

The Statutory Residence Test



The statutory residence test rules took effect from 6 April 2013.

OVERVIEW OF THE LEGISLATION

We welcome the introduction of a statutory residence test (SRT). It should assist substantially with determining individual residence for UK tax purposes going forward. HM Revenue & Customs have issued detailed guidance on the legislation.

The main aim when the legislation was first announced was to remove the uncertainty that had long existed in determining residence based on case law and HMRC guidance.

As the legislation has been drafted and redrafted it has become increasingly complex with the result that reliance will once again often need to be placed on HMRC guidance which is undesirable.

In many cases the tests will be straightforward to apply and will produce a clear result however there will be difficult cases at the margins where uncertainty will remain.

The legislation contains many complex and detailed definitions and it is essential that these are clearly understood if the correct answer is to be obtained.

THE SRT

The SRT is in three parts - an automatic residence test, an automatic overseas test and a sufficient ties test.

If the individual does not meet the automatic residence test or sufficient ties test for the relevant year, they are treated as not resident in the UK. It is therefore necessary in order to determine an individual's residence to work through the tests systematically.

HMRC will provide an online tool to assist in this process but it is not yet clear whether it will be binding on them. The definitions in the legislation are so complex that it will still be necessary to seek advice other than in the most straightforward of circumstances.

THE AUTOMATIC RESIDENCE TEST

An individual is automatically resident for the year if they meet one of the following automatic UK tests and none of the automatic overseas tests. There are four automatic UK tests:

1. The individual spends at least 183 days in the UK in the year.
2. The individual has a home in the UK during the year; he is present there for a sufficient amount of time (there are at least 30 days in the year when he is present there for no matter how short a time on each day) and there is at least one period of 91 consecutive days of which at least 30 days fall in the current tax year throughout which the individual either has

no overseas home or has an overseas home or homes and spends no more than the permitted time (he is present there on fewer than 30 days for at least some of the time) at that home or at each of those homes.

3. The individual works sufficient hours in the UK over a period of 365 days, all or part of which falls within the relevant tax year; there are no significant breaks from work and on more than 75% of those UK working days more than three hours of work was carried out in the UK and at least one of those days falls in the current tax year. There are detailed rules to calculate whether an individual works “sufficient hours in the UK” but, broadly, the test will be satisfied if the individual works an average of 35 hours a week.
4. The individual dies during the relevant tax year, was resident for each of the three preceding tax years by reason of meeting the automatic residence test and even if the individual was not resident in the year they die the preceding year would not be a split year and at the time of death their home or, if there is more than one home, at least one of them was in the UK. Where an individual has an overseas home or homes the position will be affected depending upon the amount of time they have spent in each.

An individual is treated as being in the UK on any day when they are in the UK at midnight, except in certain cases when they are in the UK in transit. There is also an anti-avoidance rule within the day count rule which applies to individuals with three or more ties who are present in the UK on more than 30 days without being in the UK at midnight on any of those days and were UK resident for at least one of the previous three tax years. In this situation all days in excess of 30 when the individual is in the UK at any time are counted as days of presence.

THE AUTOMATIC OVERSEAS TEST

An individual is automatically not resident for the year if they meet one of the automatic overseas tests. There are five automatic overseas tests:

1. The individual was resident in the UK for one or more of the preceding three tax years, spends fewer than 16 days in the UK in the relevant tax year and does not die during the tax year.
2. The individual was resident in the UK for none of the preceding three tax years and spends fewer than 46 days in the UK in the year in question.
3. The individual works sufficient hours overseas during the year without significant breaks and

during that time works in the UK (for more than three hours a day) on no more than 30 days and also spends fewer than 91 days in the UK in the relevant tax year. There are detailed rules to calculate whether an individual works “sufficient hours overseas” but, broadly, the test will be satisfied if the individual works an average of 35 hours a week.

4. The individual dies during the year, was not resident in the UK in either of the two preceding tax years and the number of days in the UK in the year is less than 46.
5. The individual dies during the year, was not resident in the UK in either of the two preceding tax years because they met the third automatic overseas test above and met the conditions of the test for the period in the current year up to the date of death.

THE SUFFICIENT TIES TEST

If an individual is not conclusively resident or not resident when applying the above tests, it is necessary to turn to the sufficient ties test. Whether the individual is resident in the UK depends on the number of ties they have with the UK together with the number of days spent here.

The ties are:

- A family tie
- An accommodation tie
- A work tie
- A 90 day tie and
- A country tie*

** Only applicable if the individual was resident for one or more of the preceding three tax years.*

The ties are applied differently depending on whether an individual is an ‘arriver’ (not resident for any of the previous three tax years) or a ‘leaver’ (resident for one or more of the previous three tax years).

The table for **arrivers** is as follows:

Days spent in UK	Number of ties that are sufficient for residence
Fewer than 46 days	Always non-resident
46 - 90 days	All four ties
91 - 120 days	At least three ties
121 - 182 days	At least two ties
183 days or more	Always resident

The table for **leavers** is as follows:

Days spent in UK	Number of ties that are sufficient for residence
Fewer than 16 days	Always non-resident
16 - 45 days	At least four ties
46 - 90 days	At least three ties
91 - 120 days	At least two ties
121 - 182 days	At least one tie
183 days or more	Always resident

There are modifications to the tables if the individual dies during the year.

EXAMPLE

Isabel is single, currently lives in Spain and spends time in the UK in 2013/14. She spends 100 days in the UK and rents an apartment for the entire year which is available for her use. She does not work while she is here. She is not resident in the UK. However, if she were to spend more than 182 days she would be treated as UK resident. If she visits again during 2014/15 her days in the UK must be limited to no more than 120 if she is to remain non-resident because the 90 day tie will apply as well as the accommodation tie.

EXCEPTIONAL CIRCUMSTANCES

The legislation makes provision for exceptional circumstances allowing up to 60 days of presence in the UK to be disregarded where an individual spends a day in the UK for reasons beyond their control, such as national or local emergencies or sudden or life threatening illness or injury. This would not include coming to the UK for medical treatment for the individual or a family member. This applies even where the consequence is that an individual will spend 183 days or more in the UK. This is more lenient than the previous rules.

DEFINITION OF TIES

The various ties have been defined although there may still be final changes to some of these definitions.

Family tie

Generally a family tie exists if an individual's spouse, civil partner, common law partner or minor child is resident in the UK for the year. The tie is not counted if the individual's only family member is a minor child who they see in the UK on fewer than 61 days in total or the minor child is only resident because they are in full time education in the UK for the year and their days in the UK outside term time are fewer than 21.

Accommodation tie

An accommodation tie exists if:

- An individual has a place to live in the UK, and
- That place is available for a continuous period of at least 91 days, and
- They spend at least one night at that place during the year.

A 'place to live' includes a holiday home or even a hotel and may include the home of a close relative.

Work tie

An individual is treated as having a work tie if they work in the UK for at least 40 days in the year, whether continuously or intermittently. A day where more than three hours work is carried out counts as a workday.

90 day tie

An individual has a 90 day tie if they spend more than 90 days in the UK in one or both of the preceding two tax years.

Country tie

An individual has a country tie if they spend more days in the UK than any other country during the year.

OTHER KEY POINTS

Other changes which are contained in the legislation include:

Transitional Rules

There are transitional rules which apply when the determination of an individual's residence position for the purposes of the SRT depends on their residence status in years preceding the introduction of the test. Individuals may apply the new rules to these years when determining residence for the purposes of the SRT although when determining actual residence status for those years the existing rules must be applied.

Split year treatment

The normal rule is that an individual is resident or not resident for the whole of a tax year. However, a tax year may be split into periods of residence and non-residence in various circumstances if a person begins or ceases to be resident part of the way through a tax year.

There are detailed rules for the different situations which must be studied to ensure that split year treatment applies. For instance, split year treatment is unlikely to apply where an individual moves to or leaves the UK, otherwise than for work, and they own a home in the UK before they arrive or one overseas before they depart.

Income tax avoidance

There are anti-avoidance rules to prevent individuals taking advantage of the certainty the SRT provides to become non resident for a short period of time and receive income free of tax. The rules are modelled on the existing capital gains rules and apply to certain types of income including certain dividends from close companies, lump-sum pension payments and gains on life assurance policies if the individual leaves the UK for less than five years.

The rules do not apply to ordinary earnings from employment or regular types of investment income eg. bank interest or dividends from non close companies.

Ordinary residence

Ordinary residence has been abolished. Provision has been made to deal with this where it was previously relevant e.g. certain anti avoidance legislation which only applied to individuals who were ordinarily resident now applies to all individuals who are tax resident. Overseas workdays relief for expatriates on short term secondment to the UK is replaced with a statutory relief which works in a similar way.

CONCLUSION

In most cases it will be possible for individuals to determine whether or not they are UK resident under the SRT reasonably easily and with a high degree of certainty. As with the previous rules there will be cases at the margins where individuals will have to examine their UK ties very

carefully to decide how many apply. The last thing an individual wants is to plan the number of days they may spend in the UK based on a certain number of ties only to find that they have one more tie than they thought. By then it may be too late to do anything about it and they will find that they have spent too many days in the UK and are tax resident.

The information detailed within this publication is intended as a general guide on this rapidly changing area and is no substitute for specific advice. If you would like to discuss the legislation in further detail please contact either your regular RPG CC contact or our tax team on 0207 782 0007.

