4. Income tax and the expat

4.1 Tax rates and allowances

4.1.1 Introduction

For income that is taxable in the UK, and where relief or exemption from UK tax is not available under a double tax treaty, the same rates of tax apply to non-residents as they do to resident taxpayers. There are no special tax rates as a result of the individual being a non-resident, unlike in some countries (e.g. Australia). These income tax rates and thresholds in the UK are shown in **Appendix 5**.

Various allowances and rates can complicate an individual's UK tax liability, one of which is the savings rate.

Interest is paid gross. A repayment may be claimed of any tax that was deducted at source but which is not due, e.g. if the interest is taxed at the savings starting rate of 0%. (Tax is still deducted at source in certain circumstances, though not now by banks.)

Law: ITA 2007, Pt. 2

4.1.2 Scottish and Welsh rules

The rates and tax bands mentioned above apply to Scottish and Welsh taxpayers' non-dividend and non-savings income, with the UK rate thresholds and tax rates still applying when calculating the tax due on dividend and savings income.

A Scottish or Welsh taxpayer can only be someone who is a UK tax resident under the statutory residence test. So an individual who is non-resident for UK tax purposes will not be a Scottish or Welsh taxpayer and so will not be subject to Scottish or Welsh income tax. In addition to being a UK tax resident, an individual will only be treated as a Scottish or Welsh taxpayer if he or she:

- has a close connection with Scotland/Wales; or
- does not have a close connection with the rest of the UK and spends more days in Scotland or Wales (as the case may be) than in the rest of the UK. (In this respect, a day in a part of the UK is when the individual is present in that part at midnight.) For this purpose, Scotland and Wales include the adjacent UK

territorial waters up to 12 nautical miles from the shore, but not the adjacent UK continental shelf for Scotland. Days spent on the latter, e.g. on an oil rig, are not days spent in any part of the UK for these purposes.

A close connection is a place of residence where the individual lives for at least part of the tax year and does not include a holiday home or a property that an individual owns but does not occupy. There needs to be a degree of continuity and the property does not necessarily have to be owned by the individual, so could include rented or employer-provided accommodation. If a person has put in a second-home election nominating a residence in Scotland or Wales to be his or her main residence for CGT private residence relief purposes (see **7.6.6**), this will not in itself make it a residence for establishing if a person is a Scottish or Welsh taxpayer.

If an individual has more than one place of residence during a tax year, and one is in Scotland or Wales and another in a different part of the UK, then the person will be a Scottish/Welsh taxpayer if his or her main place of residence has been in Scotland/Wales for at least as long as it has been in any other part of the UK. STTG 5000 and WTTG 5000 list the sort of evidence HMRC will look at to establish where a person's place of residence or main residence is.

If a person is regarded as a Scottish or Welsh taxpayer then this will be for all of the year, although split-year treatment (as described at **3.6** above) will still apply in this respect for an individual who leaves or arrives in the UK during a tax year.

An individual can be either a Scottish/Welsh or UK taxpayer but cannot be both.

Law: *Scotland Act* 1998, s. 80D-80F; *Government of Wales Act* 2006, s. 116E-116H

Guidance: *Scottish Taxpayer Technical Guidance* (STTG); *Welsh Taxpayer Technical Guidance* (WTTG)

4.1.3 Personal allowances

The personal allowance is an amount of taxable income that an individual (including Scottish and Welsh taxpayers – see **4.1.2**) can receive before starting to pay tax in the UK. For the 2021-22 tax year, the personal allowance is £12,570.

For individuals whose "adjusted net income" is more than £100,000, the personal allowance will fall by £1 for every £2 in excess of £100,000, meaning that a person will not be entitled to a personal allowance once his or her taxable income reaches £125,140 for 2021-22.

In this respect, an expat returning to work in the UK should make sure that his or her PAYE tax code does not include the personal allowance if taxable income for the year of return is likely to be at such a level that the individual will not be entitled to some or all of the personal allowance. Failure to do this may leave the taxpayer facing an unexpected tax liability, depending on all the circumstances.

For tax years of arrival to and departure from the UK an individual is entitled to the personal allowance in full if resident for the tax year (but still subject to the restriction for higher earners, explained above). The allowance is not apportioned for the time spent in the UK by the individual or for the UK part of a split year (see **3.6**).

Adjusted net income

"Adjusted net income" for this purpose is defined by ITA 2007, s. 58 and is basically taxable income less certain reliefs for items such as pension contributions and gift aid payments.

Law: ITA 2007, s. 35, 58

Guidance: https://tinyurl.com/494w6r4s (HMRC guidance re adjusted net income)

4.1.4 Non-residents

All resident taxpayers are entitled to the basic personal allowance shown above, subject to the usual limit.

An individual needs to be resident to be entitled to the personal allowance. However, ITA 2007, s. 56(3) also states that a non-resident is entitled to it if he or she:

- is a UK national or a national of a European Economic Area (EEA) state;
- is resident in the Isle of Man or Channel Islands;
- has previously resided in the UK but lives abroad for the sake of his or her own health or that of a family member who is resident with him or her;
- is a person who is or has been employed in the service of the Crown;
- is employed in the service of any territory under Her Majesty's protection;

- is employed in the service of a missionary society; or
- is a person whose late spouse/civil partner was employed in the service of the Crown.

Non-residents may also be entitled to the personal allowance via a double tax treaty. In this respect, the individual usually needs to be a national or resident (or both) in the country with which the UK has the treaty. Not all double tax treaties enable the non-resident to claim the personal allowance, the most notable one being the treaty with the US.

HMRC's *Digest of Double Taxation Treaties* shows whether the personal allowance can be claimed under a specific double tax treaty and, if so, the digest sets out what requirements must be met under each treaty for a non-resident to be able to claim the personal allowance. If a non-resident is not entitled to a personal allowance under the tax legislation, then if the relevant double tax treaty requires the individual to be both a national and resident in that country to be entitled to the personal allowance, and he or she is just resident and not a national or vice versa, then the non-resident will not be entitled to the personal allowance. HMRC's RDRM 10340 also lists which non-residents are entitled to the personal allowance under double tax treaties, and which nationals are not entitled to it.

Example

Douglas and Florence have moved to Australia and are non-resident for 2021-22. They jointly own a rental property in the UK, which for 2021-22 produced a taxable profit of £20,000. They have no other UK-sourced income.

As Douglas is a British citizen he will be entitled to the personal allowance. Florence is an Australian citizen but is entitled to the personal allowance under the double tax treaty between the UK and Australia, as she is both a national and resident in Australia. This means that there is no tax liability in the UK for either of them, as their share of the taxable rental income is covered by their personal allowances.

Douglas is assigned by his Australian employer to New Zealand for a few years and Florence moves with him. Douglas will continue to be entitled to the personal allowance as a British citizen. Florence, however, will no longer be entitled to the personal allowance under the double tax treaty between the UK and New Zealand, as the treaty states that she must be a New Zealand national as well as resident there to be able to claim the personal allowance. She cannot claim the personal allowance under the treaty between the UK and Australia, as she needs to be resident there.

This means that her share of the taxable income will be taxed in full, producing a tax liability of £2,000 if her 50% share is £10,000.

If, for example, Douglas and Florence had instead moved to the US rather than Australia, and Florence was a US national rather than an Australian citizen, then in this situation, even though Florence is a national and resident in the US, under the double tax treaty between the US and the UK she is not entitled to claim the personal allowance. Once again, her share of the taxable rental income would therefore be taxed in full in the UK. As above, Douglas would still be entitled to the personal allowance being a British national.

HMRC had previously released a consultation document *Restricting non-residents' entitlement to the UK personal allowance*. At the time of writing this proposal had gone on the back burner.

When calculating an individual's tax, the personal allowance is treated as reducing different types of income in a manner that produces the lowest tax liability. This is particularly important when looking at the order of set-off for investment income where the taxpayer is entitled to the dividend and savings allowances, etc. (see **5.9** and **5.7**).

Law: ITA 2007, s. 56