

Secondment to the Middle East

Losing UK residence

To be sure that the employee is treated as fully non resident for tax purposes, he needs to demonstrate that

- He is not resident (183 day test)
- He is not ordinarily resident. (90 days on average over 4 years)
- His absence from the UK is not for occasional residence abroad

Rulings

The UK tax authorities used to give rulings on production of a contract of employment. While this facility has been withdrawn under self-assessment, it is still worth supplying a contract of employment to the UK tax authorities. IR18, the Revenue's own Booklet on Residents and non-residents, states that individuals who work overseas under a full time contract of employment spanning at least a full UK tax year and who do not breach the rules relating to UK residence set out above are treated as not resident and not ordinarily resident from the day after the date of departure.

This means that an employee of a UK company who is remunerated from the UK is eligible to be paid remuneration gross as soon as the employee takes up residence in the destination country.

Documentation

Completion of Form P85

The departing employee should complete a Form P85 on leaving the UK, which should normally result in HMRC issuing an NT [No Tax] code which is then applicable to any UK source remuneration.

The Form P85 should include reference to 'Working abroad under a full time contract of employment spanning a full tax year.'

Reclaiming tax

If HM Revenue & Customs accept the non resident status of the employee concerned, this should be notified to the employee concerned and a Form R40 sent enabling recovery of any tax overpaid after the end of the tax year.

Tax Returns

- As HMRC no longer give rulings on residence/ordinary residence, this needs to be claimed in a self-assessment tax return where completion of the non-resident pages requires certification of tax resident status in the country of residence.
- This is HMRC's prescribed way of claiming non-resident status. The problem is that, as the many Middle Eastern countries do not levy income tax, there is unlikely to be a Tax Authority that will confirm that the employee is resident in the destination country for tax purposes if he is not liable to tax in that state.

- Where certification is available, this enables any income tax overpaid during the year to be recovered after the year end where no R40 has been issued. Completion of an R40 is the better route.

Certification of tax residence status

This should be available in countries, with which the UK has a double tax treaty, as follows:

- Egypt
- Israel
- Oman
- Saudi Arabia

[The Saudi Arabian Tax Treaty is very limited but Article 4 deals with 'dependent personal services' which is double tax treaty speak for employment]

There are no double tax treaties with

- Syria,
- Iraq
- The UAR
- The Yemen

There are very limited treaties with Lebanon and Iran, which are of no assistance, as they do not deal with employees.

National Insurance

The individual will remain within the UK National Insurance system for 52 weeks after leaving the UK if remunerated by a UK employer.