STATUTORY RESIDENCE TEST

The concept of residence in the United Kingdom is fundamental to the determination of UK tax liability for any individual. The Statutory Residence Test (SRT) provides, through a series of tests, a definitive process to determine the UK residence status of any individual. That status applies for income tax, capital gains tax and inheritance tax purposes.

Once that status has been established then other rules determine the extent of an individual's liability to UK taxes. These other rules may include not just UK statute but also double tax treaties with other countries. These rules are not covered in this factsheet.

Counting days

The SRT relies heavily on the concept of counting 'days of presence' in the UK in the relevant tax year and so it is important to understand what this term means. The basic rule is a day of presence is one where the individual was in the country at midnight. There are two exceptions to this:

- the individual only arrives as a passenger on that day and leaves the UK the next day and in between does not engage in activities that are to a substantial extent unrelated to their passage through the UK and
- the individual would not be present in the UK at the end of the day but for exceptional circumstances beyond their control which prevent them from leaving and they would intend to leave as soon as those circumstances permit.

A further rule applies where an individual has been resident in the UK in at least one of the three previous tax years and has at least three 'ties' with the UK. It will then be necessary to add to the total of 'midnight days' the excess over 30 of any other days where the individual spent any time at all in the UK.

Three tests

The SRT is based on a series of three tests which must be considered in a particular order in every case. The tests are applied to the facts in the 'relevant tax year' i.e. the year for which residence status is being determined:

- first consider the Automatic Overseas Test (AOT). If this test is satisfied the individual will be not resident in the UK in the relevant tax year and no further tests are required. If the AOT is not satisfied then move on to
- the Automatic Residence Test (ART). If this test is satisfied the individual will be resident in the UK in the relevant tax year and no further tests are required. If the test is not satisfied move on to
- the Sufficient Ties Test (STT). If this test is satisfied the individual will be resident in the UK and if it is not satisfied they will be not resident.

The detailed conditions relating to each test are discussed below. There are further tests which only apply if the individual has died in the year but these are not dealt with here.

The Automatic Overseas Test

There are three possible tests in the AOT and if an individual satisfies any one of these they will be not resident in the UK in the relevant tax year. The conditions are that the individual:

- was resident in the UK in one or more of the previous three tax years and they are present in the UK for fewer than 16 days in the relevant tax year

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- was not resident in the UK in all of the previous three tax years and they are present in the UK for fewer than 46 days in the relevant tax year
- works full time abroad and they are present in the UK for fewer than 91 days in the relevant tax year and no more than 30 days are spent working (currently defined as more than three hours) in the UK in the tax year.

The first two tests are simply based on a day count and ignore the existence of other factors such as other links with the UK like the availability of accommodation in the UK.

There are conditions for the third test which need to be considered by those planning to go abroad to work either as an employee or on a self-employed basis. Obviously the days of presence and the working days must be considered carefully. In addition it should be noted that:

- the individual must work 'sufficient overseas hours' which are calculated over the tax year. This equates to an average of 35 hours a week over the whole period of absence. Account can be taken of a range of factors such as holidays and sick leave to effectively improve the average
- working days in the UK do not have to be the same as the days of presence so a day where there is UK work but the individual leaves the UK before the end of the day may well count as a working day.

HMRC will expect evidence to be provided if it is claimed that the time limit for a working day has not been exceeded.

The way in which the subsequent tests are structured mean that it is really important that a working expatriate can pass the AOT and be treated as not resident otherwise they are likely to find a real problem under the later tests.

The Automatic Residence Test

If the AOT is not met then the individual must next consider the conditions of the ART. This test will be satisfied if any of the following apply to the individual for the relevant tax year:

- they are present in the UK for 183 days or more in a tax year
- they have a home in the UK and they are present in that home on at least 30 separate days in the relevant year. There must be a period of at least 91 consecutive days during which the home is available and at least 30 of those days must fall within the relevant tax year
- they carry out full time work in the UK for a period of 365 days during which at least 75% of their time is spent in the UK.

The 'home' test may be of real significance because, if that test applies, the number of days in the UK is irrelevant. The legislation makes clear that a home can be a building or part of a building and can include a vessel or vehicle. It must have a degree of permanence or stability to count as a home but specific circumstances may have to be considered. If the individual also has a home or homes abroad, the second test above will not apply if the person spends more than 30 days at each home abroad in the tax year.

The Sufficient Ties Test

If no conclusive answer to residence status has arisen under the first two tests, the individual must then look at how the STT applies to them for the relevant tax year. The test will be satisfied if the individual has sufficient UK ties for that year. This will depend on two basic conditions:

- whether the individual was resident in the UK for any of the previous three tax years and
- the number of days the individual spends in the UK in the relevant tax year.

The STT reflects the principle that the more time someone spends in the UK, the fewer connections they can have with the UK if they want to be not resident. It also incorporates the principle that residence status should adhere more to those who are already resident than to those who are not currently resident.

Under the STT an individual compares the number of days of presence in the UK against five connection factors. Individuals who know how many days they spend in the UK and how many relevant connection factors they have can then assess whether they are resident.

The five ties are summarily set out as:

- a family tie - this will apply if either a spouse or minor child is resident in the UK in the relevant tax year
- an accommodation tie - where there is accommodation which is available for at least 91 days in the tax year and is actually used at least once

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- a work tie - where there are at least 40 working days of three hours or more in the UK in the relevant tax year
- a 90-day tie - more than 90 days were spent in the UK in either or both of the two immediately preceding UK tax years and
- a country tie - more time is spent in the UK than in any other single country in the relevant tax year.

An individual who has been resident in the UK in any of the three preceding tax years must consider all five ties and they will be resident if any of the following apply:

Days in UK	Number of ties sufficient to establish residence
16 - 45	at least 4
46 - 90	at least 3
91 - 120	at least 2
121 - 182	at least 1

An individual who has not been resident in any of the three preceding years must consider all the ties apart from the country tie and they will be resident in any of the following situations:

Days in UK	Number of ties sufficient to establish residence
46 - 90	all 4
91 - 120	at least 3
121 - 182	at least 2

Special rules for international transport workers

The SRT rules are adapted where an individual is an 'international transport worker' This is defined as someone who:

- holds an employment, the duties of which consist of duties to be performed on board a vehicle, aircraft or ship, while it is travelling or
- carries on a trade, the activities of which consist of the provision of services on board a vehicle, aircraft or ship as it is travelling.

In either case substantially all the journeys must be across international boundaries. The individual has to be present on board the respective carrier as it makes international journeys in order to provide those services.

An individual who has some duties on purely domestic journeys will still be regarded as within the definition if the international duties are substantial (probably at least 80%).

Where an individual falls within this group the implications for the SRT are (broadly) that the individual:

- cannot be non-UK resident on the grounds of working full time overseas
- cannot be UK resident on the grounds of working full time in the UK and
- in considering the work day tie for the STT an international transport worker is regarded as doing more than three hours work where any journey that day commences in the UK and fewer than three hours on any other day.

Split year rules

The basic rule will be that if an individual satisfies the conditions of the SRT to be treated as resident for a part of the UK tax year then they are resident for the whole of that year. Special rules will apply in certain circumstances to allow a year of arrival or departure to be split into resident and non-resident parts as appropriate. We shall be pleased to discuss whether your plans or circumstances will be eligible for such treatment.

Anti-avoidance rules

The government wants to ensure that individuals are not able to exploit the rules to become not resident for a short period during which they receive certain types of income or make capital gains. Basically an individual with a history of at least four out of the previous seven years as a sole UK resident will need to maintain not resident status for at least five UK tax years otherwise certain income and all capital gains made in the period of absence will become taxable in the UK in the next year in which they are resident.

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How we can help

A change of tax residence is always a major decision and detailed advice is necessary. Please do contact us for any advice you may need.

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