

Read the small print

The government aimed for a transparent UK statutory residence test, but the proposed changes are far from clear, says *Sharon McKie*

The draft Finance Bill was published on 11 December 2012 and contained updated draft legislation to implement a statutory residence test (the SRT). Since the previous draft, published in June 2012, the legislation has increased from 39 to 55 pages. The changes are, however, of detail rather than structure.

An individual is resident in the UK for a given tax year if they satisfy the automatic residence test or the sufficient ties test. If neither of these tests are met, the individual is not resident in the UK for the purposes of income tax, capital gains tax and, where relevant, inheritance tax and corporation tax.

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 they meet any of the automatic overseas tests listed below.

- **The first test.** The individual was resident in the UK for one or more of the three tax years preceding the tax year concerned and the number of days spent in the UK is less than 16. This test does not apply if the individual dies during the tax year.

- **The second test.** The individual was not resident in the UK for any of the three tax years preceding the year concerned and the number of days spent in the UK in that year is less than 46.
- **The third test.** The individual works full time overseas for the relevant year 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 less than 31; the number of days has been increased from 21 to 31; and the number of days spent in the UK is less than 91 (excluding deemed days).
- **The fourth test.** This applies where an individual has died during the relevant tax year.

If none of the automatic overseas tests are satisfied, the individual then has to consider the automatic UK tests.

Automatic UK tests

An individual will be resident in the UK if they satisfy one of the four automatic UK tests.

- **The first test.** The individual spends at least 183 days in the UK in the tax year concerned.
- **The second test.** This is met where

the individual has a home in the UK for a period of more than 90 days; they are present in that UK home on at least 30 separate days (individual or consecutive days and regardless of time spent at their home on a day) during the year; and while they had that UK home there is at least one period of 91 consecutive days some or all of which falls within the tax year in question when they have no home overseas or had one or more homes overseas but in none of which they are present for more than 30 days during the tax year.

The use of 'home' has drawn much criticism because it is a word of broad and imprecise meaning. The draft legislation contains no exhaustive definition of what is a home and the guidance issued by HM Revenue & Customs on 18 December 2012 provides little or no assistance.

The meaning of a home will cause a great deal of uncertainty in the legislation's application.

- **The third test.** The individual works full time in the UK for 365 days or more with no significant break from UK work and all or part of that period falls within the tax year; and more than 75 per cent of the total number of days in the tax

Figure 1: the sufficient ties criteria

| Days spent in the UK in the relevant tax year | Number of ties that are sufficient where an individual has been UK resident in the three years preceding the relevant year | Number of ties that are sufficient where an individual has not been UK resident in the three years preceding the relevant year |
|---|--|--|
| More than 15 but not more than 45 | At least four | – |
| More than 45 but not more than 90 | At least three | All four |
| More than 90 but not more than 120 | At least two | At least three |
| More than 120 | At least one | At least two |

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year when the individual does more than three hours’ work are days when they do more than three hours’ work in the UK.

- **The fourth test.** This applies where the individual has died during the relevant tax year.

Where an individual satisfies one of the automatic UK tests and none of the automatic overseas tests, they are resident in the UK for tax purposes for that tax year.

Sufficient ties test

Where none of the automatic overseas tests or any of the automatic UK tests are satisfied, the sufficient ties test should be considered. Whether or not an individual has sufficient UK ties in a relevant tax year will depend upon whether the person was resident in the UK for any of the previous three tax years and the number of days the individual has spent in the UK in the relevant tax year. These are shown in figure 1.

Where the individual was resident in the UK in one or more of the three tax years preceding the relevant year there are five ties, which are family, accommodation, work, country and the 90-day tie. Where the individual has not been so resident, the country tie is omitted.

The family tie

An individual has a family tie if in that year there is a relevant relationship between that individual and another person and that other person is resident in the UK for that year.

An individual has a relevant relationship with the following:

- their husband, wife or civil partner (unless they are separated);
- their partner if they are living together as husband and wife or as civil partners;
- their children under the age of 18 unless they see their children in person in the UK on fewer than 61 days in the tax year concerned or a child becomes 18 during the tax year and they see their child in person in the UK on fewer than 61 days in the part of the tax year before their 18th birthday.

Special rules apply where a child is in full-time education in the UK.

The accommodation tie

An individual has an accommodation tie if they have a place to live in the UK and it is available to them for a continuous period of at least 91 days during that year and they spend at least one night there during that year; or, if it is the home of a close relative, they spend at least 16 nights there during that year. A close relative is defined as a parent or grandparent, brother, sister, child or grandchild age 18 or over.

Where there are fewer than 16 days between the periods in which a particular place is available, that place is treated as being available to the individual for that period. This

is a particularly nasty trap for those taxpayers who make regular trips to the UK staying at the same hotel.

The work tie

This applies if an individual works in the UK for at least 40 days in the relevant tax year. They are treated as working for a day if they do more than three hours’ work in the UK on that day.

The 90-day tie

If an individual has spent more than 90 days in the UK in either the tax year preceding the relevant year, or the tax year preceding that year or each of those tax years, they have a 90-day tie for the relevant tax year.

The country tie

An individual has a country tie for a relevant year if the country in which they spend the greatest number of days in that year is in the UK.

In summary

Although it may seem straightforward, on closer inspection, the proposed SRT is extremely complex, with many pitfalls for the unwary adviser. It includes terms that have not been adequately defined, such as the ‘home’.

There was an opportunity to create a simple and workable test which could have met the government’s aim to create a “transparent, objective and simple” test. Unfortunately, that opportunity has been missed. ■

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