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PRACTICE NOTE

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Tax Residence in the Isle of Man

Individuals

1. There is no general definition of residence for tax purposes in the Isle of Man. Determining a person's residence status is important, however, in view of the underlying basis of our taxation system. A Manx resident is taxed on worldwide income whereas a non-resident is taxed on Manx-source income only (unless that Manx-source income is otherwise excluded from income tax when paid to a non-resident by virtue of statute, order or regulation).
2. For completeness, it should be noted that our current legislation has references to the status of 'ordinary residence' without further defining its meaning, for example: Section 9, Income Tax Act 1970 contains the phrase "ordinarily residing", and both Section 70 (7) Income Tax Act 1970 and Schedule 1, Paragraph 4, Income Tax Act 1980 contain the phrase "ordinarily resident". The Assessor takes the view that additional definition of 'ordinary residence' is not necessary, and that the word "ordinarily" should be construed as synonymous with "generally" or "usually" as our system is concerned only with residence and non-residence when determining how income should be taxed.
3. When considering residence, a frequently quoted passage from the speech of Viscount Cave in the 1928 UK tax case *Levene v. Commissioners of Inland Revenue* (13 TC 486) remains applicable:
"The word 'reside' is a familiar English word and is defined by the Oxford English Dictionary as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'. No doubt this definition must for present purposes be taken subject to any modification which may result from the terms of the Income tax Act and Schedules; but, subject to that observation, it may be accepted as an accurate indication of the meaning of the word 'reside'."
4. As is common in many countries, the Isle of Man treats those individuals having a 'view or intent of establishing residence' as tax resident from the date of their arrival here. The corollary is that we treat individuals who permanently cease residence as tax non-resident from the date of their departure.

5. The Assessor will look at evidence of a 'view or intent of establishing residence' as opposed to presence on the Island for a temporary purpose. We ask new residents to answer a number of questions by completing a "Registration for Manx Income Tax Form R25 (New)" in order to establish their residence status. In most circumstances, completion of this form and evidence of the person having accommodation in the Isle of Man is sufficient for the Assessor to accept that person as resident and it is not necessary to make any further enquiries. The tests outlined in paragraphs 6 and 7 are not applicable once we have accepted a person's residence.
6. There are specific rules in the Isle of Man that determine tax residence by physical presence. These tend to come into play when people claim not to be resident for tax purposes, despite regularly being here. For the avoidance of doubt, individuals residing in the Isle of Man for a period in the whole equal to more than six months in any tax year (i.e. the year commencing 6 April) are tax resident and liable to Manx income tax by virtue of Section 10, Income Tax Act 1970, which states:
"...every such person after residence in the Isle of Man for six months as aforesaid shall be chargeable with income tax for the year commencing on the sixth April as a person residing in the Isle of Man..."
7. Our practice, based on case law, is also to treat as tax resident individuals whose visits to the Island over a period of four or more consecutive years exceed an average of three months (which we take as 90 days) in each tax year. Where this 'three month average rule' is broken, the Assessor will regard the person as resident from the fifth year. However, where it is clear when an individual first visits the Isle of Man that they intend to make visits exceeding an average of 90 days in each tax year over a period of four or more years, they will be treated as resident from the beginning of the first year. Similarly, an individual will be treated as resident from the beginning of the tax year in which they decide that they will make such visits. If an individual needs to spend days in the Isle of Man for exceptional circumstances beyond their control, those days will not be counted when considering this rule.
8. The Assessor does not count days of arrival and departure when determining the number of days that a person has spent in the Isle of Man.
9. It should be noted that other countries often have similar rules, and it is possible for an individual to be tax resident in more than one country as a consequence.
10. By virtue of Section 9, Income Tax Act 1970, individuals resident in the Isle of Man, *"...who shall have departed from the Isle of Man for the purpose only of occasional residence elsewhere, shall be deemed, notwithstanding such temporary absence, a person chargeable with income tax as a person residing in the Isle of Man."* However, where a normally-resident person is abroad for a complete tax year they will be treated for tax purposes as non-resident for that tax year. Furthermore, it is the practice of the Assessor to treat as permanently non-resident those individuals who are abroad for two complete tax years or more. Where a length of absence exceeding two tax years does not become clear until after the individual is already abroad, the Assessor may need to revise the person's tax position from the date that they left the Island. An individual returning to live in the Isle of Man after an absence of more than two complete tax years will be treated by the Assessor as a new resident.
11. Where questions arise in respect of an individual's residence status, the Assessor will make appropriate enquiries and may look to guidance from relevant case law in the United Kingdom.

12. For many years a key, if not the primary, test of establishing residence was that an individual should have accommodation available in the Isle of Man retained for their use based essentially on the 1904 case of *Cooper v. Cadwalader* (5 TC 101). Simply relying on an available accommodation test, however, led to anomalies when coupled with our system of taxing Manx residents on their worldwide income: for example, where individuals have holiday homes in the Isle of Man. The UK, which had similar practice to that of the Isle of Man, changed its approach from 6 April 1993 via Section 208, Finance Act 1993, which over-ruled the decision in *Cooper v. Cadwalader*. The stance of the UK from that date was that the question of whether an individual was in the UK for a temporary purpose only should be decided without regard to any living accommodation available for their use in the UK.
13. The Assessor considers that the available accommodation test should no longer determine Manx tax residence, although accommodation of a standard consistent with being a permanent home is clearly an aspect of residence as mentioned in paragraph 5 above. Further consideration will be given to bringing forward legislation to make clear this approach, but it is not clear that new legislation will be necessary.
14. The holiday home anomaly created by the available accommodation test was addressed to a large extent by the Isle of Man's short-term residence extra-statutory concession (Government Circular 15/03), which prescribed a period of presence in the Island that would be deemed not to create residency, despite the over-riding statement that:
"Notwithstanding that an individual, who has accommodation in the Isle of Man available for their use, is resident for income tax purposes in any year in which he sets foot in the Isle of Man...".
15. The short-term residence concession was withdrawn with effect from 6 April 2007, and after that date the Assessor will rely upon the law and practice covered above.

Companies

16. A company formed in the Isle of Man is resident here for tax purposes (Section 2N, Income Tax Act 1970).
17. A company incorporated outside the Isle of Man is regarded as tax resident in the Isle of Man where its management and control is in the Island. This rule is not in statute but derives from UK case law. Article 2 (1g) of the 1955 Isle of Man – UK double taxation agreement is based on the same principle, where it says:
"...a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident of the Island if its business is managed and controlled in the Island...".
18. Companies incorporated outside and not resident in the Isle of Man but having a branch in the Isle of Man are taxed to the extent of the business conducted in the Island, and at either the standard 0% rate or the 10% rate of corporate income tax depending on the nature of the income, although the company itself remains tax non-resident (Section 11, Income Tax Act 1970).
19. Legislation which deemed other companies formed in the Isle of Man to be tax-exempt, 'international' or non-resident for tax purposes was repealed with effect from 6 April 2007, after which date any such companies became normally tax resident.

20. If the tax residence status of a company is in doubt, appropriate enquiries should be made with the Assessor.

M Couch
Assessor of Income Tax

This Practice Note is intended only as a general guide and must be read in conjunction with the appropriate legislation. It does not have any binding force and does not affect a person's right of appeal on points concerning their own liability to income tax.

Comments and suggestions for improvements of issued Practice Notes and suggestions for future Practice Notes are always welcome.