

RESIDENCY

Institute of Financial Accountants
Mid-Southern & Wessex Branch Event
17th May 2012

AGENDA

- ▶ Introduction: UK Tax Revenue and Revenue Practice
- ▶ Residence of individuals
- ▶ Ordinary residence
- ▶ Residence of companies
- ▶ Domicile
- ▶ Coming to and departing from the UK

UK Tax Revenue

Four UK taxes governed by the residence or domicile status of the person on whom the liability will fall:

1. Income tax
2. Corporation tax
3. Capital gains tax
4. Inheritance tax

1. Income tax

Income tax is now charged in accordance with:

- ▶ The ITA 2007, effective from 6 April 2007
- ▶ The ITEPA 2003, effective from 6 April 2003
- ▶ The ITTOIA 2005, effective from 6 April 2005

1. Income tax

ITEPA imposes a charge to income tax on employment income.

Chapter 4 sets out the rules applying to employees who are resident, ordinarily resident and domiciled in the UK.

Chapter 5 sets out the rules applying to employees not resident, ordinarily resident and domiciled in the UK.

1. Income tax

ITTOIA 2005 deals with sources of income other than employment and pensions: trading profits, property income, saving and investment income, miscellaneous income, foreign income.

ITA 2007 rewrites and (in some cases) repeals various provisions relating to income tax not dealt with by ITTOIA or ITEPA.

Pt 14 of Ch 2 contains the rules regarding residence (ss. 829 – 835A).

2. Corporation tax

CTA 2009, first product of the Rewrite Project. It has effect for accounting periods ending on or after 1 April 2009.

Corporation tax is chargeable on the worldwide profits of any company resident in the UK.

A non-resident company is chargeable to corporation tax only if it carries on a trade in the UK through a permanent establishment in the UK (profits of, or attributable to, the permanent establishment).

3. Capital gains tax

A charge to capital gains tax arises when a gain accrues to an individual on the disposal or deemed disposal of a chargeable asset in a year of assessment during any part of which he is resident or during which is ordinarily resident in the UK.

Where a person has **foreign domicile**, no CGT is to be charged on a gain accruing to him from the disposal of an asset situated outside the UK (except amounts received in the UK in respect of that gain) (s 12 TCGA 1992).

3. Capital gains tax

Where a person is neither resident nor ordinarily resident in the UK but carries on a trade in the UK through a branch or agency, he is to be charged to tax on gains accruing to him from the disposal of assets situated in the UK and either held by the branch, or used in connection with the trade (s 10 TCGA 1992).

4. Inheritance tax

Inheritance tax is a direct tax on transfers of value made on, or during the seven years preceding, a person's death; and on transfers by a close company or by an individual into certain trusts.

Transfers to a spouse are exempt from tax, provided that the spouse is domiciled in the UK.

4. Inheritance tax

If a person is domiciled in the UK, the transfer, during the last seven years of his life or upon his death, of any property to which he is beneficially entitled, wherever situated, is within the charge to tax.

If a person is domiciled outside the UK, only transfers of property situated in the UK will be within the charge.

Domicile is a key concept in relation to inheritance tax.

Revenue Practice

Lysaght v IRC case in 1928:

Mr Lysaght lived in Ireland with his family and had no definite place of abode in the UK.

Each month he visited England for a week to attend a meeting of the directors of John Lysaght Ltd. He stayed with his brother or in hotels.

He stayed in the UK:

- 101 days in 1922-23*
- 94 days in 1923-24*
- 84 days in 1924-25*

Revenue Practice

Lysaght v IRC case in 1928:

The Special Commissioners held that Mr Lysaght was resident in the UK for each of those years and the House of Lords upheld their decision (residence is a question of degree and fact, and not of law).

Viscount Cave LC thought the Crown's appeal should have been dismissed.

It is this case on which the Revenue built its former rule concerning the frequency and regularity of visits to the UK.

Revenue Practice

In the *Shepherd* case as well as in *Gaines-Cooper v HMRC*, the taxpayers offered calculations of the number of days they had spent in the UK based on the practice in IR20 that the days of arrival and departure should be ignored.

The Revenue calculations included the days of arrival and departure and recorded the number of visits and visits of more than one night.

Revenue Practice

Until 6 April 2009, HMRC regarded three months as equivalent to 91 days.

Following the decision in *Gaines-Cooper*, HMRC issued a statement aimed at clarifying the application of IR20 on the question as to when it regards the counting of days to be relevant.

The practice of determining residence simply by reference to days present was finally abandoned by the adoption of HMRC6, offering explanations of residence and non-residence.

Revenue Practice

HMRC6. Introduction and Glossary:

“This guidance outlines our (HMRC) view and interpretation of legislation and case law. The material is guidance only. It has no legal force, nor does it seek to set out regulation or practice. When it seeks to give practical examples of what the relevant law means, it contains HMRC interpretation of that law”

“The guidance replaces IR20 Residents and non-residents: Liability to tax in the UK. Any practices associated with the IR20 will not apply from 6 April 2009, unless provided for outside the IR20”

Revenue Practice

HMRC6. The Purpose of this guidance:

“You are responsible for your own tax affairs in the UK but we might ask you about your tax affairs at some time. This guidance will tell you the main factors that we at HMRC take into account when deciding your residence, ordinary residence and domicile status for UK tax purposes. It is a general guidance which is designed to help you reach a decision yourself...”

“The Self-Assessment system also means that it is up to you to make a decision on whether or not you are resident in the UK for tax purposes. If you are resident, you will also have to decide whether you are not domiciled or not ordinarily resident in the UK...”

Residence of Individuals

Residence of Individuals

Residence is a complex subject. The terms residence and ordinary residence are not defined in the Taxes Acts. HMRC guidelines about their meanings are largely based on rulings of the courts.

HMRC Residency provides specialist advice to HMRC offices on the residence and ordinary residence status of individuals for UK income tax and capital gains tax purposes.

HMRC Residency also provide general guidance to both HMRC offices and members of the public on the liability to UK income tax and capital gains tax of individuals who are not resident in the UK.

Residence of individuals

- ❖ Nature of residence
- ❖ A place of abode
- ❖ Physical presence
- ❖ Connecting factors
- ❖ Intent and legality

Dual residence

Article 4 OECD Model .Rules:

- ▶ Where he has a permanent home available to him; if in both States, where his personal and economic relations are closer (centre of vital interests)
- ▶ Centre of vital interests cannot be determined, or no permanent home available to him, where he has an habitual abode
- ▶ If an habitual abode in both States or neither of them, where he is a national
- ▶ If national of both States or neither of them, the competent authorities shall settle the question by mutual agreement.

Dual residence

If you are resident in both the UK and another country, you will need to look at the Double Taxation Agreements (DTA).

If one exists, there may be provisions in the agreement which specify that you pay tax on your foreign income and gains in the UK, pay tax in your other country of residence or pay some tax in the UK and some in the other country.

DTA. UK/Spain

- 4(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
- 4(3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Spain

Residence

An individual is a resident of Spain for tax purposes if:

- he/she stays in Spain for more than 183 days in any calendar year (art. 9 IRPF)
- his/her centre of vita interest, i.e. his/her economic interest or business or professional activities, is in Spain.

In the absence of proof to the contrary, a married individual is deemed to be resident of Spain if the permanent home of his spouse and dependent minor children is in Spain.

Individuals who move their residence into Spain may elect to be taxed under the rules of individual income tax on residents or the rules of income tax on non-residents in the tax year in which he/she moves to Spain and the following 5 tax years whenever the following conditions are met:

- he/she has not been resident in Spain any time during the preceding 10 years;
- he/she moves to Spain because of an employment contract;
- he/she works physically in Spain for a company or entity resident in Spain or for a Spanish permanent resident of a non-resident entity; and
- his/her salary income is not exempt from non-resident income tax

Example

Mr Brown is British and is the director and shareholder of a UK company. He receives his income from the company in dividends. He is a higher rate taxpayer and they will be taxed at 42.5%. He became aware that the tax rate on dividends in Spain is 19%. Therefore he is thinking of becoming Spanish tax resident. His family will move to Spain and he will not own any property in Spain. He will visit the UK, but he will stay in hotels during his visits, which will not be more than 90 days a year.

Tax Treatment for years of arrival and departure from the UK

ESC A11 . RESIDENCE IN THE UNITED KINGDOM: YEAR OF COMMENCEMENT OR CESSATION OF RESIDENCE

The Income and Corporation Taxes Acts make no provision for splitting a tax year in relation to residence and an individual who is resident in the United Kingdom for any year of assessment is chargeable on the basis that he is resident for the whole year.

But where an individual

- (a) comes to the United Kingdom to take up permanent residence or to stay for at least two years; or
- (b) ceases to reside in the United Kingdom if he has left for permanent residence abroad;

liability to United Kingdom tax which is affected by residence is computed by reference to the period of his residence here during the year. It is a condition that the individual should satisfy the Board of Inland Revenue that prior to his arrival he was, or on his departure is, not ordinarily resident in the United Kingdom. The concession would not apply, for example, where an individual who had been ordinarily resident in the United Kingdom left for intended permanent residence abroad but returned to reside here before the end of the tax year following the tax year of departure

ESC A78. RESIDENCE IN THE UNITED KINGDOM: ACCOMPANYING SPOUSE

1. The residence and ordinary residence status of a husband and wife is determined independently but the circumstances of one spouse may, in certain situations, be taken into account when determining the residence status of the other. This can apply when one spouse goes abroad for full-time employment, or to work full-time in a trade, profession or vocation, and is regarded as not resident and not ordinarily resident from the day following departure to the day before return. The following concession applies where an individual in this position is accompanied, or later joined, by his or her spouse who is not in full-time employment (or working full-time in a trade, profession or vocation) abroad.
2. Where the accompanying spouse is abroad for a complete tax year and interim visits to this country do not amount to
 - 183 days or more in any tax year; or
 - an average of 91 days or more in a tax year (the average is taken over the period of absence up to a maximum of 4 years);then the accompanying spouse's liability to UK tax which is affected by residence, for the years of departure and return at the beginning and end of the period spent abroad, will be determined by reference to the period of his or her residence here during the year.

Passengers travelling through the UK

Passenger travelling between two countries via the UK:

You arrive one day and leave the following day, you will not count the day you arrived in the UK (even though you were still in the UK at the end of that day). Only if your activities are related to completing travel to a foreign destination.

If you attend business meeting, arrange to meet people socially or attend social activities, you must count that day as a day of presence if you are in the UK at the end of the day.

Passengers travelling through the UK

Example:

A resident of the Isle of Man travels to the mainland UK as part of an onward journey to the USA. They have to stay overnight in the UK before catching a flight to the USA early the following day.

They took the opportunity to attend a business meeting while they were in the UK waiting for their flight the following day.

The night they spent in the UK will be counted as a day of presence.

Temporary non-residents

If you have been resident in the UK, go to live abroad and then return to the UK at a later date which is less than five full tax years since your date of departure from the UK, you will have been temporarily non-resident in the UK.

It is possible that any 'relevant foreign income' which you brought to the UK during the time you were non-resident in the UK, will be chargeable to UK tax in the year you become resident again in the UK.

This rule will apply if you were resident in the UK for at least four of the last seven tax years before you left the UK.

Temporary non-residents

Example:

Your return to the UK during the tax year 2011/12 after a period of residence abroad.

You originally left the UK to become resident abroad on 2 September 2006 and so your year of departure was 2006/07. You had been resident in the UK for the seven years before your departure.

While you were resident abroad you remitted to the UK the following income from the profits of a trade you were carrying out wholly outside the UK:

2007/08	–	£15,000
2008/09	–	£18,000
2009/10	–	£18,000
2010/11	–	£20,000
Total		£71,000

Temporary non-residents

Example (cont'd):

As you were not resident in the UK, this income was not taxed when remitted here.

On your return to the UK in 2011/12, you will have been temporarily non-resident because there have been fewer than five full tax years between your year of departure and your year of return to the UK.

You will be liable to UK tax on these earlier remittances when you were temporarily non-resident. They will be chargeable to UK tax in the tax year of your return, i.e. 2011/12.

Ordinary Residence

Ordinary residence is different from 'residence'.

You don't have to intend to remain in the UK permanently or indefinitely in order to be ordinarily resident here.

Attributes:

- ▶ You have come to the UK voluntarily
- ▶ Your presence here has a settled purpose
- ▶ Your presence in the UK forms part of the regular and habitual mode of your life for the time being.

Ordinary Residence

You will also need to take into account:

- ▶ Your reasons for being in the UK
- ▶ Your intentions when coming to or leaving the UK
- ▶ Your lifestyle
- ▶ Your habits

If you come to the UK voluntarily and for a settled purpose, you will be ordinarily resident from when you first arrive (e.g. acquire accommodation on a long-term lease in the year of arrival)

Ordinary Residence

If you come to the UK regularly and your presence here averages 91 days or more in a tax year over an appropriate period of time, you are likely to be ordinarily resident here.

How to calculate your average presence in the UK:

$$\frac{\text{total visits to the UK (in days)}}{\text{relevant tax years (in days)}} \times 365 = \text{annual average visits}$$

Ordinary Residence

Example

If you were in the UK for 85 days in 2003–04 (this is a leap year) for 105 days in 2004–05 and for 90 days in 2005–06 then the annual average is:

$$\frac{85 + 105 + 90}{366 + 365 + 365} \times 365 = 93.2 \text{ days}$$

You would be ordinarily resident in the UK

Ordinary Residence

It is possible to be not resident in the UK but remain ordinarily resident here.

if you normally live in the UK you might become not resident because you are not in the country at all during a tax year (where you have your normal home, family ties and other social connections); you will still be ordinarily resident here.

Ordinarily residence will largely affect you if you are coming to or are leaving the UK.

Ordinary Residence. Scenarios

1. Sarah is a British citizen who has lived in the UK most of her life. She has homes in London, California and France and has spent substantial amounts of time at her other homes or travelling on business.

She spends less time in the UK and more time in her California home. Sarah's partner and their children are based in the UK and the family spends the summer together in France.

During the year ended 5 April 2010 Sarah is present in the UK at the end of 43 days, although she typically arrives in the UK in the morning and leaves in the evening.

Sarah's end of day count for the years ended 5 April 2011, 5 April 2012 and 5 April 2013 are 85, 110 and 90 respectively.

The average for the four years is just under 82 days.

Ordinary Residence. Scenarios

2. Pablo is Spanish and is seconded by his Spanish employer to work on a project in the UK for approximately nine months from early June 2009. Pablo's wife and family remain in Spain and he returns there to visit them every two weeks. He takes two weeks holiday in August 2009 which he spends outside the UK and another two weeks at Christmas which he spends in Spain with his family. When he first arrives in the UK, Pablo stays in hotels but he then takes a six-month lease on a flat here and he extends the lease for two months in early 2010. The project is completed and Pablo returns to Spain in mid-March 2010.

Pablo is resident in the UK for the year ended 5 April 2010, as he spends 183 days or more in the UK but he is not ordinarily resident here.

Ordinary Residence. Scenarios

2. Pablo takes up a new employment in Spain in July 2010. his new employer seconds him to their UK business to resolve a crisis in the business. His wife and family again remain in Spain, but he is not able to visit them very often and they visit him in the UK once a month. Between early September 2010 and 5 April 2011 Pablo spends over 183 nights in the UK, either in a company flat or in various hotels. His secondment ends and he returns to Spain at the end of May 2011.

Pablo is resident in the UK for the year ended 5 April 2011, but he is not ordinarily resident here.

Domicile

Domicile

Domicile is a concept of general law. There are many factors which affect domicile.

Broadly speaking, you are domiciled in the country where you have your permanent home. Domicile is distinct from nationality or residence. You can only have one domicile at any given time.

HMRC Residency provides specialist advice to HMRC offices on the domicile of individuals where it is material to the calculation of the individual's UK income tax or capital gains tax liabilities.

Domicile

For income tax and capital gains tax purposes, whether or not you are domiciled in the UK is relevant only if you have foreign income and/or gains during a tax year.

The fact that you were born in the UK, have lived for most of your life or are now living permanently here is a good indication that you might be domiciled in the UK.

Being domiciled in the UK might not be challenged by HMRC, however a non-UK domiciled born in the UK might be enquired whether or not that is correct.

Types of Domicile

- 1) Domicile of origin
- 2) Domicile of choice
- 3) Domicile of dependence

1. Domicile of origin

You normally acquire a domicile of origin from your father when you are born. It need not be the country in which you were born.

A domicile of origin may change as a result of adoption.

If you leave the country of your domicile of origin, you will continue to be domiciled there until you acquire a domicile of choice elsewhere.

1. Domicile of origin

You might have been born in the UK to a non-UK domiciled father and then moved to another non-UK country. Your domicile of origin would be the same as your father (non-UK). If you return to the UK and are not planning to remain here permanently, then you will continue to be domiciled outside the UK.

If your parents were not married at the time of your birth, you would acquire your domicile of origin from your mother.

1. Domicile of origin

Example:

If your non-UK domiciled father dies when you are a child and you are adopted by a UK domiciled father. Your domicile of origin will change to a UK domicile as a result of your adoption. Your original domicile has been 'displaced'.

2. Domicile of Choice

You have a legal capacity to acquire a new domicile at the age of 16.

To acquire a domicile of choice you must have your current country of domicile and settle in another country.

You need to provide strong evidence that you intend to live there permanently or indefinitely.

Relevant factors:

- ▶ Your intentions
- ▶ Your permanent residence
- ▶ Your business interests
- ▶ Your social and family interests
- ▶ Your ownership of property
- ▶ The form of any Will you have made.

2. Domicile of Choice

Example:

You were brought up, educated and start work in the UK. When you are 21 your father retires from his job and decides to return to his country of domicile. You have bought a home and married and you have made the UK your permanent home which you do not intent to leave. You will not be joining your father abroad for anything other than an occasional visit.

By deciding to stay in the UK permanently or indefinitely you have established a domicile of choice in the UK.

3. Domicile of Dependence

Until you have the legal capacity to change it, your domicile will follow that of the person on whom you are legally dependent.

If the domicile of that person changes, you will automatically acquire the same domicile, in place of your domicile of origin.

If you are a woman who married on or after 1 January 1974, your domicile is not necessarily the same as your husband's. Your domicile will be decided in the same way as any other individual who is able to have an independent domicile.

3. Domicile of Dependence

Example:

You are a woman with a domicile of origin outside the UK who married a man domiciled within the UK in January 1970. Upon marriage you became UK domiciled; your domicile of dependence being the same as your husband's domicile.

As from 1 January 1974 you can acquire an independent domicile of choice, which could be different from your husband's domicile.

Domicile. Examples

1. John was born in the UK and has lived here all his life apart from a year spent travelling around Europe and annual holidays spend abroad. His father was also born in the UK. John plans to retire to France and has already purchased a house there which he, and his entire family visit whenever they can.

John has clear and firm plans to move to France. He is currently domiciled in the UK.

Domicile. Examples

2. Paul was born in New South Wales. At present he intends to remain in England for at least another two years. Paul's father was Greek but Paul has retained very few links with Greece; he visits his extended family once every two or three years. Paul's two sisters have lived in Western Australia for many years. After Paul's father's death, Paul's mother went to live with his elder sister. Paul owns property in Western Australia and has an interest in a business there. The family has very little remaining connection with New South Wales.

Paul is domiciled in the UK: his long-term commitment to the UK, his relative lack of links with the territory of his birth.

Personal Allowances

For tax years from 6 April 2008, if you are resident in the UK and:

- ▶ Not domiciled and/or not ordinary resident in the UK and
- ▶ Have £2,000 or more in unremitted foreign income and/or gains and
- ▶ Claim the remittance basis

Then, in most cases, you will not be entitled to UK Personal Tax Allowances

Personal Allowances

Even if you are not resident in the UK, you may be able to claim personal tax allowances if you are any one of the following:

- ▶ A Commonwealth citizen
- ▶ A citizen of a state within the EEA (EU, Iceland, Liechtenstein or Norway)
- ▶ A current or former employee of the British Crown
- ▶ A UK missionary society employee
- ▶ A civil servant in a territory under the protection of the British Crown
- ▶ A resident of the Isle of Man or the Channel Islands
- ▶ A former resident of the UK who lives abroad for the sake of your own health or the health of a member of your family who lives with you
- ▶ A widow, widower or the surviving civil partner of an employee of the British Crown
- ▶ A National and/or resident of a country with which the UK has a double taxation agreement which allows such a claim

Personal Allowances

If you become or if you cease to be resident in the UK during a tax year, you will still be able to claim full allowances and reliefs in the year of your arrival or departure.

Subject to your UK residence status and to any claim you have made to the remittance basis of taxation.

ESC A10. LUMP SUMS PAID UNDER OVERSEAS PENSION SCHEMES

Income tax is not charged on lump sum relevant benefits receivable by an employee (or by his personal representatives or any dependant of his) from an Overseas Retirement Benefits Scheme or an Overseas Provident Fund where the employee's overseas service comprises:

- (a) not less than 75% of his total service in that employment; or
- (b) the whole of the last 10 years of his service in that employment, where total service exceeds 10 years; or
- (c) not less than 50% of his total service in that employment, including any 10 of the last 20 years, where total service exceeds 20 years.

If an employee's overseas service is less than described above, relief from income tax will be given by reducing the amount of the lump sum which would otherwise be chargeable by the same proportion as the overseas service bears to the employee's total service in that employment.

Residence of Companies

The place of central management and control as a test of residence is now relevant only to

- ▶ companies not incorporated in the UK and
- ▶ UK incorporated companies which qualify for exception to the incorporation rule, so long as their place of central management and control is outside the UK

Art 5. OECD Model. Permanent establishment

For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

5(2) The term “permanent establishment” includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop, and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

Art 5. OECD Model. Permanent establishment

5(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

5(4) Notwithstanding the preceding provisions of this Article, the term 'permanent establishment' shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

Residence of Companies

The case law rule

The case law rule for determining the residence of a company is authoritatively expressed in Lord Loreburn's speech in *De Beers Consolidated Mines Ltd v Howe*, 5TC213:

'A company resides ... where its real business is carried on ... and the real business is carried on where the central management and control actually abides'.

The De Beers company was incorporated in South African and its main trading operations were there. The controlling board of directors exercised its powers in the UK. The company was held to be resident in the UK.

Residence of Companies

The rule was endorsed in the much later case of *Bullock v Unit Construction Co Ltd*, 1959, 38TC712. The African subsidiary companies which were incorporated and trading in Africa were held to be resident in the UK by reason of the degree of management and control over their businesses exercised in the UK by the parent company. The constitution of each subsidiary company vested control in its board of directors which was required to hold its meetings outside the UK. The Special Commissioners found that, in fact, the directors 'were standing aside in all matters of real importance ... affecting the central management and control' and that the real control and management was being exercised, albeit unconstitutionally, by the parent company's board of directors in the UK.

Residence of Companies

The decisions in both the De Beers and Unit Construction cases make it clear that the place of central management and control is primarily a question of fact. Both cases also demonstrate that it is the highest level of control of the business which counts. That control may be exercised by the board of directors in accordance with the Articles of the company, as in De Beers, or by some other person, for example, a parent company or individual shareholder who has in fact assumed management and control of the business, as in Unit Construction.

UK residence rules for individuals

Conclusion:

The now infamous Gaines–Cooper case has exposed as a myth the belief that an individual only needs to satisfy the “day count” tests to be non–UK resident.

Whilst being in the UK for more than 182 days in a tax year (or more than 90 days on average over a 4 year period) will automatically amount to a finding of UK residence, not satisfying these day count tests will not necessarily lead to non–UK residence.

Thank you!