

PROPOSED CHANGES TO DETERMINING UK RESIDENCE

The current rules that determine UK tax residence for individuals are complicated and uncertain. In the UK 2011 Budget it was announced that HMRC would introduce a statutory definition of tax residence. Its aim is to create clear rules that provide greater certainty for taxpayers and are simple to use. A consultation document was published in June 2011; the closing date for responses to the document was 9 September. It has since been announced that implementation has been deferred until 6 April 2013.

Details of the proposed test to determine resident status are summarised as follows.

The test will have three parts:

- 1) Part A contains conclusive non - residence factors that would be sufficient in themselves to make an individual **not resident**
- 2) Part B contains conclusive residence factors that would be sufficient in themselves to make an individual **resident**.
- 3) Part C contains other connection factors and day counting rules which will only need to be considered by those whose residence status is not determined by Part A or Part B.

Part A

Part A of the test will conclusively determine that an individual is **not resident** in the UK for a tax year if he:

- was not resident in the UK in all of the previous three tax years and **he is present in the UK for fewer than 45 days** in the current tax year; or
- was resident in the UK in one or more of the previous three tax years and **he is present in the UK for fewer than 10 days** in the current tax year; or
- leaves the UK to carry out **full-time work abroad**, provided he is present in the UK for fewer than 90 days in the tax year and no more than 20 days are spent working in the UK in the tax year.

The "midnight rule" remains to determine day counting, except when counting working days in the UK.



Part B

An individual will be conclusively **resident** for the tax year under Part B if he meets any of the following conditions, namely he:

- is present in the UK for 183 days or more in a tax year; or
- has only one home and that home is in the UK (or has two or more homes and all of these are in the UK); or
- carries out **full-time** work (35 hours a week) in the UK.

Part C

Some individuals will not fall within either Part A or Part B. These will most commonly be individuals who spend between 45 days and 183 days in the UK. Where neither Part A nor Part B applies, residence status will be determined under Part C.

Part C considers days spent in the UK **and** the extent of the individual's "connection" with the UK. It 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 non-resident.

The "connection" factors are:

- 1) A UK resident family (taken to be spouse and/or children under 18);
- 2) Substantive employment or self-employment in the UK. "Substantive" means 40 days or more;
- 3) Accessible accommodation in the UK;
- 4) UK presence of 90 days or more in either of the previous two tax years;
- 5) More time in the UK than in any other single country.

The way the "connection" factors are combined with days spent in the UK to determine residence status is set out in the Tables below.

If the individual was not resident in all of the three tax years preceding the year under consideration, the connection factors may be relevant to determining their residence status.	
Days spent in UK	Impact of connection factors on residence status
Fewer than 45 days	Always non resident
45 - 89 days	Resident if 4 factors apply (otherwise not resident)
90 – 119 days	Resident if 3 factors or more apply (otherwise not resident)
120 - 182 days	Resident if 2 factors or more apply (otherwise not resident)
183 days or more	Always resident



If the individual was **resident** in any of the three tax years preceding the year under consideration, the connection factors may be relevant to determining their residence status.

Days spent in UK

Fewer than 10 days
10 - 44 days
45 – 89 days
90 – 119 days
120 – 182 days
183 days or more

Impact of connection factors on residence status

Always non-resident
Resident if 4 factors or more apply (otherwise not resident)
Resident if 3 factors or more apply (otherwise not resident)
Resident if 2 factors or more apply (otherwise not resident)
Resident if 1 factor or more applies (otherwise not resident)
Always resident

Other points to note

Although strictly a taxpayer is either resident or not resident for the whole of the tax year, in certain circumstances when an individual arrives or leaves the UK, the year is by concession split into periods of residence and non-residence for income tax purposes. It is intended that the Statutory Residence Test will broadly recreate the existing rules which apply for Capital Gains Tax, where the so-called “split-year” treatment applies for income tax, and put this on a statutory basis.

This will mean that any foreign income arising in the period of the tax year in which the individual is not UK resident will come into charge if the individual becomes UK resident again within a 5 year period. This rule will be disapplied for those becoming non-resident by virtue of full-time employment abroad.

The government intends to introduce anti-avoidance legislation to combat the risk of individuals taking advantage of the Statutory Residence Test to engineer a short period of non-residence during which they receive a large amount of income (for example a dividend from a close company).

The consultation may result in some changes to the proposals but it is expected that the new rules in roughly this format will be introduced from 6 April 2013. In the meantime the guidance contained in HMRC 6 is relevant.

If you would like to know more then please contact
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