

Statutory Residence Test

The need to determine an individual's residence status by reference to case law and HMRC guidance ended on 6 April 2013 when the new Statutory Residence Test (SRT) came into force. This legislation enables an individual to conclusively determine their residence position.

An individual may be regarded as resident for part of a tax year but the split-year rules are complex and anyone leaving or coming to the UK part way through a tax year should carefully consider whether they will qualify for split-year treatment or if they will be regarded as UK resident for the whole tax year.

The following takes into account the legislation included in Schedule 45 Finance Act 2013.

An individual's residence status under the SRT, includes the following tests:

- The automatic overseas test
- The automatic residence test
- The sufficient ties test

Each test is considered in order so, for example, if an individual meets one of the automatic overseas tests, he is not UK resident for the year and there is no reason to consider the next two tests.

The Automatic Overseas Test

The existence of any one of the following automatic overseas tests will make an individual non-resident in a tax year:

- The individual was resident in the UK for one or more of the previous three tax years and spends fewer than 16 days in the UK in the current tax year; or
- The individual was resident in the UK for none of the previous three tax years and spends fewer than 46 days in the UK in the current tax year; or
- The individual:
 1. Works sufficient hours overseas for the relevant tax year (employees working full-time overseas on average at least 37 hours a week should qualify but all employees working on average at least 35 hours should review whether this test is met in accordance with the Steps provided in legislation);
 2. Spends no more than 30 days working in the UK, where a working day is defined as working for more than 3 hours; and
 3. Spends fewer than 91 days in the UK in the tax year.

The Automatic Residence Test

An individual who meets any of the automatic residence tests will be UK resident for the year as long as he did not meet at any of the 'automatic overseas tests'. The automatic residence tests are as follows:

- The individual spends at least 183 days in the UK in the relevant tax year; or
- The individual has a home in the UK for a period of at least 91 days, all or part of which falls within the relevant tax year, and they are present in that home for at least 30 separate days in the tax year and while he/she has that home there is no home overseas or, if there is one or more homes overseas, he/she is not present in any of them for more than 30 days in a tax year; or
- The individual works sufficient hours in the UK for a period of 365 days, part or all of which falls within the relevant tax year, and during which time there are no 'significant breaks from work' of 31 days or more, and more than 75% of the total number of workdays in the 365 day period relate to days on which more than three hours are performed in the UK. Generally, an employee working in the UK on average at least 37 hours a week would meet this test but all employees working on average at least 35 hours should review whether this test is met in accordance with the steps provided in legislation.

The work tests do not apply to International Transportation Workers, however the other tests can be applied in establishing their residence status.

The Sufficient Ties Test

If an individual's residence status is not determined by either of the automatic tests, it is then necessary to consider the Sufficient Ties Test. This test looks at four or five relevant 'UK ties' and compares them with the number of days that the individual spends in the UK in a tax year. The ties are as follows:

- Family tie - the individual's spouse or civil partner or common law equivalent (provided the individual is not separated from them) or minor children are resident in the UK in the relevant year;
- Accommodation tie - the individual has a place to live available to him/her in the UK during a tax year for a continuous period of at least 91 days (not counting any gaps during this period of fewer than 16 days) and spends at least one night at that place in the year;
- Work tie - the individual works in the UK for at least 40 days in a tax year, on which he/she does more than three hours' work;
- 90 day tie – the individual spent more than 90 days in the UK in either or both of the previous two tax years; and
- Country tie (only relevant to an individual who was resident in the UK for one or more of the preceding three tax years) – an individual spends more days in the UK than in any other country in the tax year.

The interaction of ties with days in the UK is set out below.

Days spent in UK	Number of UK ties required for UK residence	
	Resident in any of last 3 yrs	Resident in none of last 3 yrs
< 16 days	Always non resident however many ties	
16-45 (inc.)	4 ties	Always non-resident however many ties
46-90 (inc.)	3 ties	All 4 ties
91-120 (inc.)	2 ties	3 ties
121-182 (inc.)	1 tie	2 ties
>182 days	Always resident	

Day-counting

The number of days spent in the UK per tax year will be important for all three tests. A UK day will be counted if the individual is present in the UK at midnight subject to the deeming rule (below). In principle, therefore, it will be possible for an individual to spend a day in the UK (flying into the UK in the morning, and out in the evening) without that day being counted for the purpose of the SRT.

Transit days are not counted as days spent in the UK.

The deeming rule

The deeming rule applies where an individual has:

- at least three UK ties for the tax year;
- been present in the UK on more than 30 days without being present at the end of that day (called 'qualifying days'); and
- been UK resident in one or more of the preceding three tax years.

If the deeming rule applies, days of departure in excess of 30 are counted as days spent in the UK. Note the importance of checking UK ties if this situation arises. The deeming rule does not apply for the purposes of the third automatic overseas test.

Exceptional days

Days in the UK will not be counted if the individual's presence is due to exceptional circumstances. The maximum number of days disregarded in this respect is 60. Exceptional circumstances will apply only where the individual was present in the UK due to circumstances beyond his/her control, which were unforeseen and where he/she has no option but to stay in the UK.

Split year treatment

An individual will be treated as split-year resident if he/she is UK resident for the year and the circumstances fall within any of the eight cases specified in Part 3, Sch. 45 (split year treatment cannot apply to a person who is non-resident for the year). Where split-year treatment applies, the individual is still regarded as resident for the whole of the tax year but the tax liability for the overseas part of the year is calculated as though he/she was non-resident for that period.

Death of individual

Special rules apply for individuals who die in a tax year with regard to the permitted UK days.

Ordinary Residence

The 'ordinary residence' status ceased to apply from 6 April 2013. Overseas work days relief (OWR) will be available for an individual who is:

- non UK domiciled; and
- has been non UK resident for the three tax years preceding arrival.

Overseas work days relief will be available for the tax year of arrival and the following two tax years. Transitional rules mean that an individual who would have benefited from OWR for three full tax years will continue to be able to benefit for this amount of time if they were claiming OWR when the new rules came into force on 6 April 2013.

Transitional rules apply to termination payments where the individual arrived in the UK before 6 April 2013. Rules in existence previously will apply until the third tax year of arrival has passed.

Legislation that previously referred to 'ordinary residence' now refers to the individual being 'resident'. Likewise, legislation that previously referred to 'not ordinarily resident' has been changed to 'not resident'.

Conclusion

Putting the residence test on a statutory footing was designed to bring certainty to individuals but the legislation is complex and must be carefully considered for those who have a presence in or connections with the UK. The application of the split-year rules in particular may cause the period of residence to apply for longer than anticipated in the tax year of departure or arrival or may not apply at all resulting in foreign income and capital gains falling unexpectedly within the scope of UK tax.

Individuals who were non-UK resident before 6 April 2013 should review their status in accordance with the new SRT rules each tax year. This is particularly important if their visits to the UK are expected to exceed 45 or 15 days in any tax year (depending on whether or not they were non-resident for all of the previous three tax years) and have UK ties.

The above is intended to be a general overview of the legislation set out in the Finance Act 2013 and should not be relied upon in isolation to establish an individual's residence status.

We would encourage all non-residents and individuals coming to or leaving the UK to review their residence status taking into account the SRT.

If you require assistance regarding the Statutory Residence Test, please refer to your normal PKF Francis Clark contact or Karen Bowen (Karen.Bowen@pkf-francisclark.co.uk) who can offer you the expert advice that you will need.

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