

FEATURE ARTICLE

Statutory residence

Contributed by Sharon & Simon McKie

Introduction

The aim of the Statutory Residence Test (SRT), enacted in FA 2013, s. 218 and Sch. 45 ('SRT Schedule'), was to be transparent, objective and simple to use (see the Consultation Document *Statutory Definition of Tax Residence and Reform of Ordinary Residence: A Summary of Response* published in June 2012). Actually, it is extremely complex and based on various soft concepts (such as a 'home' and 'available accommodation') which cannot be defined with precision, so that it is full of uncertainties and anomalies causing great practical difficulties for those who advise upon it. In this article we provide a brief outline of the test which is not meant to identify its many anomalies, but to provide a map to aid its exploration.

Structure

The SRT determines whether an individual is resident in the UK or not for the purposes of income tax, capital gains tax (CGT) and (where relevant), inheritance tax (IHT) and corporation tax. He is resident in the UK for a given fiscal year if he:

- satisfies the automatic residence test; or
- satisfies the sufficient ties test.

If neither of these tests are met, then the individual is not resident in the UK.

The automatic residence test

The automatic residence test will be met if:

- one of the automatic UK tests is met; and
- none of the automatic overseas tests are met.

Automatic overseas tests

An individual will be automatically non-resident if he meets any of the five automatic overseas tests.

Prior residence and de minimis presence

The first automatic overseas test is met if the individual was resident in the UK for one or more of the three fiscal years preceding the fiscal year concerned and the number of days spent in the UK, in the year concerned, is fewer than 16.

It does not apply if he dies during the fiscal year.

Prior non-residence and de minimis presence

The second automatic overseas test is met if the individual was not resident in the UK for any of the three fiscal years preceding the fiscal year concerned and the number of days he spends in the UK in that year is fewer than 46.

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Working sufficient hours overseas

The third automatic overseas test is met if the individual works sufficient hours overseas assessed over the fiscal year concerned without any significant breaks from that overseas work and:

- the number of days in that year on which the individual does more than three hours work in the UK is fewer than 31; and
- the number of days spent in the UK in the relevant year is fewer than 91 (the number of days spent in the UK for this purpose excludes days deemed to have been spent in the UK under FA 2013, Sch. 45, para. 23(2)–(4)).

To determine whether an individual works sufficient hours overseas, a five-step calculation must be followed.

The test does not apply to an individual who has a relevant job on board a vehicle, aircraft or ship where certain other conditions are satisfied.

Death in the year

The fourth automatic overseas test is met where the individual dies in the relevant fiscal year and:

- he was either:
 - not resident in the UK in either of the two fiscal years preceding his death; or
 - was not resident in the UK in the fiscal year preceding his death and the fiscal year before was a split year falling within the split year cases (see below) involving departure from the UK; and
- he spent fewer than 46 days in the UK in the year.

Death in the year and overseas work

The fifth automatic overseas test is met where the individual dies in the year and:

- he was either:
 - not resident in the preceding two fiscal years because he met the third automatic overseas test for each of those two years; or
 - not resident in the preceding fiscal year by reason of meeting that test and the fiscal year before that was a split year within Case 1; and
- he would have met the third automatic overseas test in the fiscal year in which he died if that test were modified so as to apply to the period in the fiscal year up to and including the day before his death.

The automatic UK tests

Where an individual satisfies one of the automatic UK tests and none of the automatic overseas tests, he will be resident in the UK for that fiscal year.

183 days spent

The first automatic UK test is met if the individual spends at least 183 days in the UK in the fiscal year concerned.

UK home

The second automatic UK test is met if:

- the individual has a home during all or part of the fiscal year concerned;
- that home is one where he spends a sufficient amount of time in the year; and
- there is at least one period of 91 (consecutive) days in respect of which the following conditions are met:
 - the 91 day period in question occurs while the individual has that home;
 - at least 30 days of that 91 day period fall within the fiscal year concerned; and
 - throughout that 91 day period, certain conditions in respect of overseas homes are met.

Where the individual has more than one UK home, each home is considered separately.

Working sufficient hours in the UK

The third automatic UK test is met if the individual works sufficient hours in the UK assessed over a 365-day period falling, wholly or partly, in the fiscal year concerned and over that period:

- there are no significant breaks from UK work; and
- more than 75 per cent of the total number of days in the fiscal year when the individual does more than three hours work are days when he does more than three hours work in the UK.

Death in the year

The fourth automatic UK test applies where the individual dies in the year and:

- for each of the previous three fiscal years he was resident in the UK by virtue of meeting the automatic residence test;
- even assuming that he was not resident in the UK for the fiscal year concerned, the fiscal year preceding the year concerned would not be a split year as respects the individual; and
- when the individual died, either:
 - his home was in the UK; or
 - he had more than one home and at least one of them was in the UK.
- if the individual had a home overseas during all or part of the fiscal year:
 - there were not thirty or more days in the year when he was present there for at least some time; or
 - he was not present there for some time on each day of the fiscal year up to and including the day on which he died.

The sufficient ties test

Where none of the automatic overseas tests nor any of the automatic UK tests are met, an individual will meet the sufficient ties test, and therefore be resident in the UK for a year, if he has sufficient UK ties for that year.

The number of UK ties which are sufficient

What is a UK tie and whether or not an individual has sufficient UK ties in a relevant fiscal year depends upon whether the individual was resident in the UK in any of the previous three fiscal years and the number of days the individual spent in the UK in the relevant year. The relevant bands are shown below.

Days spent in the UK in the relevant fiscal year	Number of Ties that are sufficient where an individual has been UK resident in one of the 3 fiscal years preceding the relevant fiscal year	Number of Ties that are sufficient where an individual has not been UK resident in one of the 3 fiscal years preceding the relevant fiscal year
More than 15 but not more than 45	At least 4	
More than 45 but not more than 90	At least 3	All 4
More than 90 but not more than 120	At least 2	At least 3
More than 120	At least 1	At least 2

Special rules apply where the individual has died during the year.

The UK ties

Where the individual was resident in the UK for at least one of the three fiscal years preceding the relevant year there are five ties which are:

- the family tie;
- the accommodation tie;
- the work tie;
- the 90-day tie; and
- the country tie.

Where the individual has not been so resident, the country tie is omitted.

Split year treatment

Before the introduction of the SRT, when an individual came to, or left, the UK during a fiscal year, three extra statutory concessions (ESCs A11, A78 and D2) enabled the fiscal year to be split into periods before and after arrival or departure. Income tax and CGT on most income and gains arising before a person had become UK resident or after he had ceased to be so resident was limited to the tax which, loosely, would have been due if the individual had been non-resident throughout the year. Part 3 of the SRT Schedule gives a statutory relief broadly similar to this concessionary relief in respect of eight Cases, three of which cover situations where the individual 'leaves' the UK

partway through a fiscal year and five of which cover situations where he comes to the UK partway through the fiscal year.

Temporary non-residence

Part 4 of the SRT Schedule contains almost 23 pages of measures imposing charges to income tax and CGT on those who become non-resident for five years or less. The Government says that these provisions are designed to prevent individuals from using short periods of non-residence to receive income or gains free of UK tax. The charge applies, *inter alia*, to income from closely controlled companies, lump sum benefits from employer-financed retirement benefit schemes and chargeable event gains from life assurance contracts.

The general transitional election

Various transitional rules and elections are provided.

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