

## Briefing Note

The Scottish Rate of Income Tax:  
Who is a Scottish Taxpayer?

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### Introduction

Under provisions in the Scotland Act 2012, the UK income tax rates applicable to Scottish taxpayers will be reduced by 10% and the Scottish Parliament will have the power to replace them with a Scottish rate of income tax. The rate to apply from April 2016 has just been announced as 10%, meaning that the amount of tax to be paid by Scottish taxpayers will remain the same as that paid by other UK taxpayers. The Scottish rate of income tax is not a devolved tax and will be administered by HMRC. The new tax rate will be introduced with effect from 6th April 2016 and it will apply only to non-savings and non-dividend income (therefore it will not apply to bank interest or dividends). There are detailed provisions and guidance regarding pension tax relief, Gift Aid and trust distributions.

Wider income tax powers are included in the Scotland Bill 2015-16, as recommended by the Smith Commission and may come into effect as early as April 2017.

### Who is a Scottish taxpayer?

In preparation for the introduction of the new Scottish tax rate, HMRC has issued technical guidance on how they intend to determine “Scottish taxpayer” status (the rules themselves being contained in the Scotland Act 2012). This test is relevant both for the Scottish rate of income tax and also the wider income tax powers proposed under the Scotland Bill 2015-16.

Only individuals can be Scottish taxpayers so the Scottish tax rate will not apply to non-individuals such as trusts and companies. To be a Scottish taxpayer a person must first be a UK resident for tax purposes. This is determined under the UK statutory residence rules. An individual will be a Scottish taxpayer, or not, for an entire tax year. There are no provisions for split year treatment (although if you only become UK resident part way through a tax year and are a Scottish taxpayer, you will only be a Scottish taxpayer from the date of becoming UK resident for tax purposes).

A person will be a Scottish taxpayer if any one of the three following conditions is met:

- he/she is a Scottish parliamentarian
- he/she has a “close connection” with Scotland
- if there is no “close connection” with any part of the UK, he/she spends at least as many days in the tax year in Scotland than in any other part of the UK.

### Scottish Parliamentarian

An individual is a Scottish parliamentarian if he/she is an MSP, an MP for a Scottish constituency or an MEP for Scotland. All Scottish parliamentarians are automatically Scottish taxpayers.

## Close Connection

This part of the definition of Scottish taxpayer focuses on the location of the person's "main place of residence".

- If the taxpayer has only one place of residence and if that residence is located in Scotland, they will be a Scottish taxpayer. If their only residence is located elsewhere in the UK, they will not be a Scottish taxpayer.
- If the taxpayer has two main places of residence at different times in the tax year, for example, if they relocate from London to Edinburgh part-way through the year, they will be a Scottish taxpayer if their Scottish home was their main place of residence for at least half of the tax year.
- If the taxpayer has more than one place of residence in the UK at the same time, it will be essential to decide which of those residences is their "main place of residence".

This will not necessarily be the place where the taxpayer spends the most time; nor will it be determined by where he/she works, nor is it relevant where the source of the income is. Instead, the aim is to try to identify the residence with which he/she has the greatest connection. This will be a question of fact to be determined by reference to the facts and circumstances of each specific case. It will involve an element of subjectivity.

The guidance indicates that the factors that will be taken into account in judging which home is the "main place of residence" will include:

- Where the person's spouse or civil partner lives, if they are married
- If they have children, where they go to school
- Where the majority of their possessions are kept
- How each of their properties is furnished
- Where they are registered to vote
- Where they are registered with a doctor and/or dentist
- Where their car is registered for insurance purposes
- The address used for correspondence by, for example, HMRC, banks and building societies and utility companies

This list is not exhaustive and other factors may be relevant in particular circumstances. The guidance contains a number of examples showing how the rules would be applied in practice.

## Day Counting

If it proves to be impossible to decide which of a person's residences is his/her main place of residence, or if he/she does not have any place of residence anywhere in the UK, his/her tax status will be determined on a "day counting" basis. If the number of days he/she spends in Scotland is the same as or more than the number of days spent elsewhere in the UK, he/she will be a Scottish taxpayer for that tax year. For this purpose, a person is treated as having spent a day in Scotland if they are here at the end of the day (i.e. midnight).

## Record Keeping

As is the case with taxes generally, the onus will be on the taxpayer to “self-assess” their Scottish taxpayer status. In cases of doubt, taxpayers will need to retain records to support their view. Details of the types of documents to be retained as evidence are set out in the guidance.

## Comment

The full document can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/470009/Scottish\\_Taxpayer\\_Technical\\_Guidance\\_151020.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470009/Scottish_Taxpayer_Technical_Guidance_151020.pdf).

HMRC has also recently written to those individuals who they believe to be tax paying Scottish taxpayers.

If you would like more information or advice on the matters covered in this briefing note, please speak to your usual Turcan Connell contact or contact Alexander Garden, Head of Tax and Succession on 0131 228 8111 or at [alexander.garden@turcanconnell.com](mailto:alexander.garden@turcanconnell.com).

Please note that this briefing note is intended as a short summary of taxpaying in Scotland. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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