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# The Statutory Residence Test for those leaving the UK

The following is a very brief summary of the new Statutory Residence Test (“SRT”) and the detail in this document has not been tailored to individual circumstances and is intended for general guidance only. Therefore this summary is not intended to give any individual advice on residence status as a detailed knowledge of an individuals’ family situation and work activities are required to do so.

HMRC have published a guidance note on these new rules and this gives a more detailed analysis of the SRT. This can be viewed on their website at [www.hmrc.gov.uk/budgetupdates/11dec12/stat-res-test-note.pdf](http://www.hmrc.gov.uk/budgetupdates/11dec12/stat-res-test-note.pdf).

## *Background*

The SRT for individuals takes effect from 6 April 2013 replacing the current case law based approach. The current system was uncertain and recent cases (most notably that of *Gaines-Cooper* [2008]) demonstrated that reliance could not be placed on published HMRC guidance in this area.

A long consultation process which began in June 2011 has resulted in draft legislation set out in the Finance Bill published on 11 December 2012. The final version will be published after the Budget 2013 but there are unlikely to be any substantive changes due to the long consultation that has taken place.

## *Taxation of Capital Gains – the basic rules*

- A person is chargeable to capital gains tax in respect of any gains arising for his benefit in any tax year during **any part of which** he is resident in the UK. Under the new rules proposed in the draft Finance Bill, if there is a split year, any gain in the overseas part of the tax year is not chargeable.
- This does not apply to non domiciled individuals where they elect to be taxed on a remittance basis, in respect of any gains arising from the disposal of an asset situated outside of the UK, until they bring the proceeds back into the UK.
- Persons ceasing to be UK resident for less than five complete tax years will be taxed on any gains arising in the period of non-UK residence in the year they recommence UK residence. (Under new legislation this will be extended to dividends and other income from 6 April 2013).

## *Split year basis*

For individuals leaving the UK, it is possible to claim the split year basis, subject to meeting certain conditions. Split year basis allows an individual to be treated as non-UK resident from the date of departure. Where:

- You go to work full time overseas.
- You leave with your partner who goes to work full time overseas.
- You leave the UK to live abroad and cease to have a home in the UK and after that you spend fewer than 16 days in the UK.

## *Statutory Residence Test*

SRT will determine whether an individual is resident or not resident in the UK in a tax year for the purposes of income tax, capital gains tax and inheritance tax. There are two layers to the SRT:

- i. The automatic residence test.
- ii. The sufficient ties test.

The legislation distinguishes between those leaving the UK, and those arriving to take up residence in the UK, when considering residence for any particular year – for ease we refer to them as:

- “**Leavers**” are those individuals who have been resident in the UK for any of the past three years.
- “**Arrivers**” are those individuals who have **not** been resident in the UK for any of the past three years.

The **automatic residence test** is met if the individual meets any of the four automatic UK tests and none of the automatic overseas tests.

### *Automatic UK tests:*

- i. Present for 183 days in a tax year in the UK.
- ii. The individual has a home in the UK available for more than 90 days and visits that home for 30 days in the tax year and either:
  - a. This is the individual’s only home.
  - b. The individual has an overseas home but does not use it for at least 30 days in the tax year.
- iii. Works full time in the UK for 365 days or more without a significant break and in any one tax year more than 75% of these days are in the UK.
- iv. Where a person dies and they were UK resident in **each** of the three preceding years and broadly have a home in the UK when they died.

If an individual meets one of the automatic UK Tests, it is then necessary to consider whether the automatic overseas tests apply to prevent the individual being UK resident:

### *Automatic Overseas tests:*

- i. Leavers – spend less than 16 days in the UK.
- ii. Arrivers – spend less than 46 days in the UK.
- iii. Works full time abroad, and spends less than 91 days in the UK in the tax year, and less than 31 days where work in the UK for more than 3 hours.
- iv. Dies abroad having been not UK resident for two years and has spent less than 46 days in the UK.

## Sufficient Ties Test

If an individual meets none of the automatic UK tests, or any of the automatic overseas tests, the sufficient ties test must be considered.

There are two levels of test – one for arrivers, and a more stringent one for leavers. Someone leaving the UK will generally be a leaver for the first three years after leaving and from the fourth year be treated as an arriver for these purposes – in other words the rules relax from the fourth year of non UK residence.

The following table demonstrates the main differences in the number of days a leaver and an arriver could spend in the UK without triggering UK residence:

<i>Number of ties to the UK</i>	<i>Maximum number of days return to UK</i>	
	<i>Leaver</i>	<i>Arriver</i>
1	120	182
2	90	120
3	45	90
4	15	45

## UK ties

- i) Family tie**  
This test of connection concerns the individual's 'relevant relationships' with people (spouse, civil partner, 'common law' partner, a child under 18 years) who is resident in the UK. Children in full time education in the UK are not counted provided they do not spend more than 21 days in the UK outside of term time.
- ii) Accommodation tie**  
This tie exists if the individual has 'a place to live' in the UK which is available to them for a continuous period of at least 91 days in that year, and at least one night is spent there. If the accommodation belongs to a close relative, the threshold is 16 days. A 'place to live' includes a holiday home and a property not owned by the individual. The HMRC Guidance sets how this rule will work in practice.
- iii) Work tie**  
An individual has a work tie if they work (more than 3 hours a day) in the UK for at least 40 days (continuously or intermittently) in that year. Working includes travelling time where paid for by the employer, and job related training.
- iv) 90 day tie**  
This test is fulfilled for a year if the individual spends more than 90 days in the UK in either the year preceding the current tax year and/or the year before that one.
- v) Country tie**  
An individual has a country tie if the UK is the country in which they meet the midnight test for the greatest number of days in that year. The 'midnight test' is met if the individual is present in that country at the end of the day.

If the midnight test is met for the same number of days in two or more countries (and that number is the greatest number of days the individual meets the midnight test in any country), the individual has a country tie provided just one of those countries is the UK.

Once the number of ties has been established, an individual can then refer to the table above to determine whether, taking into account the number of days the individual has spent in the UK, the individual is UK tax resident in a particular tax year.

## *Days spent*

Generally, the ruling confirms that if an individual is not present in the UK at the end of the day, that day does not count as a day spent in the UK – the so-called ‘midnight rule’.

However, in order to prevent manipulation of the midnight rule, there is a deeming rule which overrides the basic provision. This deeming rule only applies if:

- The individual was UK resident in at least one of the three preceding tax years (i.e. a leaver).
- Has at least three UK ties in a tax year.
- Is present in the UK in that year for more than 30 ‘qualifying days’ (i.e. days when the individual is present in the UK at some point, but not at the end of the day).

Its effect is that once the threshold of 30 qualifying days is met in a tax year, each subsequent qualifying day in the year is treated as a day spent in the UK irrespective of where the person is at midnight.

There is a concept of exceptional circumstances where an individual may stay for up to 60 additional days beyond the normal day count set out in the SRT. These additional days must arise due to circumstances beyond the individual’s control. Whilst these circumstances are not defined, they are likely to include situations such as serious illness of the individual, their spouse or dependent children.

## *Emigration advice*

There are a wide range of countries to consider when considering a move from the UK. Tax is just one consideration that needs to be taken into account and the best location will depend upon an individual’s personal circumstances. PwC with its global reach can help with the decision making process.

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