let and the individual lives in another residence.

Full-time work in the UK

4.14 A person is working full-time in the UK if they are:

- employed in the UK under one or more contracts of employment (including consecutive employments) or hold offices with total combined contracted hours of 35 hours per week or more; or
- carrying on one or more trades or professions in the UK where 35 hours of work per week or more is undertaken on average.

4.15 The work must be carried out in the UK over a continuous period of more than 9 months (excluding short breaks such as illness or holidays) and not more than 25% of the duties can be undertaken outside of the UK within that period.

Day of presence in the UK

4.16 There will be no change to the definition of what is meant by a 'day' or 'presence in the UK'. A person will be treated as being in the UK on any day where they are in the UK at midnight at the end of that day.

4.17 The current rules for individuals travelling through the UK as a passenger where they are in the UK at the end of any day will also be retained. This will mean that a day will not count as a day of UK presence if they arrive in the UK as a passenger, they depart from the UK on the next day and during their time in the UK they do not engage in any activity substantially unrelated to their passage through the UK.

Part C: other connection factors and day counting

4.18 These factors will be relevant to an individual's residence status only when linked to the number of days an individual spends in the UK.

Family

4.19 An individual has family in the UK in a tax year if either of the following applies:

- the individual's spouse, civil partner or common law equivalent is resident in the UK in that tax year or any part of that tax year. This does not include a spouse, civil partner or common law equivalent if they are separated from the individual under a court order or a separation agreement or where the separation is likely to be permanent; or
- the individual has children under the age of 18 who are resident in the UK and the individual spends time with those children (one to one or with others present), or lives with them, for all or part of 60 days or more during the tax year. It would not matter whether these days were spent with the child in the UK or elsewhere.

4.20 A child will not be treated as being resident in the UK for these purposes if their residence is mainly caused by time spent at a UK educational establishment. This will be when the child

spends fewer than 60 days in the UK not present at the educational establishment and the child's main home is not in the UK.

Accommodation

4.21 An individual has UK accommodation if residential property:

- is accessible to be used by them as a place of residence; and
- is used by them or their family in the year as a place of residence. Family has the same meaning as in paragraphs 4.19 and 4.20.

4.22 The following categories of accommodation are not included as UK accommodation:

- accommodation provided by an individual's employer where the accommodation is also accessible to, and used by, other employees of that employer who are not connected to the individual. For example, premises owned or rented by the company that is used by all employees visiting the country while on company business;
- any accommodation held on a lease of six months or less, except where there are consecutive leases taking place. For example, if an individual moves from house A, with a six month lease to house B with a six month lease, and there are fewer than six weeks between leaving one house and living in the other, they will be considered to have UK accommodation;
- accommodation accessible to a child of the individual under the age of 18 where that accommodation is provided in relation to the child being a student at a UK educational establishment;
- short-term accommodation in hotels; and
- lodging with relatives, where staying in the home of a relative is for a temporary short-term visit only.

Substantive employment (including self-employment)

4.23 An individual has substantive employment or self-employment in the UK if they work in the UK for 40 or more days in the tax year.

4.24 The definition of a working day is any day on which more than three hours of work is undertaken. This includes any day where the person is not in the UK at the end of that day.

Question 5

(a) Do you think that the proposed definitions are appropriate?

(b) Would these definitions have an adverse impact for particular groups? If so, which groups and what would the impacts be?

5

Summary of impacts

5.1 This annex provides an initial assessment of impacts from the introduction of a statutory definition of tax residence. As part of the consultation process, the Government would like to further explore the range of likely impacts with stakeholders.

Policy objective

5.2 Tax residence has a significant bearing on an individual's UK tax liability, especially where they have non-UK income or capital gains. There is currently no full statutory definition of tax residence and the rules are complicated and unclear. As a result, it can be difficult for individuals to know whether they are resident in the UK or not. Placing tax residence on a statutory footing will provide certainty for the taxpayer.

Policy change

5.3 The current rules will be replaced by a simple statutory test that combines the amount of time a person spends in the UK with the level of their other connections to the UK. It is not intended that this will change the residence status of the vast majority of taxpayers.

Other options considered

5.4 The Government has considered other ways of designing the test, such as basing it purely on day counting, but considers that the framework proposed in this consultation is the best way of designing a test that is clear and also reflects the level of connection an individual has with the UK.

Box 5.A: Impacts of introducing a Statutory Residence Test

Exchequer impact	This measure is expected to have a negligible Exchequer impact. The final impact on the Exchequer will be confirmed at Budget 2012.
Economic impact	Providing certainty on tax residence status would create more favourable conditions for inward investment and could lead to wider economic benefits. These are very difficult to quantify but there is not expected to be a significant increase in investment due to this policy alone. But, in the medium term, this would be expected to have a favourable economic impact.
Impact on individuals and households	<p>The statutory test will provide certainty for the taxpayer and reduce the administrative complexity of navigating the current rules.</p> <p>The test is intended to produce the same residence outcome as under the current rules for the vast majority of individuals. There will be a small number of individuals whose residence status will change as a result of this test but it is not possible to calculate precisely how many will be affected.</p> <p>Anyone who becomes resident as a result of this test will potentially be faced with additional burdens in completing an SA tax return, disclosing worldwide income or claiming double taxation relief. Anyone who becomes non-resident as a result of this test will benefit from a corresponding reduction in burdens.</p>
Equalities impacts	The introduction of a statutory definition of residence will provide certainty for any individual who needs to consider their residence status for tax purposes. It is not intended to change the residence status outcome in the vast majority of cases and therefore this policy is not expected to have a particular impact – either positive or negative – on any equality group.
Impact on business including civil society organisations	There will be no significant increase in administrative burdens or compliance costs for businesses or civil society organisations. Providing certainty on the residence status of individuals is expected to ease administration for companies which employ expatriate workers.
Operational impact	There will be an initial resource cost for HMRC to develop the test and to provide guidance to those who use it. In the longer term there is likely to be a reduction in operational costs for HMRC by making the rules easier to police and simplifying compliance activity. It would also reduce instances of litigation and associated legal costs.
Other impacts	No other impacts have been identified.

6

Ordinary residence

6.1 Ordinary residence for tax purposes is a separate concept from tax residence but it also has a bearing on an individual's tax liability. As with tax residence, there is currently no statutory definition of ordinary residence and this creates uncertainty. The Government thinks it is right to address the status of ordinary residence at the same time as introducing a statutory definition of tax residence. This Chapter outlines the Government's approach to reforming ordinary residence for tax purposes.

Current rules

6.2 The word 'ordinary' indicates that residence in the UK is typical. If an individual has always lived in the UK, they are ordinarily resident in the UK for tax purposes. When an individual comes to the UK, they do not have to intend to remain in the UK permanently or indefinitely in order to be ordinarily resident here. It is enough that the individual's residence has all the following attributes:

- Their presence in the UK has a settled purpose. This purpose might be for only a limited period but has enough continuity to be properly described as settled. Business, employment and family can all provide a settled purpose but this list is not exhaustive;
- Their presence in the UK forms part of the regular and habitual mode of their life for the time being. This can include temporary absences from the UK. For example, if an individual comes to live in the UK for three years or more, then they will clearly have established a regular and habitual mode of life here from the start; and
- They have come to the UK voluntarily. The fact that they chose to come to the UK at the request of their employer rather than seek another job does not make their presence here involuntary.

6.3 Individuals are treated as ordinarily resident if they usually live in the UK (or intend to do so), or come to the UK regularly and these visits average 91 days or more per tax year.

6.4 The pattern of presence, both in the UK and overseas, is an important factor when deciding whether an individual is ordinarily resident. Reasons for being in, coming to, or leaving the UK as well as lifestyle and habits all have to be taken into account.

How ordinary residence affects tax liability

6.5 Ordinary residence is relevant to an individual's UK tax liability in two main ways. Individuals who are not ordinarily resident in the UK:

- can claim the remittance basis of taxation for **foreign investment income**. This offers beneficial treatment as they are only liable to UK tax on their foreign investment income if it is remitted to the UK. Some individuals have access to the remittance basis on foreign investment income purely because they are not ordinarily resident and despite being UK domiciled; and

- are entitled to the remittance basis on income from **foreign employment duties** where the income is paid by a UK employer and hence is UK-source. This is known as “**overseas workday relief**”.¹ In these circumstances the employer typically pays the employee for all employment duties (UK and non-UK) under a single contract.

6.6 In addition, certain tax liabilities, for example capital gains tax, can apply if a person is not resident in the UK but is ordinarily resident.

6.7 In 2008-09, approximately 29,800 individuals indicated on their Self Assessment (SA) tax return that they were resident but not ordinarily resident in the UK. Of these:

- 23,100 were also non-domiciled;
- 6,700 were domiciled in the UK.

6.8 Of the 6,700 domiciled and not ordinarily resident individuals, approximately 300 claimed the remittance basis.

Case for reforming ordinary residence

6.9 The rules on ordinary residence are uncertain, complicated and subjective. Frequently this requires an assessment of an individual’s stated intention when ascertaining their ordinary residence status. It is therefore not surprising that ordinary residence cases have become increasingly prone to litigation.

6.10 Recent developments in case law have emphasised the similarity between the tests for residence and ordinary residence. In addition, many people see the differentiation between residence and ordinary residence as archaic and confusing. It adds further layers of complexity, particularly given the subjective nature of ordinary residence, on what it means to be liable to tax in the UK and this can act to reduce the attractiveness of the UK as a place to spend time, live and work. The UK is very unusual in having three separate status tests – residence, ordinary residence and domicile - to determine tax liability.

6.11 In addition, the practical effects of being not ordinarily resident are limited. Only a very few people claim the remittance basis solely on the basis of being not ordinarily resident. The situations where capital gains tax is charged on an individual who is not resident but ordinarily resident are very rare.

6.12 Therefore, the Government believes there is a good case for fundamentally re-examining and reforming the concept of ordinary residence.

6.13 However, the Government recognises that the existing treatment for overseas workday relief is important to business. This is because it provides a significant administrative easement for short-term secondees and their employers. Although it may not ultimately affect the tax outcome in many cases, it prevents employers having to enter into complicated contractual and payroll arrangements. It is estimated that thousands of people who are not ordinarily resident claim this relief, of whom the overwhelming majority are non-domiciled. They cannot access this relief solely on the basis of being non-domiciled and require a specific provision.

6.14 The Government therefore thinks it is right to retain the concept of ordinary residence for the purposes of overseas workday relief at least. Accordingly, this consultation seeks views on whether ordinary residence should be retained for purposes other than overseas workday relief and, where it is retained, how ordinary residence should be defined.

¹ This relief is provided for by Section 26 Income Tax (Earnings and Pension) Act (ITEPA) 2003

Proposed definition of ordinary residence

6.15 Irrespective of whether ordinary residence is retained solely for overseas workday relief or also for other purposes, there would need to be a simple and objective definition in statute.

6.16 The Government's proposed definition is that individuals who are resident in the UK should also be treated as ordinarily resident unless they have been non-resident in the UK in all of the previous five tax years. If they meet this condition, they may be not ordinarily resident. The status of being not ordinarily resident should be available in the tax year in which the individual arrives in the UK and for a maximum of two full tax years following the tax year of arrival.

6.17 The Government does not propose that everyone who comes to the UK for the first time or after a long period of absence should be entitled to be not ordinarily resident. In particular, it should not be possible for those who are coming to the UK permanently to be not ordinarily resident. This is the case under the current rules and the Government would like to preserve this feature as far as possible. Therefore, notwithstanding the individual's residence status in the previous five years, there will be exclusions from being not ordinarily resident if the individual:

- is resident in the UK on the basis that their only home is in the UK; or
- has more than one home and all of their homes are in the UK.

6.18 The Government is also considering whether any statutory definition of ordinary residence should be limited to non-domiciled taxpayers ("non-domiciles") only. Currently it is possible to be UK domiciled but also to be not ordinarily resident. However, very few individuals receive beneficial tax treatment purely as a result of being not ordinarily resident: fewer than 300 in 2008-09.

6.19 It would not be viable to recreate the current subjective definition of ordinary residence in statute. As a result, it is likely that some individuals who are currently ordinarily resident on the basis that they are coming to the UK permanently, would be not ordinarily resident under a statutory definition. This would pose a risk to the Exchequer in the case of domiciled individuals because they could gain access to the general remittance basis and overseas workday relief where they currently do not.

6.20 Therefore, the Government's preference is that it should only be possible for non-domiciled individuals to be not ordinarily resident.

Options for reforming ordinary residence

6.21 The Government is considering two main options for the reform of ordinary residence and seeks views on the merits of these options.

Option 1: abolish ordinary residence for all tax purposes except overseas workday relief

6.22 This option would abolish the concept of ordinary residence as a general concept for determining tax liability and access to the remittance basis.

6.23 The concept of overseas workday relief would be retained and the definition of 'not ordinarily resident' for this purpose would be put on a statutory footing using the definition proposed in paragraphs 6.16 to 6.17.

6.24 This would mean that, for most purposes, individuals would simply have to determine whether they were resident and/or domiciled in the UK.

6.25 This would be a significant simplification. Individuals would no longer have to consider whether they were also not ordinarily resident and could concentrate on one simplified

definition of residence. It would also allow the many other references to ordinary residence in tax legislation, most of which are consequential, to be removed or replaced by a reference to residence.

6.26 It should be stressed that this option would not affect other legislative instances of ordinary residence outside tax legislation. For instance, ordinary residence is separately defined for the purposes of liability to National Insurance Contributions and it is not proposed to amend this.

6.27 Under this option the 300 individuals who are currently domiciled but not ordinarily resident and claim the remittance basis would lose access to the remittance basis for foreign investment income. There would be no impact on the ability of non-domiciled taxpayers to claim the remittance basis.

6.28 There would also be an impact on some individuals in other circumstances:

- individuals who are currently resident and not ordinarily resident would become liable to any charges that will apply under the transfer of assets legislation², provided the other provisions of that legislation applied; and
- the very few people who are not resident but ordinarily resident would no longer be liable to some tax charges such as CGT.

6.29 The Government expects that this would affect only a very small number of people. However, it would welcome any evidence that abolishing ordinary residence for these tax purposes would have a significant impact in any other situations or for other taxpayers.

6.30 As outlined above, the Government considers that any new definition of overseas workday relief should be restricted to non-domiciles only but would welcome views on this point. If this approach were taken there would be fewer than 300 individuals who are currently domiciled but not ordinarily resident who would no longer be able to claim overseas workday relief. Non-domiciled taxpayers would not be affected.

6.31 The table below summarises the impacts of this option on access to beneficial tax treatment.

Table 6.A: Impact of abolishing ordinary residence for all tax purposes except overseas workday relief

Option 1	Access to remittance basis for foreign investment income		Access to remittance basis for overseas workdays relief	
	Domiciled	Not Domiciled	Domiciled	Not Domiciled
(a) Keep overseas workday relief only	Lose access	Retain access	Retain access	Retain access
(b) Keep overseas workday relief only but restrict to non-domiciles only	Lose access	Retain access	Lose access	Retain access

² Section 714 to Section 751 Income Tax Act 2007

Option 2: retain ordinary residence for all current tax purposes and create a statutory definition

6.32 This option would simply put the definition of ordinary residence on a statutory footing without amending the purposes for which it applies. The definition proposed in paragraphs 6.16 to 6.17 would be used.

6.33 This would provide clarity and it would avoid the need to remove all consequential references to ordinary residence elsewhere in tax legislation.

6.34 However, it would mean that the current complexity of having separate definitions of residence and ordinary residence would remain.

6.35 As with Option 1, it would be necessary to decide whether the statutory definition of ordinary residence should be restricted to non-domiciles only. The Government considers that it should be restricted in this way to combat the risk of inadvertently extending the general remittance basis to a larger group of domiciled taxpayers. The impact of this approach on domiciled individuals would be the same as under Option 1. There would be around 300 individuals who are currently domiciled but not ordinarily resident who would lose access to the remittance basis for foreign investment income. There would be an even smaller group of individuals who would no longer be able to claim overseas workday relief.

6.36 The table below summarises the impacts of this option on access to beneficial tax treatment.

Table 6.B: Impact of retaining ordinary residence for all current tax purposes

Option 2	Access to remittance basis for foreign investment income		Access to remittance basis for overseas workdays relief	
	Domiciled	Not Domiciled	Domiciled	Not Domiciled
(a) Keep ordinary residence for all existing purposes	Retain access	Retain access	Retain access	Retain access
(b) Keep ordinary residence for all existing purposes but restrict to non-domiciles only	Lose access	Retain access	Lose access	Retain access

Question 6

- (a) **Should ordinary residence be abolished for all tax purposes other than overseas workday relief?**
- (b) **If a new definition of ordinary residence was introduced, should it be restricted to non-domiciled individuals only?**
- (c) **Is the proposed definition of ordinary residence appropriate? If not, are there alternatives that would not have a material Exchequer cost?**

7

Summary of questions

7.1 This chapter summarises the main questions for consultation, to which the Government invites responses. In responding, stakeholders are reminded that Chapters 1 and 3 set out the Government's key objectives and that, wherever possible, comments should be supported by relevant evidence.

7.2 The issues for consultation are as follows:

Residence test – Part A:

- Question 1: Do you think there are any other circumstances in which an individual should be conclusively non-resident? If so, what are those circumstances?

Residence test – Part B:

- Question 2: Do you think there are any other circumstances in which an individual should be conclusively resident? If so, what are those circumstances?

Residence test – Part C:

- Question 3(a): Do you think that these connection factors are appropriate and are there other connection factors that should be included?
- Question 3(b): Does this part of the test provide a fair outcome? If not, why not?

Residence test:

- Question 4: Would the lack of a transitional rule as described in paragraph 3.57 leave significant uncertainty?

Residence definitions

- Question 5(a): Do you think that the proposed definitions are appropriate?
- Question 5(b): Would these definitions have an adverse impact for particular groups? If so, which groups and what would the impacts be?

Ordinary residence:

- Question 6(a): Should ordinary residence be abolished for all tax purposes other than overseas workday relief?
- Question 6(b): If a new definition of ordinary residence was introduced, should it be restricted to non-domiciled individuals only?
- Question 6(c): Is the proposed definition of ordinary residence appropriate? If not, are there alternatives that would not have a material Exchequer cost?

8

The consultation process

8.1 This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1: Setting out objectives and identifying options.

Stage 2: Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3: Drafting legislation to effect the proposed change.

Stage 4: Implementing and monitoring the change.

Stage 5: Reviewing and evaluating the change.

8.2 This consultation is taking place during Stage 2 of the process. The purpose of the consultation is to seek views on a detailed framework for a statutory residence test, building on the commitment announced in Budget 2011.

How to respond

8.3 The Government welcomes comments and responses to this consultation. The key consultation questions are summarised in Chapter 7. All e-mail correspondence should be sent to SRT@hmtreasury.gsi.gov.uk by close of business on Friday 9 September 2011.

8.4 This consultation document is available on the Treasury website at http://www.hm-treasury.gov.uk/consult_statutory_residence_test.htm. Where possible, all correspondence should be sent electronically. Alternatively, mail correspondence can also be sent to the following address:

James Hood
Statutory residence test consultation
Personal Tax Team
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

8.5 When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality disclosure

8.6 Information provided in response to this consultation document, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

8.7 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must

comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential.

8.8 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury or HM Revenue and Customs (HMRC). HM Treasury and HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Consultation Code of Practice

8.9 This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

A

The code of practice on consultation

A.1 This consultation is being conducted in accordance with the Code of Practice on Consultation that sets the following criteria:

- Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A.2 If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Richard Bowyer
Consultation Coordinator, Better Regulation and Policy Team
H M Revenue & Customs
Room 3E13, 100 Parliament Street
London, SWA 2BQ

020 7147 0062 or e-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

B

Impact of residence and ordinary residence on tax liability

Income tax and capital gains tax

B.1 Residence and ordinary residence have a significant bearing on an individual's liability to UK tax, especially on non-UK income and capital gains.

B.2 Individuals who are **resident and domiciled** in the UK are liable to UK tax on all their worldwide income and gains whenever they arise. This is known as the **arising basis**.

B.3 Those who are **resident and non-domiciled** or not ordinarily resident in the UK are eligible to claim the **remittance basis** of taxation. This means that they are:

- liable to UK tax on all UK income and gains; but
- only liable to UK tax on their non-UK income and capital gains if they are brought (remitted) to the UK. Non-UK income and capital gains left outside the UK are not liable to UK tax.

B.4 Those who are **not resident** in the UK are, subject to the provisions of double tax treaties, generally:

- liable to UK tax on UK trade, rental and employment income;
- liable to UK tax on income from savings and investments where they arise from a source in the UK, limited to the amount of withholding tax deducted;
- not chargeable to capital gains tax on the disposal of UK assets unless the gain is made on the disposal of assets situated in the UK that are used or held for the purposes of a UK trade; and
- not liable to UK tax on their overseas income and gains.

B.5 The UK tax treatment of non-UK income and capital gains can be summarised as:

	Domiciled	Non-Domiciled
Resident and ordinarily resident	Arising basis - all non-UK income and capital gains taxable when they arise	Eligible for remittance basis on non-UK income and capital gains
Resident and not ordinarily resident	Eligible for remittance basis on non-UK income but not on non-UK capital gains	Eligible for remittance basis on non-UK income and capital gains
Not resident	No tax on non-UK income and capital gains	No tax on non-UK income and capital gains

B.6 Income tax allowances, such as the personal allowance, are generally not available to non-resident individuals although there are some exceptions to this rule. For example, nationals of an EEA state and residents of the Isle of Man and the Channel Islands, amongst others, are entitled to a personal allowance.

B.7 Individuals who are resident in the UK may also be resident and liable to tax in another country. The UK has Double Taxation Agreements with a large number of countries to prevent double taxation of the same income or capital gains in more than one jurisdiction. Further details can be found on HMRC's website at <http://www.hmrc.gov.uk/si/double.htm>

B.8 The terms 'resident', 'ordinarily resident' and 'domiciled' are also used for other purposes in income and capital gains tax. For example, the residence, ordinary residence and domicile of a settlor may be material in determining the residence of trustees.

Inheritance tax

B.9 Liability to inheritance tax (IHT) is mainly determined by an individual's domicile status rather than by tax residence. Generally, if a UK domiciled individual dies, their worldwide estate is chargeable to IHT. By contrast, the estates of non-domiciles are liable to IHT on UK assets only. Lifetime transfers can be chargeable to IHT if an individual was domiciled in the UK at the date of the transfer. If they were not domiciled in the UK, the transfer could only be chargeable to IHT if the assets were sited in the UK.

B.10 However, individuals who are otherwise not domiciled in the UK under general law are deemed to be UK domiciled for IHT purposes if they have been tax resident in the UK in not less than 17 out of the 20 tax years ending with the year in which a transfer occurs. This applies regardless of whether the transfer is made during their lifetime or on death.

Domicile

B.11 Domicile is a general law concept and is not defined for tax purposes. Broadly speaking it is where an individual has their permanent home or intends to settle permanently. The law ascribes a domicile to every person at birth, usually inherited from their father. Individuals who have lived, or come to live, in the UK for a number of years can retain non-domicile status if they can show that they do not intend to remain in the UK permanently or indefinitely.

HM Treasury contacts

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If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 4558

Fax: 020 7270 4861

E-mail: public.enquiries@hm-treasury.gov.uk

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