

## Briefing Note

### Statutory Residence Test

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#### The New Statutory Residence Test

In 2011 the Government announced its intention to introduce a new statutory test of residence for tax purposes. The statutory residence test applies from 6 April 2013.

The relevant legislation is found in Schedule 45 Finance Act 2013.

#### Who does this affect?

The new rules affect anyone who has already become non UK resident or who is planning to leave the UK to take up residence abroad in the future; and people coming to the UK to live. The new statutory test completely replaces the previous rules, which were based on a mixture of case law and H M Revenue & Customs (HMRC) practice, and which could be confusing and difficult to apply. The new test applies for income tax and capital gains tax purposes (and, so far as relevant, for inheritance tax and corporation tax) but it will not be relevant for non tax purposes (such as national insurance contributions).

From 2013/14 onwards, residence in the United Kingdom for tax purposes is decided in accordance with the statutory test. Where a person's residence status in an earlier year is relevant in deciding his residence under the new rules, the rules in force in the earlier year will apply. However for 2013/14, 2014/15 and 2015/16 it will be possible to elect for one's residence status for a year prior to 2013/14 to be determined according to the new rules. The election must be within 12 months of the end of the tax year for which it is to apply. This is only for the purpose of deciding his residence from 2013/14 onwards, and his actual residence status for years prior to that will continue to be decided under the previous law. Anyone who was non resident under the previous rules, and intends to remain outside the UK in future, will have to meet the new test.

#### How does the new test work?

The new system applies a two-stage approach to determine residence. The first stage is to establish whether a person is resident or not resident without reference to his ties with the UK. If one of these tests is met, that is conclusive of the matter. If none of these tests is met, the second stage is to look at the combination of the days spent in the UK in a given year and the ties that person has within the UK in order to determine residence.

The rules distinguish between non residents coming to the UK to live (arrivers) and existing residents who are leaving to move abroad (leavers). The test for leavers to become non UK resident is stricter than for arrivers to become UK resident. The new test is designed to give clarity to taxpayers in determining their residence status; and is based on objective tests, rather than the current system which is often criticised as being too subjective in its approach.

## First Stage – Automatic tests

### (i) The non resident tests

If a person meets any of the following tests he is not UK resident for tax purposes in a tax year (X):

- someone who has been UK resident for one or more of the three tax years immediately preceding year X and spends less than 16 days in the UK in year X. This does not apply if the person dies in year X, so a long-term UK resident who goes to live abroad, and limits his return visits to less than 16 days in the year, will remain resident if he dies before the end of the first tax year spent abroad.
- someone who has not been UK resident for at least three tax years prior to year X and spends less than 46 days in the UK in year X.
- someone who works full time overseas for year X, in which there are no significant breaks from work, and spends less than 91 days in the UK in year X, of which less than 31 are days on which he does more than three hours work in the UK. A significant break from work is a period of at least 31 days when the person does not do more than 3 hours work overseas on any day, and is not on annual leave, sick leave or parenting leave.
- someone who was not UK resident in either of the two tax years preceding year X (or who was not resident in the previous tax year and for whom the year before that was a split year in which he left the UK), who spends less than 46 days in the UK in year X, and dies in year X.
- someone who dies in year X, who was not UK resident in either of the two tax years preceding year X because he was working full time overseas under the third test and who would have met the third test in the year of death if the relevant periods were pro rated from the beginning of year X to the date of death.

### (ii) The resident tests

If none of the non resident tests is met a person is UK resident in tax year X in if he meets any of the following tests:

- the person spends at least 183 days in the UK in the tax year.
- the person has a home in the UK for a period of 90 days and is present there for at least 30 days in year X **AND** while he has his UK home he either has no home overseas or has one or more homes overseas but spends fewer than 30 days at any one of them in year X, and that is the case for at least 91 consecutive days at least one day of which falls within year X. It is not necessary to spend the night at a home for it to count towards the 30 days. Anytime, however short, for which the person is present there is sufficient.

- the person
  - (i) works full time in the UK over a period of 365 days some or all of which falls within year X
  - (ii) during that period there are no significant breaks from work and
  - (iii) more than three-quarters of the number of days in year X when he does more than three hours work is when he is doing that work in the UK.

A significant break from work is a period of at least 31 days where the person does not do more than three hours work in the UK on any day, and is not on annual leave, sick leave or parenting leave.

- someone who was UK resident for the three years prior to year X under the automatic residence tests, for whom year X is not a split year, who dies in year X and has a home in the UK when he dies.

### Second Stage – Connecting factors – the “Sufficient Ties” test

If none of the non resident tests and none of the resident tests is met, the next stage is to look at ties with the UK. In broad terms, the more ties a person has with the UK, the fewer days he may spend here before being regarded as UK resident. There are two scales, one for those who have been UK resident for one or more of the three preceding tax years (leavers) and one for those who have not been UK resident for any of the three years prior to the year concerned (arrivers).

Days in UK	Leavers	Arrivers
Less than 16	Non resident	Non resident
16 – 45	Resident if at least 4 ties	Non resident
46 – 90	Resident if at least 3 ties	Resident if at least 4 ties
91 – 120	Resident if at least 2 ties	Resident if at least 3 ties
121 – 182	Resident if at least 1 tie	Resident if at least 2 ties
183 or more	Resident	Resident

### What are Ties?

There are five connecting factors that are “ties” for the purposes of the new test. All five apply to anyone who has been UK resident in any of the three years prior to the tax year concerned (leavers), but only four apply to others (arrivers). The “country tie” (see below) does not apply to arrivers. Each tax year is looked at separately to decide whether there is a UK tie.

The ties are:

### Family Tie

You have a family tie in year X if any of the following is UK resident in that year:

- your husband, wife or civil partner, unless you are separated
- anyone with whom you are cohabiting
- any of your children under the age of 18.

Having a child under the age of 18 does not count as a family tie in the following circumstances:

- if you see the child in the UK on less than 61 days in the tax year (and a day counts if you see the child for all or part of the day);
- if it is the year in which the child turns 18 and you see the child for less than 61 days in the year before his or her birthday.

There is also an exception for children under the age of 18 who are in full time education in the UK. If they spend less than 21 days in the UK outside term time, they are treated as not UK resident, and therefore cannot be a family tie. This applies if the child would not be resident if time spent in the UK full time education is ignored.

### Accommodation Tie

You have an accommodation tie in year X if you have a place to live in the UK which is available to you for at least 91 days continuously, during year X AND you spend at least one night at that place in the year. Gaps of fewer than 16 days when the place is not available to you are ignored.

You have a place to live in the UK if you have a home in the UK, a holiday home, weekend home, temporary retreat or something similar, or where there is other accommodation available to you where you can live when you are in the UK. You can have accommodation available to you even if you do not own it or have any legal right to occupy it. The meaning of “a place to live” is potentially very wide and could include a hotel or a private members’ club that someone uses on a regular basis.

If the accommodation belongs to one of your close relatives, you can spend up to 15 nights there before it will count as an accommodation tie. A close relative means your parents or grandparents, brothers or sisters, and children and grandchildren aged 18 or over, whether they are related by blood or by marriage/civil partnership.

### Work Tie

You have a work tie for tax year X if you work in the UK for at least 40 days in the year. This can be 40 days continuously or 40 days in total. You work in the UK on any day in which you do more than 3 hours work.

There is no guidance as to how this is going to be monitored in practice.

## 90 Day Tie

If you have spent more than 90 days in the United Kingdom in either or both of the two tax years preceding the year concerned, you have a tie. This means that if you have spent more than 90 days in the UK in 2012/13 and/or 2011/12 you have a tie with the UK in 2013/14.

## Country Tie

This applies only to leavers (i.e. someone who has been UK resident in at least one of the three preceding tax years).

If you spend more days in the UK than in any other country in the tax year concerned, you will have a country tie. This means that even if you restrict your days in the United Kingdom to the number permitted for your circumstances, you will still be resident here if you are spending more days here than anywhere else.

## What Counts as a Day Spent in the UK?

If you are present in the UK at the end of the day, it counts as a day spent here (the midnight rule). There are exceptions for:

- passengers in transit who arrive in the UK on one day and leave on the next, and do not engage in activities that are substantially unrelated to their passage through the UK between arrival and departure.
- if you would not be in the UK at the end of a day but for exceptional circumstances beyond your control that prevent you leaving the UK, and you intend to leave as soon as those circumstances permit, that day does not count. Examples of exceptional circumstances are national or local emergencies like war, civil unrest or natural disasters, and sudden or life threatening illnesses or injuries.

The exceptional circumstances exception is subject to a maximum of 60 days in any tax year.

There is a special rule for anyone who has at least 3 ties with the UK and was UK resident in at least one of the three tax years preceding the year concerned. If that person is present in the UK on more than 30 days in the tax year, but not at the end of the day, the excess days over 30 count as days spent in the UK. This is to avoid exploitation of the midnight rule by avoiding being in the UK at the end of a day.

## What is a Home?

Any place can be a home for these purposes, including a vehicle or vessel. You do not have to own the property for it to count as a home. It can include rented accommodation and even accommodation which you are not occupying under any formal legal agreement. Conversely a place that has been your home does not count after you have moved out, just because you still own it, for example where you are in the process of selling it or you have let or sub-let it. Somewhere you use only as a holiday home or temporary retreat does not count as a home.

## When am I Working in the UK?

You are considered to be working at any time when you are doing something in the performance of the duties of your employment, or in the course of a trade which you are carrying on alone or in partnership. The test of whether something counts as an employment is whether if you were paid for doing it, the payment would be taxed as employment income. The test of whether something is being done in the course of a trade is whether if expenses were incurred in doing it, they would be deductible for income tax purposes. Time spent travelling and training can count as work. If you are acting voluntarily and you do not have a service contract, that does not count as work.

## Where am I Working?

You are working wherever the work is actually done. If you work in the UK, that counts as work done here even if the trade or employment is carried on elsewhere.

## What is Full Time Work?

You work full time if you work on average 35 hours or more per week over the period in question. If you have more than one employment or you carry on more than one trade, the hours worked for all trades and employment will be added together in working out the average.

## Split Year Treatment

Previously you were resident or not for the whole of the UK tax year, and this continues to be the case under the new statutory residence test. By concession HMRC would treat an individual as UK resident for part of the year only in certain circumstances. This concessionary treatment is replaced by statutory provisions for splitting the tax year. A tax year can be split into an overseas part of a UK part in the following circumstances:

1. If you start to work full time overseas for a period that continues until at least the end of the tax year. You must limit the number of days on which you do more than 3 hours work in the UK from starting full time work overseas until the end of the tax year.
2. If you join your husband/wife/civil partner/cohabitant who is working overseas and has split year treatment. After you leave you must either have no home in the UK OR you must spend more time at your overseas home than your UK home. You must limit your return visits to the UK for the remainder of the year.
3. If you leave the UK to live abroad and you had a home in the UK at the start of the tax year but you cease to have one in the tax year, and that continues until at least the end of the tax year. You must not spend more than 15 days in the UK after you have ceased to have a home in the UK, and you must have a "sufficient link" with a country overseas within six months of having a UK home.

"Sufficient link" with a country means:

- you are resident there for tax purposes under its domestic law
- you have spent every day of the six month period after you cease to have a UK home in that country
- your only home, or all your homes, are in that country.

4. If you were not resident in the previous year and you come to the UK to live or to work full time.

If you are coming to live you must acquire a home in the UK, which is your only home, and maintain it until the end of the tax year. If you have more than one home they must all be in the UK.

If you are coming to work you must start to work full time in the UK and continue until the end of the tax year.

In both cases you must meet the second or third automatic UK residence test.

5. If you start to have a home in the UK for the first time in the year concerned and that continues until the end of the tax year. This applies if you were not resident in the previous year and you are resident in the following year, without it being a split year.

### Temporary Non Residence

Anti avoidance provisions are included to prevent the rules being exploited by taking short periods of non residence. Someone who has been resident in the United Kingdom for four out of the preceding seven years before the year of departure, and whose period of non residence is five years or less, is treated as a “temporary non resident”. This is a change from the former rules for short term non residents which applied where the period of non residence was not more than five tax years. Income and gains arising to a temporary non resident will be treated as arising when they return to the UK.

If you have any queries about the statutory residence test please contact Heather Thompson at [heather.thompson@turcanconnell.com](mailto:heather.thompson@turcanconnell.com) or your usual Turcan Connell partner.

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