



Chartered Accountants
Registered Auditors

New Burlington House
1075 Finchley Road
Temple Fortune
London NW11 0PU

Tel: 020 8731 0777
Fax: 020 8731 0778
mail@cohenarnold.com
www.cohenarnold.com

Partners:

A. J. Cohen FCA CTA
D. S. Davis FCCA CTA
D. M. Birns FCA CTA
J. N. Schwarz FCA
D. B. Myers FCA
J. A. Neumann FCA
D. Goldberg FCA DchA
D. Yu
B. Leigh ACA CTA
D. Z. Harris ACA
A. Sternlicht FCA CTA
M. Broner-Cohen ACA

Associates:

J. A. England FCA
R. P.S. Gill FCCA
M. Hool ACA FCCA
K. A. Sussman FCA

Consultant:

J. Schonberg FCA



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HOME OR AWAY? THE NEW STATUTORY RESIDENCE TEST



Plans to introduce a statutory test to help determine an individual's residence status for tax purposes were first announced in 2011. Following a lengthy period of consultation, the legislation has now been introduced and the new Statutory Residence Test applies from 6 April 2013.

Here we provide an overview of the new rules, although they remain complex, and it is always advisable to seek professional guidance based on your individual circumstances.

BACKGROUND TO THE CHANGES

The new test consists of a series of rules, known collectively as the Statutory Residence Test (SRT). The stated aim of the SRT is to replicate, as far as possible, the residency outcomes delivered by the previous rules and to take into consideration time spent in the UK and an individual's connections to the UK.

Previously, many of the decisions regarding an individual's residence status were dependent on case law. The new test aims to provide 'greater clarity and certainty' when determining whether an individual is considered to be resident or not resident in the UK for the purposes of taxation.

The SRT applies for the purposes of income tax and capital gains tax, and also, in some circumstances, inheritance tax and corporation tax.

THE NEW SYSTEM: AN OVERVIEW

The Statutory Residence Test consists of three parts:

- the **automatic overseas test** – a series of tests which determine whether an individual is automatically non-resident in a particular tax year
- the **automatic residence test** – a series of tests which determine whether an individual is automatically UK resident in a particular tax year, and
- the **sufficient ties test** – a series of tests which determine the residency position based on a combination of the amount of time spent in the UK and the number of UK ties a person has.

DETERMINING YOUR RESIDENCE STATUS

The automatic overseas test

If an individual meets any of the automatic overseas tests, they will automatically be considered non-UK resident for that tax year and no further tests need to be applied.

The first automatic overseas test

An individual was resident in the UK for one or more of the three tax years preceding the year in question, but was present for fewer than 16 days in the UK during the year in question.

The second automatic overseas test

An individual was not resident in the UK for any of the three tax years preceding the tax year in question, and was present for fewer than 46 days in the UK during that year.

The third automatic overseas test

An individual works sufficient hours (effectively 'full-time') overseas during the year in question, with no significant breaks from this work, and spends fewer than 91 days in the UK during the tax year. The number of days during which they work for more than three hours in the UK must be less than 31.

Certain amendments to this test apply to those with a 'relevant job' on board a vehicle, aircraft or ship during the year in question, where at least six of the trips made in that year as part of the job are cross-border trips either beginning or ending, or beginning and ending in the UK.

The fourth and fifth automatic overseas tests

These tests relate to individuals who die during the year in question and who were not resident in the UK in the previous tax year and the year before that (unless that is a split year – see below). Such individuals will be non-resident if they meet modified versions of the conditions set out in the second and third automatic overseas tests.

The basic rule

An individual is considered to be resident in the UK for a tax year if he or she does not satisfy any of the automatic overseas residence tests, and either:

- the **automatic residence test** is met for that year, or
- the **sufficient ties test** is met for that year.

The automatic residence test

The automatic residence test is met if the individual meets:

- **at least one of the four automatic UK tests below, and**
- **none of the five automatic overseas tests.**

The first automatic UK test

An individual spends at least 183 days in the UK during the tax year in question.

The second automatic UK test

An individual has or had a home in the UK during all or part of the tax year. There must be at least one period of 91 consecutive days – at least 30 of which fall within the tax year – during which they have a UK home where they spend a ‘sufficient amount of time’ (at least 30 days, in aggregate), and either have no overseas home, or spend no longer than a permitted amount of time (fewer than 30 days in the year) in an overseas home. Each home must be considered separately.

The third automatic UK test

An individual works sufficient hours in the UK (broadly based on a 35-hour week) over a 365-day period falling wholly or partly in the tax year in question. During that period there must be no significant breaks from the work. Of the total number of days worked, more than 75% of the days when the individual does more than three hours of work must involve work carried out in the UK. An individual must also carry out more than three hours of work in the UK on at least one day which falls within both the 365-day period and the tax year.

Similar exclusions apply to international transportation workers as with the **third automatic overseas test**.

The fourth automatic UK test

The above tests can apply to deceased individuals. In addition, the fourth automatic UK test stipulates that where individuals die during the tax year in question, they will be UK resident if:

- they were resident for each of the previous three tax years by virtue of meeting at least one of the automatic UK tests

Key steps to determining your residence status

1. **Consider the automatic overseas tests.** If you meet any of these, you are not resident in the UK. If not:
2. **Did you spend at least 183 days in the UK during the tax year?** If so, you are resident in the UK. If not:
3. **Consider the second and third UK tests.** If you meet one of these, you are UK resident. If not:
4. **Consider the sufficient ties test.** If you meet this, you are UK resident; if not, you are not UK resident.

- the tax year before they died was not a split year
- their home was in the UK at the time of their death, or where they had more than one home, at least one of these was in the UK
- they did not spend a sufficient amount of time in any overseas home during the year in question.

The sufficient ties test

Where an individual does not meet any of the automatic UK or automatic overseas tests, the sufficient ties test should be used to determine their residence status.

The sufficient ties test considers an individual’s connections to the UK, together with the number of days spent in the UK during the tax year and the residence status in the previous three tax years. Subject to certain qualifying conditions, a tie might include the following:

- **a family tie** – an individual’s spouse, partner or minor child are UK resident
- **an accommodation tie** – an individual has (and makes even one night’s use of) accommodation in the UK
- **a work tie** – an individual carries out at least 40 days of work in the UK
- **a 90-day tie** – more than 90 days were spent in the UK in either or both of the previous two tax years
- **a country tie** – an individual spends more days in the UK than in any other country.

TRANSITIONAL RULES

Transitional provisions apply to the tax years 2013/14 to 2017/18 inclusive. For the purpose of determining UK residence status during those years, an individual can elect to determine their residence status before 2013/14 (a ‘pre-commencement tax year’) by reference to the SRT.

SPLIT YEARS AND TEMPORARY NON-RESIDENCE

The SRT applies to individuals who are either resident or non-resident in the UK for a full tax year. However, it is also important to consider the split year and temporary non-residence rules when determining an individual’s tax position.

If an individual either starts to live or work abroad, or comes to live or work in the UK, during a tax year, it may be possible to split that year into two parts for the purposes of taxation:

- a UK part for which they are liable to pay UK tax, and
- an overseas part for which they are generally liable to UK tax as a non-UK resident.

An individual must be UK resident for a tax year under the SRT to meet the split year criteria, and the split year treatment will not affect whether they are regarded as UK resident for the purposes of any double taxation agreement.

When returning to the UK after a period of temporary non-residence, an individual may be liable to pay tax on certain income and gains received (or remitted to the UK) during that period.

The rules governing UK residence are complex, and this article offers general guidance only.

Please contact us for further information.