



## PROPOSED STATUTORY RESIDENCE TEST

A new statutory residence test has been proposed with effect from 6 April 2012. A consultation period commenced on 17 June 2011 and proposed rules published. For a number of years there has been considerable uncertainty whether a person is or is not resident in the UK so more certain rules are indeed welcome. Do the proposed rules achieve this?

The new proposed test comprises three Parts.

### Part A - Definitely not UK resident

You will definitely not be resident in the UK if:

- You were not resident in the UK in all of the previous three tax years and are present in the UK for fewer than 45 days in the current tax year; or
- You were resident in the UK in one or more of the previous three tax years and you are present in the UK for fewer than 10 days in the current tax year; or
- You leave the UK to work abroad full time over at least one full tax year and spend fewer than 90 days in the UK in each tax year of absence and no more than 20 of those days are spent working in the UK in each tax year (a "working day" is one where you spend more than three hours working and can include a day of departure).

### Part B – Definitely UK resident

You will definitely be resident in the UK if:

- You are present in the UK for 183 days or more in a tax year; or
- You only have one home and that is in the UK (or have two or more homes all of which are in the UK); or
- Carry out full time work in the UK i.e. 35 hours a week or more carried out over a continuous period of more than 9 months and not more than 25% of the duties are undertaken outside of the UK within that period.

### Part C – You may be UK resident

If neither Part A or Part B applies you need to consider Part C. The test in this Part depends on whether you have been non-UK resident in all the three previous tax years (an "arriver") or have been resident in the UK in one or more of the three previous tax years (a "leaver"). Whether you are resident in the given tax year will depend on (1) your connecting factors and (2) the number of days you are present in the UK.

The connecting factors are:

- The presence of family in the UK i.e. spouse, civil partner, common law spouse (unless formally or permanently separated) or minor children are UK resident (in the case of minor children will not be regarded as UK resident if they are at school in the UK and (1) they spend less than 60 days outside of school in the UK and (2) their main home is outside of the UK);
- The availability of accommodation in the UK which is used during the tax year;
- Substantive (but not full time) work in the UK i.e. more than 40 working days in the UK;
- Presence in the UK for more than 90 days in either of the previous two years;
- More time spent in the UK than in any other single country (applicable to leavers only).

The following tables then apply to determine residence:

***For arrivers:***

Days spent in the UK	Impact of connecting factors on residence status
Fewer than 45 days	Always non-resident
45 – 89 days	Resident if individual has 4 factors
90 – 119 days	Resident if individual has 3 or more factors
120 – 182 days	Resident if individual has 2 or more factors
183 days or more	Always resident

***For leavers:***

Days spent in the UK	Impact of connecting factors on residence status
Fewer than 10 days	Always non-resident
10 – 44 days	Resident if individual has 4 or more factors
45 – 89 days	Resident if individual has 3 or more factors
90 – 119 days	Resident if individual has 2 or more factors
120 – 182 days	Resident if individual has 1 or more factors
183 days or more	Always resident

**A couple of examples**

An “arriver” (not having spent 90 days in the UK in the previous two tax years and not intending to do any substantive work in the UK) who has family and available accommodation in the UK (i.e. two connecting factors) could spend up to 119 days in the UK in the first tax year without becoming UK tax resident. This is probably more than they could hope to spend in the UK at the moment without an HMRC challenge.

A “leaver” who has been present in the UK for more than 90 days in either of the previous two years and who retains a property in the UK and whose family remains in the UK must spend 44 days or less in the UK in each of the next two tax years to lose UK tax residence status.

### **Is there greater certainty?**

The proposed rules are subject to consultation so may still change. However, the proposed rules do appear to add greater certainty and it should therefore be possible, from 6 April 2012, to determine if you are resident in the UK or not. It is also proposed that there will be a new rule to ensure that certain types of income received during an absence will continue to be taxable unless non-resident for at least five years (in line with the current capital gains tax rules) so the scope for tax planning may be less than otherwise thought.

There are likely to be some individuals who can stay longer in the UK and some who must reduce their current day count in the UK to maintain their non-resident status when compared to the existing "rules", so great care will be needed following the introduction of the new rules. In order to reduce UK connecting factors careful consideration will need to be given to the ownership and availability of homes and other accommodation both in the UK and overseas and the time spent in other countries. It is possible that the list of connecting factors could be changed before the rules are finalised so it is important for individuals who may be affected to monitor any changes to the proposed rules.

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