

February 2011

Where you are resident for tax purposes is not a choice but a question of fact. Time spent (the so-called 183 day rule) is one element among others, but certainly not the only one taken into account. In case of dual residence, it is up to you to make your own analysis of your tax residency under the applicable international treaty and submit tax returns accordingly for control and assessment by the administration.

*N.B. Being a tax resident in France means you have to declare your worldwide income here, which does not mean that all your sources of income will be taxable here. UK Government pensions, property income or business profits remain taxable in the UK by treaty. A tax credit will be granted in France to cancel any double taxation.*

## RE : INTERNATIONAL TAX TREATIES

### SUBJECT : DETERMINATION OF TAX

#### RESIDENCY UNDER THE UK-FRANCE TAX TREATY

##### DUAL RESIDENCE SITUATIONS

Under their domestic tax law, the UK and France each have multiple (but different) criteria for residence. A person satisfying any one of their tests is considered resident in that country, unless there is an overriding international treaty provision to the contrary.

Because the countries have different criteria, it is possible to appear concurrently tax resident in both. For such cases of apparent dual residence, tie-break rules are defined in the UK-France Double Tax Treaty (DTT). These rules prescribe which country must waive fiscal residence in favour of the other.

##### FRENCH DOMESTIC LAW (Art.4B CGI)



Under Article 4B of the French *Code General des Impôts*, tax residence for individuals is determined according to three alternative criteria, the first of which is in reality two separate tests - the 'permanent home' and the 'principal residence' tests.

*N.B. These tests are alternative i.e. if **any one** of them is satisfied (which can be quite easy) you are considered to be resident in France for almost all tax purposes (income tax, wealth tax, inheritance tax notably).*

**1<sup>st</sup> test:** Your permanent family home (**foyer**) or **principal residence** is in France.

a) The concept of home embraces the notions of family and permanence. It means, for example, that you will be considered fiscally domiciled in France if your wife and minor children habitually live in France, even if you work abroad.

b) Your principal residence is considered to be in France if you spend more than 183 days (6 months) of the year in France, regardless of the nature or purpose of the stays, or the type of your accommodation(s) (hotel, short let etc..). Even if you spend less than 183 days in France, you may still have your principal residence in France if you have spent more time here than in any other country. It should also be noted that the 183 day rule is not applicable for the year of arrival or departure.

**2<sup>nd</sup> test:** You carry on an **occupation** in France, whether salaried or on your own account, unless you can prove that this occupation is ancillary to a main occupation (in terms of time devoted to the activity) carried out in another country.

**3<sup>rd</sup> test:** The **centre of your economic interests** is in France. This rule affects individuals whose income is largely derived

from French sources. The criteria applied are :

- location of your main investments
- main situs of your business affairs
- where you manage your assets
- centre of your activities
- source of main part of your income.

##### Practical application

The 'home' test takes precedence over the 'principal residence' test, and if it is possible to determine the place where a family usually gather or live, the time-spent criterion can be ignored.

The 183 day rule (b) is only applied where a couple does not have a 'home' (a) in this sense. If your home (a) is found to be outside France, you will only be considered to be resident in France if one of the other two tests (2&3) is satisfied. The fact that you may have spent more than 183 days in the year in France is ignored.

In case of multiple activities and sources of income, under the jurisprudence, the source of income criteria tends to prevail over the location of investments.

##### UK DOMESTIC LAW



*N.B. These notes are based on our understanding of UK domestic law, as explained on the UK government website, which you may visit for more detailed information :*  
[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

For UK tax purposes you must distinguish between "Residence", "Ordinary Residence" and "Domicile". UK tax law uses these definitions to determine liability to respectively income tax, capital gains tax and estate duty. They refer to increasing degrees of permanence in the notion of residence. France makes no distinction between the three categories - you are either a tax resident or not and a common definition applies for all three taxes.

- **"Residence"** (for UK Income Tax) is determined on an annual basis. You are tax resident if you spend 183 days in UK during a tax year. There is an alternative test based on spending an average of 91 days per year in UK over a period of 4 consecutive tax years. You are also resident if you intend to stay permanently for at least 2 years.
- **"Ordinary Residence"** (for UK Capital Gains Tax) is longer a term in concept and requires continued absence for 4 tax years to be confirmed Not Ordinary Resident. It may be confirmed immediately following departure if this is to take up employment elsewhere. Otherwise "Not Ordinary Residence" is accepted retroactively after

Taxation is a complex subject.  
Full independent advice on the particular facts of a case should be sought.

Kindly note that our firm provides fiscal counsel only to clients for whom we prepare regular tax declarations.

© 2011 Compagnie Fiduciaire SA.  
All rights reserved.

continuous non-residence for 4 years. One way to obtain immediate acceptance is to register a small business in France such as *gîte* letting.

- “Domicile” (re Estate Duty) is difficult to shed and requires the severing of all links (e.g. club memberships, burial plots etc.). It is equivalent to the firm intention never to return.

### ALL THESE DOMESTIC PROVISIONS MAY BE OVERRIDDEN BY TREATY

When a person is found to be a resident in both countries (which is possible because each country has its own definition of residence and they differ) then he will be subject to a tie break analysis as per article 4 of the Double Taxation Agreement between UK and France.

#### Article 4 of the D.T.A.

(1) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

- (a) He shall be deemed to be a resident of the Contracting State in which he has a **permanent home available** to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (**centre of vital interests**).
- (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an **habitual abode**.
- (c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a **national**.
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its **place of effective management** is situated.

### Practical application

These criteria are examined **successively, one after the other**, until the residency can be decided upon.

The ‘home’ test takes precedence over the other tests, and if it is possible to determine the place where a family usually gather or live, the time-spent criterion can be ignored.

If a person retains and uses homes in both France and the UK and is deemed a dual resident from their movements, then he will be considered a tax resident in the jurisdiction to which his **personal and financial links** are closer. Children schooling, local social life, everyday expenses, car registration, electricity and telephone bills, TV licence, mail address, address given to social security organizations, activities (occupational, political, cultural or other activities), considerations re personal behaviour etc, will be put in the balance to determine the **centre of vital interest**. The other jurisdiction waives its claim.

If the links test is indeterminate, the test reverts to the **habitual abode** test (comparison of time spent in each of the contracting states) and eventually to **nationality**.

### MIXED COUPLES



The residence tests under French domestic law apply to **each spouse individually**. In principle, one can be a resident while the other is considered a non resident of France.

In France, a married couple must submit a joint return. In such cases of mixed residency, the spouse who is a resident of France will benefit from the *quotient familial* applicable to a couple, taking into account the non-resident spouse. The income taxable in France will be the worldwide income of the resident spouse and the French source income only of the non-resident spouse.

Exceptionally, in the case of a couple married under a regime of *séparation de biens* (such as the UK legal regime), spouses must be taxed separately when they live under a different roof and have their own sources of income (Art 6-4a CGI). This individual taxation is by right and mandatory. In such cases, the spouse who is a resident of France needs to declare only their own income and will be assessed as a single person under the *quotient familial* rules.

In practice, a mixed situation is quite rare. It may happen when commuting between the two countries is impossible because of the distance. As far as the UK and France are concerned, it could be difficult to prove in the event of a control by the administration.