



## *UK Statutory Residence Test*

### *Background*

The SRT for individuals took effect as of 6 April 2013, replacing the former case law based approach. The former system was uncertain and recent cases (most notably that of Gaines-Cooper in 2008) demonstrated that reliance could not be placed on published HMRC guidance.

A long consultation process which began in June 2011 has resulted in draft legislation set out in the Finance Bill published on 11 December 2012. The final version was published with the Budget 2013. It is unlikely that there will be any further substantive changes in the foreseeable future due to the long consultation that has taken place.

### *The Test*

UK Statutory Residence Test (“SRT”) will determine whether you are resident or not resident in the UK in a tax year for the purposes of income tax, capital gains tax and inheritance tax. There are two layers to the SRT:

- i. The Automatic Residence Test.
- ii. The Sufficient Ties Test.

Legislation distinguishes between those leaving the UK, and those arriving to take up residence in the UK, when considering residence for any particular year:

- “**Leavers**” are those individuals who have been resident in the UK for any of the past three years.
- “**Arrivers**” are those individuals who have **not** been resident in the UK for any of the past three years.

The **automatic residence test** is met if you meet any of the four automatic UK tests and none of the automatic overseas tests.



### ***Automatic UK tests:***

- i. Present for 183 days in a tax year in the UK.
- ii. The individual has a home in the UK available for more than 90 days per annum and visits that home for 30 days in the tax year and either:
  - a. This is the individual's only home.
  - b. The individual has an overseas home but does not use it for at least 30 days in the tax year.
- iii. Works full time in the UK in a year more than 75% of these days in the UK.
- iv. Where a person dies and they were UK resident in **each** of the three preceding years and had a home in the UK when they died.

If an individual meets one of the automatic UK Tests, it is then necessary to consider whether the automatic overseas tests apply to prevent the individual being UK resident:

### ***Automatic Overseas tests:***

- i. Leavers – spend less than 16 days in the UK.
- ii. Arrivers – spend less than 46 days in the UK.
- iii. Works full time abroad, and spends less than 91 days in the UK in the tax year, and less than 31 days where he/she works in the UK for more than 3 hours.
- iv. Dies abroad having been not UK resident for two years and has spent less than 46 days in the UK.

### ***Sufficient Ties Test***

If an individual meets none of the automatic UK tests, or any of the automatic overseas tests, the sufficient ties test must be considered.



There are two levels of test: one for arrivers and a more stringent one for leavers. Someone leaving the UK will generally be a leaver for the first three years after leaving and from the fourth year be treated as an arriver for these purposes – in other words the rules relax from the fourth year of non UK residence.

The following table demonstrates the main differences in the number of days a leaver and an arriver could spend in the UK without triggering UK residence:

***Maximum number of days return to UK***

<u>Number of ties to the UK</u>	<u>Leaver</u>	<u>Arriver</u>
1	120	182
2	90	120
3	45	90
4	15	45

Once the number of ties has been established, you can then refer to the table above to determine whether, taking into account the number of days the individual has spent in the UK, you are considered UK tax resident in a particular tax year.

***UK ties***

***i) Family tie:*** If your ‘relevant relationships’ with spouse, civil partner, ‘co-habiting’ partner or a child under 18 years who is resident in the UK. Children in full time education in the UK are not counted provided they do not spend more than 21 days in the UK outside of term time.

***ii) Accommodation tie:*** If ‘a place to live’ in the UK which is available to you for a continuous period of at least 91 days in that year, and at least one night is spent there. If the accommodation belongs to a close relative, the threshold drops to 16 days. A ‘place to live’ can include a holiday home or a rented accommodation.

***iii) Work tie:*** If you work (more than 3 hours a day) in the UK for at least 40 days (continuously or intermittently) in that year. Work includes travelling time when paid by the employer as well as job related training.



**iv) 90 day tie:** If you spend more than 90 days in the UK in either the year preceding the current tax year and/or the year before that one.

**v) Country tie:** If the UK is the country in which you meet the “midnight test” for the greatest number of days in that year.

The ‘midnight test’ is met if the individual is present in that country at the end of the day. If the midnight test is met for the same number of days in two or more countries (and that number is the greatest number of days, you meet the “midnight test” in any country), you have a country tie provided just one of those countries is the UK.

*NOTE: This summary is not intended to give individual advice on residence status as a detailed knowledge of an individuals’ family situation and work activities are required to do so.*

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