Tax and immigration services

COVID-19 outbreak

Consideration of the effect on immigration and tax-residence requirements.

As concern at an international level mounts in line with the growing prevalence of the COVID-19 virus, increasing travel restrictions are impacting normal ways of working, globally mobile workforces, business travellers, international assignees and contractors.

Whilst the immediate health considerations remain a priority, individuals will need to be aware of how travel restrictions may impact their position in the UK with regards to immigration or tax-residence status.

UK Government policy on those temporarily in the UK due to COVID-19

The UK Government has published policy guidance for people in the UK whose immigration status is affected by the Covid-19 outbreak. This flexible policy is designed to protect those whose immigration permission may have expired but are unable to return to their country of residence, from become overstayers under UK immigration law.

In most cases, those impacted will get an extension of their visa until 31 March 2020. Whether that extension is automatic or requires an application will depend on the individual circumstances.

The UK Government’s policy announcement specifically addresses Chinese nationals. Those Chinese nationals who have been compliant with the conditions of their visa prior to the outbreak, will see their leave automatically extended to 31 March 2020 if their visa has an expiry date between 24 January 2020 and 30 March 2020. They do not need to do anything to get this extension which will be recorded on the UK’s immigration systems. Chinese nationals will also get an automatic extension if they are in the UK on a long-term standard visitor visa that lasts 2, 5 or 10 years and they have reached the maximum stay of 180 days between 24 January 2020 and 30 March 2020.

The Home Office will publish updated guidance to cover those impacted post 31 March 2020 in due course.

Impacted individuals are able to contact the Home Office’s dedicated coronavirus immigration helpline to discuss their circumstances and arrange an extension. The Home Office can also be contacted on 0800 678 1767 (Monday to Friday, 9am to 5pm) or via email on CIH@homeoffice.gov.uk.
UK tax-residence considerations

The Statutory Residency Test (SRT) determines the amount of days an individual may be present in the UK before HMRC consider them to be UK-resident for tax purposes. The application of the SRT, and resultant day count, is entirely dependent on an individual’s specific circumstances. As such no “one-size-fits-all” policy can be adopted when considering exposure to UK tax-residence and planning UK days of presence accordingly.

An unplanned increase in UK days of presence could therefore have a significant impact on exposure to UK taxation where an individual exceeds the amount of days they are permitted to be present in the UK day without triggering a UK-resident status. Breaching the allowable days can have a significant impact on an individual’s UK tax exposure through exposing individuals to UK tax on a worldwide basis, although the exact impact may be mitigated if the individual is simultaneously resident in a country with which the UK has a comprehensive Double Tax Treaty.

As yet there is no detailed commentary from HMRC to suggest the extent flexibilities will be applied to the question of residence for tax purposes in view of travel restrictions. The legislation can allow for exceptional circumstances to be taken into account when considering certain days of presence. What constitutes an exceptional circumstance can be difficult to identify and as such bespoke professional advice should be sought immediately. It is likely this will need to be considered on a case by case basis and often there may be other factors to consider when assessing an individual’s residence position including the impact of the number of ties that an individual may have (if for example the family need to stay longer) or the impact of a Double Tax Treaty residence tie-breaker claim.

There seems to be a particular issue for those who are well but unable to return to their home country as a result of travel restrictions. The exceptional circumstance provisions require the individual to be prevented from leaving the UK. Strictly speaking such individuals could still leave the UK, although it is likely to present considerable practical difficulties. We are in discussions with HMRC around whether it may be possible to extend the provisions for cases of this kind.

How we can help

We can assist clients in understanding how travel restrictions and additional days of presence will affect them from a UK tax perspective and what if anything can be done to limit the impact. Those impacted are strongly advised to seek professional advice.

Our Immigration and Private Client tax teams work together to provide integrated tax and immigration advisory services, supporting clients through the application process and beyond.
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