

ARE YOU A UK TAX RESIDENT UNDER THE NEW STATUTORY RESIDENCE TEST?

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INTRODUCTION

A new UK statutory residence test (SRT) for individuals came into effect on 6 April 2013 and applies for the tax year 2013-14 onwards. The SRT is contained in the Finance Act 2013, which was enacted on 17 July 2013. The SRT contains a series of tests to determine an individual's residence status for UK tax purposes. This briefing outlines the various tests forming part of the SRT and the steps that should be followed when attempting to determine whether an individual is UK tax resident.

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Why is determining an individual's residence status important? An individual's residence status is important when determining that individual's liability for UK tax. In most circumstances, individuals who are UK tax resident are liable to UK tax on some or all of their worldwide income and capital gains, whereas individuals who are not UK tax resident are generally only liable to UK tax on UK source income and in most circumstances will not be liable to UK tax on capital gains.

THE UK RESIDENCE RULES PRIOR TO 6 APRIL 2013

Despite the importance of establishing whether an individual is UK tax resident, until the introduction of the SRT there was no definition for UK tax residence; rather the concept had been developed through case law and guidance from HM Revenue & Customs (HMRC). The courts established several factors that may be relevant when determining an individual's residence status, including: UK accommodation; frequency and purpose of UK visits; and ties with the UK (for example, family and business links).

However, there were no definitive rules prescribing when these factors would be sufficiently strong enough to make an individual UK tax resident.

THE CASE FOR REFORM

The plethora of case law on this issue, coupled with ambiguity concerning the binding nature of HMRC guidance (particularly following the recent case of *Gaines-Cooper v Revenue and Customs Commissioners* [2011]) gave rise to much uncertainty regarding how UK tax residence was established.

Consequently, at the 2011 Budget, the Government announced its intention to introduce an SRT. A lengthy period of consultation followed until draft legislation was eventually published in June 2012. The Government intends that the SRT will not affect the residence status of the majority of individuals.

THE MECHANICS OF THE SRT

Under the SRT, the basic rule is that an individual will be UK tax resident if he/she does not meet any of the automatic overseas tests and:

- meets one of the automatic UK tests; or
- the sufficient ties test.

The Automatic Overseas Tests

There are three automatic overseas tests: (1) the “16-day” test; (2) the “46-day” test; and

- the “full-time work overseas” test. Accordingly, an individual will be automatically non-UK resident for tax purposes if he/she:
 - Was resident in the UK for one or more of the previous three tax years and spends less than 16 days in the UK in the current tax year and does not die in the current tax year;
 - Was not resident in the UK for any of the previous three tax years and spends less than 46 days in the UK in the current tax year; or
 - Works full-time overseas without any significant breaks during the tax year, and:
 - spends less than 91 days in the UK in the current tax year; and
 - works for no more than 30 days in the UK in the current tax year (where a working day is deemed to be at least 3 hours work).

For the purpose of the third automatic overseas test, an individual is considered to work full-time overseas if he/she works for “sufficient hours overseas”, which is calculated according to a prescribed formula.

If an individual does not satisfy any of the automatic overseas tests, it will be necessary to consider whether one of the automatic UK tests applies.

The Automatic UK Tests

There are three automatic UK tests: (1) the “183-day” test; (2) the “UK home” test; and (3) the “full-time work in the UK” test. An individual will be automatically UK tax resident if he/she:

- Spends at least 183 days in the UK in the tax year;

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- Has a home in the UK during all or part of the tax year, and
 - that individual is present in that home on at least 30 days in the tax year; and
 - while he/she has that home there is a period of at least 91 consecutive days (at least 30 days of which fall in the tax year) when that individual either has no overseas home or, alternatively, has one or more overseas homes but is present in each on less than 30 days in the tax year; or
- Works full time in the UK over a 365 day period without a “significant break from UK work”; and
 - All or part of that 365 day period falls within the tax year;
 - More than 75% of the total number of working days in that 365-day period are working days in the UK (where a working day is deemed to be at least 3 hours work); and
 - At least one working day in the UK falls in both the 365-day period and the tax year.

For the purposes of the “UK home” test, an individual is present in his/her home on any day that he/she has been physically present in it, irrespective of how short a period this might be.

Akin to the “full-time work overseas” test, an individual will be considered as working full-time in the UK, if he/she works for “sufficient hours in the UK”, which is calculated according to a prescribed formula. Broadly, for both the “full-time work overseas” and the “full-time work in the UK” tests, a “significant break” from work occurs where an individual does not work for at least 31 consecutive days.

"The sufficient ties test involves considering an individual's ties to the UK and combining those ties with the number of days that he/she spends in the UK."

THE SUFFICIENT TIES TEST

If an individual does not satisfy either the automatic overseas tests or the automatic UK tests, it will be necessary to consider the sufficient ties test. The sufficient ties test involves considering an individual's ties to the UK and combining those ties with the number of days that he/she spends in the UK to determine whether that individual is considered to be UK tax resident for a particular tax year. There are five UK ties: (1) family tie; (2) accommodation tie; (3) work tie; (4) 90-day tie; and (5) country tie.

Family Tie

An individual has a UK family tie for a tax year if any of the following family members are UK tax resident in that tax year:

- Husband, wife or civil partner;
- Partner if living with the individual as husband, wife, or civil partner; or
- Child under 18-years

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It should be noted that an individual will not have a UK family tie, solely by virtue of spending time with his/her child in person in the UK on less than 61 days in the tax year. Additionally, children under 18 years of age will not constitute UK family ties, if they are in full-time education in the UK, would not be UK resident if they were not in full-time UK education and spend less than 21 days in the UK outside of term-time (half-term breaks and inset days are included as being term-time).

Accommodation Tie

An individual has a UK accommodation tie if he/she has a place to live in the UK and it is available to him/her for a continuous period of 91 days or more during the tax year; and he/she spends at least one night there during the tax year. If the available accommodation is at the home of a close relative, there will be a UK tie, if that individual spends at least 16 nights there during the tax year. For the purposes of the SRT, a close relative will be a parent, grandparent, sibling or adult child or grandchild.

Work Tie

An individual has a work tie for a tax year if he/she works in the UK on at least 40 days in the tax year. Akin to other tests explained above, 3 hours of work will constitute a working day. There is no requirement for the 40 working days to be in a single continuous block.

90-day Tie

If an individual spends more than 90 days in the UK in either or both of the previous two tax years, he/she will have a 90-day tie. Subject to certain exceptions, an individual is considered to have spent a day in the UK when he/she is in the UK at midnight.

Country Tie

This is only relevant to those individuals attempting to leave the UK and cease being UK tax resident. An individual will have a UK country tie, if the UK is the country in which he/she is present at midnight for the greatest number of days in the tax year

The number of ties that will be required to make an individual UK tax resident will depend on the number of days that that individual spends in the UK in the tax year. The sufficient ties test reflects the concept that when an individual spends increasingly more time in the UK, fewer UK ties will be permissible if that individual wants to maintain a non-UK resident tax status. The sufficient ties test also distinguishes between those individuals who have been UK tax resident for one or more of the previous three tax years (“leavers”) and those who have not been UK tax resident for any of the previous three tax years (“arrivers”). It is harder for individuals to relinquish their UK tax residence status than for individuals to become UK tax resident. Accordingly, the thresholds are lower for individuals attempting to become non-UK tax resident than for those individuals becoming UK tax resident for the first time.

The table below details the minimum number of UK ties required to make an individual UK tax resident under the sufficient ties test.

Minimum number of UK ties required to make an individual UK tax resident

Days spent in the UK

Arrivers

Leavers

Minimum number of UK ties required to make an individual UK tax resident

Fewer than 16	Always non-resident	Always non-resident
16-45	Always non-resident	4
46-90	4	3
91-120	3	2
121-182	2	1
183 or more	Always resident	Always resident

SPECIAL RULES

When applying the SRT, special rules need to be considered if an individual dies in a tax year, whilst additional rules also exist for those individuals with jobs working on board vehicles, aircraft or ships. A discussion of these rules is beyond the scope of this briefing.

Under the SRT, an individual is either UK resident or non-UK resident for the entire tax year. However, in certain circumstances split-year treatment is available for those individuals who either start to live or work abroad or come from abroad to live or work in the UK during the tax year. Essentially, this involves splitting the tax year into two parts: a UK part, where an individual is considered to be UK tax resident and an overseas part, where an individual is taxed as non-UK resident.

Finally, it is important to note that time that an individual spends in the UK as a result of “exceptional circumstances beyond their control”, will be disregarded when applying the SRT. Possible examples of “exceptional circumstances” could include: natural disasters; civil unrest; and a sudden serious or life threatening illness or injury. The number of days that will be disregarded is limited to 60.

COMMENT

The SRT provides a definitive set of rules to determine UK tax residence, creating clarity in the law that was previous lacking. This is to be welcomed. However, the rules are complex and lengthy and HMRC’s guidance can be difficult to navigate. Consequently, individuals should continue to consult specialist tax advisers when attempting to determine their tax residence status.

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