

The hotly anticipated Statutory Residence Test was published 28 March 2013 taking up a hearty 64 pages of the 615 page Finance Bill 2013. There have been several incarnations of this legislation as it has gone through its consultation period which began back in the summer of 2011. The new rules will now apply as they are from 6 April 2013.

As we at Squire Sanders were lead solicitors on the key case that prompted calls for a statutory test we have been awaiting this day with breath that is bated. Would the SRT have aided Mr Gaines-Cooper in his Supreme Court battle back in July 2011? Possibly not in terms of deciding his residence but in terms of keeping HMRC in check one would hope so.

The new test will be very important to internationally mobile individuals. The extent of liability to UK tax hinges entirely on a person's residence status.

There are provisions in the new SRT for split year treatment which can also apply to an accompanying spouse/partner where there is employment abroad. In terms of temporary non-residence further statutory instruments are expected on this.

In a very small nutshell to befit this note the new test has 3 limbs. The tests are broadly as follows (if a taxpayer dies during a year there are different provisions):

1. You will be conclusively **NON RESIDENT** if:
  - a) You were not resident in the previous 3 years and you spend fewer than 46 days in the tax year; or
  - b) You were resident in any of the last 3 years and you spend fewer than 16 days in the UK; or
  - c) You leave the UK to carry out "full time" work abroad and spend less than 91 days in the tax year and no more than 30 working days the UK.

Full time work means 35 hours/week subject to some very complex allowances for what a week is and with respect to business travel days.

2. You will be conclusively **RESIDENT** if:
  - a) You spend at least 183 days in the UK; or
  - b) You have only one home which is in the UK or if you have a 'home' elsewhere you spend only a specified limited amount of time there; or
  - c) You carry out "full time" work in the UK.

If you do not fall into category 1 or 2 then please go to 3 and look at your day count compared to your UK ties.

3. UK ties include:
  - a) Spouse or minor children being resident in the UK;
  - b) The existence and use of accessible accommodation in the UK;
  - c) Substantive work done in the UK;
  - d) More than 90 days in the UK in either of the previous two years;
  - e) More time in the UK than any other single country. (This is applicable to "leavers" only)

The importance of these factors depends upon whether you are an "arriver" (someone who was not resident for the last three years) or a "leaver" (someone who was resident in UK for any of the last three years).



If you are an **arriver** you may spend the following number of days in the UK before you become UK resident:

<b>Days in the UK</b>	<b>UK Ties</b>
0 - 45	Always non resident
46 - 90	4 UK Ties = resident
91 -120	3 UK Ties = resident
121 -182	2 UK Ties = resident
Over 182	Always resident

If you are a **leaver** you may spend the following number of days in the UK before you become UK resident:

<b>Days in the UK</b>	<b>UK Ties</b>
0 - 15	Always non resident
16 - 45	4 UK Ties = resident
46 - 90	3 UK Ties = resident
91 - 120	2 UK Ties = resident
121 -182	1 UK Ties = resident
over 182	Always resident

I am yet to wade through the minutiae of the new legislation but my initial view is that it fails to address commentators early concerns to reduce the risk of ambiguity and potential pitfalls over what constitutes a "home" and what constitutes "work" - if I pick up a few emails at Heathrow am I compromising my residency position? Provision has been made for exceptional days in the UK for example for medical treatment but the protection this affords may not be as generous as the previous HMRC practice.

The moral of the story? The new SRT reinforces the need for internationally mobile individuals to keep complete and accurate records of their movements.

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