

## **Guide to Residency in St Helena**

### **Guide No.1 in the Tax Guide Series**

#### **About This Guide**

This Guide has been prepared to help you understand how to determine whether you are a resident or a non resident of St Helena for income tax purposes. If you still have some questions after reading this guide, please call into the Income Tax Office.

#### **1. Why is residency important for income tax?**

St Helena will charged income tax only on income earned in St Helena, whether it is earned by a resident or non resident. However, there are three areas where income tax for a resident will be calculated differently from how it will be for a non resident of St Helena.

The first area is in relation to the calculation of the amount of Personal Allowance (tax free income).

Non residents will not be entitled to any personal allowance but persons who arrive part way through the year may qualify as a resident from the date of arrival and will then be allowed a partial allowance.

The second area of difference is in relation to the crew on the RMS St Helena. A crew member who is a resident of St Helena will be liable to income tax on their income derived from the ship whereas a crew member who is not a resident will not have to pay income tax in St Helena.

#### **2. If I am treated as a resident for Income Tax, will I also be treated as a resident for immigration?**

No.

All the laws of St Helena serve a different purpose and the application of any one Ordinance does not necessarily mean that there will be a similar outcome under a different Ordinance. It is necessary to consider each law separately as a person who is a resident for income tax may not necessarily be a resident for immigration purposes.

#### **3. How is residency determined for an individual?**

There are three tests for determining the residency of a person under the Income Tax Ordinance. A person will qualify as a resident if any one of the tests is met. Test (i) is a subjective test that considers a person's place of abode. This may often be difficult to determine and will always be based on each person's individual circumstances.

Tests (ii) and (iii) are objective tests and consider the period of time a person was physically present in St Helena. These two tests are relatively simple to apply.

A person's status as either a resident or non resident is always determined by an analysis of the relevant facts. This is particularly so when making a subjective determination of a person's place of abode and often the decision can only be made with the benefit of hindsight. Even though a person may have a certain intention, that intention must be supported by actions.

#### **4. Test (i) – normal place of abode.**

A person will be a resident of St Helena if their normal place of abode is in St. Helena and they were physically present in St Helena for at least 90 days of the tax year. The 90 days do not need to be consecutive days.

This test relies principally on the meaning of a place of abode; a term that is not defined in the Income Tax Ordinance but considered on many occasions by United Kingdom Courts. The most widely accepted meaning of a place of abode comes from a judgement by Chief Justice, Lord Campbell who said that... "a man's residence, where he lives with his family and sleeps at night, is always his place of abode."

In essence, a person's "place of abode" is their dwelling or physical surroundings in which they normally live and reside. From the comments made by Chief Justice Lord Denning, it is apparent that place of abode does not have to be permanent (in an everlasting sense) but can change from time to time depending on a person's circumstances. However, to meet the meaning of a normal place of abode, it must have some degree of permanency, rather than just being of a transient nature.

#### **5. What happens when a person normally resides in St Helena but is absent for a period of time?**

A person's place of abode can change due to personal circumstances. The longer a person stays away from St Helena, the more likely it is that they will have acquired a normal (and new) place of abode in some other country. A person's intention regarding the duration of an overseas stay and the length of the actual stay are relevant factors in determining whether St Helena is still the normal place of abode or whether there is now another normal place of abode.

Where a person leaves St Helena for an unspecified or a substantial period and establishes a home in another country, that home will represent a normal place of abode outside St Helena. As a broad rule of thumb, a period of about 2 years or more would generally be regarded as a substantial period for the purposes of a person's stay in another country. It would be reasonable to accept that there is no longer a place of normal abode in St Helena.

However, it must be stressed that the duration of a person's actual or intended stay out of St Helena is not, in itself, conclusive. Where a person with a usual place of abode in St Helena has no fixed or habitual place of abode overseas but moves from one country to another or moves constantly within the same country (for example, from town to town or even from village to village) it is likely that St Helena would remain the normal place of abode as any association with a particular place overseas is

purely temporary. On the other hand, a person may be considered to have acquired a new normal place of abode in an overseas country where he or she establishes a home in that country even if he or she moves to another home in the same country.

Generally speaking, a person who leaves St Helena but with an intention of returning at the end of a transitory stay overseas would be regarded as maintaining St Helena as a normal place of abode and would remain a resident provided they are physically present for 3 months every tax year.

## **6. What happens when a person does not normally reside in St Helena but arrives with the intention of staying indefinitely?**

The place of abode test applies equally to a person who arrives in St Helena, as it does to someone who leaves St Helena to reside elsewhere.

The first important indicator on arrival is the intention of the person in terms of duration of stay. If there is an intention to stay indefinitely in St Helena and this intention is supported by the steps taken to implement that intention, it is likely that the person will be regarded as a resident if the 90 day requirement is satisfied. Indicators of taking steps to establish a place of abode include:

- (i) Shipping personal effects, household furniture or a motor vehicle to St Helena;
- (ii) Taking a lease on a residential rental property;
- (iii) Placing children in school;
- (iv) Joining clubs or societies.

A person who arrives in St Helena with no firm intention and stays in self catering or guesthouse accommodation would most likely be regarded as a non resident under test (i) as no place of abode has been established.

## **7. Test (ii) - physical presence in St. Helena for a total period/s exceeding 183 days in the tax year.**

Test (ii) operates independently of any other residency test and a person will be a resident in St Helena if physically present for more than 183 days (in total) during a tax year. This is an objective determination and no judgment or personal circumstances are considered. A person is either physically present in St. Helena for 183 days, in which case they are a resident or they are not present for 183 days, in which case they are not a resident under test (ii).

The 183 days will include the day of arrival and the day of departure but will not include any travelling time on board the RMS St Helena.

It should be noted that residency under test (ii) is an annual test and if this test is relied upon, a person would need to satisfy the 183 day qualifying period every year. If the test is met, residency will start from the date of arrival (see paragraph 11). If the test is not met, the person is not resident.

**8. If a person is in St Helena for more than 183 days but over two different tax years, will they be regarded as a resident?**

No.

This test for residency is an annual test and the 183 day requirement must be satisfied for every tax year.

**9. Test (iii) - present in St Helena under a contract of employment that has a term greater than 183 days.**

Test (iii) also applies independently of any other residency test and applies to employees who enter St Helena under a contract of employment. If the contract of employment is for a period of greater than 183 days, the person will be a resident.

The relevance of including this employment related test is that a person who fails test (ii) because they are not present in St Helena for 183 days in a tax year would still be a resident if they entered on an employment contract and the contract had a duration longer than 183 days.

**10. Can I be a resident for part of a tax year?**

Yes.

Any person who satisfies any one of the three residency tests described in paragraphs 4 to 9, will be regarded as a resident for that part of the tax year during which they were physically present.

**11. Arrival during the tax year.**

As noted in paragraph 10, a person who arrives in St Helena will be regarded as a resident for part of the tax year if they satisfy any of (i) to (iii). If the person was not a resident in the immediately preceding year, their residency will commence on the day of arrival. If they were a resident in the preceding tax year, they will be a resident for the full tax year.

For example, Paul arrives in St Helena on 15th January 2011 to take up a two year employment contract. As he had not been a resident of St Helena in the previous year, he will be regarded a resident under test (iii) from the date of arrival.

If Paul had been a resident of St Helena during the year ended 31st March 2011, he will be regarded as having maintained his residency and will be a resident for the full tax year ended 31st March 2012.

**12. Departure during the year.**

The determination of part year residency applies equally to a person who leaves St Helena.

Apportionment of residency to the date of departure from St Helena applies where a person has satisfied one of the residency tests but is leaving St Helena and will not be a resident in the next tax year. Thus, a person with no intention of returning would cease to be a resident on departure.

However, a person who is temporarily away and does intend to return to St Helena in the next tax year will be regarded as having maintained residency during the absence.

As all decisions on residency are based on an individual person's facts and circumstances, it is difficult, if not impossible to make an advance decision on whether a person will be a resident in the next tax year. In practice, the majority of people who leave St Helena will be regarded as ceasing their residency from the date of departure unless the departure is primarily a holiday and there is very good reason to accept that they will be returning after a holiday period abroad.

For example, Brian worked in St Helena for two years and left on 28th October 2011 to go to the United Kingdom. As Brian had no plans to return to St Helena, he will only be regarded as a resident up to his date of departure.

If Brian had a place of normal abode in St Helena and left to take up a one year contract in Ascension, it is possible that he could be a resident in the year ended 31st March 2011. If that were the case, his residency in St Helena would not cease at the date of departure.

However, the decision on residency in a future tax year cannot be made until after the end of the year when all the actual facts are available. In practice, Brian's residency would cease at the date of departure and would be reviewed after his eventual return to St Helena.

### **13. How is residency determined for a company?**

Residency for a company is determined by reference to two tests. Test (i) refers to the place of incorporation and test (ii) refers to the place of control and management.

#### **14. Test (i) – Place of incorporation.**

A company will be resident in St Helena if it is incorporated under the Companies Ordinance of 2004. This Ordinance also requires all foreign companies operating in St Helena to register but registration under the Ordinance does not mean it is a resident for income tax purposes. A foreign company registered under the Ordinance will need to either satisfy test (ii) of residency or meet the requirements for a permanent establishment. If not, it will be taxed as a non resident.

#### **15. Test (ii) – control and management of the affairs.**

A company will be a resident if it is incorporated outside St Helena but the control and management of its affairs is carried out in St Helena.

Control and management decisions are those that direct a company's business activities. This often involves high level decision making processes, such as general policies, strategic directions, major agreements and significant financial matters. It also includes activities such as the monitoring of the company's overall corporate performance and the review of strategic recommendations made in the light of the company's performance.

Determining management and control involves a focus on the who, when and where the strategic decision making takes place rather than focus on the day to day operational decision making.

A company that trades exclusively in St Helena would generally have its management and control in St Helena. This is because the decision making exercised by directors would probably be carried out by people who reside in St Helena. However, it is question of fact as to whether decisions are made in St Helena or elsewhere and if all the directors reside outside St Helena, it may be that the control and management is not exercised in St Helena.

If a company is incorporated outside St Helena and carries on a business activity in St Helena through a branch office, it is likely that it would not satisfy the control and management test. Commonly, branches carry on the day to day business activities but report to head office for all strategic and budgetary matters. If so, control and management would be located in the head office and the company would not be a resident.

## **16. What is a permanent establishment of a non resident?**

A permanent establishment primarily refers to a fixed place through which a non resident person carries on business. Common examples of a permanent establishment include:

- (i) a place of management, branch, office, factory, warehouse, workshop or building;
- (ii) a building or construction site, or supervisory activities connected with such site or project;
- (iii) providing services by any person through employees.

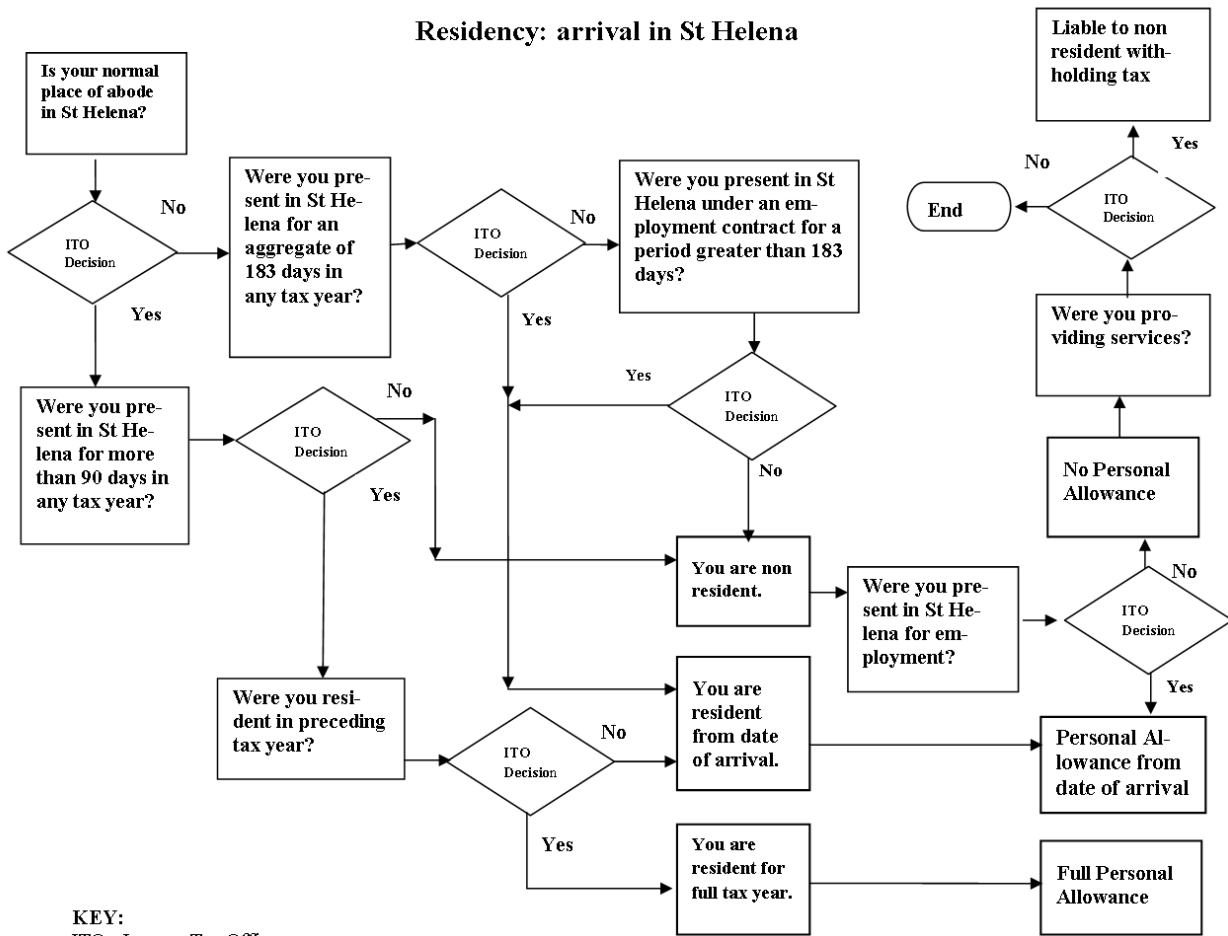
## **17. How is the tax liability of a permanent establishment calculated?**

Permanent establishments are taxed on the basis that they are residents of St Helena. Business profits will be included in an annual income tax return.

## **18. Residency flowcharts.**

The flowcharts below demonstrate the effect on a person in the year of arrival or departure.

## Residency: arrival in St Helena





## Residency: Departure from St Helena

