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Residency warning for UK expats with onshore bank accounts

Expat Britons who maintain onshore accounts with UK banks, or who open new ones, are being warned that they could be building a case for HM Revenue & Customs to argue they are still resident in Britain.

The advice of tax experts follows a number of high-profile court cases and changes to HMRC's guidance on residency that took effect in April.

Under HMRC's latest guidance on residency, such things as "what connections you keep in the UK, such as family, property, business and social connections" will be taken into account, says Matt Coward, director of Private Client Tax Services at PKF, the London-based tax advisers.

In the past these things were understood to be borne in mind, but the new HMRC guidance "explicitly" spells them out. He added, however, that guidance is still "just that, guidance".

"By itself, the setting up of a bank account in the UK is not likely to be fatal" to an expat who is declaring him or herself non-resident, Coward said.

"But if that bank account is linked to a UK address, which is available for that person's use, then sustaining the argument that the person is non-resident might be quite difficult".

Onshore/offshore dilemma

Few UK banks offer onshore accounts to offshore-resident Britons, and some that do tend to ask applicants to supply a UK address.

The difficulties involved in keeping and opening onshore bank accounts has prompted an outcry in recent months by some expats, who claim they have been forced to keep their savings in offshore institutions, where they may not enjoy the same level of depositors' protection, because UK banks will not have them.

Some of these expats were among those who lost access to their savings as a result of the collapse last October of Kaupthing Singer & Friedlander (Isle of Man) and the Guernsey branch of Landsbanki.

'Valid reason' needed

One of the UK banks that does offer onshore bank accounts to ex-pats, HSBC, said applicants must show what the bank considers to be "a valid reason" for wanting to open such an account – which

does not include wanting to be covered by the UK's depositor protection scheme, according to a spokeswoman.

Such reasons could include ownership of a property or business interests that would best be serviced by an onshore bank account, or having family in the UK, she said.

However, some of the criteria required by HSBC and banks like it for a non-resident to open an onshore account may bring expats into conflict with HMRC.

The Grace case

Coward points to a recent case won by HMRC, in which the defendant was a South African-born pilot who travels on a British Overseas Citizens passport and who claimed to be resident in South Africa, in spite of having married, in South Africa, a UK citizen who returned home with their two children in 1978.

The pilot, Lyle Dicker Grace, was considered to be a UK resident for tax purposes because his work for a British airline meant all his trips began and ended in Britain, and because he maintained a house in Horley, near Gatwick airport, where he rested between flights.

"Presence in the United Kingdom in order to fulfil duties under a permanent, or at least indefinite, contract of employment cannot be described as casual or transitory," the Hon. Justice Lewison wrote in his decision last November.

As for Grace's house in Horley, unlike a hotel room, it "actually belonged to him and unlike a hotel room, no one else used it", he added.

The Gaines-Cooper case

Another key case was that of a globe-trotting entrepreneur named Robert Gaines-Cooper, who was ruled a UK resident in spite of having "lived" in a Seychelles villa for 30 years. He had maintained a house in Henley-on-Thames, sent his son to an English school in 2002, and had his will drawn up under English law.

AES International managing director Sam Instone said that in his experience, people who are "legitimately non-resident" rarely have anything to fear from HMRC. But he stressed the importance of maintaining accurate records, and the danger of failing to make arrangements to pay tax in one's new country of residence, particularly now that cash-strapped countries like Britain have begun to scrutinise the finances of expatriates with new intensity.

HMRC tenacity

Frank Strachan, a tax specialist with Grant Thornton, said that once the tax authorities begin to get interested in a residency argument, they rarely go away easily.

"HMRC commence residence enquiries with a fairly bland letter. The second and third letters tend to appear clear in their intent, but the devil is in the detail. Before you know it the client is left wondering how much more he needs to do [to prove] he is non-resident," Strachan, who is with Grant Thornton's National Tax Investigations unit, says.

"We have come across cases where taxpayers keeping a cat or a golf club membership in the UK is sufficient for HMRC to continue their 'UK resident' arguments.

"[So] retaining a UK bank account, attached to a UK address, could be fraught with issues if you are subsequently subjected to an HMRC residency enquiry."

Source: International Adviser Magazine, Helen Burggraf



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