AABA

The Association for
Accountancy
and Business Affairs

Response to the Treasury paper

"Reviewing the Residence and Domicile Rules as they Effect the Taxation of Individuals: A Background Paper"

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Background

The Association for Accountancy and Business Affairs exists to:

(i) review the trading, accounting and other activities of commercial and non commercial entities;

(ii) review the activities of professional bodies, regulatory bodies, employer organisations, employee organisations, government departments and business organisations especially as they relate to accountancy and business matters

(iii) campaign for such reforms as will help to secure greater openness and democracy, to protect and further the rights of stakeholders and to make appropriate disclosures to enhance these objectives where necessary;

(iv) engage in education and research to further public awareness of the workings of and the social, political and the economic role of accountancy and business organisations.

As part of this work AABA has been a significant commentator on taxation issues for a number of years, in which role its work has attracted much public attention. This is particularly true with regard to its campaigning role for the reform of tax havens and related taxation in the UK and other territories.

The commentary offered here is set against that background.

Principal author

The principal author of this work is Richard Murphy, a UK chartered accountant who trained as an auditor and in taxation with KPMG London. He has since been senior partner of a UK firm of chartered accountants for more than 15 years and has been the chairman, chief executive or CFO of nine SMEs. He has wide experience of UK and international tax. He writes for the Observer and other newspapers and journals.

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Background

HM Treasury is undertaking a review of the residence and domicile rules affecting the taxation of individuals. It published a paper as part of that review in April 2003. This paper is a response to that publication and takes the opportunity to comment upon some other submissions already made, including those by the Chartered Institute of Taxation (CIOT), the Institute of Chartered Accountants in England and Wales (ICAEW) and the Institute of Chartered Accountants in Scotland (ICAS).

This paper notes that the Treasury is seeking informed debate and suggests that any modernization should be based on the assumption that the rules should be:

- fair
- support the competitiveness of the UK
- clear and easy to operate.

This paper supports those objectives.

Summary

This paper suggests that the current UK rules on residence and domicile as applied to individuals are anachronistic and inherently unfair both domestically and internationally and must as a result be fundamentally reformed.

The particular basis for this suggestion is that the rule of domicile was never developed for use as a fiscal concept but was intended as a means of excluding colonial citizens of the British Empire from obtaining the full benefits of the law of the UK. As such the concept was, and remains, inherently racist and is therefore inappropriate for use by a modern state. Because of its racist nature, and the increasing wealth and influence within the UK economy of relatively recent immigrant communities, the rule is now open to widespread abuse. This is because it provides one section of the population, by accident of their birth, with substantial benefit over other members of the same society to which they belong. It is vital that this problem be tackled before it becomes a source of major social friction. This factor overrides all international dimensions of this matter.

This paper suggests that a quantitative analysis of the issues under discussion is unlikely to be achievable and as such redevelopment of the tax base from first principles, taking into consideration the point on domicile made above is required.

On the basis of this analysis it is clearly possible to conclude that none of the current rules of taxation on which the Treasury makes specific enquiry are satisfactory at this time.

Accordingly new rules are required. The paper suggests a set of such rules, although the Treasury has not sought such suggestion at this time. The suggested rules are

based on dual concepts of residence and physical presence in the UK. It is proposed that all UK citizens should be subject to UK tax on their world wide income and capital transactions unless they can demonstrate why this is inappropriate. This could either be by reason of permanent absence established by reason of ceasing to have UK citizenship or by being absent for at least 15 tax years, as defined by these rules. It is also proposed that temporary absence in another state which agrees to tax the individual on their actual income and world wide capital transactions at rates at least equivalent to 50% of those chargeable in the UK will also be grounds for avoiding a UK tax liability.

With regard to those coming to the UK the unfair and ambiguous rule of ordinary residence be abolished and be replaced by one rule based on residence. Rather than base this on fiscal years this is suggested to be established by 120 days presence in the UK at midnight in any 365 day period. For many this will be a more generous rule than the current laws with regard to ordinary residence.

The rule changes proposed in this paper:

1. provide a fair compromise between the current ambiguities of the ordinary residence and residence rules

2. are fair in removing anomalies between tax years and base decision making purely on facts

3. are fair in allowing extensive visits to the UK before residence is established

4. are fair in requiring physical presence rather than property ties before residence is established, it being presumed that corporate and property taxes provide fair contribution to the UK economy in the case of the ownership of such property by non residents

5. are fair in providing certainty as to means of ceasing to be UK resident and to therefore ceasing to be subject to UK tax

6. are fair in providing certainty as to when the full rule of UK tax laws applies, including with regard to Inheritance Tax

7. are clear and easy to operate because of their simplicity compared to current rules.

8. are comparable in effect with the rules of many of the states referred to in the HM Treasury document.

Approach

The Treasury publication, despite calling for an informed debate, does in fact concentrate on an analysis of the current rules for taxation of those people who are not, or have not been, or will not be permanently resident in the UK and who do, for a wide variety of reasons consider another country their natural home. It only

considers the key principles on which any change must rest in just 4 pages of the 36-page publication. We consider this to be unfortunate. Unlike the CIOT, who say in their submission "the (Treasury) paper is long on general principles but short on specific ideas and proposals" and who go on to say "this leads us to ask whether there are real problems, or whether the present review is driven by political considerations" we think the paper is short on consideration of key principles and overly long on consideration of detail. As a consequence, the political aspects of the matters to be considered have not been adequately developed and the response of the professional institutes referred to has been at the level of detail, and largely irrelevant to any meaningful debate. This paper is, in part, an attempt to redress that balance.

The approach this paper adopts is:

1. to consider the background to the issues that are to be considered

2. to place those issues within their political and social context

3. to consider what fairness and competitiveness mean within this context

4. to determine what a fair basis of taxation might be and to suggest rules that will, in our opinion, fulfil the stated objectives of the Treasury

Unlike most commentators on this matter we do not in this paper spend time discussing the extent of the fiscal cost of any change to the rules under discussion. This is not to suggest we are indifferent to such consequence. We straightforwardly hope that the rule changes we propose in this paper are fiscally beneficial to the UK. But we note that the Treasury has over a long period suggested that it is not possible to categorically identify the fiscal benefit or cost of any rule change, and we note that whilst other commentators suggest that such analysis must be undertaken before any rule change is considered, we also note that they have no suggestions to make as to the basis on which this might be done. Given the expertise that we would expect them to have available we think this fairly sure indication that they also agree that it is not possible and as such are making this suggestion as a means of blocking any serious change. Accordingly we think that any argument on this basis is fruitless and accordingly adopt other approaches which we consider to be more appropriate.

Historical and political background

As HM Treasury note, the current rules on tax residence have developed over a period of 200 years. This is not true of the fiscal concept of domicile, which did not appear until the 1850s. The ICAS suggests, in their submission, that this longevity alone is reason for not changing the current rules. We would argue to the contrary, but would suggest that an informed view is required before conclusions are drawn.

We note in this respect that the ICAEW appears not to have adequately informed itself. For example, it says in its submission that "the policy purpose behind (the existing rule of domicile) was, we believe, that it was felt unfair to tax foreign visitors on income arisen (sic) in their home country that they left there so that it did not

affect their standard of living in the UK". As is shown below, this is quite straightforwardly wrong. There was no policy basis to the fiscal law of domicile now found in UK law.

Although of fiscal consequence after the concept of residence was created, it is the concept of domicile that is key to the UK's peculiar position on the taxation of persons temporarily resident or non resident in the UK. As such it is this concept which must be the focus of any review of the background to these rules, with the actual issue of residence itself being secondary. We note that all commentators seem to agree that a split approach is needed.

It is important to note that the concept of domicile was not originally, and is still not exclusively, a tax concept. It is a legal concept that predates the modern state. It was used to identify what was, in effect, the tribe to which one belonged, irrespective of the territory in which one lived. This was because, before the development of the modern territorial state and its associated jurisprudence, it was generally considered that one was subject to tribal, not territorial law. In essence that concept remains inherent within current domicile laws that do not recognise either nationality or territorial residence as the basis on which domicile is determined. This is unsurprising: the notion that a geographic territory can be identified with a nation is only to be widely found from the Middle Ages onwards, and the wanderings of the Jews as a national group without territorial rights provide an early example of the independence of the tribe from any territory. The original concept of domicile dates from this era, whilst the notion of nationality is decidedly modern; for example, such concepts as passports as identifiers of citizenship date only from the time of the First World War.

It was the "tribal" aspect of the ancient concept of domicile that made it attractive to those administering the British Empire in the nineteenth century and which gave rise to its revival as a legal concept. It is also in that era that its taxation use is first found, its first use being noted in legal taxation opinion in about 1850 with regard to capital taxation. Surprisingly, it does not appear to have been referred to in legislation until 1914.

To understand this it must be remembered that the Empire was British. But whilst a quarter of the world might have been pink the British were not too keen on saying everyone resident within that territory were necessarily a part of their tribe. So domicile was used to make clear that some people were both British citizens and were also tribally British, and some might be citizens but were not full members of the tribal club. The result was that whilst you might be a citizen of the Empire wherever you were living, you were legally domiciled in a particular country within it, and were subject to the laws of that territory. This is why, for example, there is still the concept of being domiciled in England or Scotland and so on, and not in the UK. The law of each is different. But in all cases the law of domicile was designed to make sure that it was very difficult to either acquire or lose a domicile to ensure that this remained the case over many generations of absence from the country of "tribal origin".

The use of this to colonial administrators was obvious. Those with a domicile of origin in England, Scotland or Ireland kept that domicile however long they might

serve in the colonial service, but those who came from the colonies to the UK also kept their domicile of origin elsewhere, and so were not quite British, however hard they tried. This is the true basis of these rules and the reason why it is so hard to prove loss of a domicile of origin. The advantage, of course, was that the colonial administrator working overseas in the Empire could always appeal to English (or whatever) law, but the local person could not. This put the local person at a disadvantage. Tax was simply not part of the policy process involved in the development of this concept. It is fair to say that racism was.

What no one considered was that this concept, introduced when:

- the number of types of citizenship available anywhere in the world was very limited indeed
- very few persons travelled
- there were very few taxes

would survive to a time when more than 200 nations offer citizenship in the world, travel over long distance has become commonplace, international relocation is a regular occurrence and the nature of taxation and both tribal and family loyalty have all fundamentally changed.

Despite such changes, the concept of domicile as introduced in the nineteenth century has remained unaltered in any substantial fashion. As such it is still primarily indicated by the place to which a person's father, and grandfather in his turn (assuming a legitimate line) owed their loyalty in turn. This does not reflect the fact that modern tribes in modern states are not what they used to be. Multiculturalism and travel have ensured that this is so.

The curious, and unforeseen, result of this is that the domicile system designed to protect the essence of "Britishness" now does just that, but with quite contrary consequence to that originally intended. The intention was to confer privilege on those UK resident. Now it does quite the reverse. It confers privilege on those who are not UK domiciled by giving those who come to the UK a substantial tax advantage that it was never intended that they should enjoy by allowing them to retain their domicile of origin.

It has been suggested by HM Treasury that about 60,000 UK resident people claim to not be domiciled in the UK at any time. It is said that about half of these are temporarily resident and half are here for longer periods. What is clear is that these statistics cannot reveal the whole truth of the situation. Nor do they show the unfairness of the domicile rules. That is because it is generally assumed that the "unfairness" of the domicile rule only works in favour of a small number of very rich people or "internationally mobile management" who, it is argued, spend sufficient here to justify their favourable tax treatment or who add sufficient value to the UK economy to do the same, neither of which arguments has ever been proved and neither of which is accepted in this paper, but which apparently justifies "unfairness" at the expense of the long term resident population in the eyes of those who promulgate such views.

This however is a very narrow view of the unfairness that the domicile of origin rule. What that rule means is that all first generation immigrants can easily claim for considerable periods of time that they have a domicile of origin outside the UK. And as such a second generation can typically do the same because they inherit the domicile of their parents on birth, and that is not likely to be within the UK. As such it is probably only the third generation of a family that has relocated to the UK who can be safely assumed as having a UK domicile.

It is only recently that this situation has been widely exploited within the UK by its many immigrant populations. However, as they become more stable and affluent, as will, inevitably (and desirably) be the case, the degree of exploitation of this rule by this population will inevitably increase.

It is difficult to estimate the precise number of long term resident people within the UK who might be able to utilise the rule to substantially mitigate their tax liabilities by claiming that despite long term residence in the UK they remain domiciled elsewhere, but it is quite conceivable that the numbers involved at the present time comfortably exceed 1 million and might exceed 2 million. This number can only increase with current long term immigration running at up to 100,000 a year according to Home Office figures, and with there still being substantial short term immigration that does not need to be recorded because, for example, it is from EU countries. It is also bound to be economically significant since many immigrants are active in small business and as such have more opportunity than average to exploit the domicile rules to advantage, particularly with regard to the avoidance of capital taxation. Anecdotal evidence from senior tax inspectors supplied to the author suggests that this trend is already prevalent amongst certain immigrant populations in London.

The consequence of this is that the issue of domicile is not, as is widely suggested, one that affects just a limited number of high level managers and a few select business sectors, such as Greek ship owners. The domicile rule, due to its inappropriate nature in a modern economy, and the ease with which it has been turned from representing an advantage to the long term UK resident person to being an issue of decided disadvantage to them, has the potential to be a point of major contention within the domestic tax environment. This is because it creates an obviously unlevel domestic taxation playing field, with the advantage definitely being in favour of first and second generation immigrants who either already, or will increasingly, exploit this rule to provide themselves with a competitive advantage from this tax rule which no one intended they should have. This is bound to be seriously socially divisive (as well as economically inefficient) and before the situation deteriorates this issued must be resolved by abolishing this rule. Since no one intended that it should have its current usage this is just and equitable and appropriate and meets the criteria noted by the Treasury that any change in the rules must be fair.

An appraisal of the questions and issues on which HM Treasury seeks opinion

In the light of this appraisal of the domicile issue alone it seems appropriate at this stage to consider those questions and issues on which HM Treasury sought opinion since if the rules with regard to domicile are so inherently flawed that they must be changed it is necessary to consider those on residence as well, since for the purposes of taxation they are intrinsically linked, even if separate, issues.

Those questions were as follows:

<table>
<tr><th>Issue</th><th>Response</th></tr>
<tr><td>Do 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?</td><td>There are two responses, both of which support the answer of no:

1. The domicile rule clearly fails in this respect. It does not require those who come to the UK to make such contribution sufficiently quickly. Nor, unfairly, does it release those who have permanently left the UK sufficiently quickly, and leaves them in a state of doubt as to their status.

2. Residence alone is a sufficient basis for contribution to the exchequer on the basis of world wide income, and this is the normal situation world wide as the Treasury paper makes clear. As such the remittance basis associated with the domicile rule is anachronistic and should be abolished.</td></tr>
<tr><td>Do the current rules identify those with a temporary connection to the UK, and ensure an appropriate contribution to the UK from those individuals?</td><td>The answer, again, is no. There are again two reasons:

1. The rules can too quickly identify habitual visitors as resident. Due to the ease and cheapness of air travel it is fairly easy to habitually stay in a territory for commercial reasons for 90 days a year now and have real long term association elsewhere. A higher</td></tr>
</table>

	time limit for habitual residence is needed. 2. For single years a limit of 183 days, as at present, within one artificially delimited fiscal year is too high because this implies a quite extended stay before contribution is due. New rules to counter both these problems are suggested below.
Do the current rules provide objective criteria for determining when a long term or temporary connection is severed, suspended or restored?	With regard to domicile, the inherent inflexibility in the rules clearly does not allow this which is why an alternative is suggested below. With regard to residence the artificial allocation of days in the UK to a fiscal year that few in the UK, let alone outside it, recall or understand means that the rules are obscure and need updating to allow for modern travel circumstances. Suggestions for change are made below.
Do the current rules establish an appropriate divide between long term and temporary connections with the UK?	As the survey of world wide taxation practice shows, this divide is not usually recognised within most fiscal systems. Accordingly it is not clear why, except with regard to inheritance tax, it is necessary within UK law. A set of clear residence rules should cover both circumstances. The rules suggested below are based on this premise.
Do the current rules play an appropriate role, along with 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?	As is noted above, this question is less important than the potential domestic problems the current rules could create. Since the domicile rules of the UK are anachronistic they are not a feature of the internationalisation of the labour market, and probably only confuse it, arguably to the disadvantage of British labour, which will find itself effectively competing against non-British labour that is indirectly subsidised through the tax system.

	Since almost all major competitors use rules consistent with those suggested below this paper suggests that these will promote international transparency in taxation and the removal of inappropriate fiscal competition. This has been widely recognised as appropriate within the market place. As the Treasury paper notes, the reason for people wishing to work in the UK are numerous. The UK tax base, despite all claims made in the popular press, is generally favourable to UK resident people and is often lower than tax rates in many of our direct, and physically near competitors. There is no reason to believe that key people will not come to the UK for taxation reasons if their employers want them to if the rules suggested below were to be in operation, and other factors e.g. the UK's favourable corporation tax climate and capital gains climate for entrepreneurs are more significant for people in this group.
Do the current rules ensure that any differences in treatment between UK locals and visitors and long and shorter term residents have a clear economic rationale?	As the analysis of the domicile rule and its currently divisive potential shows, the clear answer to this question is that the current rules have no economic rationale, and were never intended to have one. We contend that the current rules introduce harmful perversities to the labour market and are an accidental creation that needs replacement on a rational basis. Such a basis is suggested below.
Do the current rules take into account the equivalent arrangements in other countries?	Quite clearly the answer to this question is no. Few countries operate with a domicile rule. Few operate taxation on a remittance basis. The result has been that the UK has been seen by many other countries to operate rules akin to those of a tax haven. This is not unfair comment on their part. These rules need

	to be changed to ensure international consistency and to ensure that the UK acts appropriately with regard to unfair tax competition. Modern ICT techniques and effective information exchange between fiscal authorities also needs to be exploited as part of any new rules to ensure that the possibility of individuals disappearing from the tax system internationally, at a cost to the UK exchequer and those of other territories is minimised. Rules to allow for this are suggested below.
Do the current rules provide transparent, clear and unambiguous outcomes, and minimise the compliance burden on individuals and their employers?	It is abundantly clear that the answer to this question is no. The current rules on domicile and ordinary residence are based largely on statements of intent which are subjective and open to considerable abuse. The rules on residence are too arbitrary with regard to fiscal years to be fair, and are not clear, especially to the person coming to the UK temporarily. These criteria suggest the need for a rule change. The proposals suggested below are considered less burdensome than the current rules.
Do the current rules present minimal opportunities for exploitation and avoidance?	The current rules, created, as they were, largely by accident and for other than fiscal purposes probably create the maximum opportunity for exploitation and abuse, and a whole industry has been created in the UK to service demand for such exploitation and abuse. The resulting ethos has led the UK to become a prime mover in the offshore finance industry and has seriously undermined the moral and ethical credibility of the UK professions involved in taxation planning. There are compelling grounds for revising rules to mitigate this opportunity for exploitation and to close down this wholly negative and unproductive taxation avoidance

	industry and to reallocate the resources so used to greater social good. The rules proposed below are designed with that purpose in mind.

A fair approach to taxation of temporarily resident and non resident people

If the rules relating to domicile must be abolished because they are racist in origin and inherently unfair, and those relating to residence need revision for the reasons noted above then a new set of rules for identifying liability to taxation by the UK need to be created.

As is noted above, the Treasury suggests that any modernisation should be based on the assumption that the rules should be:

- fair
- support the competitiveness of the UK
- clear and easy to operate.

We would suggest that this requires that the rules be:

1. fair in that they treat all people in a similar fashion
2. equitable in that they do not impose excessive tax burdens, in particular with regard to double taxation
3. consistent with the democratic principles of the UK government in confirming the right of the government to expect those who participate in its economy and benefit from its protection to pay tax, whether as subjects or as residents (unless such residence be very short term)
4. unambiguous in not requiring statements of intent as a key contributor in determining the basis of tax liability
5. internationally comparable.

It is, of course, the case that some of these objectives will at all times be in competition with each other. We accept that is the case. In that context we suggest that the guiding principles for determination of what is fair are, in order:

1. all persons long term resident in the UK must be treated equally

2. those temporarily resident in the UK must not be unreasonably advantaged over those permanently resident in the UK, or vice versa

3. those temporarily absent from the UK must not obtain an unfair economic advantage at the expense of other governments and their citizens

4. those who permanently leave the UK must have a fair basis of indicating that fact so that they can leave the UK taxation system and adopt that of another territory in which they are permanently located.

In terms of competitiveness we suggest the priorities are, in order:

1. fiscal neutrality within the domestic market place

2. encouragement of trade, including encouraging those engaged in such activity to visit the UK regularly without fear of UK taxation liability

3. broad compatibility for those moving between states on a temporary with major economic competitors.

It is these principles that underpin the rules that we suggest to be appropriate below. We note that the Treasury paper does not request suggestions for a new basis of taxation to replace the current rules on domicile an residence, but such is a the scale of the problem that we identify with the current rules we believe it appropriate to make such suggestion and as such dedicate the rest of this paper to that purpose.

It is our suggestion that there should be two bases of residence ruling. The first would be based upon citizenship. In effect this replaces the domicile rule where it is necessary to indicate long term association with the UK. The second would be based on physical presence in the UK and is a pure residence based rule. The two are linked where appropriate and are designed to be comprehensive in their extent.

It is our suggestion that it should be assumed that all UK citizens are subject to UK taxation on their world wide income and capital transactions unless grounds can be proved to allow otherwise. This is, of course, consistent with the practice of the USA and it does not appear to have created problems for that country which is, as noted above, that with which most direct comparison should be made.

If this rule were to be adopted each UK subject would have a duty to declare their income and relevant capital transactions under UK law each year to UK taxation authorities unless they could obtain exemption from doing so on the grounds that:

1. They had established a permanent residence in another territory in the world to which they were making full declaration of their income and capital transactions on a worldwide basis, and which were taxable in that territory as such on that basis, with confirmation being provided to the UK Inland Revenue of this fact by the territory in question, and had ceased to be resident in the UK under any of the other criteria referred to below. Permanent residence in another territory would be indicated by either:

- ceasing to hold UK citizenship and accepting the citizenship of the country of permanent residence that was subjecting them to tax

or

- ceasing to be resident in the UK under the 120 day rule referred to below for a continuous period of at least 15 years

A permanently non resident person shall not be subject to any UK tax, including Inheritance Tax.

2. They had established temporary residence in a state which had primary right to tax the individual in question under normal double tax treaty tie breaking provisions and had the intent to do so on the world wide income and capital transactions, such intent being established in writing as a matter of fact by that territory in exchange of correspondence with the UK Inland Revenue, in which case income and current capital gains would fall out of UK taxation subject to current anti avoidance rules but Inheritance Tax would continue to apply until such non UK residence became permanent or was deemed to be so by the lapse of fifteen years of non residence.

   Note that in the case of temporary non residence if:

   - another country does not accept responsibility for taxing the individual, or

   - another country does not tax the individual at rates acceptable to the UK government as noted below, or

   - a period of time elapses between departure from the UK to the time of being taxed elsewhere, or there shall be a period between territories accepting responsibility for taxing the individual at rates acceptable to the UK, or

   - the individual cannot prove their temporary non residence

   then they shall remain resident in the UK for taxation purposes for such periods and the person shall not be considered non resident at those times.

In the case of temporary non residence (which all UK subject departees would have until permanence could be established) it should be noted that the state providing the confirmation of intent to tax the UK citizen would also be required to confirm that the tax rates that will be used will be applied to actual declared income, gains and inheritances and not on arbitrary or pre-agreed sums and that these rates are at least 50% of those usually applied in the UK on an agreed level of income to be used to determine this test, such rule being equivalent for individuals to that now used for Controlled Foreign Companies. In the event that such assurance cannot be given the UK citizen would remain subject to UK tax with credit being given for foreign tax paid.

By requiring the specific confirmatory involvement of another state, these rules avoid the currently commonplace occurrence of people leaving one state and failing to appear in another, or there being substantial tax leakage between the two. If another state will not tax the person who temporarily leaves the UK then under these rules they will remain subject to UK tax. If another state will only tax part of their income then the UK will be entitled to tax the remainder. It would be a relatively straightforward matter to use modern ICT to track those who do not wish to comply and, for instance, to refuse renewal of passports until such time as compliance was obtained. To assist this passport renewal periods might need to be reduced to, say, 5 years but with new passport proposals now being put forward, and with such new passports being proposed to carry electronic data this should be readily enforceable on a world wide basis by simple reason of refusal to renew a passport unless compliance had taken place.

These rules are:

1. clear
2. fair in that they recognise the duty of the UK subject to the state which provides them with legal and physical protection
3. fair in that it makes clear that unfair tax practises are not acceptable with regard to rates
4. fair in that compliance with the laws of another territory is required if those of the UK are to be avoided
5. fair in that entitlement to citizenship rights is associated with a contribution to society
6. competitive in that clear absence allows a person to avoid paying UK tax
7. competitive in that UK citizens living overseas will never be asked by the UK government to pay more than the UK rate of tax on any transaction, full credit having been given for foreign tax paid.

For the person coming to the UK the rules need to be different. In this case citizenship is not a criterion for taxation and alternative residence rules are needed. These should be unambiguous and as such this paper, along with those other submissions (except that of the ICAS) referred to above, suggests that the concept of ordinary residence be abolished as anachronistic and plainly unfair due to the ability to manipulate it because it involves statements of intent which cannot be proven.

It is suggested that the current residence rules for those coming to the UK, and for those UK citizens who want to prove absence from the UK to exploit the situations referred to above, should be that any person physically present in the UK at midnight on more than 120 nights in any twelve month period should be considered UK resident for taxation purposes in that twelve month period (which may be successively tested on a daily basis) and will be taxed under UK taxation laws on

their worldwide income and capital transactions in that period as a result, with double tax relief being given for taxes due in territories other than the UK in which any transaction took place if not in the UK. It is suggested that no other residence rule is needed.

It is however suggested that this rule only apply to income and capital gains until habitual residence, indicated either by:

1. adoption of UK citizenship, or

2. habitual residence in the UK, as indicated by 15 years out of any twenty year period

has been established. Before such time Inheritance Tax provisions would only apply to UK assets, and after that time they would apply to worldwide assets, but in the former case this would only be the case if it could be shown that the assets out of the UK were subject to a similar tax in another jurisdiction which actually had intent to tax them, and actually did so in the event of death at rates of at least 50% of those applying to an estate of similar size, or gift of similar extent in the case of lifetime charges.

It will be noted that under this rule the remittance basis of taxation ceases to have any relevance.

It is stressed that under this, potentially more generous, rule for the genuine migrant visitor than exists at present UK taxation will still be applied on UK source income of the non resident person to the extent that it is at present.

In the interests of fairness, and to avoid abuse, the 120 night rule is specifically applied over any twelve month period and not to either fiscal or calendar years, but residence once established should give rise to income being allocated to relevant fiscal years with appropriate allowances being given in each and with the same period then being used as the basis for determination of residence in the next two years. After that, if residence has become habitual the fiscal year shall be used. The use of such a rule prevents current games used by individuals to prevent residence by splitting visits between tax years so that extended stays can avoid taxation liability.

The use of 120 days recognises that it is relatively easy in the short term for an individual to spend 90 days in the UK in a year, as is the test for ordinary residence, given current modes of transport. As such this proposal is a generous concession to those who are habitual visitors for reasons of commerce but who do not establish permanent ties despite that. This is a major contribution to the competitiveness of the UK economy in the current international climate.

In the interests of such competitiveness two possible further bases of residence, being the ownership of a permanent place of abode in the UK and control of a permanent place of business operating under the direction and control of the individual whether alone or with others have been rejected as bases for determining residence as these would both reduce the attractiveness of inward investment in the UK.

The proposed residence rules:

1. provide a fair compromise between the current ambiguous ordinary residence and residence rules

2. are fair in removing anomalies between tax years and bases decision making purely on facts

3. are fair in allowing extensive visits to the UK before residence is established

4. are fair in requiring physical presence rather than property ties before residence is established, it being presumed that corporate and property taxes provide fair contribution to the UK economy in the case of the ownership of such property by non residents

5. are fair in providing certainty as to means of ceasing to be UK resident and to therefore ceasing to be subject to UK tax

6. are fair in providing certainty as to when the full rule of UK tax laws applies, including with regard to Inheritance Tax

7. are clear and easy to operate because of their simplicity compared to current rules.

8. are comparable in effect with the rules of many of the states referred to in the HM Treasury document

For these reasons these rules of residence are recommended as a basis for consideration as part of this discussion process.