DIXON WILSON
CHARTERED ACCOUNTANTS

# Statutory Residence Test

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## INTRODUCTION

The new statutory residence test applies from 6 April 2013 (retrospectively once the 2013 Finance Bill receives Royal Assent in mid-July). The objective of the test is to alleviate uncertainty surrounding an individual's tax residency. The legislation maintains the core of the proposals set out previously but there are a number of refinements. Extensive guidance and examples as to how the new rules operate have also been published.

The test comprises three parts: first a test of conclusive non-residence, second a test of conclusive of UK tax residence and a third test for those who were neither conclusively resident nor non-resident who would need to consider the extent of their connections to the UK to determine their residence.

## 1. CONCLUSIVE NON-RESIDENCE

An individual will be conclusively non-resident in any tax year if any of the following conditions are met:

the individual spends fewer than 16 days in the UK,

the individual was not resident in any of the previous three tax years and spends fewer than 46 days in the UK,

the individual works full time overseas, the number of days on which more than 3 hours work is done in the UK is fewer than 31 and the number of days spent in the UK is fewer than 91 (excluding qualifying days under the 'deeming rule' (see details below). There are detailed guidelines as to how full time work overseas is determined which require consideration of all the facts (including periods of leave from work).

## 2. CONCLUSIVE RESIDENCE

An individual will be conclusively resident in the UK for a tax year if any of the following conditions are met:

- the individual is present in the UK for at least 183 days,
- the individual's only home, or all of the individual's homes, are in the UK (and was their home for more than 90 days, and that the individual was present there for 30 days),
- the individual works full time in the UK and at least 75% of their working days are spent in the UK.

A UK day is defined as a day when an individual is in the UK at midnight. However, a UK day for the purpose of being present in a home is defined as spending any part of a day there (i.e. no requirement to be there at midnight).

## 3. CONNECTION FACTORS

Individuals who are neither conclusively resident nor conclusively non-resident must look at the numbers of connections or ties they have to the UK.

There are five connection factors for those individuals who have been resident in the UK during the previous three tax years:

a) Family tie

b) Accommodation tie

c) Work tie

d) 90 day tie

e) Country tie

For those who have not been UK resident during the previous three tax years the 'country tie' is omitted giving a maximum of four connection factors.

### A) Family tie

An individual has a family tie with the UK if their spouse, civil partner or common law equivalent, or minor child is resident in the UK.

However, a UK resident minor child will only be a connection factor for a parent if that parent sees the child in the UK for more than 60 days in a tax year.

Furthermore, solely for the purposes of determining a parent's family ties, a minor child in full time education in the UK will only be considered to be UK resident if they spend more than 20 days in the UK away from the educational establishment outside term time.

### B) Accommodation tie

An individual has an accommodation tie if the individual has a home or other accommodation available to them for a continuous period of at least 91 days, and the individual spends at least one night at that accommodation during the tax year. For these purposes if there is a gap of

fewer than 16 days when the accommodation is not available to them then this gap is ignored and the property is treated as being available throughout this gap.

For these purposes available accommodation includes holiday homes or similar and it is not necessary for the individual to either own or hold any interest in the property.

For individuals who have accommodation in the UK available to them which belongs to a close relative, defined as parents, grandparents, siblings, adult children or adult grandchildren, then this will only be considered available to them for the purpose of the accommodation tie if they spend more than 16 nights at that accommodation during a tax year.

### C) Work tie

An individual has a work tie if the individual works in the UK for at least 40 days in a tax year. For these purposes a UK work day is one where more than 3 hours' work is done in the UK. There are detailed rules about what work-related travel amounts to time spent at work in the UK.

### D) 90 day tie

An individual has a 90 day tie if they spent more than 90 days in the UK in either of the previous two tax years.

### E) Country tie

An individual has a country tie if they spend more days in the UK than in any other single country during the tax year. This is only relevant for those who have been UK resident during the previous three years.

Based on the number of connections an individual's residence will be determined based on the number of days spent in the UK in a particular tax year as summarised in the tables below:

**Individuals resident in one or more of the previous three tax years:**

| Impact of connection factors on residence | Days spent in the UK |
|---|---|
| Always non-resident | Fewer than 16 |
| Resident if individual has 4 factors or more | 16 - 45 |
| Resident if individual has 3 factors or more | 46 - 90 |
| Resident if individual has 2 factors or more | 91 - 120 |
| Resident if individual has 1 factor or more | 121 - 182 |
| Always resident | 183 or more |

**Individuals not resident in all of the previous three tax years:**

| Always non-resident | Fewer than 46 |
|---|---|
| Resident if individual has 4 factors | 46 - 90 |
| Resident if individual has 3 factors or more | 91 - 120 |
| Resident if individual has 2 factors or more | 121 - 182 |
| Always resident | 183 or more |

## THE DEEMING RULE

A UK day is defined as a day when an individual is in the UK at midnight. However, to prevent any manipulation of the day counting rules a 'deeming rule' for day counting purposes takes into account the days in which the individual was present in the UK but not at midnight, known as 'qualifying days'. The first 30 qualifying days are ignored. After the 30 day threshold, any additional qualifying days are added to the day count for residence purposes.

The deeming rule only applies if an individual:

- has three or more connection factors to the UK
- has been present in the UK on more than 30 days (but not at midnight)
- was UK resident in one or more of the previous three tax years.

The deeming rule does not apply in determining the '90 day tie'.

There are new rules to prevent individuals creating artificial short term periods of non-residence during which they receive income which accrued during a period of residence and would otherwise not be liable to UK tax. These are similar to the existing capital gains tax anti-avoidance provisions so that a previously resident individual who becomes resident again within five years of leaving is liable to income tax in the year of return on income which arose during the period of non-residence.

## SPLIT YEAR TREATMENT

Previously, an individual who was resident in the UK for part of the tax year was treated as being resident for the whole tax year. There was a concession to split the tax year into periods before and after arrival or departure in certain circumstances with the effect that income arising either before arrival or after departure was treated as if it arose to the individual when they were non-resident.

The new rules have attempted to replicate the effects of this concession in broad terms. The tax year can be split in the following situations:

- Where an individual becomes non-resident by taking up a full time employment abroad and limits their subsequent time in the UK (according to pro-rated thresholds). The rule applies to the spouse or partner of those who work full time abroad subject to certain conditions.
- Where an individual becomes non-resident by establishing their only home in a country outside the UK and does not return to the UK for more than 15 days during the remainder of the tax year and either within six months of departure becomes tax resident in that country or is present outside the UK for six months consecutively.
- Where an individual becomes resident by virtue of their only home being in the UK.
- Where an individual becomes resident by starting full time employment in the UK.
- Where an individual resumes UK residence following a period of full time employment abroad and either takes up full time employment in the UK or has their only home in the UK.
- Where an individual becomes resident by starting to have a home in the UK (whilst retaining an overseas home).

## OTHER POINTS OF INTEREST

The concept of ordinary residence will be abolished although the 'overseas workday relief' will remain. This provides a partial tax exemption for earnings from employment carried on partly abroad and partly in the UK by a UK resident and it will only be available to non-UK domiciled individuals.

There are also specific rules to determine the residence for individuals in the tax year of their death.

## CONCLUSION

The statutory residence test will provide welcome certainty to taxpayers and employers alike. However, the published guidance for tax payers runs to over a hundred pages which is some indication ofthe complexity of the new rules.

It will be necessary for some individuals to review their affairs frequently (at least once a year and preferably before the start of a new tax year). There are onerous record-keeping requirements for individuals in order to prove where they spend their time when this is relevant to their tax status. Whether this is practical remains to be seen.

On balance, the new test is to be welcomed. It is hoped that the certainty provided to individuals arriving in the UK is likely to have a positive impact on the attractiveness of the UK as a place to do business.

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