



## tax me if you can!

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**Colin Jelley** explains why recent court rulings on individuals' residence and domicile for tax purposes will create opportunities for advice.



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The courts have been particularly busy in recent weeks with some very topical decisions relating to an individual's residence, ordinary residence and domicile status for tax purposes. The Gaines-Cooper case heard by the Special Commissioners addressed all of these issues whereas *Agulian & ANR v Cyganik* addressed only domicile.

While I do not propose to critique the cases, they clearly demonstrate that anybody advising on tax strategies involving non-UK residence should not rely on HM Revenue & Customs (HMRC) guidance booklets as the defining rule.

In the Gaines-Cooper case, HMRC successfully argued that the individual was actually resident and ordinarily resident in the UK for tax purposes despite applying a strategy of non-residence and believing they had not breached the 90 day rule.

In the *Agulian* case, despite establishing businesses, holding main residence and spending a significant proportion of his life in the UK, he was still found to be a Cypriot domicile. The claim under the Inheritance (Provision for Family and Dependents) Act 1975 was therefore dismissed.

### revisiting strategies

IR20 is the HMRC guidance booklet which outlines the rules for residence, ordinary residence and domicile – forming the basis of advice for applying a non-UK resident strategy. A recap on residence and ordinary residence can be summarised as follows:

*An individual will be classified as UK resident if he spends 183 or more days in the UK during a tax year or less than 183 days but more than 90 days a year on average over a four year period.*

Establishing non-resident status for a given period can be beneficial in terms of income and capital gains tax savings, depending on the length of time spent outside the UK. As a general rule, UK resident and domiciled individuals are liable to tax (income, capital gain and inheritance) on their worldwide assets.

With so many clients owning property and working from (and retiring) abroad, the need to know the real facts when advising on such strategies has never been more important. Record keeping and a clear audit trail of travel could be the difference between tax and no tax.

Affluent people have often exploited the ability to enter and leave the country without triggering residence issues, but will surely now be re-visiting their strategies.

### 'in-pat'

The other significant market to consider is the increasing 'In-Pat' market; that is UK resident for tax purposes but non-UK domiciled. The well known acquisition of a UK deemed domicile for UK IHT purposes after residence in 17 years out of 20 tax years is another area where action and advice should be sought. It is based on tax years, not actual time spent in the UK. So the 17 years can easily be reduced by a couple of years if entry to the UK is towards the end of a tax year.

A review of the above cases clearly demonstrates that interpretation and application of the general rules can result in tax consequences for or against your clients. Out of sight does not mean out of mind for tax purposes - the need for informed advice in this area is another opportunity for advisers to develop business.

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