



UK Statutory Residence Test Introduced - The Ties that Bind

08 April 2013

Following the publication of the Finance Act 2013, Private Client Partner Frederick Bjørn and Private Client Solicitor Emily Hewlett consider the Statutory Residence Test for individuals, and in particular whether it really is just a straight forward box ticking exercise...

At its most basic, the statutory residence test ("**SRT**") (which applies for the tax years 2013/14 onwards) provides the clarity and certainty that many clients and their advisors have been seeking. It is now possible to state categorically that an individual ('P' in the legislation and in this note) is either UK resident or not UK resident in a broad range of circumstances. Further, it has given a number of jet-setting anglophiles the opportunity to spend considerably more than the old 90 day average in the UK without fear of becoming resident. However, as demonstrated below, for those not fortunate enough to qualify for automatic resident/non-resident status, the rules are far from straight forward and require detailed examination.

Before setting out the tests it is worth reminding the reader that the UK tax year runs from 6 April to 5 April in the following year. This differs from nearly all other countries (in which tax years follow the calendar year) and consequently it is important that any UK residence considerations are reviewed in tandem with the rules of any other countries which could impose tax. The implications of dual residence are complicated and in many cases unwelcome, so best avoided.

The Rules

The initial premise is simple: P is UK resident for a tax year for which either:

- The automatic residence test is met; or
- The sufficient ties test is met.

If neither test is met, P is not resident in the UK for that tax year.

1) Automatic tests

The automatic residence test is met in a particular tax year if P meets none of the automatic overseas

tests but at least one of the automatic UK tests.

So, the first question is: does P meet one of the three automatic overseas tests?

If the answer is yes, then P is not resident and there is no need to consider the other tests (subject to the limited circumstances described under the heading "Qualification under both tests" below, where P qualifies for both the automatic overseas test and the automatic residence test).

a. Automatic overseas tests

There are three main automatic overseas tests which confirm that an individual will not be UK resident in a tax year:

- i) 46 day test: this is satisfied if P has not been resident in the UK for any of the previous three tax years and spends fewer than 46 days in the UK in the tax year in question; or
- ii) 16 day test: this is satisfied if P is resident in the UK for one or more of the previous three tax years, spends fewer than 16 days in the UK in the tax year in question and does not die in that year; or
- iii) Full-time work abroad test: this is satisfied if all of the following conditions are met:
 - a. P works "sufficient hours" (meaning on average at least 35 hours per week) overseas, as assessed over the relevant tax year
 - b. during that year there are no significant breaks from overseas work. There is a significant break for these purposes if at least 31 days go by and not one of those days is a day on which P does more than 3 hours' work overseas or a day on which P would have done more than 3 hours' work overseas but for being on annual leave, sick leave or parenting leave (but notably not due to redundancy);
 - c. P spends fewer than 31 days working in the UK. For these purposes a working day means more than 3 hours' work.
 - d. P is present in the UK for fewer than 91 days (excluding deemed days - discussed below).

There are two additional tests for an individual who dies in the tax year in question, but these are outside the scope of this note.

Only if P meets none of the automatic overseas tests are the automatic UK tests relevant.

b. Automatic UK tests

There are three main automatic UK tests which confirm that P is UK resident in the tax year in question:

- i) 183-day test: this is satisfied if P spends 183 days or more in the UK in a tax year; or
- ii) UK Home test: this test is met if P:
 - a. has a home in the UK during all or part of the tax year in question; and

b. is present in that UK home on at least 30 separate (individual or consecutive) days during the relevant tax year; and

c. while P has that UK home, there is a period of 91 consecutive days, at least 30 of which fall within the tax year in question, when P either has no home overseas, or has one or more homes overseas in none of which he is present for more than 30 (not necessarily consecutive) days during the tax year; or

iii) Full-time work in the UK test: this is satisfied if all of the following conditions are met:

a. P works "sufficient hours" (meaning, as before, on average at least 35 hours per week) in the UK, as assessed over a period of 365 days;

b. during that period there are no "significant breaks" from UK work;

c. more than 75% of the total number of days in the tax year when P does more than 3 hours' work are days when P does more than 3 hours' work in the UK; and

d. at least one day in the relevant tax year is a day on which P does more than 3 hours' work in the UK.

There is a fourth automatic overseas test if P dies in the tax year in question but that is also outside the scope of this note.

If P meets either the automatic overseas test or the automatic UK test that will determine his residence and there is no need to consider the sufficient ties test.

c. Qualification under both tests

In limited circumstances it is possible to qualify for the automatic UK test and the automatic overseas test. In this instance the automatic overseas test takes priority.

By way of example, if P spends fewer than 46 days in the UK in a tax year, he will qualify for the automatic overseas test so long as he has not been resident in the UK for any of the past three tax years. However, if P also has a home in the UK for more than 90 days, at least 30 of which fall within the relevant tax year, and is present there for at least 31 separate days, he will meet the automatic UK residence test so long as he does not spend more than 30 days in any overseas home. In this example P would not be UK resident for that tax year.

2) Sufficient ties test

Having established that P is categorically neither UK resident nor non-UK resident, P must now look to the sufficient ties test to determine his residence status for the tax year.

The first step is to establish whether P has been UK resident for any of the previous three tax years before the tax year under consideration. In previous drafts of the legislation P was called a 'leaver' if he had been resident in any of those tax years and an 'arriver' if he had not. Whilst these definitions are not used in the final legislation, they have been used in this article for ease of reference.

The key point is that an arriver can have more ties to the UK than a leaver without being UK resident in the relevant tax year. This is demonstrated in the table below which shows how many UK ties are sufficient in each case to make P UK-resident in a tax year.

Days spent in the UK	Minimum number of ties needed to make an individual UK-Resident in a tax year	
	Arrivers	Leavers
Under 16 days	Always non-UK resident	Always non-UK resident
16 - 45 days	Always non-UK resident	At least 4
46 - 90 days	All 4	At least 3
91 - 120 days	At least 3	At least 2
121 - 182 days	At least 2	At least 1
183 days or more	Always UK-resident	Always UK-resident

The ties are as follows:

Family tie: P has a family tie if P's spouse or civil partner (unless legally separated), partner (if living as spouses or civil partners) or child (under the age of 18) is UK resident in the tax year in question. There is an exception for minor children where P sees his child in the UK on a total of 60 days or fewer in the relevant tax year even if P's child turns 18 during that tax year. In addition, any period for which a minor child is present in the UK for the purposes of full-time education are disregarded, provided that the child spends fewer than 21 days in the UK outside term time (excluding half-term breaks).

Accommodation tie: this exists for as long as P has a place to live in the UK that is available to him during the tax year for a continuous period of 91 days or more and P spends at least one night there during the year (or if it is at the home of a close relative, 16 or more nights there). As indicated, the accommodation need not be owned by P but merely available to him, so that a hotel room can count as accommodation, for example. In addition, the 'continuous period' ignores unavailability of 15 days or fewer.

Work tie: this exists if P does more than three hours' work a day in the UK for an aggregate of at least 40 days in that year.

90-day tie: this exists if P has spent 91 days or more in the UK in either or both of the previous two tax years.

Country tie: P has a country tie for a tax year if the UK is the country in which P was present at midnight for the greatest number of days in that year. **This tie applies to leavers only.**

It is important to note that once an individual has become UK resident they will automatically be treated as a leaver for the following 3 tax years. Consequently, the number of days an individual can spend in the UK without being resident in a tax year is likely to drop considerably for the three years after a year of residence.

Definitions

Days spent in the UK

A day counts as a day spent in the UK if P is present in the UK at midnight. This is subject to the deeming rule (discussed below). However, if P has to spend time in the UK due to exceptional circumstances those days may not count towards the total day count.

P can also exclude from the day count any day when he arrives in the UK as a passenger, leaves the UK the next day (so is present at midnight) but between arrival and departure only undertakes activities that are related to his passage through the UK. However, this exception is very restrictive and it is debatable if it would apply if P undertakes social engagements whilst in the UK, even though none of these would have been undertaken had P not been travelling through the UK.

Deeming Rule

Some of the tests require P to count the number of days that he spends in the UK. The deeming rule applies for a tax year if P:

- i) has at least three ties for the tax year;
- ii) has been present in the UK on more than 30 days without being present at the end of those days (qualifying days); and
- iii) has been UK resident in one or more of the preceding three tax years.

If P meets all of these conditions, the deeming rule means that, after the first 30 qualifying days, all subsequent qualifying days within the tax year are treated as days that P spent in the UK. However, the rule does not apply for the purpose of deciding if P has a 90-day tie.

Other Aspects of the SRT Legislation

Transitional Rules

Where P needs to know what his residence status was in any of the three years prior to the introduction of the SRT for the purpose of determining his residence thereafter, he can elect to determine his residence status by reference to the new rules in place of those that applied in the year(s) in question. However, this will apply solely for the purposes of determining P's residence status for 2013/2014 onwards; it will not change actual residence status or tax liability in the earlier year(s).

Split years

The general rule is that an individual is either UK resident or non-UK resident for a full tax year regardless of when he becomes resident in that year. However, previously there was a concession that provided that a tax year could be split in certain circumstances so that an individual was treated as UK-resident for only part of a tax year and was taxed accordingly. The Government has now put this split year treatment on a statutory footing, but rather than rely on the vague concept of a person becoming "permanently" resident in the UK (as the concession did), the new rules instead set out specific circumstances when the split year treatment will apply.

The relevant circumstances for those leaving the UK part way through a tax year are: starting full-time work overseas; going overseas as the partner of someone starting full-time work overseas; or leaving the UK to live abroad.

For those arriving in the UK, split year treatment is available in circumstances including coming to live or work full-time in the UK or starting to have a home in the UK (and continuing to have a home in the UK until the end of the following tax year).

Anti-avoidance provisions

An income tax anti-avoidance rule has been introduced in relation to some forms of investment income. This is similar to the existing capital gains tax temporary non-UK residence provision, which broadly allows chargeable gains realised while an individual is non-UK resident for a period of less than five years to be taxed in the year of his return to the UK. This is to deter people from becoming non-UK resident for short periods of time to avoid UK tax liability on anticipated income.

Conclusion

The SRT is undoubtedly an improvement on the old rules, based as they were on dated case law and UK Revenue guidance only. However, although most taxpayers will now be able to determine their UK residence status to a higher degree of certainty, the SRT will not be able to provide clear answers for all taxpayers and the application of the sufficient ties test, in particular, is unlikely to be straightforward. As a result, obtaining specialist advice in advance of coming to, or leaving, the UK is still to be recommended in the vast majority of cases where the automatic tests do not categorically apply.

November 2013

If you wish to discuss how this proposal could affect your tax situation please contact your usual contact in the Private Client department at Payne Hicks Beach, or the authors Frederick Bjørn (fbjorn@phb.co.uk) / Emily Hewlett (ehewlett@phb.co.uk).

10 New Square, Lincoln's Inn, London WC2A 3QG

DX 40 London/Chancery Lane
Tel: 020 7465 4300 Fax: 020 7465 4400 www.phb.co.uk

This publication is not intended to provide a comprehensive statement of the law and does not constitute legal advice and should not be considered as such. It is intended to highlight some issues current at the date of its preparation. Specific advice should always be taken in order to take account of individual circumstances and no person reading this article is regarded as a client of this firm in respect of any of its contents.

The firm is authorised and regulated by the Solicitors Regulation Authority: SRA Number 00059098

© 2013 Payne Hicks Beach