Low Incomes Tax Reform Group
A voice for the unrepresented

Restricting non-residents' entitlement to the UK personal allowance
HM Treasury (HMT) consultation document
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

1.1 We welcome the opportunity to respond to the HMT consultation document on restricting non-residents' entitlement to the UK personal allowance.

1.2 We can see the rationale for the proposal to remove the connection between nationality and entitlement to the UK personal allowance. We fear, however, that the proposals may disadvantage a large and vulnerable group of people: migrants to the UK with low earnings – for instance, those who travel to the UK to do summer agricultural work. The UK economy is dependent on such migrant labour, therefore careful thought and research are needed before a policy decision is taken that may create work disincentives. We are therefore responding to this consultation largely with the position of low-income migrant workers in mind.

1.3 Whilst we note the suggestion of various 'protections' to help mitigate the impact on the position of low-income migrant workers, we foresee various difficulties for them – in terms of having to navigate through another layer of tests (on top of the complicated statutory residence test), extra administrative burdens and cash flow problems if they are asked to reclaim tax at the end of the year. Indeed these proposals would introduce more complexity into the tax system in general.

1.4 We also have concerns that this proposal will not generate the income HMT expects. For example, there is no mention of Universal Credit (UC) or other benefits in the consultation. It

is important that the interaction between year-end adjustments in relation to restricted UK personal allowances and UC and other benefits is fully explored. It will be necessary to discuss this with both HM Revenue & Customs (HMRC) and the Department for Work and Pensions (DWP). The costs of updating HMRC's administrative systems and processes to cope with the change, as well as of communicating with affected groups of employers and taxpayers need to be explored. As such, we urge the Government to undertake further detailed cost/benefit analyses.

1.5 No doubt the Government will receive many responses to this consultation from potentially affected people warning of 'unintended consequences'. In this regard, we cannot stress enough the importance of holistic thinking when making a decision about the desirability of this policy change. This consultation is concerned with restricting the 'generous' personal allowance. The Government's objective in raising the personal allowance was to improve the financial position of low-income households. However as LITRG has argued on many occasions,[1] increasing the income tax personal allowance is not the most efficient way of doing that for low-income taxpayers who claim means-tested benefits, as any increase in their net, after-tax, income is accompanied by a reduction in their benefit entitlement.

2 About Us

2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

[1] http://www.litrg.org.uk/News/2014/140319_PR_Budget14_threshold and http://www.litrg.org.uk/News/2014/140319_Budget2014

3 Introduction

General comments

3.1 We note that this consultation is being carried out to enable the Government to 'understand the impacts and feasibility of any change and to make a balanced decision as to the desirability of a policy change', and therefore trust that the views of respondents to the consultation will be taken into account before any policy decision is made.

3.2 We understand the reasoning behind proposals to restrict non-residents' entitlement to the UK personal allowance is that it would be one way of helping to ensure that people pay UK tax commensurate with their level of connection to the UK, and to help avoid differing outcomes for those in essentially the same circumstances.

3.3 However, we also note that under the section called 'Rationale for Change' the fact that 'Most other countries restrict entitlement' is given great emphasis (the whole of chapter 4 then being dedicated to detailing the international comparisons). Whilst it is sensible to bear in mind practices around the world, we are not in favour of rationalising policy changes simply because 'other countries are doing it'. As we raised in our response to the Direct Recovery of Debt[2] proposals, often it is not helpful to compare our tax system to others when formulating policy: different countries have different rules, and there are often very good reasons for those differences.[3] Comparisons must therefore be made only in the overall context of each tax system, rather than selectively comparing parts of different regimes.

Specific comments

3.4 We are pleased to note that HMT and the Government do not seem to be attracted to the option of total restriction of the UK personal allowance (para. 4.5 of the consultation) and seem to be considering instead restricting claims to the personal allowance to those with strong economic connections to the UK – which should go a long way to protecting the vulnerable groups of people with which we are concerned. In addition, allowing low income workers to keep the UK personal allowance provides them with several other easements from a practical perspective.

3.5 The commentary in para 6.4 of the consultation, about the contrasting positions of low income individuals with or without the personal allowance, is quite simplistic. For completeness, we think it is worth looking at the detail around their positions.

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[2] http://www.litrg.org.uk/submissions/2014/direct-recovery-of-debt

[3] Some of these differences are alluded to here: https://www.gov.uk/government/publications/plan-for-growth--5. Indeed, we wonder if this policy has synergy with the 'programme of structural reforms to remove barriers to growth for businesses and equip the UK to compete in the global race' as announced?

3.6 For example let us look at Rob's position again.[4] Rob is an EEA national who is not resident in the UK but is engaged in temporary employment in the UK. Let us assume that he is an Eastern European (where they often have lower tax rates than the UK) – a Bulgarian perhaps – who is providing seasonal labour on a farm in the UK for two months in May and June 2013 (we appreciate the Seasonal Agricultural Migration scheme[5] is now closed but it strikes us that this is still very likely to be a common scenario in the future).

3.7 Rob earns £4,000 while he is in the UK. With the UK personal allowance Rob pays no tax (but he does pay class 1 primary National Insurance contributions[6]). Rob is subject to taxation on his worldwide income in his home country. If Rob is Bulgarian,[7] his tax liability on the £4,000 would be £400 (as there is a 10% flat rate of income tax). His tax return is fairly simple for Rob to file in his home country.

3.8 Without the UK personal allowance, Rob's UK tax liability is £800. Rob is still subject to taxation on his global income in Bulgaria, so his Bulgarian tax liability on this income is still £400. He will be able to claim a credit so that overall he does not pay any double tax; however, as foreign tax credits are typically restricted to the amount of tax payable on the same income, he is £400 worse off. The excess foreign tax credit is lost.

3.9 In addition, as he has suffered UK income tax on his UK income, he must *claim* tax relief and bear the administrative burden of making a complex double taxation relief claim, perhaps meaning he has to engage the professional services of an accountant in his home country and possibly also in the UK (if the Bulgarian authorities insist on a formal UK tax return as evidence of the amount of UK tax paid for example[8]).

3.10 Further there is a timing and cash flow issue due to the non-coterminous tax year ends. Rob's Bulgarian tax return for the calendar year 2013 has to be filed by April 2014 (when the £400 Bulgarian tax also has to be paid over) whereas Rob's UK tax return for 2013/14 does not have to be filed until January 2015. It could quite easily be eight months after Rob has

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[4] The example of Rob is provided in para. 6.4 of the consultation. We will expand on his example throughout this response.

[5] A scheme under which some 22,000 Romanian and Bulgarian workers came to the UK: http://www.bbc.co.uk/news/uk-politics-24064774

[6] Payable at 12% on weekly earnings above £149 in 2013/14 and £153 in 2014/15.

[7] http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/JDCN-8MENXN

[8] At section 6.8 of the consultation, it states that the UK Government does not want most or all non-residents who receive UK income to have to submit UK tax returns, however the UK Government's intentions are irrelevant if, as is often the case, the claim for double tax relief needs to be accompanied by evidence of tax paid in the other country. After all the recent efforts to reduce the number of people in self assessment, we wonder how HMRC feel about the potential prospect of having to deal with another 400,000 tax returns a year?

paid the £400 Bulgarian tax that he would be able to file an amended Bulgarian return containing the UK foreign tax credit, and no doubt several months later that he will receive the refund of £400 from the Bulgarian authorities. Thus for a long period, Rob has actually suffered £1,200 tax on his £4,000 income. This is without even considering whether fluctuations in exchange rates between the two countries' currencies would compound the cost to Rob, in view of these lengthy timing differences.

3.11 These could be very real difficulties facing migrants into the UK if the personal allowance is removed. We therefore commend the fact that their plight seems to be recognised in the consultation. However the suggested 'tests' that help mitigate the impact of the proposals on them create 'cliff edges' and it must be recognised there will be others who fall just outside of the area of protection – maybe by only a couple of pounds – for whom the loss of the UK personal allowance could be equally economically devastating (leaving them to face all the difficulties and problems explained above).

4 Restricting access to the Personal Allowance in the UK

4.1 ***Q.5.1 Do you agree that, if the government decides to introduce any restriction on non-residents' entitlement to the Personal Allowance, this should not apply in circumstances where individuals have strong economic connections to the UK? If you do not agree please explain your reasoning.***

4.1.1 We agree that any restriction on non-residents' entitlement to the UK personal allowance should not apply in circumstances where individuals have strong economic connections to the UK. We think that retaining entitlement to the UK personal allowance for non-residents with strong economic connections to the UK might be a way of providing protection for those low income individuals we mention in section 3 above.

4.2 ***Q.5.2 Is a percentage test for the location of income the simplest and least burdensome basis upon which to identify circumstances where individuals have strong economic connections to the UK? Do you have any views on what level such a percentage should be set at? Please explain your reasoning.***

4.2.1 We think that a percentage test is probably the simplest and least burdensome basis upon which to identify circumstances where individuals have strong economic ties to the UK.

4.2.2 We would hope that such a percentage test would provide protection for low income migrant workers, who have little or no other income from outside the UK. We understand that a percentage of 75% would mean less of a revenue gain for the Government, however we think this still demonstrates that they have substantial reliance on the UK for their income and in any case have concerns that a test set at 90% might not protect all low income individuals. For example, a migrant worker might manage to find some work in their home country, and therefore meet a 75% test, but not a 90% test. Overall, their income might still be very low, and an increase in tax of potentially up to £2,000 could seriously affect their own and their dependants' lives.

4.2.3 Consider Rob, who earns £4,000 while in the UK and then manages to find some work in his home country, and in the same tax year earns the equivalent of £1,000 there (the average Bulgarian wage is approximately 800 leva per month[9] or around £345,[10] so £1,000 represents about three months' work). His annual income is only £5,000; he would meet a 75% test, but not a 90% test.

4.2.4 Assuming Rob could not claim tax relief for all of the £800 additional tax resulting from the restriction of the UK personal allowance, the tax liability would essentially negate the 'home' earnings, meaning that the work in his home country 'would not pay'.

4.2.5 There would presumably be other issues to consider. While it may be simple to identify the UK income, such a test would mean an individual also has to calculate their global income for the purposes of the comparison; there would have to be rules about the period of consideration (presumably this would be measured over the UK tax year in question?), exchange rates to be used, types of income to include (all welfare benefits/tax credits/non-cash benefits in kind). If an individual receives property rental income or self-employment income from outside the UK, would their calculation of 'profits' be based on UK methods or those of the overseas country in terms of allowable expenses, and so on? This could mean they have to calculate two different profit figures in relation to the same income.

4.2.6 While we understand the rationale behind having a 'test', working out whether or not one meets it (and then claiming its protection) could increase an individual's administrative burdens significantly and those lacking in English skills, numerical ability or confidence may struggle disproportionately. In addition, we are unsure as to how HMRC would check whether what they were being told about overseas income was correct – there would clearly be some record-keeping requirements for the migrant, yet we do not understand how HMRC could enforce them in an overseas jurisdiction. Finally, we assume that such an analysis would only be able to be done following the tax year end in question, meaning that many non-resident individuals may have been given or denied the personal allowance incorrectly in the intervening period – how would HMRC cope with these cases in the coding and reconciliation processes?

5 Impact of a change

5.1 ***Q.6.1 Are there unfair outcomes for those with globally low incomes from a broader policy of restricting non-residents' entitlement to the UK Personal Allowance? Could a de minimis limit of global income below which non-residents would automatically be entitled to the UK Personal Allowance help mitigate these unfair outcomes? If so, is there a way to design this so that the administrative burdens are not disproportionate?***

[9] http://www.tradingeconomics.com/bulgaria/wages

[10] Average for year to 31 March 2014: http://www.hmrc.gov.uk/exrate/bulgaria.htm

5.1.1 As noted in section 3 of this response there is one very significant unfair outcome for those with globally low incomes – they may not pay enough tax overseas to claim relief for any UK tax payable as a result of the restriction of the UK personal allowance. This could mean not just the usual timing or cash flow disadvantages associated with having to claim foreign tax credit relief, but a significant cash loss to an already low income.

5.1.2 Further, many low income migrants to the UK currently at most have to submit a tax refund claim, outside of the self assessment system. If they are no longer entitled to the UK personal allowance, they will have to claim relief in their home country for UK income tax paid. This may mean they have to complete tax returns and/or complex double taxation relief claim forms in one or both jurisdictions. This is a new administration and compliance burden, in addition to the cash flow disadvantage or cash loss they will face.

5.1.3 One outcome is that such individuals with globally low incomes may find themselves in the position of having to pay for professional advice or assistance to ensure they can meet their tax obligations. Claiming double tax relief is not straightforward, especially for someone with little experience or understanding of tax systems. There may be record-keeping requirements or evidential requirements for claims for tax relief that the individuals may find it difficult to comply with, particularly if they are young and transient. This group is likely to contain individuals who are less likely to realise that they need guidance, understand where to seek assistance and know how to access guidance and may have little understanding of the English language meaning a further burden when applying it to a complex tax system.

5.1.4 Even where such workers are aware of their international tax treaty rights and understand that they can make a claim for tax relief, we think there is a significant possibility that some people will consider the process so difficult that it is not worth pursuing relief or coming to the UK for work.

5.1.5 A *de minimis* of global income below which non-residents would automatically be entitled to the UK personal allowance would help form an extra layer of protection for any migrants who did not meet the percentage test for whatever reason (in Rob's case because his Bulgarian job paid him an extra 100 leva, for example).

5.1.6 It is not really realistic however, to expect non-residents to forecast their worldwide income for a tax year so as to be able to claim the personal allowance via the *de minimis* test up front (or for the percentage test either, for that matter).

5.1.7 They may be working casually or irregularly – perhaps their home country even has the equivalent of zero hour contracts and their incomes fluctuate wildly. Indeed, many of our other points raised in the last question about the 'workability' of the percentage test apply to the *de minimis* test. Again, the fact that total global income would only really be known after the end of the tax year dictates that there would really need to be a reconciliation process for the migrant. To those who are used to having to make a refund claim or payment of tax at the end of a tax year, this will be a 'familiar' process, however we comment on this in more detail later. It may certainly cause difficulties for other migrants.

5.1.8 In terms of the level for such a limit, this should take into account accepted views of what a low income is – for instance, LITRG and the tax charities Tax Help for Older People and TaxAid currently view an annual income of less than £20,000 gross as low. Certain other organisations[11] measure low pay as being two-thirds of the average salary, so if this is £27,000 per annum,[12] the *de minimis* could be around £18,000. In terms of the effect of meeting the limit (or not), these low income non-residents are very unlikely to have tax advisers helping them, so whatever is decided has to work for the 'unrepresented' taxpayer – that is, it must be simple to understand and have very clear guidance.

5.2 ***Q.6.2 Do you agree that retaining the UK Personal Allowance in respect of the income of non-residents which is by treaty subject exclusively to UK taxation would help mitigate unfair outcomes from a broader policy of restricting non-residents' entitlement to the UK Personal Allowance?***

5.2.1 If there is a percentage test (and a *de minimis* test at or around the levels suggested), then any pensioner in receipt of a UK government service pension who was substantially dependent on UK source income would probably retain entitlement to the UK personal allowance anyway. We recommend that further research is carried out to establish the numbers that might be affected, and whether the individuals concerned tend to depend on UK source income before making a decision.

5.2.2 In general though, it seems to us that if one of the aims here is for simplification, then it is counterproductive to create exceptions. Retaining the UK personal allowance in such situations may even create an unfair outcome. For example, it would be hard to support the situation of an individual in receipt of a UK government pension of say £40,000 retaining their UK personal allowance, when they also have non-UK source income of £25,000, while an individual in receipt of a private pension of £10,000 and non-UK source income of £9,000 would lose their UK personal allowance. (This assumes a percentage test of 75% and a *de minimis* equal to £18,000). In fact we recently had a very upset elderly user of our website enquiry service querying the proposed rules. As a retiree overseas he would have found himself in this latter position and wondered if the cash loss would mean that he would have to return to the UK to live.[13]

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[11] For example the Resolution Foundation: http://www.resolutionfoundation.org/

[12] http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2013-provisional-results/stb-ashe-statistical-bulletin-2013.html

[13] Note: he was living in a country where the double tax treaty did not contain a pensions clause, meaning that his pension was taxable in the UK under domestic legislation anyway, even though it was not from a Government source. This seems contrary to the Government's assertions in section 6.6 of the consultation document that 'provision of tax treaties generally mean that UK state pension, personal pensioner private pensions occupational pensions are only taxable in recipient's states of resident and not the UK'. We suggest that the position is doubled-checked in relation to pensions.

5.3 ***Q.6.3 Are there any other hard cases or unfair outcomes you believe that the government may not have considered if the Personal Allowance for non-residents were to be withdrawn?***

5.3.1 In terms of thinking more broadly about issues the Government may not have considered, as noted at various points in the consultation document, the restriction of non-residents' entitlement to the UK personal allowance (and suggested related tests) could create an extra administration and compliance burden for the lowest paid in addition to a financial burden and we do not think this has been given sufficient thought.

5.3.2 The married couples' allowance (MCA) currently depends on the same eligibility criteria as the personal allowance. This proposed policy could therefore result in a higher financial cost for some couples who have retired abroad on the assumption that it would also lead to the restriction of the MCA.

5.3.3 Additionally, it does not seem that the Government has considered the interaction of this change with other systems. There is no mention of Universal Credit (UC) or other benefits in the consultation for example. Yet it is our understanding that certain European migrants who are workers/self-employed are able to claim means-tested benefits,[14] including UC when it is eventually fully rolled out.[15] A UC award will be calculated on a pay period basis depending on net income (after tax and NIC) levels and hours worked – fed into DWP from HMRC's RTI system.[16] If there is no personal allowance to set against income in a particular pay period, then more tax will be paid. This will mean lower net income so a potentially higher UC award. This interaction with UC seems particularly important in cases where there is no personal allowance given through the year, or the personal allowance is given but then a tax reconciliation is made at the end of the year.

5.3.4 We acknowledge that most individuals who are eligible to claim UK means-tested benefits (and thus meet the DWP's habitual residence test) will also be UK tax resident and eligible for the personal allowance, and therefore these comments will apply to a minority of individuals. Nevertheless, the statutory residence test for tax purposes and the habitual residence test for benefits are different and therefore it is important that the interaction between year-end adjustments and UC and other benefits is fully explored and it will be necessary to discuss this with both HMRC and the DWP.

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[14] http://www.turn2us.org.uk/information__resources/benefits/migrants/habitual_residence_test_hrt.aspx

[15] Which will replace income-based Jobseekers Allowance, income-based Employment and Support allowance, Income Support, Child Tax Credits, Working Tax Credits and Housing Benefit.

[16] http://www.legislation.gov.uk/uksi/2013/376/regulation/54/made

5.4 ***Q.6.4 In practice are non-resident individuals claiming the UK Personal Allowance on the basis of criteria other than UK residence or EEA nationality?***

5.4.1 Yes, we are aware that certain non EEA low paid migrants (from Turkey/Morocco etc.) claim the personal allowance under the terms of a treaty via form R43.[17] This may be because the personal allowance has not been allocated via the payroll in the first place, or more likely that it has been allocated, but then negated upon further inspection of the taxpayer's records after receipt of P85 – Leaving the UK form[18] (causing a P800 underpayment calculation to be issued), and then has to be restored. In addition, we are aware that young people working in the UK via the youth Mobility Scheme[19] – for example those from Australia and New Zealand – often claim the UK personal allowance under the terms of a treaty.

5.4.2 If HMT should like to quantify the specific numbers of such people, we would have thought that HMRC might be able to access some data in respect of this question (we would think them significant). This leads us to question whether HMT have considered the impact of having to renegotiate/redraft all the double tax treaties. At the very least it seems there would need to be an update to each treaty. It seems that it could be a significant task – (however it possibly presents a good opportunity to regularise certain 'expensive' anomalies to do with the personal allowance – for example that in certain cases, where an individual does not qualify for domestic legislation due to the remittance basis of taxation being claimed, he may still be entitled to claim a personal allowance due to the specific provisions of the treaty).

5.5 ***Q.6.5 If the government were to remove the entitlement to the UK Personal Allowance by virtue of EEA nationality to what extent would non-residents you are familiar with claim the UK Personal Allowance on the basis of other criteria currently in Section 56 Income Tax Act 2007? Please provide what evidence you can in support of your answer.***

5.5.1 LITRG is not in a position to answer this question in detail. However, there are likely to be individuals living overseas for health or medical reasons.[20] Again, we would have thought

[17] http://search2.hmrc.gov.uk/kb5/hmrc/forms/view.page?record=8hObC1-9L-o&formId=7356

[18] http://search2.hmrc.gov.uk/kb5/hmrc/forms/view.page?record=5Ay4eloD0nw&formId=766

[19] https://www.gov.uk/tier-5-youth-mobility/overview

[20] Individuals who have been diagnosed with myalgic encephalomyelitis (ME) or chronic fatigue syndrome (CFS) are sometimes advised to move to a country with a warm and dry climate, to ease their symptoms.

HMRC would have access to this data, as presumably the individuals will claim the UK personal allowance on a tax return or form R43.[21]

5.6 ***Q.6.6 Which, if any, of the criteria other than UK residence or EEA nationality in Section 56 Income Tax Act 2007 do you think are relevant in the 21st century? Should these criteria be repealed? Are there any other criteria in Section 56 on which individuals should be entitled to the UK Personal Allowance? Please provide evidence in support of your answer.***

5.6.1 As stated above, we do not see the merit in simplifying a system, only to go on and then create exceptions. This is possibly with the exception of individuals who have previously resided in the UK and who live abroad for the sake of their own health or that of a member of their family who is resident with them – we think they should retain eligibility for the UK personal allowance.

5.7 ***Q.6.7 How widespread is knowledge of residence status amongst PAYE scheme operators, particularly employers? How easy would asking employees to declare their tax residence be for employers?***

5.7.1 The tests to determine residency are complex and professional advice is nearly always advisable.

5.7.2 Unless an employer is one with a large expatriate population, we do not believe that they would even be familiar with the concept of tax residence, let alone how to determine the residence status of any of their individual employees. Even those with large expatriate populations often retain the services of specialised accountancy firms to assist them.

5.7.3 We are aware that employers often know the nationality of workers, as this forms part of identification checks when taking workers on. Nationality is not the same as residence however. Most employers currently do not have methods of identifying the residence status of employees or the capacity to do so. Employers are not tax experts; small employers in particular would find this overly burdensome.

5.7.4 We are therefore concerned by the content of the opening paragraph of section 6.9 of the consultation:

> 'Depending on the policy design, employers… could need to review their employees' residence position, global income and entitlement to a UK Personal Allowance for each tax year as appropriate.'

This is worrying, because employers do not have a right to know their employees' level of income;[22] indeed, we doubt that employers would wish to have to obtain such information

[21] SA109 2014 boxes 15 ff.: http://search2.hmrc.gov.uk/kb5/hmrc/forms/view.page?record=oOVk4q-G82U&formId=3101

[22] https://www.gov.uk/personal-data-my-employer-can-keep-about-me

from their employees, not least because of all the consequent data protection considerations. This would be an unfair burden to impose on employers. It also seems, from the reference to global income above, that it might be HMT's intention that employers determine (provisionally) the applicability of the percentage test or *de minimis* test in the case of those who indicate that they may be non-resident. However as mentioned previously we think this is problematic.

5.7.5 We have no doubt that employers could ask employees to declare their own tax residence status. Whether the results would be accurate is another matter, perhaps with the exception of a person who has always lived and worked in the UK. This may be inadvertent or not – it seems to us that there would be nothing to stop employees declaring a tax residence status that achieves the best outcome for them at the time.

5.7.6 As noted above, deciding one's residence for tax purposes is not always straightforward. For migrants visiting the UK, it is only really straightforward when you have spent more than 183 days in the UK in a particular tax year, as that means you will always be tax resident. For those with fewer than 183 days in the UK, it is a grey area. Of course there is the statutory residency test (SRT)[23] in place since 6 April 2013 to help those with fewer than 183 days in the UK determine their position. It would be necessary to provide all employees with the HMRC Guidance Note RDR3.[24] There would also have to be other channels for assisting employees,[25] as this guidance is more than 100 pages long and some individuals would not be able to understand it due to language difficulties and/or use it to make an accurate declaration.

5.7.7 It would be an excessive and unreasonable burden to expect employees, other than those who usually live and work in the UK, to be able to make an accurate declaration of their residence status upon starting employment (or employers to assist their employees in making these declarations). Usually an inbound individual is only able to determine their residence status after the end of the tax year. It is difficult therefore to see how an employer or employee will be able to determine with any degree of accuracy a provisional residence status in advance in order that the personal allowance can usefully be given to such employees.

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[23] Sch. 45 FA 2013; http://www.hmrc.gov.uk/international/residence.htm. The SRT consists of automatic tests for residence and non-residence; and a sufficient ties test, for individuals who are not automatically resident or non-resident. To apply the rules, you consider each tax year separately and apply the tests in order. Some of the concepts are extraordinarily complex, meaning that without professional advice, the questions may be answered incorrectly.

[24] Guidance Note: Statutory Residence Test (SRT), RDR3 – HM Revenue & Customs (December 2013): http://search2.hmrc.gov.uk/kb5/hmrc/forms/view.page?record=FhT41sOFA5E&formId=7361

[25] We note HMRC's 'Tax Residence Indicator' tool: http://tools.hmrc.gov.uk/rift/screen/SRT+-+Combined/en-GB/summary?user=guest. This does require the user to understand the guidance, however and does not provide absolute certainty for the individual.

5.7.8 Residence status can also change from year to year, as well as be affected by changes that occur during a tax year; therefore, it could not be a simple case of asking an employee to declare their residence status (if that were simple) when they start an employment, and never having to revisit the issue.

5.8 ***Q.6.8 How could the PAYE starter process be best used to ensure that most people get the correct tax code at the start of the employment if the government decides to restrict the availability of PAs to non-residents? What questions could be used to indicate residence status? Is the new starter process a sensible way to identify non-residents? What other processes could be adapted, with minimal additional burden, to identify non-residents?***

5.8.1 We do not think it is sensible to try and identify non-residents via the starter process. As alluded to above, the only groups of people which one could be comfortably sure were receiving the correct tax code would be those who have always lived and worked in the UK or those who were *definitely* going to spend more than 183 days in the UK. We suppose that questions along these lines could be included on the starter declaration to help identify tax residents. One difficulty is, however, that the starter checklist is not mandatory so not all employers will get all employees (those without a P45) to complete it. We cannot therefore see this working unless the form is made mandatory, and that there are consequent obligations imposed on employers to keep copies of them – otherwise there are risks of challenge if mistakes are made in allocating the personal allowance (or not) to the employee.

5.8.2 For other groups of people, it seems to us it would be necessary to expand the starter process significantly to include elements of the statutory residence test and relevant guidance. The starting point for HMT to understand the questions that would be relevant to include on a starter declaration, therefore, would be to refer to the statutory residence test itself.

5.8.3 As noted above, however, it cannot be a one-off exercise – residence status needs to be revisited each tax year or sometimes even during the tax year if circumstances change. In addition, if this method is adopted, there will be a responsibility on HMRC, employers and pension providers to make sure that employees and pensioners understand that the outcome is only provisional. They may still need to assess their position properly after the end of the tax year using the statutory residence test (and for those who are concluded as non-resident, go on to do the percentage and *de minimis* tests).

5.8.4 We note that from April 2016, the Scottish Rate of Income Tax will take effect. This will require the identification of Scottish taxpayers; one option would be to consider the approach being taken in regard to that to further inform this question.

5.9 ***Q.6.9 Although the government will consult on detail if it decides to restrict non-residents' entitlement to the UK Personal Allowance do you have preliminary views as to whether any system should lean toward restriction or entitlement?***

5.9.1 If the outcome of the 'residency' questions in the aforementioned new starter process indicates that the person is a non-resident, then there are implications both ways, that is, restriction followed by recompense, or entitlement followed by claw-back – however on balance, we think that the former would be more workable.[26] Psychologically, people prefer to receive a tax refund rather than to pay tax back. 'You may get a refund' seems like it would be an easier message for HMRC to disseminate to the affected taxpayers than the alternative.

5.9.2 However, this is unfortunate for many low paid workers, where the percentage and *de minimis* tests are likely to be invoked (meaning that the personal allowance will be restored at the end of the year) – they will have lost out on cash flow in the meantime.

5.9.3 We would be very interested in the design of the 'reclaim' process – clearly it would need to be as simple and easy to use as possible (and not be wholly digital – there are many people who are 'digitally excluded'). Following on from this, we would like to highlight our report, The Tax Repayment System and Tax Refund Organisations[27], in which we looked at the use of tax refund agents and urged those in the tax profession, HMRC, and others, to work together to ease the tax repayment system for the low-income and unrepresented taxpayer. It is important that HMT appreciate that more than a year on, HMRC's system is still so unintelligible to many that they are happy to pay a fee to have their refund organised for them. This situation would need to change in order for these proposals to work.

5.9.4 Further, if individuals have to claim refunds of tax, then HMRC must develop the capacity and ability to pay refunds directly into overseas bank accounts. Currently HMRC only send refunds by cheque to a UK address. This is a major failing in the current system, which is another reason that many migrant workers use refund companies to claim their tax refunds (and therefore pay a fee) – simply because the refund companies exchange the funds into their home currency and deposit it in their overseas bank accounts.

5.9.5 HMRC must also be set up so that they can identify and communicate with all people that might be affected to let them know of the upfront restriction, but that they may be entitled to claim the UK personal allowance under the tests and then secure a refund of tax. A one size fits all approach to communication will not work as not everybody has the same capacity. Clear, user-friendly, targeted consumer messages will be required at the less

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[26] In a system of entitlement followed by claw-back, there is a question mark over whether HMRC will be able to recuperate the tax if the migrant has left the country and at what administrative effort – HMT may not be aware for example that currently, 'voluntary' payments of PAYE can only be made by UK bank cheque or postal order, which will not be possible for many non-residents. There can also be an issue with 'voluntary' payments whereby they are not matched with a taxpayer's record in a timely manner, so a more efficient system would have to be developed.

[27] The Tax repayment System and Tax Refund Organisations: a call for action – LITRG (August 2013): http://www.litrg.org.uk/reports/2013/Refund_Company_Report

sophisticated end of the taxpayer spectrum. HMRC must also ensure that guidance is available through more than one channel and potentially in different languages.

LITRG
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