

Statutory Residence Test - Finance Act 2013

The new Statutory Residence Test (SRT) for individuals which took effect from 6 April 2013 now replaces all existing legislation, case law and guidance from the tax year 2013/2014 onwards and determines an individual's liability to UK income tax, capital gains tax and (in some cases) inheritance tax. The SRT is set out in Finance Act 2013 and has the clear aim of simplifying the rules and providing certainty.

The SRT consists of three separate tests:

- 1) An automatic non-residence test;
- 2) An automatic residence test; and
- 3) A "sufficient ties" test.

If the non-residence test is satisfied, you qualify as non-UK resident. If not, (2) and (3) above will need to be reviewed and if either one is satisfied you will be regarded as UK resident.

Automatic Non-Residence Test

You will be classified as non-UK resident in tax year 2013/14 if any of the following tests apply:

1. You were resident in the UK for one or more of the tax years 2010/11, 2011/12 or 2012/13 and spend fewer than 16 days in the UK in 2013/14;
2. You were resident in the UK for none of the tax years 2010/11, 2011/12, and 2012/13 and spend fewer than 46 days in the UK in 2013/14; or
3. You work full-time overseas in 2013/14 and spend fewer than 91 days in the UK of which fewer than 31 days are working days.

There is a fourth test that applies to determine a deceased individual's tax liability if that individual dies in the tax year. To determine residence in preceding tax years (for this and the tests below), the old rules for that year apply, although it is possible to elect for the new rules to apply, if desirable.

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Automatic Residence Test

If you do not satisfy one of the Automatic Non-Residence Tests you will definitely be resident in the UK for the tax year 2013/14 if you satisfy any of the following:

1. You spend 183 days or more in the UK;
2. You have a home in the UK for a period of more than 90 days, are present there on at least 30 separate days during the tax year and, while you have that UK home, there is a period of 91 consecutive days when you have no home overseas or you have one or more homes overseas in none of which you are present for more than 30 days during the tax year; or
3. You work full-time in the UK for 365 days or more with no significant break, all or part of that work period falls within 2013/14 and more than 75% of the total number of days in 2013/14 that are working days, are working days spent in the UK.

In common with the Automatic Non-Residence Test, there is a fourth test applicable to determine a deceased individual's tax liability.

"Days spent in the UK" and a "working day" are defined in the Finance Act, but "Home" has no statutory definition. The Finance Act does refer to a building or part of a building, or for example, a vehicle, vessel or structure of any kind, rather than an area, e.g. a town or country, but an individual's arrangements with respect to the building must possess a sufficient degree of permanence or stability for it to count as their home.

Genuine holiday homes and temporary retreats will not be caught but this is subject to conditions.

Sufficient Ties Test

If you do not satisfy either of the automatic tests you need to look at the sufficient ties test. The ties are listed below with reference to the tax year 2013/14. UK ties are as follows:

1. Family tie – your spouse, civil partner, cohabiting partner or minor child is UK resident in 2013/14. There are exceptions for minor children who are in the UK for full-time education or for those whom you visit in the UK for fewer than 61 days in the year.

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2. Accommodation tie – you have a “place to live” available to you for a continuous period of 91 days or more in 2013/14 and you spend one or more nights there or 16 or more nights if the accommodation is that of a “close relative”. A “close relative” is a parent or grandparent, a brother or sister, a child aged 18 or over or a grandchild aged 18 or over, in each case, including by half-blood or by marriage or civil partnership.
3. Work tie – you have a work tie for a year if you work in the UK for at least 40 days (whether continuously or intermittently) in the relevant year. For this purpose you work in the UK for a day if you do more than three hours’ work in the UK on that day.
4. 90-day tie – you spent more than 90 days in the UK in either or both of 2011/2012 and 2012/13.
5. Country tie – a UK country tie arises if you are present here for the greatest number of days in 2013/14 rather than in any other single country. This tie only applies if you were resident in the UK for one or more of 2010/11, 2011/12 or 2012/13.

The number of “ties” that are sufficient to make you UK resident depend on whether you have been UK resident for any one of the last three tax years (a recent UK resident) and how many days you have spent in the UK. If you have not been so resident, only the first four ties are relevant, i.e. there is no country tie. The table below indicates the number of ties sufficient to establish UK residency in any of the given periods.

Days Spent in the UK in 2013/14	Ties needed for a recent UK resident	Ties needed for someone who is not a recent UK resident
16-45	At least 4	N/A
46-90	At least 3	All 4
91-120	At least 2	At least 3
121-182	At least 1	At least 2

The number of ties needed for a deceased individual is calculated differently.

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Split Year Treatment

The old concessionary “split year” treatment has been placed onto a statutory footing as part of the new SRT. From the commencement of the new rules a tax year will be split into periods of residence and non-residence for those arriving in the UK or returning after a period of time abroad, and also for those leaving the UK, provided certain conditions are met.

Anti-Avoidance

A more comprehensive test of temporary non-residence is set out in the legislation. The concept of temporary non-residence now applies to a wider number of situations in order to prevent the avoidance of UK tax during a period of non-residence of a comparatively short duration. The categories of income and gains that arise during a period of temporary non-residence that will be taxed in the year the tax payer returns to the UK have also been extended. In addition to capital gains and foreign income remitted during temporary non-residence which are already taxed on temporary non-residents in the year of return to the UK, dividends from close companies and companies which would be close companies if UK resident, certain employment income, pension income, chargeable event gains from certain insurance policies and the taxation of loans to participators in close companies are brought within the charge to tax.

A person will be temporarily non-resident if he or she was resident in the UK in at least four out of the seven tax years preceding the year of departure, and the individual remains non-resident for less than five complete UK tax years.

Ordinary Residence

The concept of ordinary residence for tax purposes has been abolished with effect from 6 April 2013. A number of provisions of the tax code which are based on the concept of ordinary residence, or the lack of ordinary residence, have been amended to substitute a reference to residence or non-residence.

Of particular importance will be the provisions of the transfer of assets abroad legislation and the definition of exempt UK government securities (gilts) for inheritance tax purposes. Exempt UK government securities will be excluded property and outside the scope of inheritance tax if owned by a person who is not UK resident.

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Transitional Rules

An individual will be able to elect that their residence status for tax years prior to 2013/14 be determined applying the statutory residence test (rather than the rules applicable at the time) for the purpose (but only for the purpose) of determining whether they are resident in the UK in the years 2013/14 to 2015/16. This election is irrevocable and must be made formally in writing by the first anniversary of the end of the relevant tax year.

Action

You should take advice now on how the new SRT will affect you.

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For further information or to discuss any of the issues raised in this briefing note, please contact a member of the Rooks Rider Solicitors team:



Karen Methold
Partner
Head of Wealth Planning
+44 (0)20 7689 7112
kmethold@rooks rider.co.uk



Nicholas Jenkins
Managing Partner
Wealth Planning
+44 (0)20 7689 7161
njenkins@rooks rider.co.uk



Christopher Cooke
Senior Partner
Corporate & Wealth Planning
+44 (0)20 7689 7110
ccooke@rooks rider.co.uk

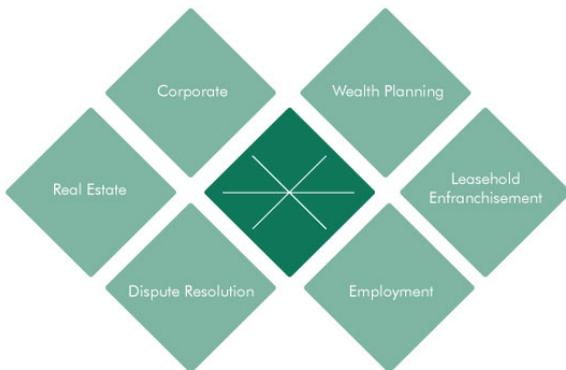


Robert Drysdale
Associate
Wealth Planning
+44 (0)20 7689 7168
rdrysdale@rooks rider.co.uk



Jeremy Duffy
Solicitor
Wealth Planning
+44 (0)20 7689 7185
jduffy@rooks rider.co.uk

CREaTe[®]



Rooks Rider Solicitors LLP
Challoner House
19 Clerkenwell Close ■ London ■ EC1R 0RR

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