CHAPTER 45

RESIDENCE – THE STATUTORY RESIDENCE RULES

In this chapter you will cover the rules for determining an individual's residence status including:
- an overview of the Statutory Residence Test (SRT);
- the automatic overseas tests;
- the automatic residence tests;
- the “sufficient ties” tests and the treatment of “Arrivers” and “Leavers”;
- determining days of presence in the UK;
- transitional provisions;
- record keeping under SRT.

In this chapter, all tax years are assumed to consist of 365 days and the effects of leap years have been ignored.

45.1 Introduction

The UK consists of England, Scotland, Wales and Northern Ireland. The Republic of Ireland, the Isle of Man and the Channel Islands (Jersey, Guernsey etc) are not part of the UK.

As a general rule:

- Taxpayers who are resident in the UK in a tax year are taxable on their worldwide income and capital gains arising in that year; while

- Taxpayers who are NOT resident in the UK in a tax year are only taxable on their UK income arising in that year (their foreign income is not taxed). Subject to limited exceptions, non residents do not pay capital gains tax.

It is therefore important that a taxpayer’s residence status for tax purposes is correctly determined.

Until 6 April 2013, the UK did not have statutory rules to determine an individual’s residence status.

Since April 2013 the UK has a Statutory Residence Test (SRT) which applies to determine a taxpayer’s residence status for income tax and capital gains tax for the tax years 2013/14 and onwards. It does not apply for the purposes of National Insurance (residence for NIC will continue to be determined using the guidelines laid out in booklet NI38).

45.2 Dual Residence and Non-Residence

It is possible to be resident in the UK and at the same time be resident in another country under that country's rules.

If an individual has “dual residence”, he/she should establish whether there is a Double Tax Treaty between the UK and that other country.
Where an individual is resident in two or more countries under their respective domestic laws, the “tie-breaker” clause within the Tax Treaty will normally allocate residence to one country or the other.

Where there is no Double Tax Treaty in place, all income and gains (both UK and foreign source) will be subject to UK tax but relief can be claimed for foreign tax paid.

If an individual is dual resident, he/she must complete boxes 18-22 of the “Residence, Remittance basis etc” supplementary pages of his self assessment return.

It is also possible for an individual not to be resident in any country if his lifestyle is such that he does not trigger the residence rules in any of the countries in which he is present.

45.3 The Statutory Residence Test (SRT) – the General Idea

The SRT determines whether or not an individual is resident in the UK for a tax year. The SRT takes into account both the amount of time the individual spends in the UK and the other “connections” they have with the UK.

The SRT has three parts:

1. The “automatic overseas tests” – if any of these tests are met, the individual is conclusively non-UK resident for the tax year.

2. The “automatic residence tests” – if any of these tests are met, the individual is conclusively UK resident for the tax year.

3. The “sufficient ties test” – this contains other connection factors and day counting rules which will only need to be considered by those whose residence status is not determined by the first 2 tests. This test considers whether an individual has sufficient UK ties such that they are UK resident when taking into account the number of days they are present in the UK.

An individual will be non-UK resident if they meet any of the automatic overseas tests.

If none of the automatic overseas tests are met, an individual will be resident in the UK if they meet any of the automatic UK tests or they meet the sufficient ties test.

The SRT contains tests which apply to determine residence in the tax year in which an individual dies, however these rules are outside your syllabus and will not be covered in this chapter.

Similarly the rules on “International Transportation Workers” which cover residence rules for those individuals with jobs working on ships and aircraft etc, are also outside your syllabus and are not discussed here.
45.4 **The “Automatic Overseas Test”**

An individual is conclusively **not resident in the UK** for a tax year if they meet **any** of the following conditions, namely:

1. They were **resident in the UK in one or more of the previous three tax years** and they are **present in the UK for fewer than 16 days** in the current tax year; or **FA 2013, Sch 45 para 12**

2. They were **not resident in the UK in all of the previous three tax years** and they are **present in the UK for fewer than 46 days** in the current tax year; or **FA 2013, Sch 45 para 13**

3. They meet the “work abroad” condition.

Broadly the “work abroad” condition is met where the individual **works abroad for an average of at least 35 hours a week** for the whole of the tax year, and is **present in the UK for fewer than 91 days** in the tax year of which **fewer than 31 days** are spent working in the UK. **FA 2013, Sch 45 para 14**

This condition is defined in more detail later in the chapter.

45.5 **The “Automatic Residence Test”**

An individual will be **conclusively resident in the UK** for the tax year if they meet **any** of the following conditions, namely:

1. They are **present in the UK for 183 days or more** in a tax year; or **FA 2013, Sch 45 para 7**

2. They have a “home” in the UK; or **FA 2013, Sch 45 para 8**

3. They carry out “**full-time work**” in the UK for a period of at least 365 days. **FA 2013, Sch 45 para 9**

What constitutes a “home” in the UK and what is meant by “full-time work” will be explained later.

If an individual has met any of the automatic overseas tests, he is automatically not resident in the UK, even if he also meets one of the automatic residence tests. Therefore **in cases where both tests apply, the automatic overseas test takes priority.**

- **Illustration 1**

Pascal is coming to the UK on 1 March 2016 to start a full-time job with a chemical engineering company in Leeds. He will lease a house in Leeds to live in while he is in the UK. He has never previously been resident in the UK.

**What is Pascal’s residence status for 2015/16?**

Pascal will carry out full-time work in the UK. This is normally sufficient to make Pascal UK resident under the “automatic residence test”.

However in 2015/16, he will only spend a maximum of 36 days in the UK. Where an individual is not resident in the UK in **all** of the previous three tax years and is
present in the UK for fewer than 46 days in the current tax year, he is automatically non-resident under the “automatic overseas test”.

The automatic overseas test takes priority, therefore Pascal is non-UK resident in 2015/16.

45.6 The “Sufficient Ties Test”

Some individuals will not meet any of the automatic overseas tests or any of the automatic residence tests. These will most commonly be individuals who spend between 46 days and 182 days in the UK.

For this population, their residence status will be determined by the “sufficient ties” test. FA 2013, Sch 45 para 17

The “sufficient ties” test considers both the number of days spent in the UK and the extent of the individual’s “connection” with the UK. It reflects the principle that the more time someone spends in the UK, the fewer connections they need to have with the UK to be treated as UK-resident.

There are 5 “ties” or “connection factors” laid out in the legislation namely:

1. **Family** – a “family” tie is created if either:
   
   - The individual’s spouse/civil partner/common-law partner are resident in the UK; or
   - A minor child (under 18) of the individual is resident in the UK and the individual sees that child on at least 61 days in the tax year. FA 2013, Sch 45 para 32

2. **Accommodation** – an “accommodation” tie is created if:
   
   - The individual has a place to live in the UK which is available to be used by them for a continuous period of at least 91 days; and
   - He/she spends at least one night there during the tax year (or 16 nights in the case where the accommodation is that of a close relative, being a parent, grandparent, sibling, child or grandchild). FA 2013, Sch 45 para 34

3. **Work** – a “work” tie is created if the individual works for 40 days or more in the UK in the tax year. A workday is any day on which more than 3 hours work is carried out. FA 2013, Sch 45 para 35

4. **UK presence** (the “90-day tie”) – a “UK presence” tie is created if the individual spent more than 90 days in the UK in either of the previous two tax years, FA 2013, Sch 45 para 37

5. **Country** – a “country” tie is created if the individual spends more days in the UK in the tax year than in any other single country.

   [This final “country” tie only applies to taxpayers who have been resident in the UK in one or more of the 3 previous tax years. For taxpayers who are coming to the UK having been non-resident for the previous 3 years, this factor is disregarded.] FA 2013, Sch 45 para 38
The above connection factors are combined with days spent in the UK to determine residence status.

Where the “sufficient ties” test applies, the legislation contains 2 Tables which we refer to in order to determine residence status.

The first Table is relevant for individuals who have been resident in the UK in one or more of the 3 preceding tax years. These people are referred to as “Leavers”.

The second Table is relevant for individuals who have not been resident in the UK in any of the 3 preceding tax years. These people are referred to as “Arrivers”.

All individuals for whom the sufficient ties test applies will fall within one or other of these Tables (but never both).

Table for “Leavers”: FA 2013, Sch 45 para 18

<table>
<thead>
<tr>
<th>Days spent in the UK in the tax year</th>
<th>Number of ties required to establish residence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 16</td>
<td>Always non resident</td>
</tr>
<tr>
<td>16 – 45 days</td>
<td>At least 4</td>
</tr>
<tr>
<td>46 – 90 days</td>
<td>At least 3</td>
</tr>
<tr>
<td>91 – 120 days</td>
<td>At least 2</td>
</tr>
<tr>
<td>121 – 182 days</td>
<td>At least 1</td>
</tr>
<tr>
<td>183 days or more</td>
<td>Always resident</td>
</tr>
</tbody>
</table>

Table for “Arrivers”: FA 2013, Sch 45 para 19

<table>
<thead>
<tr>
<th>Days spent in the UK in the tax year</th>
<th>Number of ties required to establish residence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fewer than 46</td>
<td>Always non resident</td>
</tr>
<tr>
<td>46 – 90 days</td>
<td>All 4</td>
</tr>
<tr>
<td>91 – 120 days</td>
<td>At least 3</td>
</tr>
<tr>
<td>121 – 182 days</td>
<td>At least 2</td>
</tr>
<tr>
<td>183 days or more</td>
<td>Always resident</td>
</tr>
</tbody>
</table>

You will notice that there is a more stringent day count for “Leavers” than “Arrivers”.

It is HMRC’s belief that residence should have an “adhesive” nature. The statutory residence rules therefore make it harder for a “Leaver” to become non-resident when leaving the UK after a period of residence than it is for an “Arriver” to become resident when coming to the UK.

The following flowcharts summarise how residence will be determined under the Statutory Residence test.
STATUTORY RESIDENCE TEST – RESIDENCE FLOWCHART PART 1

1. PRESENT IN THE UK FOR < 16 DAYS IN THE TAX YEAR?
   - NO
   - PRESENT IN THE UK FOR < 46 DAYS and NON-RESIDENT IN ALL OF LAST 3 TAX YEARS?
     - NO
     - WORKING ABROAD > 35 HOURS P/W; and PRESENT IN THE UK FOR < 91 DAYS; and WORKING DAYS IN UK < 31?
       - NO
       - PRESENT IN THE UK FOR > 182 DAYS IN THE TAX YEAR?
         - NO
         - HAVE A “HOME” IN THE TAX YEAR?
           - NO
           - WORKING FULL-TIME IN THE UK FOR A PERIOD > 365 DAYS?
             - NO
             - REFER TO THE “SUFFICIENT TIES” TEST
   - YES
     - NOT RESIDENT IN THE UK

2. PRESENT IN THE UK FOR > 182 DAYS IN THE TAX YEAR?
   - NO
   - HAVE A “HOME” IN THE TAX YEAR?
     - NO
     - WORKING FULL-TIME IN THE UK FOR A PERIOD > 365 DAYS?
       - NO
       - REFER TO THE “SUFFICIENT TIES” TEST
   - YES
     - RESIDENT IN THE UK
STATUTORY RESIDENCE TEST – RESIDENCE FLOWCHART PART 2

**THE “SUFFICIENT TIES” TEST**

WERE YOU RESIDENT IN THE UK IN ANY OF THE PREVIOUS 3 TAX YEARS?

- **YES = “LEAVER”**
- **NO = “ARRIVER”**

HOW MANY OF THE FOLLOWING “TIES” DO YOU HAVE TO THE UK?

<table>
<thead>
<tr>
<th><strong>UK RES PARTNER OR SEE CHILDREN</strong></th>
<th>≥ 61 DAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACCOMMODATION IN THE UK</strong></td>
<td></td>
</tr>
<tr>
<td><strong>≥ 40 DAYS WORKING IN THE UK</strong></td>
<td></td>
</tr>
<tr>
<td><strong>PRESENT &gt; 90 DAYS IN EITHER OF</strong></td>
<td></td>
</tr>
<tr>
<td><strong>LAST 2 YEARS</strong></td>
<td></td>
</tr>
<tr>
<td><strong>MORE DAYS IN UK THAN ANY OTHER</strong></td>
<td></td>
</tr>
<tr>
<td><strong>COUNTRY</strong></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL UK “TIES” (MAX 5)</strong></td>
<td></td>
</tr>
</tbody>
</table>

HOW MANY OF THE FOLLOWING “TIES” DO YOU HAVE TO THE UK?

<table>
<thead>
<tr>
<th><strong>UK RES PARTNER OR SEE CHILDREN</strong></th>
<th>≥ 61 DAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACCOMMODATION IN THE UK</strong></td>
<td></td>
</tr>
<tr>
<td><strong>≥ 40 DAYS WORKING IN THE UK</strong></td>
<td></td>
</tr>
<tr>
<td><strong>PRESENT &gt; 90 DAYS IN EITHER OF</strong></td>
<td></td>
</tr>
<tr>
<td><strong>LAST 2 YEARS</strong></td>
<td></td>
</tr>
<tr>
<td><strong>MORE DAYS IN UK THAN ANY OTHER</strong></td>
<td></td>
</tr>
<tr>
<td><strong>COUNTRY</strong></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL UK “TIES” (MAX 4)</strong></td>
<td></td>
</tr>
</tbody>
</table>

NEXT COUNT THE NUMBER OF DAYS YOU SPENT IN THE UK IN THE TAX YEAR

FOR “LEAVERS”

<table>
<thead>
<tr>
<th>DAYS</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 16 DAYS</td>
<td>NOT RESIDENT</td>
</tr>
<tr>
<td>16–45 DAYS</td>
<td>RESIDENT IF 4 TIES</td>
</tr>
<tr>
<td>46–90 DAYS</td>
<td>RESIDENT IF 3 TIES</td>
</tr>
<tr>
<td>91–120 DAYS</td>
<td>RESIDENT IF 2 TIES</td>
</tr>
<tr>
<td>121–182 DAYS</td>
<td>RESIDENT IF 1 TIE</td>
</tr>
<tr>
<td>&gt; 182 DAYS</td>
<td>RESIDENT</td>
</tr>
</tbody>
</table>

FOR “ARRIVERS”

<table>
<thead>
<tr>
<th>DAYS</th>
<th>STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 46 DAYS</td>
<td>NOT RESIDENT</td>
</tr>
<tr>
<td>46–90 DAYS</td>
<td>RESIDENT IF 4 TIES</td>
</tr>
<tr>
<td>91–120 DAYS</td>
<td>RESIDENT IF 3 TIES</td>
</tr>
<tr>
<td>121–182 DAYS</td>
<td>RESIDENT IF 2 TIES</td>
</tr>
<tr>
<td>&gt; 182 DAYS</td>
<td>RESIDENT</td>
</tr>
</tbody>
</table>
Illustration 2

Caleb is South African. He came to the UK for the first time on 1 November 2015 to visit friends. He is in the UK on a tourist visa and is not intending to work.

He intends to stay in the UK for a few months, so he will rent a bedsit on a 6 month lease to use as a base (this works out cheaper than staying in a hotel). He has retained his flat in South Africa. You can assume that the 2\textsuperscript{nd} automatic residence test (the “home” test) is not met.

What is Caleb’s residence status for 2015/16?

Residence Ruling

In 2015/16 Caleb spent 156 days in the UK. He will not therefore satisfy the tests for automatic non-residence.

He is not working in the UK and we are told that he does not pass the “home” test. Caleb will not therefore satisfy any of the tests for automatic residence.

We therefore look at the “sufficient ties” test.

Caleb has not been resident in any of the 3 years before 2015/16, so he will be an “Arriver”.

An “Arriver” who spends 156 days in the UK in the tax year must have 2 ties in order to be resident in the UK.

He only has one tie being his available accommodation.

Under the “sufficient ties” test, Caleb will therefore be non-UK resident in 2015/16.

Illustration 3

Marco is Italian. He has lived with his parents in Naples all his life.

He left school in summer 2015 and came to the UK on 1 November 2015 to visit his uncle who runs a restaurant in Cardiff. Marco stays with his uncle and works 3 days a week (Friday through Sunday) at the restaurant to earn money for a university course. The rest of the time he studies English at a local college.

He returned to Italy for 1 week over Christmas 2015.

He intends to return permanently to Italy in July 2016 and will start his university course in September 2016.

You can assume that the 2\textsuperscript{nd} automatic residence test (the “home” test) is not met.

What is Marco’s residence status for 2015/16?

Residence Ruling

In 2015/16 Marco spent 149 days in the UK. He will not therefore satisfy any of the tests for automatic non-residence.
He is not working full-time in the UK and we are told that he does not pass the “home” test. Marco will not therefore satisfy any of the tests for automatic residence.

We therefore look at the “sufficient ties” test.

Marco has not been resident in any of the 3 years before 2015/16, so he will be an “Arriver”.

An “Arriver” who spends 149 days in the UK in the tax year must have 2 ties in order to be resident in the UK.

He has 2 ties being:

1. His available accommodation; and
2. At least 40 days working in the UK in the tax year.

Under the “sufficient ties” test, Marco will therefore be UK resident in 2015/16.

Illustration 4

Gloria is a retired widow who lives on her pension and investment income. She has 6 children and 15 grandchildren. Gloria has always lived in the UK.

In December 2014 she was diagnosed with osteomalacia (caused by vitamin D deficiency) which her doctor said can be alleviated by increased exposure to sunlight.

Gloria therefore decided to spend part of the year with her children and grandchildren, some of whom live abroad. She sold her house in the UK to fund her travel costs. When she returns to the UK she either stays with friends and family or she books herself into a seaside hotel.

Gloria spent the tax year 2015/16 in the following places:

<table>
<thead>
<tr>
<th>Period</th>
<th>Days</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.4.15 – 30.6.15</td>
<td>86</td>
<td>In Portugal with her daughter</td>
</tr>
<tr>
<td>1.7.15 – 15.9.15</td>
<td>77</td>
<td>In the UK (at various different places)</td>
</tr>
<tr>
<td>16.9.15 – 15.11.15</td>
<td>61</td>
<td>In St Lucia with her daughter</td>
</tr>
<tr>
<td>16.11.15 – 29.12.15</td>
<td>44</td>
<td>In Dubai with her son</td>
</tr>
<tr>
<td>30.12.15 – 9.1.16</td>
<td>11</td>
<td>In the UK with her sister in Devon</td>
</tr>
<tr>
<td>10.1.16 – 16.1.16</td>
<td>7</td>
<td>In Singapore on holiday</td>
</tr>
<tr>
<td>17.1.16 – 5.4.16</td>
<td>79</td>
<td>In Australia with her grandson</td>
</tr>
<tr>
<td></td>
<td>365</td>
<td></td>
</tr>
</tbody>
</table>

What is her residence status for 2015/16?

Residence Ruling

In 2015/16 Gloria spent 88 days in the UK.

She will not therefore satisfy any of the tests for automatic non-residence.

She does not work full-time and does not have a home in the UK. She does not therefore pass any of the tests for automatic residence.
We therefore consider the sufficient ties test.

Gloria has been resident in at least one of the 3 years before 2015/16, so she is a “Leaver”.

A “Leaver” who spends 88 days in the UK in the tax year must have 3 ties in order to be resident in the UK.

Gloria has 2 ties being:

1. UK presence – she spent more than 90 days in the UK in either of the previous two tax years;
2. More time in the UK than in other countries – she spent more days in the UK in 2015/16 than in any other single country.

Gloria will therefore be non-UK resident in 2015/16.

If it transpires that Gloria has “a place to live” in the UK and she has made use of that place on at least one occasion, this would be a 3rd tie ("accommodation") which would then be sufficient to make her UK resident in 2015/16.

This seems not to be the case here, but this would need to be checked before the tax return was filed.

45.7 More Detail on “Connection Factors"

Family:

A family tie is created where either:

- The individual’s spouse/partner/civil partner is resident in the UK; or
- The individual’s minor children (under 18) are resident in the UK and he sees the child in the UK on at least 61 days in the tax year.

Spouses or civil partners do not include those from which the individual is separated.

An individual will be a “partner” if the couple is living together as husband and wife.

Where a minor child is resident in the UK mainly due to their attendance at an educational establishment, this will not be deemed to be a family connection if the child spends fewer than 21 days in the UK outside term-time. FA 2013, Sch 45 para 32

Accommodation:

An accommodation tie is created where the individual has accessible accommodation in the UK and makes use of it during the tax year.

An individual will have UK accommodation if:

- The individual has a place to live in the UK;
• It is available to be used by them for a continuous period of at least 91 days; and

• The individual spends at least one night in that place during the tax year.

There is no requirement for the accommodation to be owned by an individual – it only has to be accommodation that is available while an individual is in the UK. This will therefore include holiday homes and other similar types of accommodation.

Accommodation held by “close relatives” can be said to be continually “available” as the individual can potentially stay there whenever he/she wants. However, such accommodation only counts as a connection factor if the individual spends at least 16 nights there during the tax year.

“Close relatives” include parents (and in-laws), grandparents, siblings/ half-siblings and children and grandchildren over 18.

Where there is a gap of fewer than 16 days between periods in the tax year in which a particular place is available to the individual, that place will continue to be treated as if it were available to the individual during that gap.

This is designed to ensure that a place to live does not avoid being an “accommodation” tie simply by the taxpayer arranging short periods during the 91 days when it is not available for him to use (for example, by letting a property out for one or two weeks every 3 months).

However, this “16 day rule” could result in there being an accommodation tie in the genuine situation of an individual who makes multiple trips back and forth to and from the UK but regularly uses the same accommodation (such as a favourite hotel). FA 2013, Sch 45 para 34

More Time in the UK than in Other Countries

A tie is created where the individual spends more days in the UK in the tax year than in any other single country. An individual is in the UK for a “day” if he/she is in the UK at midnight.

This tie only applies to taxpayers who have been resident in the UK in one or more of the 3 previous tax years (ie, only to “Leavers”).

For “mobile” employees, the need to evidence whether they have spent more time in the UK than in any other single country may present difficulties in terms of record-keeping (HMRC may require sight of such records to ensure that this test has not been triggered).

This factor could also produce different results for individuals who spend the same amount of time in the UK in a tax year.

For instance, a tie could be created by an individual who spends (say) 2 months in the UK and for the rest of the year travels around Europe spending one month in 10 different countries. However no tie would be created by an individual who spends 2 months in the UK and 10 months travelling around different areas of the same country.

In practice the “country” tie will be the least likely tie to apply. As it only applies to Leavers (not Arrivers), the Leaver must leave the UK, spend less than 6 months of
the year in the UK in the tax year (and hence more than 6 months abroad), but still spend more time in the UK than any other overseas country.

This tie will therefore typically apply to those individuals who leave the UK and thereafter spend small pockets of time in a number of different overseas locations. FA 2013, Sch 45 para 38

45.8 The “Day Counting” Rules

An individual will be automatically resident in the UK for a tax year if he/she is present in the UK for 183 days or more in that tax year.

An individual is treated as being in the UK on any day where they are in the UK at midnight at the end of that day. This means that days of arrival in the UK will usually be counted while days of departure from the UK will not. FA 2013, Sch 45 para 22

However, this “midnight rule” does not apply in the following two cases:

1. For “transit passengers” – the midnight rule does not apply if an individual arrives in the UK only as a passenger, he leaves the UK the next day, and between arrival and departure the individual does not engage in activities that are to a substantial extent unrelated to his passage through the UK.

   Unrelated activities broadly mean anything which is unrelated to simply passing through the UK en-route to another country (such as engaging in social meetings, carrying out employment duties etc).

   The transit exception will most commonly apply to travellers who change flights in the UK but the incoming and outgoing flights straddle midnight. FA 2013, Sch 45 para 22(3)

2. In “exceptional circumstances” – the midnight rule does not apply if the individual would not be present in the UK at the end of that day but there are exceptional circumstances beyond his control which prevent him from leaving the UK, and the individual intends to leave the UK as soon as those circumstances permit. FA 2013, Sch 45 para 22(4)

“Circumstances beyond his control” are listed as:

- National or local emergencies, such as war, civil unrest or natural disasters; or
- Sudden or life-threatening illness or injury.

“Exceptional circumstances” will normally apply where an individual has no choice concerning the time they spend in the UK or in coming back to the UK.

“Life events” such as birth, marriage, divorce and death are not routinely regarded as exceptional circumstances.

Travel problems, for example a delayed or missed flight due to traffic disruption, train delays, or a car breakdown, will not be considered as exceptional circumstances.

To prevent manipulation, the number of days that can be disregarded due to exceptional circumstances is restricted to 60 days in any tax year. Any excess days over 60 will be treated as days of presence. FA 2013, Sch 45 para 22(6)
This disregard for exceptional circumstances will apply to:

- The 183-day count in the automatic residence test; and
- The day counts in the automatic overseas test and the “work abroad” condition; and
- The day counting thresholds in the sufficient ties test;
- The day counting rule in the “90 day” tie.

### 45.9 Days Spent in the UK – the “Deeming Rule”

Under the “deeming rule”, an individual can be treated as being in the UK for a day even though he/she was not present in the UK at midnight.

The deeming rule applies for a tax year where the individual:

- Has at least three UK ties for the tax year; and
- Has been UK resident in one or more of the preceding three tax years; and
- Has been present in the UK on more than 30 days in the tax year, without being present at the end of that day (these are called “qualifying days”). FA 2013, Sch 45 para 23

Where all the above conditions are met, the deeming rule means that, after the first 30 qualifying days, all subsequent qualifying days within the tax year are treated as days spent in the UK.

This rule is targeted at those “commuter” taxpayers who come in and out of the UK on an almost daily basis without being in the UK at midnight.

To ascertain the number of days spent in the UK in a tax year, we therefore:

1. Ascertain the number of days on which the individual was in the UK at midnight.
2. Deduct “transit days” and days spent in the UK due to exceptional circumstances.
3. Add the number of “qualifying days” (being days otherwise present in the UK minus 30).

In considering whether an individual has 3 “ties” to the UK for the purposes of applying the deeming rule, when looking at the “90-day” tie we do not count any deemed days.

The deeming rule does not apply for the purposes of the 91-day and 31-day limits in the 3rd automatic overseas test (the work abroad condition) or for the “country tie”.

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Illustration 5

Philippe lives mainly in Monaco. He does not meet any of the automatic UK or automatic overseas tests for 2015/16. He was UK resident in 2013/14 but was non-resident in 2014/15.

He has 3 ties to the UK being his available accommodation, substantive work carried on in the UK and his UK presence in one of the previous 2 tax years. His family lives in Monaco.

In 2015/16 there were 32 days on which he was present in the UK at the end of the day.

Philippe was also present in the UK on 50 other days, leaving the UK before the end of the day.

What is Philippe’s residence status for 2015/16?

Philippe has been UK resident in one or more of the preceding three tax years, so he is a “Leaver”.

He was present in the UK for 32 days under the midnight rule.

He has 3 ties to the UK.

A “Leaver” who is present in the UK for 32 days requires 4 ties to establish residence. Therefore without the deeming rule, Philippe will be non-resident under the sufficient ties test, as he only has 3 UK ties.

However, when looking at the days he has spent in the UK, Philippe will need to consider the deeming rule because:

- He has at least three UK ties for the tax year; and
- He has been UK resident in one or more of the preceding three tax years.

Philippe was present in the UK on 50 other days without being in the UK at midnight. He therefore has 20 “qualifying days” (being 50 less 30).

This gives a total of 52 days spent in the UK (32 “midnight” days plus 20 qualifying days under the deeming rule).

When taken together with his 3 UK ties, this means that Philippe will be UK resident for 2015/16 under the sufficient ties test.

45.10 The “Automatic Overseas Test” – the “Work Abroad” Condition

One of the 3 tests for an individual to be conclusively not resident in the UK for a tax year is the “work abroad” condition.

In order for the “work abroad” condition to be met, the individual must:

- Work “sufficient hours abroad” (assessed over the tax year); and
- Have no “significant breaks” from the overseas work. A significant break is where at least 31 days go by and not one of those days is a day during which
the individual worked for more than 3 hours (or would have done were it not for annual leave, parenting leave or sickness); and

•  Spend fewer than 31 days working in the UK in the tax year; and

•  Be present in the UK for fewer than 91 days in the tax year. FA 2013, Sch 45 para 14

An individual will work “sufficient hours abroad” if he/she works an average of at least 35 hours per week abroad over the course of the tax year.

To determine the average hours worked, a step-by-step calculation is laid out in the legislation. This can be simplified as below:

1. Calculate “Net overseas hours”:
   \[ A \]
   \[ = \text{Total number of hours worked overseas in the tax year} \]

2. Calculate days in the “reference period:
   \[ 365 \]
   \[ \text{Days in tax year (usually 365)} \]
   \[ \text{Less: Days unavailable for work (eg, sickness, annual leave, parenting leave etc)} \]
   \[ B \]
   \[ \text{Days available for work} \]

3. Divide “B” by 7 (round down to nearest whole week if necessary)
   \[ C \]
   \[ = \text{Weeks available for work} \]

4. Divide “Net overseas hours” by “Weeks available for work”
   \[ D \]
   \[ A/C = D \]

5. If “D” is 35 hours or more:
   • Individual has worked sufficient hours overseas during the tax year.

Note:

This is a very simplified version of the steps laid down in the legislation and is sufficient for examination purposes. However, if you need to perform this calculation in practice, you should refer to the detailed rules in the statute.

The main difficulty with this “sufficient hours” calculation is the enormous amount of record keeping that will be required on the part of the taxpayer. As a bare minimum, the taxpayer will need to keep a daily working hours timesheet or diary, noting where the work was performed. This will be very onerous for those not already used to keeping timesheets.

45.11 Definition of “Working”

“Work” means either employment or self-employment. There is no distinction between types of duties, so the nature of the work is irrelevant. FA 2013, Sch 45 para 26

Unpaid voluntary work will not normally count as work (although an individual employed or engaged in a self-employed capacity by a voluntary organisation will be eligible as long as the other conditions are met).

Business travel within the UK (being travel where the costs are met by the employer or where the travel costs are tax-deductible) will also constitute “work”. “Home to work” travel is however excluded unless the individual carries out any employment
duties while commuting (for example, working on a laptop or making business telephone calls while on the train). FA 2013, Sch 45 para 26(4).

Training time counts as time spent working if:

i. The training is provided or paid for by the employer and is undertaken to help the employee in performing the duties of the employment; or

ii. In the case of a self employment, the cost of the training is deductible in calculating the profits of the trade. FA 2013, Sch 45 para 26(5).

45.12 The “Automatic Residence Test” – Detailed Rules

An individual will be conclusively resident in the UK for the tax year if they meet any of the 3 tests for automatic UK residence, namely:

1. They are present in the UK for 183 days or more in a tax year; or

2. They have a “home” in the UK; or

3. They carry out full-time work in the UK.

We shall now look at tests 2) and 3) in detail.

45.13 The “Home” Test

The second test automatic residence test (the “home” test) will be met where:

a. An individual has a home in the UK for all or part of the tax year; and

b. He/she is present in that UK home on at least 30 separate days during the tax year; and

c. While he has his UK home, there is a period of at least 91 consecutive days, (of which at least 30 days falls within the tax year in question), when either Condition A or Condition B is met. FA 2013, Sch 45 para 8.

Condition A is that the individual has no home overseas.

Condition B is that the individual has one or more homes overseas but he/she is present in each of those homes on fewer than 30 separate days during the tax year.

If the individual has more than one home in the UK, the test must be applied to each home separately (not in aggregate). This means those with more than one home in the UK could spend time in a number of homes in succession and not be caught by this rule (as any home in which the individual is present for less than 30 days in the tax year is ignored).

Similarly, presence in any place which is not considered a “home” is also ignored.

This is a complex test and must be looked at in 2 stages.

First look at the UK home. Does the taxpayer have a home in the UK for at least 91 days and does he use that home for at least 30 days in the tax year?

The second stage of the test looks at the overseas home.
Look at the period during which the taxpayer has a UK home. If, within this period, the taxpayer goes for 91 days or more without having a home overseas, he will be UK resident by virtue of having his “home” in the UK.

This will catch those taxpayers who sell their overseas properties and come to live in the UK.

If the taxpayer DOES have an overseas home in this period, then check whether he has used that home for 30 days or more in the tax year. If he hasn’t, he will be UK resident.

This will catch those taxpayers who come to live in the UK but who keep their overseas properties and either let them out or use them very rarely (thereby having their “home” in the UK).

The “home” test is a complicated test and can be summarised in the following flowchart:
STATUTORY RESIDENCE TEST: THE “HOME” FLOWCHART

THIS FLOWCHART IS INTENDED TO HELP YOU DETERMINE WHETHER YOU TRIGGER UK RESIDENCE UNDER THE 2nd AUTOMATIC RESIDENCE TEST – THE “HOME” TEST – FOR A TAX YEAR HEREIN REFERRED TO AS “YEAR X”.

IS THERE A 91-DAY PERIOD (OF WHICH AT LEAST 30 DAYS WERE IN YEAR X) DURING WHICH YOU HAD A HOME IN THE UK?

←← NO YES

YOU ARE NOT AUTOMATICALLY RESIDENT UNDER THIS TEST.

YOU SHOULD NOW CONSIDER WHETHER YOU ARE RESIDENT UNDER THE “FULL-TIME” WORK TEST OR THE “SUFFICIENT TIES” TEST.

IN YEAR X, WERE YOU PRESENT IN THAT HOME ON AT LEAST 30 SEPARATE DAYS?

←← NO YES

DURING THE PERIOD IN WHICH YOU HAD YOUR UK HOME, IS THERE A PERIOD OF 91 CONSECUTIVE DAYS (OF WHICH AT LEAST 30 DAYS WERE IN YEAR X) DURING WHICH YOU HAD NO HOME OVERSEAS?

←← NO YES

YOU ARE UK RESIDENT FOR YEAR X UNDER THIS TEST.
Illustration 6

Jacob has lived in Israel all his life. In February 2015, while on a business trip to Edinburgh, he met Shirley. They plan to marry in March 2017. Jacob has therefore decided to move permanently to the UK.

Jacob returned to Israel to make preparations for his move. He sold his house in Israel (his only home) on 23 January 2016 and arrived in the UK on 25 January 2016.

He rented a flat in Edinburgh on a 12-month lease and moved in on 1 February 2016. He intends to live there for at least a year, after which he and Shirley will marry and find a home together.

What is Jacob’s residence status for 2015/16?

During 2015/16 Jacob is present in the UK for 71 days of which 64 days were spent living in his Edinburgh flat.

There is a period of at least 91 consecutive days (starting on 1 February 2016 and running through to 2 May 2016) when Jacob has a home in the UK. At least 30 days of this period fell into 2015/16.

During 2015/16 Jacob is present in that UK home on at least 30 days.

Jacob is therefore resident in the UK for 2015/16 under the second automatic residence test.

45.14 The Definition of a “Home”

The above rules only apply if the property meets the definition of one’s “home”.

Unfortunately, the definition of what is or is not a “home” is open to interpretation.

In the SRT Guidance notes, HMRC says: “We consider that a person’s home is a place that a reasonable onlooker with knowledge of the material facts would regard as that person’s home”.

The legislation defines a “home” as including any building or structure which the individual uses with a “degree of permanence or stability”. This excludes holiday homes or similar properties which are used for temporary purposes.

A “home” need not be a property that the individual owns.

A property will remain an individual’s home until such a time as it stops being used as a home. Therefore a property which was an individual’s home will generally cease to be a home after the individual has moved out.

A property which is made available to let commercially will no longer be a home during the period it is let unless the individual or his family retain a right to live there.

A property that an individual never stays in will not be their home. For example a property purchased solely as an investment will not be a home.
HMRC has said that the difference between “accommodation” and a “home” is that accommodation is more transient and does not require stability or permanence. FA 2013, Sch 45 para 25

45.15 The “Full-Time Work” Test

An individual will be classed as working “full-time” in the UK if:

- He works “sufficient hours” in the UK over a continuous period of 365 days, part of which falls in the relevant tax year; and
- During that 365 day period there are no significant breaks from work; and
- During that 365 day period, more than 75% of his working days are carried on in the UK; and
- The individual has at least one working day in the tax year in the UK. FA 2013, Sch 45 para 9

A “working day” is defined as any day on which more than three hours of work is carried out.

An individual will have a “significant break” from work if, during the 365 day period, at least 31 days go by and not one of those days is a day during which the individual worked for more than 3 hours (or would have done were it not for annual leave, parenting leave or sickness).

The individual will work “sufficient hours” if he/she works an average of at least 35 hours per week over the 365 day period. As for the “work abroad” condition, there is a step-by-step calculation in the legislation to determine the average hours worked. The 35-hour average therefore takes into account holidays, parenting leave and absences from work due to ill health or injury.

You should note that the SRT legislation does not use the term “full time” in this context. However the phrase “full time” is used by HMRC in the Guidance Notes when referring to “sufficient hours”.

Illustration 7

Chen is from Hong Kong. He came to the UK for the first time on 22 August 2015 to start a job as an IT consultant for a travel company. He started work on 1 September 2015. He is required by his employer to travel around the UK to work at various sites. He spends (on average) 3 or 4 weeks at each location. He therefore lives in temporary accommodation provided by his employer near each work site.

Most of his duties are UK based although Chen is required to travel as required to the firm's overseas office in Barcelona.

In 2015/16 he spent 29 days working at the Barcelona office.

In 2016/17 he spent 33 days working at the Barcelona office.

Between September 2015 and 5 April 2016 he spent 23 days on holiday in Hong Kong.

Between April and September 2016, he spent 14 days on holiday in Hong Kong.
Chen became homesick and resigned his employment on 29 August 2016. He worked his 4-week notice period and left his job on 26 September 2016. He returned to Hong Kong 2 days later.

Apart from his contractual holiday entitlement, Chen worked 40 hours per week (Monday to Friday) throughout his period of employment.

Discuss Chen’s residence status for 2015/16 and 2016/17.

2015/16

Chen spent the following days in the UK in 2015/16:

<table>
<thead>
<tr>
<th>Days</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>22 August 2015 – 5 April 2016</td>
<td>227</td>
</tr>
<tr>
<td>Less: Days in Barcelona</td>
<td>(29)</td>
</tr>
<tr>
<td>Less: Days in Hong Kong</td>
<td>(23)</td>
</tr>
<tr>
<td>UK days</td>
<td>175</td>
</tr>
</tbody>
</table>

He has not spent 183 days in the UK so he will not therefore satisfy the first automatic residence test.

He does not have a “home” in the UK as his accommodation is temporary and unlikely to be regarded as a home. He will not therefore satisfy the second automatic residence test.

He will meet the third automatic residence test (the “full-time work” test) if:

- He worked at least 35 hours per week on average for a period of 365 days;
- He has not taken a significant break from his UK work during this period;
- During this 365 day period, more than 75% of his workdays were in the UK; and
- He has at least one working day in the UK in 2015/16.

We first need to identify a 365 day period. We will start with the first 365 days of his employment from 1 September 2015 to 31 August 2016.

In this period he worked at least 35 hours per week on average without a significant break.

We need to check whether more than 75% of his workdays were in the UK in this period.

His workdays in this period have been as follows:

<table>
<thead>
<tr>
<th>Days</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 September 2015 – 31 August 2016</td>
<td>365</td>
</tr>
<tr>
<td>Less: Days on holiday in Hong Kong (23 + 14)</td>
<td>(37)</td>
</tr>
<tr>
<td>Total workdays (328 × 5/7)</td>
<td>234</td>
</tr>
<tr>
<td>Less: Workdays in Barcelona (29 + 33)</td>
<td>(62)</td>
</tr>
<tr>
<td>UK workdays</td>
<td>172</td>
</tr>
</tbody>
</table>

In the 365 day period, Chen worked for a total of 234 days. Of those, 172 days (being 73.5%) are days on which he worked in the UK.
As less than 75% of his workdays were carried out in UK, Chen will not satisfy the “full time work” test for the period 1 September 2015 to 31 August 2016.

We should then repeat the test for a different 365 period (say 27 September 2015 to 26 September 2016), but based on the information given, we would get the same answer. The third automatic residence test is not therefore satisfied for 2015/16.

We next consider the “sufficient ties” test.

Chen is an “Arriver” as he has not been resident in any of the previous 3 tax years. He spent 175 days in the UK in 2015/16; therefore he would need 2 ties to trigger UK residence.

He has 1 tie in 2015/16 being a “work” tie (he worked for at least 40 days in the UK in 2015/16). His accommodation is “temporary” and therefore unlikely to be available to him for 91 continuous days.

Chen will therefore be non-UK resident in 2015/16.

2016/17

Chen spent the following days in the UK in 2016/17:

<table>
<thead>
<tr>
<th>Days</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>176</td>
<td>6 April 2016 – 28 September 2016</td>
</tr>
<tr>
<td>33</td>
<td>Less: Days in Barcelona</td>
</tr>
<tr>
<td>14</td>
<td>Less: Days in Hong Kong</td>
</tr>
<tr>
<td>129</td>
<td>UK days</td>
</tr>
</tbody>
</table>

He will not therefore satisfy the 183-day test.

He does not have a home in the UK.

He does not satisfy the “full time work” test as there is not a 365 day period during which more than 75% of his work was performed in the UK.

We therefore consider the “sufficient ties” test.

Chen is an “Arriver” as he has not been resident in any of the previous 3 tax years. He spent 129 days in the UK in 2016/17; therefore he would need 2 ties to trigger UK residence.

He now has 2 ties to the UK being:

1. 40 days or more working in the UK; and
2. More than 90 days spent in the UK in either of the previous two tax years.

Chen will therefore be UK resident in 2016/17 under the “sufficient ties” test.
45.16 “Arrivers” and “Leavers” – Transitional Provisions

To determine whether either:

- The first or second automatic overseas tests apply; or
- The individual is an “Arriver” or a “Leaver” under the “sufficient ties” test;

we must first work out whether that individual was resident in the UK or not in the last 3 tax years.

If any of those previous 3 tax years fall before 6 April 2013 (which they will if we are determining residence for 2013/14 through to 2015/16), to determine residence before 2013/14 we can either:

- Apply the rules that existed before the statutory residence test came into being (ie, by reference to booklet HMRC6); or
- Elect to use the new statutory rules to determine residence for previous years for this specific purpose only. FA 2013, Sch 45 para 154

The election must be made in writing to HMRC no later than the first anniversary of the end of the relevant year to which it applies. Therefore, where the relevant year is 2015/16, the election must be made by 5 April 2017.

Separate elections will need to be made in respect of 2013/14, 2014/15 and 2015/16 as appropriate.

The election can be made on the Tax Return for the year (provided it is submitted by the deadline for making the election).

Individuals cannot elect to apply the statutory rules to determine their ACTUAL residence status for periods before April 2013.

Any disputes as to an individual's residence status for years up to and including 2012/13 will be determined by considering the rules that existed before the statutory residence test came into being (as laid out in booklet HMRC6).

45.17 Record Keeping Under the SRT

Taxpayers need to keep records and documents to support any statements or tax return entries which they make in connection with the statutory residence test.

In their Guidance Notes on SRT, HMRC has provided examples of the types of records they might require sight of to substantiate any statements made by the taxpayer.

For example:

Day counting – records should be kept that will allow the individual to work out in which countries he/she has spent days and midnights. A travel diary supported by travel documents (tickets, boarding cards, hotel bills etc) is recommended.
The “home” test – when considering whether an individual had a home in the UK or abroad, HMRC would look for evidence to establish presence at a particular home. This would include:

- Utility bills and/or Council Tax bills;
- Local parking permits;
- Insurance documents relating to that home;
- Bank accounts and credit cards linked to the address;
- Registration, at that address, with local medical or dental practitioners; and
- Lifestyle purchases pointing to the individual spending time in that home (such as TV/satellite/cable subscriptions, memberships of local clubs/gyms and bills from local restaurants etc).

Working hours and location of work done – where residence status is determined by the automatic tests relating to working full-time in the UK or overseas, individuals should keep information and records relating to:

- Days worked (including training and travelling);
- Hours worked on those days;
- Periods of annual, sick or parenting leave; and
- Breaks from working (for example between jobs).

A work diary/calendar or daily/weekly timesheets are likely to indicate this.

This list is not exhaustive, but the taxpayer must ensure that his records are adequate to defend his residence position in the event of a HMRC enquiry.

45.18 The HMRC Online “Tax Residency Indicator (TRI)”

To help taxpayers understand their residence status under SRT, HMRC has launched an online “Tax Residence Indicator” which can be accessed via their website (www.gov.uk).

The taxpayer is asked a few straightforward questions such as how many days they spent in the UK in the tax year, where they have a home, and if they have family or work ties to the UK. The Tax Residence Indicator will then give taxpayers an indication of their residence status.

The TRI gives taxpayers the option to print off the details entered so that a record can be kept.

Any result produced by the Tax Residence Indicator is for guidance only. In the event of an enquiry at a later date, HMRC will not be necessarily bound by any indication offered by the online tool.
EXAMPLES

Example 1

Cedric is a sports psychologist. He is self-employed and works with top sportsmen all over Europe. Apart from a 4-month training course in the UK in the summer of 2014, he has never spent much time in the UK and has never been UK resident.

Cedric has been offered work by a UK professional football club which will require him to spend some time in the UK in 2016/17. He will lease a flat in the UK but will keep his house in Switzerland (to use as a base to see his other European clients). He will spend at least 30 days a year in the Swiss property. His wife (who is also his PA) will accompany him on his UK visits.

The maximum number of days Cedric could spend in the UK in 2016/17 without becoming UK resident is?

A: 45
B: 90
C: 120
D: 182

Example 2

Mr Cooper is retired. He lives mainly in the Seychelles where he has a home and a large circle of friends.

His wife lives in their family home in the UK and is UK resident. They have a son (aged 16) who is at school in the UK. They spend their holidays in the Seychelles. His wife intends to spend more time with Mr Cooper in the Seychelles once their son’s schooling is completed.

Mr Cooper spends (on average) 12 weeks a year in the UK (mainly in the summer months as he attends Royal Ascot and the Henley Regatta). He has never spent more than 90 days in the UK in any tax year. During his UK visits he lives with his wife in the family home. For the rest of the year he lives in his home in the Seychelles.

For all years up to and including 2014/15, Mr Cooper has been UK resident.

The maximum number of days Mr Cooper can spend in the UK in 2015/16 without being UK resident is?

A: 15
B: 45
C: 90
D: 120
ANSWERS

✔ Answer 1

Cedric will not work full-time in the UK or meet the “home” test, so he will not be UK resident under the automatic resident tests unless he spends 183 days or more in the UK.

Cedric will be an Arriver as he has never previously been UK resident.

Under the “sufficient ties” test, he will have 3 ties being:

1. Accommodation in the UK;
2. Working 40 days or more in the UK – one assumes that Cedric will be here to work and will work on the majority of the days he is here, so this tie will apply once he has worked for 40 days; and
3. A “90-day” tie – he would have been present in the UK for more than 90 days in 2014/15.

His wife is non-UK resident so there is no “family” tie.

As an Arriver with 3 ties, Cedric will be UK resident if he is present in the UK for more than 90 days.

Therefore if Cedric spends 90 days or less in the UK in 2016/17, he will remain non-UK resident.

✔ Answer 2

Mr Cooper does not have his “home” in the UK as he spends at least 30 days a year in his home in the Seychelles.

He does not work in the UK.

Mr Cooper does not therefore pass the test for automatic residence in the UK.

We therefore consider the “sufficient ties” test.

Mr Cooper is a “Leaver” as he has been UK resident in at least one of the previous 3 years.

He has 2 ties being his family (spouse and minor child) and available accommodation in the UK.

Mr Cooper will therefore be able to spend up to 90 days in the UK in 2015/16 without triggering UK residence.