

The statutory residence test

The enactment of the Finance Bill 2013 on 17 July 2013 heralded a new era for tax residence legislation, including as it did the much-anticipated new statutory residence test (SRT) which applies to individuals from 6 April 2013. This note summarises the mechanics of the SRT (as well as the other Finance Act 2013 changes to the tax residence rules) and highlights some practical issues in relation to the new legislation.

1. How does the SRT work?

There are three parts to the SRT as follows:

1.1 Automatic overseas test

An individual is not resident for a tax year if he:

- was not UK resident in any of the previous three tax years and spends fewer than 46 days in the UK in the relevant year; or
- was UK resident in one or more of the previous three tax years and spends fewer than 16 days in the UK in the relevant tax year; or
- carries out full-time work abroad (which includes self-employed work).

Key definitions

Day spent in the UK: A day where an individual is here at midnight. However, a day when he arrives in the UK as a passenger, leaves the following day and in the meantime undertakes activities related only to his passage through the UK, will not be included. In addition, days spent in the UK due to exceptional circumstances beyond an individual's control that prevent him leaving the UK do not count for the purposes of the SRT, provided they do not exceed 60 days. There is an anti-avoidance rule to prevent abuse of the midnight test for certain individuals who are in the UK, but not present here at midnight, for more than 30 days. Finally, note that this definition of "a day spent in the UK" applies for the purposes of the SRT generally, subject to certain exceptions (eg see the definition of "working day" below).

Full-time work abroad:

- The individual undertakes an average of 35 hours work per week overseas for the relevant year (calculated using special rules);
- He is in the UK for fewer than 91 days in the relevant year;
- He has fewer than 31 UK workdays in the relevant year; and
- He has no significant break from overseas work (being a period of more than 30 days).

Working day: A day of more than 3 hours of work (irrespective of whether the individual was in the UK at midnight).



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1.2 Automatic residence test

An individual who does not meet the Automatic Overseas Test will be resident for a tax year if he:

- spends 183 days or more in the UK in the relevant year; or
- has a UK home; or
- works full-time in the UK (which includes self-employed work).

Key definitions

UK home: The individual has a home in the UK during the relevant year and:

- he is present here for a total of at least 30 days in the relevant year; and
- there is a period of 91 consecutive days (at least 30 days of which fall within the relevant year) during which he has that UK home and either no overseas home, or one or more overseas homes in which he spends a total of less than 30 days in the relevant year.

An individual will be treated as present at the home for a day if he has been there for any length of time on that day (ie it is not necessary for him to be there at midnight for the day to be counted). Note that "home" has a wide definition: it can include "a vehicle, vessel or structure of any kind". However, a place must have a "sufficient degree of permanence" to count as a home, therefore property used as a holiday home will not be included. Property that is let commercially also will not qualify as a home. Key factors when assessing the position will be whether the relevant place is both capable of being and actually used as a home.

Full-time work in the UK:

- The individual works full-time (ie an average of 35 hours work per week) in the UK for 365 days, at least part of which is within the relevant year (calculated using special rules);
- He has no significant break from UK work (being a period of more than 30 days);
- More than 75% of his workdays in the 365 day period are UK workdays; and
- There is at least one UK workday which falls within both the 365 day period and the relevant year.

1.3 Sufficient ties test

If an individual's residence status has not been ascertained under either of the above tests, this third test, which considers both the number of days spent in the UK as well as an individual's UK ties, will be applied. The test has been designed so that it is more difficult to relinquish UK residence status than to acquire it in the first place. Therefore, there are separate tests for:

Arrivers - defined as individuals not resident in any of the three previous tax years;
and

Leavers - defined as individuals resident in one or more of the three previous tax years.

The test is structured so that the more UK ties that a person has, the fewer days he can spend in the UK without becoming resident (see the table below).

Days spent in UK	Number of UK ties which make Arrivers resident	Number of UK ties which make Leavers resident
Less than 16 days	Always non-resident	Always non-resident
16 - 45 days	Always non-resident	4 UK ties or more
46 - 90 days	4 UK ties	3 UK ties or more
91 – 120 days	3 UK ties or more	2 UK ties or more
121 – 182 days	2 UK ties or more	1 UK tie or more
Greater than 182 days	Always resident	Always resident

The following UK ties are relevant for both Arrivers and Leavers:

Family - the individual has a UK resident spouse, civil partner (or common law equivalent) or child under 18 years in the relevant year. It should be noted that:

- a child does not represent a family tie if the individual sees the child in the UK for fewer than 61 days in total in the relevant year (a day including part days, as well as whole days, spent with the child); and
- a child who is resident due to being in the UK for full-time education in the UK will not be treated as a family tie if that child spends fewer than 21 days in the UK outside term-time in the relevant year.

Accommodation – the individual has a place to live in the UK which is available to him for a continuous period of at least 91 days during the relevant year (although an interval of fewer than 16 days during which the accommodation is not available will be disregarded) and he spends at least one night there in that year. However, he is allowed to stay at the home of a close relative (which does not include a spouse or child under 18 years) for less than 16 nights without it being regarded as available accommodation. Note that accommodation can be "available" to an individual even if he is not the owner and UK holiday homes and temporary retreats are included in the definition. However, short stays at hotels will not usually constitute an accommodation tie.

Work - the individual works in the UK (including self-employed work) for a total of 40 days or more for more than 3 hours a day. This includes tax-deductible travel and training time that is work-related and paid for by the employer.

90 days - the individual has spent more than 90 days in the UK in either or both of the previous two tax years.

Leavers also have the following additional UK tie:

Country – the individual spends more days in the UK than in any other single country.

Abolition of ordinary residence

The concept of ordinary residence has been abolished from 6 April 2013 in order to simplify the residence rules. In particular, the withdrawal of ordinary residence status will mean that:

- the remittance basis is now available only for non-UK domiciliaries; and
- the transfer of assets abroad rules may become relevant for individuals who were not affected by these provisions previously because they were resident but not ordinarily resident.

Overseas workday relief

Prior to 6 April 2013, overseas workday relief allowed individuals who were resident but not ordinarily resident in the UK and who carried out employment duties partly in the UK and partly overseas, to benefit from the remittance basis on foreign earnings. This relief has been placed on a statutory footing from 6 April 2013 for non-UK domiciled individuals arriving in the UK who have been non-UK resident for the previous three tax years. The new relief applies for a fixed period of up to the first three years of residence, but only is available for individuals coming to the UK from 6 April 2013. Those who are already here will be subject to existing treatment.

Split-year treatment

Split year treatment (which allows an individual to be treated as non-UK resident for part of the tax year) is now restricted, broadly, to where an individual:

- a) starts to work full-time overseas (or accompanies a spouse or partner who is working full-time overseas); or
- b) leaves the UK to live abroad, moving his home there within six months of his departure and not returning to the UK for more than 15 days for the rest of the relevant tax year; or
- c) comes to the UK to live here and his only home is in the UK; or
- d) comes to work full-time in the UK; or
- e) comes to the UK after leaving to work abroad (or accompanies a spouse or partner coming to the UK after leaving to work abroad); or
- f) acquires a home in the UK and continues to be resident in the UK in the next tax year.

Temporary residence rules

New rules have been introduced in relation to the taxation of individuals who avoid tax on the receipt of certain types of income (eg dividends paid by close-companies and proceeds of single premium insurance bonds) whilst temporarily non-resident. The rules apply to individuals who have been UK resident for four or more of the previous seven tax years. Where such individuals are non-resident for no more than five complete tax years they will be treated as receiving the relevant income in the year of their return.

Other

The new legislation includes special rules to determine the residence position of international transportation workers (eg pilots) and the position of individuals who die within the relevant tax year.

Some practical issues

- Non-resident individuals should review their position to ensure that actions taken now do not prejudice their residence status in the future. This is particularly important due to the fact that establishing non-residence is more difficult for those leaving the UK after a period of residence than for those arriving in the UK.
- Individuals may elect to apply the SRT to one or more of the three tax years prior to 6 April 2013 in order to determine their residence for the current and future tax years. If you intend to make an election, ensure that any necessary paperwork is retained to evidence your residence status for the years before the introduction of the new test.
- Where the "full-time work tests" are being relied upon, take care to ensure that all the conditions are met and remember that work-related activity, such as training, may be taken into account. Ensure that detailed records are kept to evidence the 3 hour working day restriction.
- Take particular care when assessing whether you have a "home" or "available accommodation" under the new rules. All relevant facts and conditions need to be taken into account and kept under review. Remember that even if you do not have a UK home you may still have an "accommodation tie" under the Sufficient Ties Test if you have a place to live in the UK, the latter concept being more transient than a "home".
- Individuals with interests in offshore trusts and companies before 6 April 2013 who were not ordinarily resident should consider their exposure to the transfer of assets abroad legislation following the abolition of ordinary residence.
- HMRC has provided an on-line tool to assist taxpayers in deciding whether they are resident under the SRT. However, this tool only provides a definitive conclusion if you can show that you have applied the interpretation of any relevant concepts in the SRT correctly to your circumstances. Therefore, this is likely to be of limited use in more complex cases.
- If you come to the UK part way through a tax year, unless split year treatment applies to the facts of your case, you risk being treated as tax resident for the whole tax year (subject to any relief under a double tax treaty). This could adversely affect pre-immigration tax planning.

This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances.
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