



UK RESIDENCE CHANGES FROM 6TH APRIL 2008

The Budget Report last autumn contained two proposed changes relating to residence. The first introduced the concept of temporary non-residence in connection with the rules for remittance of income by non-domiciled individuals, the second envisaged that days of arrival in and departure from the UK would be taken into account in determining residence for tax purposes. The second proposal has since been modified as set out below.

Temporary non-residence

This provision applies where:

- (i) an individual is resident or ordinarily resident (and not treated as resident outside the UK for double tax treaty purposes) in a tax year,
- (ii) was not so resident or ordinarily resident (or was treated as resident outside the UK for double tax treaty purposes) for at least one but not more than four years immediately before that year and after a previous year of residence or ordinary residence ("the year of departure"),
- (iii) was so resident or ordinarily resident (and not treated as resident outside the UK for double tax treaty purposes) for at least 4 of the 7 years before the year of departure.

Foreign income falling within specified categories, including interest and dividends, for the year of departure or an earlier year which is taxable on a remittance basis and which is remitted during the years of non residence is treated as remitted in the year of return. The provision thus prevents the avoidance of tax by deferring remittance until a year for which the taxpayer is temporarily not resident.

Days to be counted in determining residence

The Press Release "Residence and Domicile Review" published at the time of the Pre-Budget Report last autumn stated that, on and after 6 April 2008, days of arrival and departure would be counted as days of presence in the UK for residence test purposes. This was probably in response to the reaction to Gaines – Cooper (decision published January

2007), in which HMRC had taken account of the days of the taxpayer's arrival in and departure from the UK in deciding whether he had ceased to be resident in the UK.

The Budget Notes published on 12th March 2008 indicate that the legislation to be introduced in the Finance Bill 2008 will be more limited than that originally envisaged. From 6th April 2008, any day on which an individual is present in the UK at midnight will be treated as a day of presence in the UK for residence test purposes. It is thus only the day of arrival which will be counted, and not even that if the individual leaves before midnight on the same day.

The exemption for days in transit is also more generous than was originally intended. Days on which passengers are in transit between two places outside the UK are not to be counted as days of presence so long as the individual does not during transit engage in activities substantially unrelated to their passage through the UK, such as a business meeting, even if his transit involves a change of airports or terminals, or even a change in the mode of transport.

This note is intended for general guidance only and it is important to consider the effect of the provisions with reference to the facts of each particular case. For further information or advice please contact **Chris Cooke, Gerald Chappell, Karen Methold or Lawrie Kearns.**

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Whilst every effort has been made to ensure that the information contained in this briefing is correct it is intended as a guide only and should not be relied upon when embarking on any tax or estate planning exercises. Specialist legal advice should always be sought so that all the factors specific to your circumstances can be taken into account.

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Residential Property and the Control of Asbestos at Work Regulations 2006

If you own a residential property that contains communal areas then you will need to comply with the Control of Asbestos at Work Regulations 2006. This will include for example, hallways, lift shafts, stairs and roof spaces.

The responsibility belongs to the "Duty Holder". This is anyone who has the responsibility for maintaining and repairing all or any part of the property or who has control of the building. A Landlord and /or managing agent has a responsibility to pass on relevant information to tenants. Leaseholders have a duty to allow access for inspection of the premises.

As the Duty Holder you will need to undertake the following steps:

- Investigate whether the property contains asbestos or asbestos containing materials
- Check the condition of the material
- Carry out a risk assessment of the relevant areas
- Prepare and keep an up to date written plan explaining the management of the risk and make sure that this is available for appropriate people to view

If you have the responsibility to deal with this, then firstly consider what you already know about the building, such as its age, plans or information about previous alterations. Think about contacting the people who may have already carried out work on the premises, such as surveyors or builders.

You will need to inspect the building, which may require an expert to carry out a survey if you suspect that the building contains asbestos. Once the inspection has taken place and if the building contains asbestos, then you will need to record the results of this inspection and assess the risk of any asbestos fibres being released into the air.

Then prepare a management plan. This should include a clear plan of where the asbestos can be found. It may be that you need to identify which areas need asbestos to be sealed or if absolutely necessary removed. If an area does contain asbestos it can be sealed by an expert in that field and marked with a warning sign. The aim of the management plan is to ensure that if someone is coming to work on the building they can easily recognise where the asbestos is located and so prevent accidental exposure.

Regularly inspect the condition of any area to make sure the material has not deteriorated and keep a record of this in the management plan.

It is important to make sure that anyone who is responsible for carrying out the maintenance of a building is kept informed of any asbestos in the building and the plan for managing this. They must also be made aware of the risk to health and be told that they must not disturb the asbestos.

If any asbestos containing materials are to be removed then a licensed contractor must be employed to do so.

If you require any further information, then please contact Nicola Stewart of these offices on 020 7689 7181 or by email at nstewart@rooksriders.co.uk

PROPERTY MANAGEMENT CAN BE HANDLED PROFESSIONALLY!

We at Michael Tims + Company have an expanding management department currently looking after numerous properties mainly in Central London. We specialise in residential block management and currently offer a comprehensive management service for occupied and unoccupied properties at a starting rate from only £500 per annum!

We offer a 24 hour call out service, over 25 years professional local experience and in being an independent agency we are not tied to any chain. We hold membership of the National Association of Estate Agents, the Government Ombudsmen Scheme, are Office of Fair Trading approved and of course a founder member of the Leasehold Advisory Group. We seek to provide a pre-emptive maintenance service to reduce the need for sudden excessive expenditure in any one year and insist on the need for a preliminary survey of the exterior of a

building and of the common parts before taking on a new management. This assists in evaluating future works required and the cost and time criteria at the initial stage. We seek to provide a caring and considerate approach to dealing with tenants and landlords with ourselves as managing agents acting often in an arbitration role to avoid unnecessary disputes which can prove costly and delay the need for urgent remedial work.

We will advise and implement with the client's agreement the potential for improvements of management of the building including any health and safety issues.

We have a team of surveyors, architects, engineers, interior designers and legal advisors and of course provide specialist advice on extending as a right your lease or collectively buying with other tenants the freehold!

Further information from Tim Erdman on 020 7409 2233.



Your questions answered on Home Information Packs (HIPs) and Energy Performance Certificates (EPCs)

Changes to the property market now dictates that anyone selling a residential property (with certain exceptions) must by law have a Home Information Pack (HIP).

We answer some of the most popular questions raised on this controversial subject:

Q1. Are there any properties which will not need a Home Information Pack?

A1. These include non-residential properties, mixed commercial and residential properties, tenanted properties, properties marketed before the commencement date (14th December 2007), a portfolio of properties and unsafe properties.

Q2. How long does a pack last for?

A2. While the property is on the market, there is no need to update the Home Information Pack (ultimately the market decides whether the documents remain acceptable and up to date).

If the sale of your property stops and then starts again, you would normally be required to assemble a new Pack and to update those documents which are now out of date according to the requirements of the Home Information Pack Regulations. However the seller can carry on using the same pack without the need to update any of the documents in the following circumstances...

- Where marketing stopped because the seller accepted an offer and wants to start marketing because the sale has fallen through, provided that re-marketing starts within one year of the date when marketing first began, or, if later, within 28 days of the sale falling through.
- Where marketing has stopped for any other reason, the seller may re-market the property with the same Pack provided that the re-marketing starts within one year of the date when marketing first began.

Q3. Are HIPs required across the UK?

A3. No – Only in England and Wales.

Q4. What goes in a HIP?

A4. A HIP includes documents that are required when homes are bought and sold. Some documents are mandatory and others optional.

- Documents that are Mandatory are:
 - a) An index (ie a list of the contents of the HIP)
 - b) A sale statement (summarising the terms of the sale)
 - c) Evidence of Title
 - d) Standard searches (ie the Local Authority enquiries and a drainage and water search)
 - e) An Energy Performance Certificate (EPC)
 - f) Commonhold information (where appropriate)
 - g) A copy of the lease (where appropriate)
- Documents that are optional include:
 - a) A Home Condition Report (HCR)
 - b) Additional leasehold information
 - c) Guarantees and warranties
 - d) Other searches relevant to the particular area

Q5. What is an Energy Performance Certificate? (EPC)

A5. EPCs look similar to the energy label found on domestic appliances such as fridges and washing machines.

The energy efficiency and environmental impact on your property will be rated on a scale from A-G (where A is the most efficient and G is the least efficient) as shown below.

Current running costs – the heating, hot water and lighting will also be shown on the certificate, together with a list of recommended energy saving improvements.

Q6. Landlords are you ready for EPCs?

A6. From 1st October 2008, all rental properties with a new tenancy in England and Wales will be required to have an Energy Performance Certificate.

Q7. How do I get an Energy Performance Certificate?

A7. Either yourself or your Letting Agent will have to commission one from a credited Domestic Energy Advisor (DEA). They will visit your property to assist the age, construction and location of the property as well as its current fitting such as heating systems, installation, double glazing etc.

- If an EPC is not provided when the law comes in the Landlord could be fined £200 for non-compliance.

Q8. What can I do if a HIP and EPC are not provided?

A8. Except in relation to properties which are exempt (see Question 1) and those properties first placed on the market during the temporary period, which ends on the 31st December 2008, which are being marketed without Packs, but a HIP has been commissioned, potential buyers have a right to a copy of the pack and this should be provided within 14 days of requests. Sellers are entitled to make a reasonable charge to cover copying and postage costs and may also refuse to provide copying in certain limited cases. These are where a seller believes that the person making the request:

- Could not afford the property
- Is not really interested in buying the property
- Is not a person to whom the seller would wish to sell the property (but this does not allow them to unlawfully discriminate against someone). If you believe you are being denied a copy of the pack unlawfully Local Authority Trading Standard Officers are responsible for enforcement of these duties.

Q9. Why is the government introducing EPCs?

A9. Domestic energy use accounts for 27% of the UK's carbon dioxide emissions. The government is introducing a number of energy saving initiatives, including EPCs aimed at making all buildings more energy efficient. These measures are being applied across all European Countries as per the European Directive for the energy performance of buildings.

Q10. Are there grants available to help cover installation costs?

A10. There are several grants available that can cut your costs by half or even to zero! Visit www.est.org.uk/myhome/gid to see if you are eligible.

The writer Stephen Phillips, Associate Director of Michael Tims + Company will be glad to answer any further questions that you may have on these and other topics. The above answers are based upon his own interpretation of the law and therefore cannot therefore be relied upon without legal advice.



CASE REPORT

MAJORSTAKE LIMITED v CURTIS 2008 House of Lords decision

This case which was heard in the House of Lords in November last year concerns the landlord's counter-notice seeking a declaration that the tenant was not entitled to a lease extension by reason of the landlord's plans to redevelop part of the building of which the flat formed part.

The facts were as follows:

The tenant was the owner of flat 77 on the seventh floor of Block B Boydell Court. Block B contained 50 flats on nine floors. Block A contained 60 flats on 11 floors.

The tenant served a notice on his landlord under section 42 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") claiming a statutory lease extension. As the tenant's lease had less than 5 years left to run, the landlord served a notice under section 45 of the Act stating that it intended to apply to the Court for an order under section 47(1) of the Act that the tenant's right to acquire a new lease should not be exercised on the ground that it intended to redevelop the premises in which flat 77 was contained.

The landlord intended to develop flat 77 and the flat below, number 74, in order to convert both flats into one "duplex" apartment on two floors. The question arose as to whether the conversion of the two flats constituted redevelopment of the "premises in which [flat 77] is contained" in order to satisfy section 47(2)(b) of the Act. Arguments were advanced as to whether or not the "premises" referred to were the two flats to be developed, Block B itself or Blocks A and B taken together and also whether or not it is for the landlord to decide what works it wishes to do and the extent of the premises upon which it wishes to do them.

Their Lordships decided there was no doubt as to what the 1993 Act was designed to achieve. It was designed to give long-leaseholders of flats the rights as close as possible to those of freeholders at a price approximating to the market price, though subject to some statutory assumptions. They agreed that this purpose would be frustrated if the landlord could defeat either of those rights by proposing to carry out comparatively minor works to the building involved. Their Lordships also looked at the scale of redevelopment that would defeat a claim for collective enfranchisement under the Act which in their view would be demolition or construction or works of a substantial nature. They thought that the definition had in mind major works requiring a large investment not simply the reconstruction of a small part of the building for the purpose of making a profit on that part.

Their Lordships did not agree that the intention of Parliament was to allow the landlord to define the "premises" itself and

further that there has to be some objective way of estimating how likely it is that the landlord will be able to defeat a claim. Therefore they thought that the "premises" must be an objectively recognisable space.

Lord Scott drew an analogy from the works of J K Rowling and stated that "Harry Potter, we are told, received letters addressed to him at 'The Cupboard under the Stairs, 4 Privet Drive, Little Wingeing'. The Cupboard under the Stairs might have constituted 'premises' for the purposes of letters from Hogwarts but for the purposes of construction of the 1993 Act a normal use of the English language must be assumed." He did not accept that it could possibly have been the intention of Parliament that the "premises in which [flat 77] is contained" could consist of flat 77 and a contiguous flat.

There was also discussion as to what a visitor to premises would perceive as being the "premises" and it was agreed that a visitor to the flat would recognise Block B as the premises of which the flat formed part. It therefore followed that if the definition of the "premises" was Block B then two flats out of that block would not constitute "a substantial part" for the purposes of section 47 of the Act. The tenant's appeal was allowed and his claim to a lease extension will proceed.

A victory for the tenant and life made harder for landlords wishing to defeat tenant's claims. However, mention was made of the fact that each case turns on its own facts, possibly leaving the door open a crack for landlords to devise schemes to defeat tenant's claims, perhaps by using 9 and three quarters of the building?

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