1955 ROYAL COMMISSION ON THE TAXATION OF PROFITS AND INCOME

FINAL REPORT

CHAPTER 14

RESIDENCE, ORDINARY RESIDENCE, DOMICILE

THE THREE CONCEPTIONS

279. There are three conceptions which have an effective bearing upon the taxability of a persons overseas income — residence, ordinary residence, domicile. Each presupposes a certain relation to be subsisting between the person concerned and the United Kingdom or another country in the year in which the question of taxing his income arises, and since each requires a different set of facts to support it anyone relation can subsist without the other. Thus a man can be resident in the United Kingdom without being either ordinarily resident or domiciled there: or ordinarily resident there while being domiciled in another country.

Residence

280. The most important of the three conceptions is that of residence. For upon the test whether a man is resident in a particular year will depend the question whether he is to be taxed in respect of every part of his income wherever arising or only in respect of that part of it which arises in the United Kingdom. Secondly, personal allowances and reliefs are not available in full to an "individual who is not resident in the United Kingdom"([1]). Thirdly, the question of residence is material for some more limited purposes, such as the establishment of title to certain of the double taxation reliefs.

([1]) Income Tax Act, 1952, s. 227.

Ordinary residence

281. There is a statutory rule to the effect that if a British subject is ordinarily resident in the United Kingdom he remains chargeable to tax as a resident when he leaves the country "for the purposes of occasional residence abroad"([2]). On the other hand the benefit of the remittance basis for overseas income is extended to British subjects or citizens of the Irish Republic who can show that, though resident in the United Kingdom, they are not ordinarily resident there([3]). As we explained in our First Report([4]), the remittance basis involves that the measure of the income which is taxed is not the income itself but that portion of it, if less than the whole, which is remitted to the United Kingdom.

Moreover, the interest on certain British Government securities is exempt from tax while they are in the beneficial ownership of a person not ordinarily resident in the United Kingdom.

([2]) Income Tax Act, 1952, s. 368.

([3]) Income Tax Act, 1952, s. 132 (2) (*a*).

([4]) Cmd. 8761, paras. 16 19.

Domicile

282. Persons who, though resident in the United Kingdom, are not domiciled there also get the benefit of the remittance basis for their overseas income([5]).

([5]) Income Tax Act, 1952, s. 132 (2) (*a*).

THE POSSIBILITY OF SIMPLIFICATION

283. The first question that we considered was whether the tax scheme could not be simplified by dispensing with the use of one or more of these tests. They depend on what is sometimes a rather delicate balance of complicated facts and in those cases it is not

easy to apply them at short notice. There are very few statutory rules to help in their application — a matter which we will deal with later — and no complete set of rules could be laid down for some of them.

284. We concluded, however, that each of these three conceptions had a useful part to play in our tax system. Although the remittance basis for persons not ordinarily resident or domiciled in the country seems to be peculiar to the United Kingdom, we think that its employment is appropriate having regard to the conditions that govern our trade and commerce. The large overseas connections of the United Kingdom do make a special tax problem for those persons who leave for or come back from service broad for various purposes and for various periods: conversely, there are special problems with regard to those persons who, while truly belonging to another country, are led by business interests to centre in the United Kingdom for what may often turn out to be long periods of years. We do not think that a simple conception of liability which depended on residence or non-residence would be adequate for the complications of the case.

285. But the next question is: If these conceptions are all needed to play their part in the system of taxing overseas income, is it not possible to make easier for the taxpayer, especially perhaps the visitor from abroad, to know where he stands? That question involves some enquiry as to what his position is today.

Present position

286. There are only three actual provisions in the tax code which constitute rules on this subject. Each of them deals with a particular point for a particular purpose and offers little general guidance. Nor are they happily worded in all respects. They are as follows:—

(1) A person is not to be charged as resident if he is in the United Kingdom "for some temporary purpose only and not with any view or intent of establishing his residence therein" (Income Tax Act, 1952, Section 375).

(2) A person who has "actually resided in the United Kingdom at one time or several times for a period equal in the whole to six months in any year of assessment" is to be charged as resident, even if he is here for a temporary purpose only and without the intention of "establishing his residence" (Income Tax Act, 1952, Section 375).

(3) A British subject whose ordinary residence has been in the United Kingdom remains chargeable as resident if he leaves the country "for the purpose only of occasional residence abroad" (Income Tax Act, 1952, Section 368).

287. These provisions leave a very great deal undetermined. They have been supplemented by decisions of the Courts and by rules of

practice which the Inland Revenue Department applies. The rules are regarded by the Department as either deduced from legal decisions or as representing what would be fair and in accordance with the spirit of the tax code.

Domicile

288. The rules that determine in which country a man is domiciled must be taken from the general law of this country as laid down in the Courts. For the United Kingdom a persons domicile can be defined as meaning the country "in which he has his home and intends to live permanently —First Report of the Private International Law Committee(l), paragraph 6. To determine this may involve an elaborate investigation of facts, but for income tax purposes, where the person is alive, it is probably easier to determine than for other purposes, such as testamentary succession and death duties, where the subject of the enquiry is dead. The Committee just mentioned took the view (paragraph 12) that "the facts of each case vary so widely that most problems are insoluble by legislation". They did nevertheless suggest the enactment of a Code in the form of certain general principles which, if they became law, would provide rules, at any rate of presumption, for the solution of particular cases. If the Code were enacted, the administration of income tax would become that much the simpler. We are satisfied that we must leave the question of domicile on that footing.

(1) Cmd. 9068.

Residence and ordinary residence

289. Neither of these conceptions is defined by statute, but "ordinary residence" has been treated in legal decisions as the equivalent of residence habitual residence". The two conceptions interact upon each other, sometimes being indistinguishable and sometimes in conflict. Thus the great majority of persons living in the United Kingdom are both resident and ordinarily resident. On the other hand, a person who comes here from overseas may well be resident without being or having yet become ordinarily resident: so may a person who comes back after an extended period of absence.

290. Subject to the statutory rules which we have already set out, prescribing that six months physical presence in the country makes residence, while temporary presence or absence has no effect, the established practice of the Revenue seems to be capable of being reduced to the following working principles:—

(1) It is necessary to approach questions involving the residence of a man who has previously been ordinarily resident in the United Kingdom but has then gone abroad in a different way from questions involving the residence of a man who begins his connection as a visitor.

(2) A visitor who does not maintain a place of abode here and does not make habitual visits to the country is not resident unless he is present for more than six months in all during the tax year.

(3) A visitor who maintains a place of abode here is resident for any year in which he pays a visit, however short. to the United Kingdom.

(4) A visitor who habitually visits the country for substantial periods becomes a resident, even if he does not maintain a place of abode or spend in the United Kingdom six months in all in the tax year. For this purpose visits are treated as “habitual” if they have occurred in four more or less consecutive years, and “substantial” if they averaged three months a year.

(5) A man who has been regularly resident in the United Kingdom and has then gone abroad may or may not be treated as a visitor if he comes back again at any time. That depends primarily on the question whether the circumstances in which he went abroad indicate a clear break with the United Kingdom as his place of ordinary residence.

(6) Many of the cases just mentioned occur when men who have taken up employment overseas return to this country, either on leave or in connection with the duties of their employment. The

rules applied to any such person who returns to this country are as follows:—

(a) If a man has an available abode in the country or is here for more than six months in all in a tax year, he is resident.

(b) Otherwise, he is not resident until his final return, unless his leave in this country averages three months or more a year. If it does, he does not lose residence or ordinary residence. For this rule to apply the period of overseas employment must cover a minimum of one complete tax year.

(c) A man whose employment overseas is for a period of at least three years is not ordinarily resident in any year until his final return, even though he maintains a place of abode here, so long as his leave in this country does not average as much as three months a year.

291. These working principles are not statutory. It is claimed that they are proper deductions from the few statutory rules that do exist and from decided cases. We cannot give any positive confirmation of this claim, and we think that appeal Commissioners at any rate might be in much the same difficulty. In any event the position of the ordinary taxpayer can hardly be an easy one. We quote the view of the Codification Committee on this point(1).

"We are fully conscious of the complexities which surround this question and of the advantages which, from the point of view of a

taxing authority, lie in the absence of a statutory definition. We are, however, of the opinion that the present state of affairs, under which an enquirer can only be told that the question whether he is resident or not is a question of fact for the Commissioners, but that by the study of the effect of a large body of case law he may be able to make an intelligent forecast of their decision, is intolerable and should not be allowed to continue."

([1]) Cmd. 5131

292. We agree with the Committee's general view that this state of affairs is unsatisfactory, particularly for the visitor. But we do not accept their diagnosis in all respects. It is true that a visitor who wishes to arrive at an independent assessment of his position will be met with the difficulties that they indicate: but on the other hand he will be able to obtain without difficulty a printed leaflet which sets out at any rate the main lines of the Revenue Departments established practice. Nor do we think that the present general uncertainty is maintained in any way for the convenience of the taxing authority. On the contrary fixed rules would simplify the work of administration even if they worked unreasonably in some instances. But it is one of the arguments against the existing system that it does lead to the devotion of a great deal of time and skill to considering and adjudicating upon individual cases, whereas the establishment of certain fixed rules would make this unnecessary without giving any individual a serious cause of complaint. Indeed we think that the visitor or potential visitor would normally prefer certainty to the assurance that there will be the fullest consideration of his personal circumstances.

CONCLUSION

293. We conclude therefore that there ought to be certain principles laid down by Parliament as legal principles governing the question of residence. We do not require that there should be exhaustive definitions of residence or that there should be a code which is capable of providing rules for the whole range of the subject. Considering its nature, we doubt whether that would be possible, and we doubt more whether it would be desirable. In point of fact, the Codification Committees own suggested solutions by way of definition do not appear to be altogether satisfactory. We recognise that if fixed time limits are introduced arbitrary results may follow. But this is hardly a disadvantage for the visitor or the person returning to this country after absence, two categories of taxpayer which we have particularly in mind. If such a person can know in advance precisely where he stands he can adjust his arrangements accordingly: by this means he will not have to concern himself with the complications of our tax system except by his own choice.

294. Accordingly we have drawn up the following set of rules which we recommend as the basis of a statutory enactment. We have had the assistance of comment from the Board in preparing them but we do not put them forward as endorsed by the Board. There are three points in which, as we see it, these rules would bring about a change in the existing law or practice.

(1) No special importance would be attached to the question whether a man maintains a place of abode in the United Kingdom. At present, if he does, he is treated *ipso facto* as it he appears in the United Kingdom at all in the relevant year. We think that such a rule draws altogether too sharp a distinction between the man who maintains a place of abode and the man who does not. It bears with obvious harshness upon the man who keeps up a home here for his family while he is abroad, and distinguishes him absolutely from the man who comes back and stays in a hotel or furnished rooms or the bachelor who comes back to spend his time in his parents home. In our view the rule under the conditions of modern life does not afford a test of any particular value as to the motive or purpose of a man who returns to the United Kingdom for some period of time.

(2) The test of residence in the case of the "ordinary resident" would be put upon a precise time basis. There is no such basis at present.

(3) The habitual visitor would become chargeable as a resident one year earlier than he would under the present practice.

Proposed rules

295. The rules we recommend are:—

(1) Anyone who spends 183 days or more in all in the United Kingdom in a year of assessment is resident for that year.

(2) No-one who has been outside the United Kingdom for the whole of a year of assessment is resident for that year.

(3) Prima facie, a person becomes resident and ordinarily resident in the United Kingdom if he has come to it to take up permanent employment in the United Kingdom as his principal occupation or to make his home in the United Kingdom.

(4) Prima facie, a person ceases to be resident or ordinarily resident in the United Kingdom if he has left it to take up permanent employment overseas as his principal occupation or to make his home overseas.

(5) *As to visitors:*

(a) A person is within the visitors rule if, being in the United Kingdom in any year of assessment, he was not charged as a resident in either of the two preceding years.

(b) A visitor can only be charged as resident for a year if—

(i) he has been in the United Kingdom for 183 days or more in all in that year, or

(ii) in the period covered by that year and the three preceding years he has spent 365 days or more in all in the United Kingdom and has been present for not less than 61 days in each of those years.

(c) A person who has taken up permanent employment overseas as his principal occupation is to be treated as a visitor if he returns to the United Kingdom on leave or for some temporary purpose connected with his employment. Previous periods of residence before he took up such employment do not count as residence for the purposes of *(b)* (ii) above.

(6) *As to persons ordinarily resident:*

(a) A person is ordinarily resident if he is resident in the United Kingdom according to the usual order of his life.

(b) A person ordinarily resident can only be charged as resident for a year if—

(i) he has been in the United Kingdom for 91 days or more in all in that year, or

(ii) such periods of that year as he has spent outside the United Kingdom are due to occasional or temporary absence.

Remittance basis

296. Finally, we consider that the reasons which make it fair to give the benefit of the remittance basis in respect of overseas income to British subjects or citizens of the Irish Republic who are resident but not ordinarily resident apply as much to persons who are not British subjects or citizens of the Irish Republic. We recommend that the law should be changed accordingly. In the result the remittance basis for overseas income will be available to

any person who is resident in the United Kingdom but is either not ordinarily resident or not domiciled there.