Reviewing the residence and domicile rules as they affect the taxation of individuals:

a background paper

April 2003

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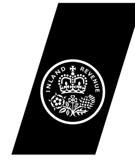

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CONTENTS

		Page
Chapter 1	Introduction	1
Chapter 2	The Current Rules	3
Chapter 3	International Experience	11
Chapter 4	Key Principles	23
Annex A	Meaning of “Residence”, “Ordinary Residence” and “Domicile” for tax purposes	27

1 INTRODUCTION

This paper provides background information relevant to the Government's review of the residence and domicile rules affecting the taxation of individuals, announced by the Chancellor of the Exchequer in Budget 2002. This review must be based on clear principles, and a full understanding of the effects of the current rules on individuals and their employers. In order to encourage a process of informed debate, this paper describes the current rules, analyses international experience, and develops the principles that the Government believes should underpin any change.

1.1 Budget 2002 announced a review of the residence and domicile rules as they affect the taxation of individuals. These rules determine an individual's liability to UK tax. People who are UK resident and domiciled pay tax to the UK exchequer on their worldwide income and gains. Similar rules govern liability to inheritance tax. Those residents who are not domiciled in the UK pay tax on their foreign income and gains only when these are remitted to the UK.

1.2 The Government values a dynamic and open economy, and supports the international interchange of skills and expertise. However, the current rules determining residence and domicile have developed over the past 200 years, are complex and poorly understood, and do not reflect the reality of today's more integrated world.

1.3 In Budget 2002 the Government set out the principles that would underpin any modernisation. The rules:

- should be fair;
- should support the competitiveness of the UK economy; and
- should be clear, and easy to operate.

The Government welcomes the comments received in response to the Budget announcement, and invites further contributions to inform the ongoing work in this area. The Government has been considering the implications for the current rules of increasing international labour mobility, particularly among the highly skilled, and took further steps in the Pre-Budget Report to ensure that the UK economy can benefit from the expertise available in the growing global market for skilled labour. The Government has also looked at the interaction between increasing labour and capital mobility and the Government's commitment to creating a tax system which ensures that individuals make a fair contribution to investment in public services.

1.4 This paper develops the principles which the Government believes should underpin any reform, and invites comment on them. It also seeks to encourage discussion about how the current rules compare with these principles, and provides broad summaries of regimes operating in other countries.

2 The Current Rules

This chapter sets out the current rules which determine an individual's liability to pay tax in the UK. These rules, setting out whether someone is resident, ordinarily resident, and/or domiciled in the UK are largely based on case law and reflect the development of the income tax system from its introduction in 1799. UK resident individuals who are both ordinarily resident and domiciled in the UK are liable to tax on their worldwide income and gains, wherever these arise. UK residents who are not domiciled in the UK are liable on overseas income and gains only to the extent that these are remitted or received in the UK. The way in which the rules work in practice, together with some of their implications, are highlighted through a series of hypothetical case studies.

2.1 The extent to which an individual is liable to UK tax will depend on whether s/he is:

- resident; and/or
- ordinarily resident; and/or
- domiciled in the UK.

2.2 These terms are not defined in detail in statute. They are in practice largely based on case law, mainly deriving from the 19th and early 20th centuries. The rules outlined in Box 2.1, below, therefore reflect the incremental development of the tax system over the last 200 years. The residence rules and the concept of domicile and how these impact on an individual's liability to UK tax are explained in booklet IR20, which provides a comprehensive statement of the Revenue's interpretation of the application of the rules in practice. An extract from the latest version of that booklet (December 1999) is set out in Annex A. This chapter, for the sake of simplicity, sets out a broad summary of the rules.

Residence

2.3 The residence basis of taxation defines the individuals who have a liability for tax in the UK. Non-residents are not generally liable to income or capital gains tax, except on income arising in the UK. They may, however, pay VAT and excise duties, and usually pay national insurance contributions on work they do in the UK for a UK employer. Individuals who are, or become, non-resident in the UK may well, of course, be resident and subject to tax in another country. The terms 'resident', 'ordinarily resident' and 'domiciled' are also used for other purposes in income and capital gains tax – for example, the residence, ordinary residence and domicile of a settlor may be material in determining the residence of trustees in particular circumstances, but these are not covered below.

2.4 The circumstances in which individuals are treated as UK resident for tax purposes include the following:

- they spend 183 days or more here in any tax year or more than 90 days on average over a period of up to 4 years;
- they come to the UK intending to live here permanently or for at least three years;
- they come to the UK for a purpose (for example employment) that will mean that they remain here for at least two years (whether or not, in a particular year, they spend 183 days here); and
- they usually live in the UK and go abroad for short periods, for example on business trips.

2.5 People who have been treated as tax resident may lose that status:

- if they leave the UK permanently, or to live abroad for at least three years, and their return visits since leaving are less than 183 days in any tax year, and average less than 91 days per tax year over the period of absence; or
- if they leave the country to take up full time employment abroad and their absence covers a complete tax year, and their return visits do not exceed those set out immediately above.

For the purposes of the various day counting tests, days of arrival and departure are not normally taken into account.

Ordinary residence

2.6 Broadly, being ordinarily resident means being resident here year after year. Individuals are treated as ordinarily resident if they usually live in the UK (or intend to do so), or come to the UK regularly (or intend to do so), and these visits average 91 days or more per tax year.

Domicile

2.7 It is important to stress that, while the concept of domicile is an important characteristic identifying those who pay tax in the UK on their worldwide income, it is not in itself a tax concept, but one of general law. It is distinct from nationality, residence or citizenship. Individuals acquire a "domicile of origin" at birth, which usually follows their father's domicile. Until the age of 16, their domicile will follow that of the person on whom they are legally dependent – a "domicile of dependency". After the age of 16, an individual can acquire a "domicile of choice" by providing evidence that they intend to settle permanently or indefinitely in another country. There are special rules for married women who married before 1 January 1974.

2.8 Domicile also plays a part in determining liability to Inheritance Tax. Individuals domiciled overseas pay Inheritance Tax to the UK exchequer on wealth situated in the UK. They become liable on their worldwide wealth either when they acquire a domicile in the UK or when they are deemed to be domiciled here under special rules for Inheritance Tax. These special rules apply to those who have been resident in the UK for seventeen out of the last twenty years. However if property outside the UK is put in a trust before an individual becomes UK domiciled for Inheritance Tax purposes, it will be excluded from the charge to Inheritance Tax, even if the individual continues to enjoy the property after they are domiciled here.

DETERMINING TAX LIABILITY

2.9 Resident individuals who are both ordinarily resident and domiciled in the UK are liable to tax on their worldwide income and gains, wherever these arise.

Remittance basis

2.10 UK residents who are not domiciled in the UK are liable on overseas income and gains only to the extent that they are remitted to or received in the UK. This is called the remittance basis of taxation. It applies where a UK resident who is not domiciled here receives:

- employment income, where the employer is not resident in the UK and the duties of the employment are performed wholly outside the UK;
- pensions and other earned income arising outside the UK;
- investment income arising outside the UK; and
- gains on disposal of overseas assets.

2.11 The remittance basis also applies where a UK resident who is not ordinarily resident here receives:

- employment income, in respect of duties which have been performed outside the UK;
- pensions and other earned income arising outside the UK (and the Republic of Ireland), if the individual is a Commonwealth citizen (which includes a British citizen) or a citizen of the Republic of Ireland; and
- investment income arising outside the UK (and the Republic of Ireland), where the individual is a Commonwealth citizen or a citizen of the Republic of Ireland.

Box 2.1 A Summary of the Residence and Domicile Rules

UK Status			Income Tax on Employment	Income Tax on Savings Income	Capital Gains Tax	Inheritance Tax
Resident	Ordinarily Resident	Domiciled				
√	√	√	Worldwide (1)	Worldwide (2)	Worldwide	Worldwide
√	√	X	Worldwide (1) (3)	Worldwide (2) (4)	Worldwide (4)	UK
√	X	√	Worldwide (5)	Worldwide (2) (6)	Worldwide	Worldwide
√	X	X	Worldwide (5)	Worldwide (2) (4)	Worldwide (4)	UK
X	√	√	Duties performed in the UK	UK Source (7)	Worldwide	Worldwide
X	√	X	Duties performed in the UK	UK Source (7)	Worldwide (4)	UK
X	X	√	Duties performed in the UK	UK Source	None (8)	Worldwide

For Income Tax and Capital Gains Tax all sources are taxed on the full amount of the income or gain arising except:
(1) Foreign Earnings Deduction of 100 per cent may apply – this only applies to seafarers.
(2) Special rules apply for foreign pensions in certain circumstances.
(3) Where an individual is non-domiciled and works for a non-resident company, earnings from employment wholly outside the UK are taxed on the Remittance Basis.
(4) Foreign sources taxed on the Remittance Basis.
(5) Income from duties of employment performed overseas taxed on Remittance Basis.
(6) Commonwealth and Irish citizens taxed on the Remittance Basis for all foreign sources (except Irish sources).
(7) Taxable on UK source income and FOTRA's.
(8) Gains on the disposal of assets used or held etc. for the purposes of a trade carried on in the UK by a branch or agency are chargeable.

2.12 Box 2.2 below gives a brief historical summary of how the current rules have come about.

Box 2.2 A Historical Perspective

The current rules on residence and domicile can be traced back to the introduction of Income Tax in 1799 to meet the cost of the Napoleonic wars. This was imposed upon all income arising from property in Great Britain, whether or not the person was resident here, and on all income of those defined as being resident here. However those here for some temporary purpose, with no view or intent of establishing residence here, were not taxed as residents. Those who had been ordinarily resident here, and had gone overseas for occasional residence abroad, continued to be taxed as residents. Income from foreign assets was subject to tax if it was remitted to the UK, but not if it was kept offshore. (The remittance basis was devised primarily as a means of taxing income from British plantations in the Americas.)

The regime has changed little since its introduction. By 1800 the definition of residence had been tightened so that those here for 6 months, even if for a temporary purpose, were treated as resident. In 1803 Schedule D was introduced, charging tax on residents in respect of profits from property, wherever situated, and non-residents for property in Great Britain and on the profits of activities exercised here.

During the twentieth century, occasional reforms have concentrated upon tightening up the remittance basis. In 1914 and 1940 it was tightened to cover fewer types of foreign income, and there was further tightening in 1956 and 1974. When Capital Gains Tax was introduced in 1965, it was charged on individuals who were resident or ordinarily resident, and the remittance basis applied to gains from foreign assets for those who were non-domiciled. Most recently, in 1993, the 'available accommodation' rule, under which those with accommodation in the UK might be regarded as resident for any year they visited here, was abolished.

APPLICATION OF THE RESIDENCE AND DOMICILE RULES

2.13 The vast majority of people in the UK, whether they were born here or overseas, or whether their family origins are overseas, remain unaffected by any consideration of whether they are resident here, ordinarily resident here or domiciled here for tax purposes because, for example, they are clearly resident here on an ongoing basis, or because they have no unremitted foreign income and no foreign assets.

2.14 Data from Self Assessment returns indicates that there are around 100,000 individuals who benefit from the remittance basis of whom:

- 65,000 are non-domiciled residents; and
- 33,000 are resident, but not ordinarily resident.

Of these, around 75,000 completed an employment schedule with UK employment income of about £8 billion, giving an average annual income of just over £100,000. A smaller subset of 16,000 also returned foreign earnings totalling £800 million which were not remitted to the UK and therefore not liable to tax, giving an average foreign earnings of £50,000.

2.15 Routine Self Assessment information on non-domiciled residents by industrial sector is not available, but an analysis of the top 40 largest employers of resident non-domiciles – with 11,000 non-domiciled resident employees – showed that two-thirds were in banking and financial services, 10 per cent were in the oil industry, and 20 per cent were in manufacturing (particularly electronics) and others. Self Assessment data will, of course, only cover individuals within Self Assessment. There is no centrally held data on the above lines for individuals falling outside Self Assessment.

THE RULES IN PRACTICE

2.16 The rest of this chapter uses hypothetical case studies to illustrate how the current rules work in practice, in a range of situations common to the increasingly global working relationships established in the modern economy.

Long-term connections

2.17 Example 1 illustrates the differential treatment of individuals with a long-term connection to the UK, depending on their domicile status. It highlights a case in which, for relatively non-mobile people, the precise status accorded to them under the rules can have a marked effect on their tax liabilities and can produce different treatment between two individuals spending the same amount of time here.

Example 1

Adam & Bill have lived in the UK all their lives. Both are now 50.

Adam is domiciled here. He is resident and ordinarily resident and is taxed on his world-wide income and gains.

Bill is domiciled overseas. He is treated as resident and ordinarily resident and pays tax on UK income and gains. Income and gains with a non-UK source are taxed only when remitted to the UK.

Temporary connections

2.18 Visitors to the UK might have foreign source income and gains that derive from their activity prior to arriving in the UK. Example 2 shows how individuals with different types of income and different domiciles are taxed.

Example 2

Clive and Dan both take up work at the UK headquarters of a foreign company. Clive is a US citizen seconded to the UK for 9 months to work for the company. He is domiciled in the States. Whilst he is here, he realises substantial gains in the US from his investments there. Provided he remits nothing from the US, he will be taxed only on the UK income.

Dan is domiciled here. He has various overseas investments. He has been working in the States on a 24-month assignment before returning to work with the company in London. Apart from that, he has lived in the UK all his life. He kept his foreign investments while he was abroad, but realises substantial gains from them after returning to the UK. After his return he pays tax on the whole of his income and gains.

2.19 Under the current rules, individuals spending a limited period here in single or successive tax years will be treated as resident here if their visits exceed certain limits. The rules can, however, produce different results for people who spend similar amounts of time here. In Example 3, this difference arises solely from the pattern of arrival and departure.

Example 3

Eugene & Ferdinand visit the UK and both spend 185 days here in one year.

Eugene comes to the UK for one continuous period and is treated as resident in the UK.

Ferdinand makes numerous visits to the UK during the year and is treated as not resident, because days of arrival and departure are ignored for the purposes of establishing residence.

Losing a long-term connection

2.20 A long-term connection to the UK can be severed in various ways under the current rules. Example 4 illustrates how different results can arise, depending on the timing and duration of absences from the UK.

Example 4

Gail, Helen and Iain are resident and ordinarily resident in the UK. They have lived here all their lives and go abroad to work full time.

Gail leaves the UK on 5 April and works abroad for just over a year. She visits the UK on a number of occasions during the year, spending 80 days here in total. When she returns she has lived outside the UK for a whole tax year and is treated as not resident and not ordinarily resident for that tax year. She will be taxed on UK source income only.

Helen leaves the UK on 7 April. She is away from the UK for 724 days and does not return to the UK at all until the end of her spell abroad. She has not been out of the UK for a whole tax year and is therefore treated as resident for the whole of the period she was away. She will be taxed on all her income and gains.

Iain leaves the UK on 5 April and stays away for 5 years. He comes back for 92 days a year (excluding days of arrival and departure). Because of the amount of time he spends in the UK, he is treated as resident and ordinarily resident throughout.

Moving from temporary to long-term connection

2.21 In some cases, the current rules can produce a different result for individuals who spend precisely the same length of time here, depending on the intention of the individuals. In Example 5, the difference between individuals arises, not from the pattern of arrival and departure, but from the intention notified to the tax authorities.

Example 5

Jan and Kate both visit the UK regularly.

Jan does not intend to make prolonged visits to the UK for the next 4 years. But in the event she visits the UK for 100 days a year for 4 years. She is treated as resident and ordinarily resident from the start of the 5th year only.

Kate intends to make prolonged visits to the UK for the next 4 years. She visits for 100 days a year. She is treated as resident and ordinarily resident from year 1.

Effects on behaviour

2.22 Examples 6 to 8 provide illustrations of the way in which the residence and domicile rules can affect economic behaviour, and incentives to locate labour market participation, or even where to live. In Example 6, two individuals with different reasons for being in the UK are subject to the same tax treatment.

> **Example 6**
>
> **Louise and Mona are domiciled overseas.**
>
> **Louise is on secondment to the UK for 4 years. She has substantial income and gains in the US. She is treated as resident and ordinarily resident in the UK. She is taxed on all UK income, and on any US income and gains remitted to the UK.**
>
> **Mona has lived in the UK for 40 years and has substantial financial interests. She too is treated as resident and ordinarily resident and is taxed on all UK income and on any non-UK income and gains remitted to the UK.**

2.23 The two individuals in Example 7 both have capital and income arising overseas, and the way in which they use it determines the way in which it is taxed.

> **Example 7**
>
> **Norman and Oscar are domiciled overseas.**
>
> **Norman has never lived in the UK before. He comes to the UK and brings capital into the UK to start a business. He has income arising overseas, which he brings here to fund expansion of his UK business. He is taxed on all income and gains brought into the UK (provided they are in a taxable form).**
>
> **Oscar is UK resident and ordinarily resident. He has lived in the UK for 30 years. He maintains his business interests outside the UK so that he can maximise benefits offered under the remittance basis.**

2.24 In the next example, two skilled workers who stay in the UK for very different periods of time and with different intentions about which country will be their future home are taxed in similar ways while in the country.

> **Example 8**
>
> **Paula and Quentin are highly skilled workers whose work permits have been fast-tracked through Home Office procedures because they are needed to fill UK skills gaps.**
>
> **Paula takes a 4-year fixed contract in the UK and then returns to her home country. While she is here she is treated as resident and ordinarily resident in the UK but domiciled overseas and is taxable on all her UK income plus any non-UK foreign income and gains she remits.**
>
> **Quentin wants to come and live in the UK permanently; he likes London, has friends there and finds the climate pleasant. He intends to return to his country of origin to retire in 30 years time, though in fact he never does. He is also treated as resident and ordinarily resident here but domiciled overseas and pays tax only on UK income and gains remitted to the UK.**

Complexity of the current rules

2.25 Finally, Examples 9 and 10 provide an illustration of the complexity of the current rules. Example 9 shows how changes to a pattern of visits may affect an individual's residence status under the averaging rules.

Example 9

Ruth and Seth leave the UK to work full time abroad. They leave the UK on 5 October and over the next four and a half years, they each make return visits to the UK.

Ruth visits the UK for 40, 80, 95, 95 and 90 days. She may be regarded as not resident and not ordinarily resident in the UK as her visits average less than 91 days a year taken over a maximum of 4 years.

Seth visits the UK for 40, 40, 100, 95 and 90 days. Seth's visits also average less than 91 days over a four-year period, but he is viewed as having substantially altered his visits in year 3 and the averaging period is reset. Seth is treated as resident and ordinarily resident from year 3.

2.26 In the final example, the tax paid by the individuals is determined by the manner or sequence in which foreign earnings are brought into the UK.

Example 10

Tanya is UK resident and ordinarily resident but domiciled overseas.

Tanya has two sources of foreign income; a bank account yielding interest and a property from which she receives an ongoing source of rent. The rent is paid into the foreign bank account. Tanya closes the bank account by transferring the balance to a second overseas bank account. In the next tax year, Tanya remits all the money in the account to the UK. She is taxed on the rental income but not on the interest as the source upon which it arose had ceased before the beginning of the tax year in which the remittance was made.

Ulla and Veronica are also treated as resident and ordinarily resident in the UK but domiciled overseas. Both have come to the UK for 5 years, and have £10,000 investment income arising overseas. Both bring £10,000 here.

Ulla transfers the investment income here straight away – she is liable to tax.

Veronica is able to bring other funds here from capital she holds overseas. She is not liable to tax in the UK on the £10,000 investment income arising.

3 International Experience

This chapter sets out a broad summary of the rules and procedures in place in the member states of the Organisation for Economic Cooperation and Development (OECD). This demonstrates the variety of approaches which are currently used to determine residence for tax purposes.

3.1 The personal tax systems of all OECD countries define who is to be subject to tax and on what items of income and gains. In most countries individuals who are resident under the relevant domestic law definition are liable to tax on their worldwide income and gains, and non-residents are liable on income or gains arising in that country.

3.2 Each country has its own definition of what characteristics mark out "residents" and "non-residents", with most being based, at least in part, on some degree of physical presence in the taxable period. In the majority of cases, anyone present in a country for 183 days or more during a taxable period is treated as resident there, but the detailed rules for defining residence vary considerably between countries. A number of countries (for example Ireland and Sweden) primarily define non-resident individuals by reference to their presence there on a short-term basis, considering the time spent in the country by the individual. Other countries (for example New Zealand, Spain and Portugal) additionally look at a number of other factors that demonstrate a physical connection with the country such as the presence of a permanent address, or the co-location of family.

3.3 In some, but not all, OECD countries there are special regimes for particular classes of resident. These usually fall into two broad categories. Firstly, a number of countries offer different treatment to residents who are in the country on a short-term basis, in some cases only where the individual was not previously resident there in the recent past.

3.4 The second broad category is represented by countries offering different treatment to particular groups of new arrivals. These groups include those with particular skills or training, such as researchers, or technicians for example in Denmark, Korea and Sweden, and executive/managerial personnel for example in Belgium and Luxembourg. There are also some special regimes for expats arriving in the country to work for a multinational company, for example in the Netherleands, or those who are on fixed or short term assignments.

3.5 The examples above look at tax status acquired by those arriving in the country. In a few countries, for example Iceland, Spain and Portugal, the potential tax treatment acquired in the country of destination by those leaving the country is also considered in determining whether they lose their tax residence status in the country of departure.

3.6 The descriptions of the rules in other countries in the following table have been drawn from a range of publicly available sources, and include as much up to date information as possible. The Government would welcome comments on how they are applied in practice.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Australia	An individual who resides in Australia, including an individual whose domicile is there, unless the Commissioner of Taxation is satisfied that his permanent place of abode is outside Australia; or who has actually been in Australia, continuously or intermittently, during more than one half of the year of income, unless the Commissioner of Taxation is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia. A person's domicile for the purposes of the tests of residency is briefly either that of origin, choice or as ascribed by law. It is not defined by statute, but is a question of fact or degree. In certain circumstances (e.g. a working holidaymaker staying for a maximum of 1 year but barred from working for the same employer for more than 3 months) they will be considered non-resident even if staying for more than 183 days.	Residents: taxable on worldwide income. Non-residents: the assessable income is gross income derived from sources in Australia. (a) None. (b) New measures for qualifying individuals – tax exemption on foreign-source income – currently Taxation Laws Amendment Bill (7) 2002 before Australian Parliament which would apply where the person: • has not been an Australian resident at any time during 10 years before last becoming resident; • has not been resident for more than 4 years since last becoming resident; or • is holder of temporary entry visa and has not applied for permanent visa. Duration of exemption for 4 years (following which would become liable to tax on worldwide income). In addition, those eligible for certain superannuation treatment are also resident. Measure seeks to attract internationally skilled mobile labour and to assist in promotion of Australia as a business location. Exemptions would apply to: • foreign source income from assets regardless of when they were acquired; • capital gains or losses arising on assets other than those having necessary degree of connection with Australia; • interest withholding tax obligations; and • FIF rules.
Austria	Residence determined according to circumstances. Major factors are physical presence, having a home at one's disposal, location of family and the centre of an individual's social and economic activities. A stay in Austria exceeding 6 months is deemed to establish a habitual place of abode there. A person who arrives in Austria in the course of a year will be considered resident from the date of arrival if it is his intention to stay.	Residents: (unlimited liability to tax) subject to tax on worldwide income. Gains from some assets, including securities, are not taxable if held for more than 1 year. Non-residents: (limited liability to tax) subject to tax on income arising in Austria. (a) Tax simplification measures for expats to cover expenses of maintaining household in Austria, educational expenses and home leave allowance if the individual: • has not had a residence in Austria during past 10 years and who is transferred from foreign employer to Austrian employer (subsidiary or PE of foreign company in Austria); • has employment contract with Austrian employer; • maintains his or her primary residence abroad; or • has assignment not exceeding 5 years. Totals up to 35 per cent of salary, within certain limits, which are deducted from the calculation of withholding tax.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Belgium	Resident status does not depend only on physical presence but is defined as a person whose family home or place from which he manages his fortune, his business or his occupation is in Belgium. The place or residence of the household may be conclusive. Various categories of non-resident including: • individuals with a permanent home in Belgium (the expression 'permanent home in Belgium' means that a non-resident individual has established himself – together with his family, as the case may be – in Belgium in circumstances showing that he has not transferred his residence or the seat of his fortune to Belgium. In other words, such residence is temporary); • 'privileged' individuals without a permanent home who qualify for particular treatment under non-discrimination clauses in DTAs; and • individuals without a permanent home in Belgium.	Residents: subject to tax on worldwide income. For capital gains not related to self-employment, only gains derived from the sale of land or buildings, or from the sale of shares to a non-resident company are subject to tax. Non-residents: taxable on income from Belgian sources. Variance between the categories is on the expenses which are tax deductible. (a) An employee is not taxable on amounts which his employer pays in order to reimburse expenses which are 'expenses attributable to the employer'; and as a non-resident, the foreign executive will not be taxable on foreign source income or on remuneration for activities carried out abroad. 4 categories of person qualify for this special treatment: • executive personnel requiring special knowledge and entrusted with responsibilities; • corporate directors exercising permanent functions; • special non-executive personnel whose recruitment in Belgium is very difficult; and • foreign research workers operating in scientific research centres or laboratories. The rules expressly exclude personnel whose recruitment abroad or assignment in Belgium is not indispensable and who could be replaced by Belgians. (b) As above.
Canada	Courts have held that an individual is a resident if Canada is where, in the 'settled routine' of his life, he 'regularly, normally or customarily lives'. In addition an individual is deemed resident for any year in which he *sojourns* (i.e. temporarily stays) in Canada for 183 days or more. Factors determining residence include regularity of visits to Canada; retention of a place of abode in Canada; whether spouse and children are in Canada; and whether living accommodation is bought or leased in a new overseas location.	Residents: taxed on worldwide income. Non-residents: taxed on Canadian source income. There are special tax rules and exceptions applying to individuals entering or leaving Canada with respect to the calculation of capital gains or losses and the general deemed disposition rule.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Czech Republic	An individual is considered to be resident in the Czech Republic if: • he has his permanent home (residential address) in the country; or • he stays in the country for at least 183 days in the relevant calendar year, with the exception of stays for studies or medical treatment.	Residents: subject to tax on worldwide income. Non-resident: subject to tax on Czech source income.
Denmark	Resident once an individual has lived in Denmark for 6 consecutive months (he will then be taxed as resident from date of arrival).	Residents: taxed on worldwide income. Non-residents: taxed on Danish source income. (a) A flat rate tax of 25 per cent (normally 39-59 per cent) on gross income of highly-paid, if working for Danish employer for up to 3 years in 7 year period (there are claw-back provisions if stay exceeds this, but there are proposals for these to be abolished). Technicians' relief for up to 3 years if employees working in Denmark for an external employer. Separation allowance for up to 2 years.
Finland	Present for more than 6 months continuous stay in any 12 month period or if they maintain a permanent home in Finland. Finnish citizens are still regarded as resident for 3 years from the date of departure, unless they can establish that no essential connections with Finland have been maintained.	Residents: taxed on worldwide income. Non-residents: taxed on Finnish source income. (a) Under a special expatriate tax regime, qualifying expatriates such as highly-paid employees whose duties in the service of a Finnish employer require special skills may elect to be taxed on their salary income at a flat rate of 35 per cent for up to 2 years.
France	An individual, whether a French or foreign national, is resident according to the French tax code if: • he has his permanent home or principal place of *sejour* in France (namely if he stays in France for more than 183 days per calendar year or spends more time in France than in any other country); • he carries out an occupation or employment in France, except where this is incidental to a foreign activity; or • the centre of his economic interests is in France.	Residents: subject to tax on worldwide income. Non-residents: taxed on French source income. (a) A foreign expatriate assigned to the French HQ of a multinational company may be eligible for tax relief for up to 6 years from the assignment date. The main benefit of this is relief from 'tax on tax' of tax equalisation packages.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Germany	Resident if individual has accommodation in Germany which is more than casual or temporary, or if he is physically present in Germany for more than 6 months consecutively which may fall in 2 calendar years.	Residents: subject to tax on worldwide income. Non-residents: normally subject to tax on certain defined income arising in Germany. In certain circumstances former residents of Germany who retain links to Germany have an extended tax liability as a non-resident for a certain period if emigrating to a lower tax country. (a) and (b) Non-residents may elect to be treated as residents if income subject to German taxation amounts to 90 per cent or more of their worldwide income or does not exceed certain limits – this allows them to claim full deductions.
Greece	Liability for Greek taxes depends on domicile. For example, a foreigner working in Greece for a Greek company and who has taken up residence in Greece and has no tax liability abroad is considered to have his tax domicile in Greece. Residence in Greece is determined on the basis of factual circumstances. Relevant facts include the possession of a residence permit issued by the Ministry of the Interior, length of stay in Greece, etc. Nationality is not material in the determination of residence. All individuals will be considered resident if any of the following apply: • their permanent home (i.e. family or principal residence) is in Greece; • they spend over 183 days in Greece during any calendar year; • they are employed or carry out paid professional activities in Greece, except when secondary to business activities conducted in another country; or • their centre of vital economic interest (e.g. investment or business) is in Greece.	Residents: taxable on worldwide income. Capital gains derived by individuals generally are not subject to tax, except those derived from the transfer of any right connected with an enterprise. Non-residents: taxed on Greek source income.
Hungary	Deemed to be resident if an individual's domicile or habitual place of abode is in Hungary, or if physically present for 183 days or more in a calendar year.	Residents: taxed on worldwide income. Non-residents: tax liable on Hungarian source income.
Iceland	As a general principle, any individual staying in Iceland for 6 months is considered a resident. Former residents remain subject to unlimited tax liability for 3 years after leaving the country, unless they prove that they have become subject to taxation in another country.	Residents: taxed on worldwide income. Non-residents: taxed on Icelandic source income.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Ireland	Resident if spending 183 days in Ireland in a tax year, or 280 in that and preceding tax year. No account taken of time spent in Ireland totalling 30 days or less in a tax year. Presence for a day means physical presence at the end of the day (midnight). Ordinarily resident if resident for three consecutive tax years. Ordinary residence status lost after being not resident for three consecutive tax years. Domicile follows general law principles, as UK.	Residents: (ordinarily resident, domiciled) liable to tax on worldwide income and gains. Residents: (not ordinarily resident, domiciled) liable on Irish source income and remitted foreign income; liable on worldwide gains. Residents: (not domiciled) liable on Irish source income and gains, and remitted foreign income and gains. Non-residents: (ordinarily resident, domiciled) liable on Irish source income, and worldwide gains. Non-residents: (not ordinarily resident, or not domiciled) liable on Irish source income and gains.
Italy	Resident individuals are those who for the greater part of the tax year are registered in the Italian civil registry, or have a residence or domicile in Italy as defined in the Civil Code.	Residents: subject to tax on worldwide income. Non-residents: subject to tax on Italian source income, with exemptions from tax on some bonds for certain non-residents.
Japan	A permanent resident is one who is domiciled in Japan either as a citizen of Japan or as someone who has his permanent home there. This definition includes aliens who have lived in Japan for more than 5 years. A resident who has no intention of living permanently in Japan is classified as a non-permanent resident, as long as they do not stay there for more than 5 years. Most expatriates are therefore non-permanent residents and are normally treated as such from the date of their arrival in Japan, provided they intend to stay in Japan for at least 1 year.	Residents: (permanent) taxed on worldwide income. Residents: (non-permanent) assessed on Japanese source income and overseas income remitted to Japan. Non-residents: liable to tax on Japanese source income. (a) For expatriates living in Japan, relocation allowances and once a year home leave allowances are generally tax free.
Korea	Resident if an individual plans to make his domicile in Korea permanently or has resided there continuously for more than 1 year.	Residents: subject to tax on worldwide income. Non-residents: taxed on Korean source income. (a) Tax-free allowances of up to 20 per cent of salary (this will be doubled to 40 per cent from 1 January 2003) to cover cost of living, housing, home leave and education. Tax exempt salary for certain sectors for up to 5 years if the individual is: • employed under tax-exempt technology inducement contract; or • foreign technician with experience in certain industries.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Luxembourg	An individual is treated as resident if he is domiciled (i.e. has accommodation available for his use on a long-term basis) or 'habitually resident', defined as present in Luxembourg other than for a temporary purpose for more than 183 days in any year. Non-resident owners and directors of Luxembourg enterprises are deemed to have a *'fictive domicile'* there which results in tax liability on their worldwide income. However, non-resident directors who have never resided nor have a place of abode in Luxembourg and whose activities are regarded as a control function on behalf of non-resident lenders or investors are not deemed to have their domicile in Luxembourg.	Residents: taxable on worldwide income. Non-residents: taxable on income arising in Luxembourg. (a) Expatriates with managerial functions temporarily assigned to Luxembourg may be granted lump-sum allowances, normally for up to 5 years for those who become residents and 3 years for those who remain non-resident. The amount varies for married and unmarried individuals and there are also allowances for dependent children (with increases if they attend private fee-paying schools).
Mexico	Any individual who has established his residence in Mexico (by establishing his home there) is resident, unless he remains in another country for more than 183 days in any calendar year and can certify tax residence in the other country.	Residents: taxed on worldwide income. Non-residents: subject to tax on Mexican source income. (a) Reduced rates on employment income for non-resident expatriates.
Netherlands	Residence is determined 'according to circumstances'. Major factors are physical presence, having a home at one's disposal, location of family and centre of economic and social activities. A person who leaves the Netherlands and returns within 1 year without having been resident elsewhere will remain resident in the Netherlands.	Residents: subject to tax on worldwide income. Non-residents: subject to tax on specific Netherlands source income. (a) A special facility called the '30 per cent' rule is available to individuals seconded to the Netherlands within an international group or employed by a Dutch company because the individual has special knowledge and experience which is not available or scarce in the Netherlands. The employer may pay the employee a tax-free allowance to a maximum of 30 per cent of employment income for up to 10 years. From May 2002 those who qualify for this must agree to revisions in the contracts of employment allowing for a reduction in income so that 70 per cent of their present income equals the originally agreed employment income. If not, they will lose this benefit – (the financial implication is that this will affect the base salary level on which mortgages and pension entitlements etc. are calculated). (b) An expatriate is treated as resident or non-resident according to the normal rules, but if he is a resident taxpayer he can opt for non-resident status so that foreign investment income is not taxed.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
New Zealand	Deemed to be resident if he: • has a permanent place of abode in New Zealand (even if they also have a permanent place of abode in another country); or • is physically present for more than 183 days in any 12 month period. A New Zealand resident who leaves New Zealand but retains strong links there will remain resident.	Residents: subject to tax on worldwide income. Non-residents: taxed on New Zealand source income. (a) Tax exemptions for short-term visitors working in New Zealand for 183 days or less in any 12 month period (if home country has DTA with NZ). Employer must not be tax resident in NZ or have permanent or fixed establishment there, and must not be able to claim deductions in NZ for cost of salary. For countries with no DTA with NZ, exemptions apply where visit is 92 days or less, income is taxed in home country and services are not performed on behalf of someone resident in NZ. (a) and (b) Experts and students visiting under an agreement with NZ Government also receive special treatment where they: • provide professional or expert advice or assistance; • teach or lecture; • make investigations; or • receive education, training or experience. Exempt from income tax on income payments and/or maintenance, allowances, scholarships or bursaries received in NZ, for personal or professional services carried out in NZ on behalf of overseas employer.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Norway	A temporary stay in Norway will give the individual resident status from date of arrival if he remains for at least 6 months. Once tax resident, an individual retains this status for 4 years after departure from Norway unless away for more than 1 year and tax resident in another country. Due to abuse of the '1 year rule' above, new rules were introduced in June 2002 applying retrospectively from 1 January 2002. (The previous rules may be applied to the income tax year 2002.) The 1 year rule is replaced by a more limited relief from tax on employment income earned abroad which is tax exempt if taxpayer has lived abroad for at least 12 months. For income from public service employment, relief applies if taxpayer has been working abroad for two or more periods of at least 6 months in a 30-month period. Short stays in Norway in a 6 or 12-month period do not result in loss of relief if stays are no longer than 6 days on average. Relief does not apply to income which is taxable only in Norway under the terms of a tax treaty and if the work has been performed mainly outside the territory of the other country.	Residents: taxed on worldwide income. Non-residents: taxed on Norwegian source income. (a) Expatriates expected to reside in Norway for 4 years or less may be allowed a 15 per cent standard deduction from their gross income instead of itemised personal deductions. If expatriates have tax-equalisation package, their income is grossed up to include the amount of the tax reimbursement. This does not apply to income from directors' fees for Norwegian companies.
Poland	Present for more than 183 days in tax year.	Residents: subject to tax on worldwide income. Non-residents: subject to tax on Polish source income. (a) In general, directors' fees paid to residents are treated as employment income, but directors' fees paid to non-residents as well as to foreign residents who come to Poland temporarily to undertake employment in Polish companies with foreign participation in represented offices, are subject to a final withholding tax of 20 per cent (normal rates 21-45 per cent).

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Portugal	Resident if individual: • is present in Portugal for more than 183 days in a calendar year; • occupies a house in Portugal on such terms that it may be presumed it is his intention to occupy it on a permanent basis; • belongs to the crew of a ship or aircraft having its home port in Portugal; or • is a Portuguese national who moves his residence to a listed tax haven, in which case he is considered resident in Portugal in the year of removal and the following 4 years unless he proves that the removal is for a valid reason, such as being seconded by his employer for performing a temporary duty.	Residents: subject to tax on worldwide income. Non-residents: taxable on Portuguese source income.
Slovak Republic	Individuals with permanent address there, those who hold residence permits or are present for more than 183 days in a calendar year (except for cross-border commuters who are treated as non-resident).	Residents: subject to tax on worldwide income. Non-residents: subject to tax on Slovak source income.
Spain	Resident if an individual: • has a permanent presence in Spain for more than 183 days during a calendar year (temporary absences are included as presence in Spain unless he can prove his residence for 183 days in another country for the calendar year); • has his base or the base for his economic or professional activities in Spain; and • unless he can prove to the contrary, the Spanish tax authorities will presume that an individual has his or her residence in Spain when the spouse, not legally separated (and any under-age children) are resident in Spain. A Spanish national who gives up Spanish tax residence is nonetheless considered resident for the next 4 years if the new residence is in a tax haven.	Residents: subject to tax on worldwide income. Non-residents: subject to tax on Spanish source income.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Sweden	Present for more than 6 months in 12-month period. In addition, Swedish nationals and individuals who have been resident in Sweden for at least 10 years are deemed to be residents during the 5 years following their departure, unless they can prove that they have not maintained essential ties with Sweden.	Residents: subject to tax on worldwide income. Non-residents: normally subject to tax on income arising in Sweden but not on most interest and royalties. (a) Tax relief for foreign experts, researchers and other key persons who work in Sweden temporarily. 25 per cent of salary is tax-free along with some benefits (removals expenses, home leave travel, school fees). Tax relief is only for first 3 years in Sweden and intended length of temporary work must not exceed 5 years. Main criterion is that skills are impossible or extremely difficult to recruit in Sweden. An individual who has resided in Sweden at any time during 5 years preceding calendar year in which assignment starts is not eligible for the relief and it may only be granted if remuneration is paid by Swedish company, branch or permanent establishment.
Switzerland	Resident if an individual: • has their place of residence in Switzerland. This is defined as the place where a person dwells with the intention of living permanently and which therefore provides the centre of his personal and economic interest; • remains in Switzerland for more than 30 days and exercises activity of trade, business or employment; or • remains in Switzerland for more than 90 days where not engaged in gainful activity.	Residents: (unlimited tax liability) subject to tax on worldwide income, but not on capital invested or income derived from business, permanent establishments and real estate located abroad. Non-residents: (limited tax liability) subject to tax on Swiss source income. (a) Expatriates may claim certain specific deductions according to cantonal and federal law. Examples are costs for housing, moving, travelling and education.
Turkey	Resident if his domicile is in Turkey or he continuously resides in Turkey for more than 6 months per year.	Residents: (full tax liability) subject to tax on worldwide income. Non-residents: (limited tax liability) subject to tax on Turkish source income. (a) Certain categories of foreigner are not regarded as having full tax liability even though they may be present in Turkey for more than 6 months, e.g. business people, scientists, experts, officials and press members who come to Turkey for a particular and temporary mission. Persons in Turkey who work for non-resident entities and are paid in foreign currency are not taxed on their salaries if the entity pays their salaries out of earnings abroad, the payments are not charged against profits chargeable in Turkey, and the salary is brought into Turkey as foreign currency.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
USA	Nationals/citizens are resident. Non-nationals who have right of residence are resident under the substantial presence test if they are present in US on at least 31 days in a calendar year and the sum of the number of days present during that calendar year, together with the prescribed fraction of the days present in the 2 preceding years equals 183 days or more; or if they hold a green card. Various exceptions to the numerical substantial presence test are available for non-citizens. If an individual's 'tax home' is abroad and he is not in the US for 183 days or more during the current calendar year, he would not meet the substantial presence test.	US citizens and resident aliens: subject to tax on worldwide income. Non-resident aliens: taxed on income effectively connected with a US business and certain other income from US sources.

4 Key Principles

Having described the current rules, this final chapter develops the principles that the Government believes should underpin the review, taking into account the need to ensure a fair tax system, and to adapt to developments in the global market for skilled individuals and entrepreneurs, while ensuring clarity and transparency. It concludes with a list of issues on which the Government would welcome comments, and which it intends to use as a framework for further analysis and debate.

Globalisation and the taxation of income

4.1 Globalisation is creating new challenges for governments in many fields of public policy, and forcing them to modernise aspects of policy and practice that have stood for generations. The tax system is no exception.

4.2 Considerable attention has been paid to the implications of globalisation for the taxation of capital markets, and a number of principles and approaches have been developed at the national and international levels in response; for example through the work of the OECD. The globalisation of capital and labour markets also carries implications for personal taxation systems. A number of labour markets are already internationalised, particularly in occupations requiring skills in very scarce supply. This is especially true in the market for entrepreneurs and senior managers, employment closely linked to international financial markets, and in certain occupations linked to international travel and communication. The globalisation of capital markets is also creating opportunities for high-net-worth individuals, with income from a highly diversified portfolio of international assets, to have highly flexible links between the focus of their economic activity and any concept of citizenship or residence. The implications of these trends for the taxation of the income of individuals have typically received less attention.

4.3 It is clear, therefore, that the arrangements for personal taxation need to be assessed against these developments, including:

- the definition of the relevant tax base, and the nature of the tax liability incurred by economic activity which transcends national boundaries;
- arrangements for determining the taxing rights of individual nation states over income earned by internationally mobile individuals, or those with world-wide income; and
- the approach to defining the obligations of individuals to contribute to the public services in the states in which they are resident.

4.4 These considerations need to be reflected in the rules governing the residence and domicile of individuals, which determine the scope of personal income taxes in the UK. More details of the current rules are set out in Chapter 2 and Annex A. The purpose of this chapter is to consider the principles that should underpin those rules.

4.5 In defining these parameters, and applying them in the UK's tax system, Budget 2002 set out the following principles for any new rules; they:

- should be fair;
- should support the competitiveness of the UK economy; and
- should be clear and easy to operate.

Fairness **4.6** It is generally accepted as fair that those with the same characteristics are taxed in the same way. In the context of residence and domicile, the degree of connection of an individual to a country is an important characteristic, which may vary in intensity and over time. It is also generally accepted as fair that those with a long-term connection owe a special obligation to support the social structures of the state. It is therefore necessary for governments to define the degree of long-term connection which is sufficient to generate this special obligation, and to set criteria for determining when that long-term connection is made, severed or suspended; for example, in cases where people with a long-term connection are temporarily absent.

4.7 At any point in time, a person with a long-term connection to one state may be present, or engage in forms of economic activity, in other states. The tax system therefore needs to establish the conditions under which a presence, or the degree of economic activity, in the country is sufficient to give rise to particular obligations to the tax system.

4.8 The rules need to be applied within this to the taxation of employment income, and of savings income and gains. Their application to savings income is inherently more complex, for example because of the greater mobility of savings, which are more likely to arise across international borders; while the taxation of employment activities will usually be linked to the same geographical location as the person earning the income.

Box 4.1: The Taxation of Savings Income: The "Helsinki Principle" and International Exchange of Information on Tax

At the 1999 Helsinki European Council, the member states of the European Union signed up to the principle that all citizens of EU member states should pay the tax due on all their savings income. This important principle has underpinned the work of the UK government at a European and wider international level, to support initiatives which enhance international cooperation in tax enforcement, and promote the exchange of relevant information. The OECD, through its work on Harmful Tax Competition and related initiatives, is helping to set a new framework for universal adherence to minimum standards of tax cooperation, and to eliminate excessive bank secrecy. This new framework should assist national governments in the enforcement of their own tax laws, and ensure that rules set at the national level governing the tax treatment of saving income can be more effectively enforced on an international basis.

Competitiveness **4.9** The Government is committed to ensuring that the tax system supports the competitiveness of the UK economy. An assessment of the residence and domicile rules therefore also needs to take into account the economic impact of any change, including the impact on the ability of UK employers to attract employees from overseas.

4.10 It is important that public policy plays a part in facilitating the international integration of labour markets and the spread of entrepreneurship. Migration – at all levels – can help match the supply and demand for skills, and provide a more flexible labour market response to economic cycles. Cross-border labour mobility can also help to encourage the spread of knowledge, innovation, and enterprise. The UK economy is well placed to benefit from this global trend, and a range of factors helps to make the UK an attractive place for foreigners to live, and thus create wealth and contribute to a productive and efficient economy. These include the benefits of economic stability, the UK's labour force, the English language, access to EU markets, access to one of the world's largest financial centres, incentives provided by development agencies, our corporation tax regime and tax treaty network. The residence and domicile rules are part of this framework of factors. More details on the Government's

approach to international labour mobility, and a description of recent measures to enhance UK firms' competitiveness in this market, are set out in Box 4.2 below.

4.11 There are a number of economic instruments that can be directed at securing the optimal level of inward migration, and do so in a manner which contributes most to the economy. It is therefore important to establish the principles that should govern the contribution that the tax system can make, and the factors that may limit the extent to which the tax system is an appropriate instrument. Economic incentives operating through the tax system, should:

- minimise the dead-weight cost of supporting those who would work here in the absence of tax incentives;
- take into account the full range of other incentives and instruments, and avoid creating incentives through the tax system if other instruments are more efficient;
- ensure that any differences in tax treatment between locals and visitors, and between long and short-term residents, have a clear economic rationale, and are fair and transparent; and
- take into account the arrangements in place in other countries - to ensure that UK firms are not unreasonably disadvantaged relative to their competitors based in other countries, to ensure a reasonable degree of comparability between British people working abroad and foreigners working in the UK, and to limit the extent to which people either "fall between the gaps" or face double taxation. Information on the arrangements in place in other OECD countries was set out in Chapter 3.

Box 4.2: International Labour Mobility: The Government's Approach

The Government's Pre-Budget Report 2002 argued that migration has a positive effect on growth and productivity, on the public finances and on meeting labour and skills shortages in the public and private sectors. Its effect on growth arises through its direct effect on growth of the working population, and through meeting skill shortages at all levels; and also through spillover effects on the productivity of domestic workers, arising from migration as a source of innovation and entrepreneurship. The Pre-Budget Report also set out a number of new measures to help employers facing skill shortages to access the expertise available in the international labour market; including greater help for small and medium-sized enterprises, and an extension of the Highly Skilled Migrant Programme.

Clarity and enforceability

4.12 Rules should be transparent, non-discriminatory and simple to apply. They should be applied in a consistent manner, and should not impose unnecessary compliance costs. Ideally, they should be based on objective observable characteristics, rather than subjective or uncertain factors. Any differences between the application of the rules to different forms of income need to be clear and objectively justified. The sophistication of international labour and capital markets makes these difficult objectives to achieve. Employers which draw on a range of nationalities for their workforce already face considerable additional burdens in terms of recruitment costs, costs relating to employment law and the work permit system, as well as complications caused by differential training and education systems, and the need to mitigate exchange rate risks and costs of travel and relocation when determining pay rates. The complications inherent in the tax treatment of internationally mobile individuals can be a substantial additional burden, which governments should seek to minimise where possible.

Complex tax arrangements can also create opportunities for tax avoidance and other means of minimising tax bills. There is therefore a strong case, in principle, for having clear and easy to apply rules as this better enables individuals to comply with their obligation to pay the right amount of tax at the right time to the right country.

Summary and conclusions

4.13 In this context the principles which underpin the review are that the rules:

- should be fair;
- should support the competitiveness of the UK economy; and
- should be clear, and easy to operate.

4.14 These principles give rise to a number of questions and issues, which the Government is using as the basis for the review of the residence and domicile rules. The questions that the Government is considering, and would welcome comments from others upon, are whether the current rules:

- successfully identify those with a long-term connection to the UK who have an obligation to help support the UK exchequer on the basis of their world-wide income;
- successfully identify those with a temporary connection to the UK, and ensure an appropriate contribution to the UK exchequer from those individuals;
- provide objective criteria for determining when a long-term or temporary connection is severed, suspended or restored;
- establish an appropriate divide between long-term and temporary connections to the UK;
- play an appropriate role, alongside other policy instruments, in supporting the internationalisation of labour markets, and ensuring the competitiveness of UK firms in the international market for skills, entrepreneurship and expertise;
- ensure that any difference in treatment between UK locals and visitors, and long and short term residents have a clear economic rationale;
- take into account the equivalent arrangements in other countries;
- are transparent, provide clear and unambiguous outcomes, and minimise the compliance burden on individuals and their employers; and
- present minimal opportunities for exploitation or avoidance.

4.15 The Government would also welcome further contributions to enhance the evidence-base for the review, and to add to the information provided in Chapter 2 on the numbers and characteristics of those most affected by the rules. It would in particular welcome comments from those directly affected and their employers.

4.16 The Government will use this paper as background to provide a framework for further analysis and debate and to ensure that any specific options for reform are based on the widest possible understanding of their potential effect.

A MEANING OF 'RESIDENCE', 'ORDINARY RESIDENCE', AND 'DOMICILE' FOR TAX PURPOSES

RESIDENCE AND ORDINARY RESIDENCE

A.1 The terms '**residence**' and '**ordinary residence**' are not defined in the Taxes Acts. The guidelines to their meaning in this section and in the sections below on leaving the UK and coming to the UK are largely based on rulings of the Courts. These paragraphs set out the main factors that are taken into account, but we can only make a decision on your residence status on the facts in your particular case.

A.2 Even if you are resident (or ordinarily resident) in the UK under these rules, the terms of a double taxation agreement with another country might affect your final tax position if, for example, you are resident in both that country and the UK.

Residence

A.3 To be regarded as **resident** in the UK you must normally be physically present in the country at some time in the tax year. You will always be resident if you are here for 183 days or more in the tax year. **There are no exceptions to this**. You count the total number of days you spend in the UK – it does not matter if you come and go several times during the year or if you are here for one stay of 183 days or more. If you are here for less than 183 days, you may still be treated as resident for the year under other tests.

A.4 The normal rule is that days of arrival in, and departure from, the UK are **ignored** in counting the days spent in the UK, in all the various cases where calculations have to be made to determine your residence position. (This rule is not relevant to the concessionary split year treatment, where a person coming to or leaving the UK part way through a tax year is resident from the date of arrival or to the date of departure.)

Ordinary residence

A.5 If you are resident in the UK year after year, you are treated as **ordinarily resident** here. You may be resident but not ordinarily resident in the UK for a tax year if, for example, you normally live outside the UK but are in this country for 183 days or more in the year. Or you may be ordinarily resident but not resident for a tax year if, for example, you usually live in the UK but have gone abroad for a long holiday and do not set foot in the UK during that year.

Residence in both the UK and another country

A.6 It is possible to be resident (or ordinarily resident) in both the UK and some other country (or countries) at the same time. If you are resident (or ordinarily resident) in another country, this does not mean that you cannot also be resident (or ordinarily resident) in the UK. Where, however, you are resident both in the UK and a country with which the UK has a double taxation agreement, there may be special provisions in the agreement for treating you as a resident of only one of the countries for the purposes of the agreement.

Leaving or coming to the UK part way through a tax year

A.7 Strictly, you are taxed as a UK resident for the **whole** of a tax year if you are resident here for any part of it. But if you leave or come to the UK part way through a tax year, the year may, by concession (extra-statutory concession A11), be split. Where this applies, your tax liabilities on income, which are affected by tax residence will be calculated on the basis of the period of your actual residence here during the year. This has the same effect as splitting the tax year into resident and not resident periods.

Split year treatment applies where

- you have been not ordinarily resident in the UK and you come to live here permanently or to stay for at least two years. You are taxed as a resident only from the date of your arrival; or

- you have been resident in the UK* and you leave to live abroad permanently or for a period of at least three years, and on your departure are not ordinarily resident in the UK. You are taxed as a resident only up to and including the date of your departure; or
- you have been resident in the UK* and you leave to take up full-time employment abroad, and you meet certain conditions. You are taxed as a resident only up to and including the date of your departure (and from the date when you return to the UK).

* other than resident only as a short term visitor.

For certain types of income of a non-resident the UK tax charged is limited to any tax deducted before payment. This only applies, however, to complete years of non-residence. Where the tax year is split, the limitation does not apply to the part of the year for which you are treated as though you were not resident.

A.8 Split year treatment does not apply if you come to the UK as a short term visitor, or if you come for only limited periods with no intention to live here permanently or to stay for at least two years.

LEAVING THE UK

Short absences

A.9 You are **resident and ordinarily resident** in the UK if you usually live in this country and only go abroad for short periods - for example, on holiday or on business trips.

Working abroad

If you leave the UK to work full-time abroad under a contract of employment, you are treated as not resident and not ordinarily resident if you meet all the following conditions;

- your absence from the UK and your employment abroad both last for at least a whole tax year;
- during your absence any visits you make to the UK
  - total less than 183 days in any tax year; and
  - average less than 91 days a tax year. (The average is taken over the period of absence up to a maximum of four years. Any days spent in the UK because of exceptional circumstances beyond your control, for example the illness of yourself or a member of your immediate family, are not normally counted for this purpose.)

A.10 If you meet all the conditions in paragraph A.9, you are treated as not resident and not ordinarily resident in the UK from the day after you leave the UK to the day before you return to the UK at the end of your employment abroad. You are treated as coming to the UK permanently on the day you return from your employment abroad and as resident and ordinarily resident from that date.

A.11 If there were a break in full-time employment, or some other change in your circumstances during the period you were overseas, we would have to review the position to decide whether you still meet the conditions in paragraph A.9. If at the end of one employment you returned temporarily to the UK, planning to go abroad again after a very short stay in this country, we may review your residence status in the light of all the circumstances of your employment abroad and your return to the UK.

A.12 If you do not meet all the conditions in paragraph A.9, you remain resident and ordinarily resident unless paragraph A.17 applies to you. Special rules apply to employees of the European Community.

A.13 The treatment in paragraph A.10 will also apply if you leave the UK to work full-time in a trade, profession or vocation and you meet conditions similar to those in paragraph A.9.

Meaning of 'full-time'

A.14 There is no precise definition of when employment overseas is 'full-time', and a decision in a particular case will depend on all the facts. Where your employment involves a standard pattern of hours, we will regard it as full time if the hours you work each week clearly compare with those in a typical UK working week. If your job has no formal structure or no fixed number of working days, we will look at the nature of the job, local conditions and practices in the particular occupation to decide if the job is full-time.

A.15 If you have several part-time jobs overseas at the same time, we may be able to treat this as full-time employment. That might be so if, for example, you have several appointments with the same employer or group of companies, and perhaps also where you have simultaneous employment and self-employment overseas. But if you have a main employment abroad and some unconnected occupation in the UK at the same time, we will consider whether the extent of the UK activities was consistent with the overseas employment being full-time.

Accompanying spouse

A.16 If you are the husband or wife of someone who leaves the UK within the terms of paragraph A.9 or A.13 and you accompany or later join your spouse abroad, you may also by concession (extra-statutory concession A78) be treated as not resident and not ordinarily resident from the day after your departure to the day before your return, even if you are not yourself in full-time employment abroad. This applies where:

- you are abroad for a complete tax year; and
- during your absence any visits you make to the UK;
  - total less than 183 days in the tax year; and
  - average less than 91 days a tax year. (The average is taken over the period of absence up to a maximum of four years. Any days spent in the UK because of exceptional circumstances beyond your control, for example the illness of yourself or a member of your immediate family, are not normally counted for this purpose.)

Where the tax years of your departure or return are split in this way, your tax liabilities which are affected by residence status are calculated on the basis of the period you are treated as resident in the UK.

Leaving the UK permanently or indefinitely

A.17 If you go abroad permanently, you will be treated as remaining resident and ordinarily resident if your visits to the UK average 91 days or more a year. Any days spent in the UK because of exceptional circumstances beyond your control, for example the illness of yourself or your immediate family, are not normally counted for the purposes of averaging your visits.

If you claim that you are no longer resident and ordinarily resident, we may ask you to give some evidence that you have left the UK permanently, or have lived outside the UK for three years or more. This evidence might be, for example, that you have taken steps to acquire accommodation abroad to live in as a permanent home, and if you continue to have property in the UK for your use, the reason is consistent with your stated aim of living abroad

permanently or for three years or more. If you have left the UK permanently or for at least three years, you will be treated as not resident and not ordinarily resident from the day after the date of your departure providing:

- your absence from the UK has covered at least a whole tax year;
- your visits to the UK since leaving have totalled less than 183 days in any tax year; and
- have averaged less than 91 days a tax year. (The average is taken over the period of absence up to a maximum of four years. Any days spent in the UK because of exceptional circumstances beyond your control, for example the illness of yourself or a member of your immediate family, are not normally counted for this purpose.)

If you do not have this evidence, but you have gone abroad for a settled purpose (this would include a fixed object or intention in which you are going to be engaged for an extended period of time), you will be treated as not resident and not ordinarily resident from the day after the date of your departure providing:

- your absence from the UK has covered at least a whole tax year;
- your visits to the UK since leaving have totalled less than 183 days in any tax year; and
- have averaged less than 91 days a tax year.

If you have not gone abroad for a settled purpose, you will be treated as remaining resident and ordinarily resident in the UK, but your status can be reviewed if

- your absence actually covers three years from your departure, or
- evidence becomes available to show that you have left the UK permanently providing in either case your visits to the UK since leaving have totalled less than 183 days in any tax year and have averaged less than 91 days a tax year.

Calculating annual average visits

A.18 If it is necessary to calculate your annual average visits to the UK, the method is as follows:

$$\frac{\text{Total visits to the UK (in days)}}{\text{Total period since leaving (in days)}} \times 365 = \text{annual average visits}$$

A.19 For this purpose, days spent in the UK in the tax year before the date of your original departure are excluded.

Suppose, for example, you leave the UK on 5 October 1997. The first review of the average of your visits is made after 5 April 1999, and takes account of your visits between those two dates. If you visited the UK for 30 days between 6 October 1997 and 5 April 1998 and for 50 days in 1998-99, the annual average is:

$$\frac{30 + 50}{182 + 365} \times 365 = \frac{80}{547} \times 365 = 53.88 \text{ days}$$

If you continue to remain outside the UK, the annual average is calculated as follows in reviews after 5 April in subsequent years:

- after 5 April 2000 - include visits from 5 October 1997 to 5 April 2000
- after 5 April 2001 - include visits from 5 October 1997 to 5 April 2001
- after 5 April 2002 - include visits from 6 April 1998 to 5 April 2002.

A.20 After the third review the year of departure is dropped from the calculation. At each subsequent review the oldest year is dropped, so that there is a rolling period of four years being reviewed.

A.21 However, if during your absence the pattern of your visits varied substantially year by year, it might be appropriate to look at the absence as being made up of separate periods for the purpose of calculating average visits. This might be necessary if, for example, a shift in the pattern of your visits suggested a change of circumstances, which altered how we viewed your residence status.

Contacting the Inland Revenue

A.22 You should let us know when you leave the UK (other than for short trips as in paragraph A.9). You will normally be asked to complete form P85, which will help to determine your residence status.

Special classes of employees

A.23 Special rules apply to some employees working abroad. If one of the classes shown below applies to you, write to the Inland Revenue office shown. Please give your National Insurance number and details of your employment abroad. We will advise you of your tax position.

- Crown employees (e.g. civil servants, diplomats, members of the armed forces, etc.):–
  HM Inspector of Taxes, Cardiff 4 (Foreign Section)
- European Union (EU) employees:–
  Centre for Non-residents, Bootle
- Employees working in oil and gas exploration and extraction industries (where the employer is not resident in the UK):–
  Foreign Compliance, Compliance Centre 1
- Merchant Navy seafarers:–
  HM Inspector of Taxes, Cardiff 1

COMING TO THE UK

Coming to the UK permanently or indefinitely

A.24 You are treated as **resident and ordinarily resident** from the date you arrive if your home has been abroad and you intend:

- to come to the UK to live here **permanently**; or
- to come and remain here for **three years or more**.

You 'remain' in the UK if you are here on a continuing basis and any departures are for holidays or short business trips. (The same applies for the other references in this Chapter to 'remaining' in the UK.)

Visitors to the UK

A.25 If you come to the UK other than to live here permanently as in paragraph A.24, the guidelines in the rest of this Chapter will govern your residence and ordinary residence position in the UK.

The Chapter deals in turn with two main groups coming to this country:

- **short term visitors** – where you visit the UK for only limited periods in one or more tax years, without any intention to remain for an extended period; and

- **longer term visitors** – where you come to the UK intending to remain indefinitely or for an extended period, perhaps stretching over several tax years.

At first you may fall within one of these categories and later move to the other, depending on your precise circumstances.

Short term visitors

Residence **A.26** You will be treated as **resident** for a tax year if:

- you are in the UK for 183 days or more in the tax year; or

- you visit the UK regularly and after four tax years your visits during those years average 91 days or more a tax year. You are treated as resident from the fifth year. However:

  - any days spent in the UK for exceptional circumstances beyond your control, for example the illness of yourself or a member of your immediate family, are not counted for this purpose;
  - you are treated as resident from 6 April of the first year, if it is clear when you first come to the UK that you **intend** making such visits and you actually carry out your intention; and
  - you are treated as resident from 6 April of the tax year in which you **decide** that you will make such visits, where this decision is made before the start of the fifth tax year and you actually carry out your decision.

For example:

- you come to the UK with no definite intentions, but your visits during the tax years 1999–2000 to 2002–2003 average at least 91 days a tax year; you are resident from 6 April 2003; or

- you first come to the UK during 1999-2000, intending that between then and 5 April 2003 your visits will average at least 91 days a tax year; you are resident from 6 April 1999, provided that your visits in fact reach that level, you first come to the UK during 1999-2000 with no definite intentions and you spend, say, 60 days here; you come again during 2000-2001 and decide you will come regularly in future years and your visits will average at least 91 days a tax year; you are resident from 6 April 2000, provided that your visits in fact reach that level.

Ordinary residence **A.27** You will be treated as **ordinarily resident** if you come to the UK regularly and your visits average 91 days or more a tax year. Any days spent in the UK for exceptional circumstances beyond your control, for example the illness of yourself or a member of your immediate family, are not normally counted for this purpose.

A.28 The date from which you are treated as ordinarily resident depends upon your intentions and whether you actually carry them out. You will be ordinarily resident:

- from 6 April of the tax year of your first arrival, if it is clear when you first come here that you **intend** visiting the UK regularly for at least four tax years; or
- from 6 April of the fifth tax year after you have visited the UK over four years, if you originally came with no definite plans about the number of years you will visit from 6 April of the tax year in which you decide you will be visiting the UK regularly, if that decision is made before the start of the fifth tax year.

For example:

- you first come to the UK during 1999-2000, you intend visiting regularly until at least 5 April 2003 and your visits will average at least 91 days a tax year. You are ordinarily resident from 6 April 1999; or
- you come to the UK with no definite intentions, but you visit regularly during the tax years 1999-2000 to 2002-2003 and your visits average at least 91 days a tax year. You are ordinarily resident from 6 April 2003; you first come to the UK during 1999-2000 with no definite intentions; you come again in 2000-2001 and 2001-2002; during 2001-2002 you decide you will come regularly in future years, and your visits will average at least 91 days a tax year. You are ordinarily resident from 6 April 2001.

Calculating annual average visits

A.29 Where it is necessary to calculate your annual average visits, the method is as follows:

$$\frac{\text{Total visits to the UK (in days)}}{\text{Relevant tax years (in days)}} \times 365 = \text{annual average visits}$$

For example, suppose you visited the UK for 80 days in 1995-96, 100 days in 1996-97, 85 days in 1997-98 and 105 days in 1998-99. The annual average is

$$\frac{80+100+85+105}{366+365+365+365} \times 365 = \frac{370}{1461} \times 365 = 92.44 \text{ days}$$

Longer term visitors

Residence

A.30 You are treated as **resident** in the UK from the day you arrive to the day you leave if you come to the UK for a purpose (for example, employment) that will mean you remain here for at least **two years**. The same treatment will apply if you own or lease accommodation in the UK in the year you arrive here.

In all other cases you will be treated as resident for the tax year if:

- you spend 183 days or more in the UK in the tax year, or you own or lease accommodation in the UK.

Ordinary residence

A.31 You will be treated as **ordinarily resident** in the UK from the date you arrive, whether to work here or not, if it is clear that you intend to stay for at least three years.

A.32 If you come to the UK **as a student** for an extended period of study or education, see paragraph A.35.

You will be treated as ordinarily resident from the beginning of the tax year after the third anniversary of your arrival if you come to, and remain in, the UK, but you:

- do not originally intend to stay for at least three years; and
- do not buy accommodation or acquire it on a lease of three years or more.

A.33 For example, if you arrive in the UK on 21 November 1999 and are still living in the UK on 6 April 2003, you are ordinarily resident from 6 April 2003.

If, after you have come to the UK, you **decide** to stay for at least **three years** from the date of your original arrival, you will be treated as ordinarily resident from:

- the day you arrive if your decision is made in the tax year of arrival; or
- the beginning of the tax year in which you make your decision when this is after the year of arrival.

For example:

- you arrive in the UK on 4 January 2000 and decide on 16 May 2000 to stay permanently. You are ordinarily resident from 6 April 2000; or
- you come to the UK to work on 14 July 1999 on a 2 year contract of employment, but in December 2001 your assignment is changed and your contract is extended until after July 2002*. You are ordinarily resident from 6 April 2001.

* If there is a change in the circumstances of your assignment, but no formal change to the terms of a contract, whether you are treated as ordinarily resident - and from what date - will depend on the precise facts.

If you come to, and remain in, the UK, you will be treated as ordinarily resident

- from the day you arrive, if:
  - you already own accommodation here;
  - you buy accommodation during the tax year of arrival; or
  - you have or acquire accommodation on a lease of three years or more during the tax year of arrival; or
  - from 6 April of the tax year in which such accommodation becomes available, when this occurs after the year of arrival.

A.34 If you are treated as ordinarily resident solely because you have accommodation here and you dispose of the accommodation and leave the UK within three years of your arrival, you may be treated as not ordinarily resident for the duration of your stay if this is to your advantage.

A.35 If you are a **student** who comes to the UK for a period of study or education and you will be here for less than **four years**, you will be treated as not ordinarily resident, providing:

- you do not own or buy accommodation here, or acquire it on a lease of three years or more; and
- on leaving the UK you do not plan to return regularly for visits which average 91 days or more a tax year.

Contacting the Inland Revenue

A.36 You should let us know when you come to the UK. You will normally be asked to complete form P86, which will help to determine your residence status.

DOMICILE

A.37 Domicile is a general law concept. It is not possible to list all the factors that affect your domicile, but some of the main points are explained in this annex.

A.38 Broadly speaking, you are domiciled in the country where you have your permanent home. Domicile is distinct from nationality or residence. You can only have one domicile at any given time.

Domicile of origin

A.39 You normally acquire a **domicile of origin** from your father when you are born. It need not be the country in which you are born. For example, if you are born in France while your father is working there, but his permanent home is in the UK, your domicile of origin is in the UK.

Domicile of dependency

A.40 Until you have the legal capacity to change it, your domicile will follow that of the person on whom you are legally dependent. If the domicile of that person changes, you automatically acquire the same domicile (a **domicile of dependency**), in place of your domicile of origin.

Domicile of choice

A.41 You have the legal capacity to acquire a new domicile (a **domicile of choice**) when you reach age 16. To do so, you must broadly leave your current country of domicile and settle in another country. You need to provide strong evidence that you intend to live there permanently or indefinitely. Living in another country for a long time, although an important factor, is not enough in itself to prove you have acquired a new domicile.

Married women

A.42 Before 1974, when you married you automatically acquired your husband's domicile. After marriage this domicile would change at the same time as your husband's domicile changed. If your marriage ended, you kept your husband's domicile until such time as you legally acquired a new domicile.

A.43 This rule is modified by the terms of the double taxation agreement between the UK and the USA. A marriage before 1974 between a woman who is a US national and a man domiciled within the UK is deemed to have taken place on 1 January 1974 for the purpose of determining her domicile on or after 6 April 1976 for UK tax purposes.

A.44 From 1 January 1974 your domicile is not necessarily the same as your husband's domicile. It is decided by the same factors as for any other individual who is able to have an independent domicile. If, however, you were married before 1974 and had acquired your husband's domicile, you retain this after 1 January 1974 until such time as you legally acquire a new domicile.

Overseas electors

A.45 From 6 April 1996 registering and voting as an overseas elector is not normally taken into account as one of the factors for determining whether you are domiciled in the UK, for the purpose of establishing your tax liability here.