

Implications for Statutory Residence Test with Effect from 6 April 2013

The new SRT is due to come into effect on 6 April 2013. Although the legislation is still to receive Royal Assent, it is not expected to vary substantially from the draft already published by HMRC.

The essence of the SRT is that the existing concepts of residence and ordinary residence, which are not defined in legislation, will be replaced by a system that will provide taxpayers with clarity as to their residence position in the UK.

The Government has made it clear that the SRT is specifically designed to make it more difficult for individuals leaving the UK to lose their resident status without significantly reducing the extent of their connection with the UK. Equally, under the SRT, individuals should not be resident in the UK if they have little connection with the UK.

The SRT will comprise three separate tests; the Automatic Overseas Test (AOT) the Automatic Residence Test (ART) and the Sufficient Ties Test (STT). Each of these tests are to be applied in order, and as soon as one of them provides a clear answer as to an individual's residence position in any relevant year then the SRT will stop at that point without having to look at any further tests.

The flowchart at the end of this document summarises the new rules. However you will need to look at the detailed explanations below to check how you may be affected.

Days Spent in the UK

All the tests in the SRT have some element of counting days spent in the UK. The basic concept remains that a counting day is one in which the individual is in the UK at midnight, with two exceptions; the individual only arrives as a passenger and leaves the UK the next day without engaging in activities unrelated to their passage through the UK, or if they are only here due to exceptional circumstances beyond their control.

There is also now a concept of deemed days in the UK under the STT to prevent people who have left the UK after a period of residence here from abusing the day counting mechanism by spending multiple days in the UK but leaving before midnight. Please see more on this point below.

It is important that you keep records of where you spend your days.

Automatic Overseas Test

An individual will not be resident in the UK for a relevant year if they meet any one of four conditions:

1. Having been resident in the UK for any of the last three tax years, they are in the UK for less than 16 days in that year
2. Having been not resident in the UK in all of the previous three years, they are present in the UK for less than 46 days in that tax year

3. The individual works full time abroad for the relevant year with no significant breaks and they are present in the UK for less than 91 days (ignoring deemed days) and less than 31 days are spent working in the UK (defined as more than 3 hours working in any day).

For the purposes of the SRT, full time work is defined as averaging 35 hours a week across the period concerned, ignoring reasonable periods of annual leave, parenting leave, sick leave etc. There are a few other criteria – please contact us if you are concerned about how the average is calculated.

4. The individual died in the year and spent less than 46 days in the UK in the year of death having either been not resident in the two preceding years or not resident in the previous year and the year before that was a split year involving departure from the UK.

It is important that you keep records of where you are working and for how many hours per day.

If none of these criteria applies to an individual, then the SRT moves on to the ART to determine whether they are resident in the UK.

Automatic Residence Test

Again, there are 4 conditions for the ART, compliance with any one of which will make an individual automatically resident in the UK for the relevant year.

1. The individual is present in the UK for more than 183 days in a tax year
2. The individual satisfies the home test. This requires:
 - a. that they have a home in the UK for more than 90 days in the relevant year, and
 - b. they are present in that home on at least 30 separate days in the relevant year (not necessarily overnight), and either
 - c. They only have a UK home, or
 - d. They have a home or homes overseas for a period of 91 consecutive days of which at least one falls into the relevant year and they are present in that home for less than 30 days in that year.

The Revenue have provided some guidance as to what constitutes a home although it is fairly broad and they have said that each case must be looked at in context. The following have been confirmed as not constituting a home:

- If the home has been let out and is not available to the family
- A home that cannot be physically used due to its state of repair
- A home where the family have moved out and their furniture is in store
- A holiday home
- A property purchased solely as an investment even if it is temporarily empty

3. The individual works full time in the UK for a period of 365 days falling at least partly in the relevant year with at least 75% of those days actually working in the UK.
4. The individual dies in the relevant year and was resident in the UK for each of the three previous tax years.

Sufficient Ties Test

The STT will only operate if the individual does not meet any of the conditions in the other two tests. Each relevant year is looked at in isolation. The test will be satisfied if the individual has sufficient ties for that year.

The STT reflects the principle that the more time someone spends in the UK, the fewer connections they can have with the UK if they want to remain non-resident.

There are five, clearly defined connection factors.

1. A Family Tie

A family tie exists for a year if an individual has a 'relevant relationship' with a person who is resident in the UK in that year. A relevant relationship exists with a spouse or civil partner from who they are not separated, a live-in partner where the couple live as husband and wife or civil partners and with a child of theirs under the age of 18.

A family tie does not exist with a minor child if the parent only sees them in the UK for fewer than 61 days in the year. There are also special rules if the child is only resident in the UK because they are in full-time education.

2. An Accommodation Tie

An individual has an accommodation tie if:

- They have a place to live in the UK. This is defined as a home or holiday home in the UK, or any other place where the individual can live. It includes accommodation belonging to a close relative.
- That place is available for a continuous period of at least 91 days in the tax year (excluding any intervening periods if the gap is less than 16 days); and
- The individual spends at least one night at that place in the year. However, if staying in the home of a close relative, the individual must stay there for at least 16 nights in the tax year.

3. A Work Tie

An individual has a work tie if they work in the UK for at least three hours a day for 40 or more days in the tax year. The days do not have to be continuous.

4. A 90-day Tie

This is satisfied if the individual has spent more than 90 days in the UK in either or both of the two preceding tax years.

5. A Country Tie

This applies if the individual spends more time in the UK than in any other country, as defined by where they are at midnight on any day. If the same number of days is spent in the UK as elsewhere, then the UK tie will apply.

It is important that you keep records of how long you spend in all countries visited

Deemed Days

If the STT becomes relevant to determine residency, the basic proposition that a day cannot count unless an individual is present in the UK at midnight is made subject to a deeming rule, which applies in situations when all of three conditions are met:

- The individual has at least three UK ties;
- In the year concerned there are more than 30 days where the individual was present in the UK but had left by midnight; and
- The individual was resident in the UK in at least one of the preceding three tax years.

If these conditions are satisfied, then any days in excess of 30 caught under bullet point 2 above, whereby the individual has been in the UK but left before midnight, will be treated as counting days for the SRT. However, this rule specifically does not apply to determine whether the 90 days test for the STT is met for any year.

The number of ties sufficient to establish residence depends on how many days are spent in the UK in any relevant year.

1. Resident in One or More of Three Previous Tax Years

If the individual was resident in one or more of the three tax years immediately preceding the tax year under consideration, then all five ties count as UK ties.

Days in UK	Number of Ties Sufficient to Establish Residence
15 - 45	At least 4
46 – 90	At least 3
91 - 120	At least 2
More than 120	At least 1

2. Not Resident in Any of the Three Previous Tax Years

If the individual was not resident in any of the three years immediately preceding the tax year under consideration, then only the first 4 ties count as UK ties – the country tie is not relevant.

Days in UK	Number of Ties Sufficient to Establish Residence
45 - 90	All 4
91 - 120	At least 3
More than 120	At least 2

Split Years

There are new rules under the SRT concerning how to treat individuals who are leaving the UK to either work or live abroad, or those coming to the UK part way through a year. There are a number of conditions to be met that allow the year to be split between a ‘UK part’ and ‘overseas part’ rather than simply treating an individual as either resident or non-resident for the whole year. The day counts under the STT and other tests are proportionately adjusted for each part to determine qualification for residence or non-residence in the UK.

Transitional Provisions

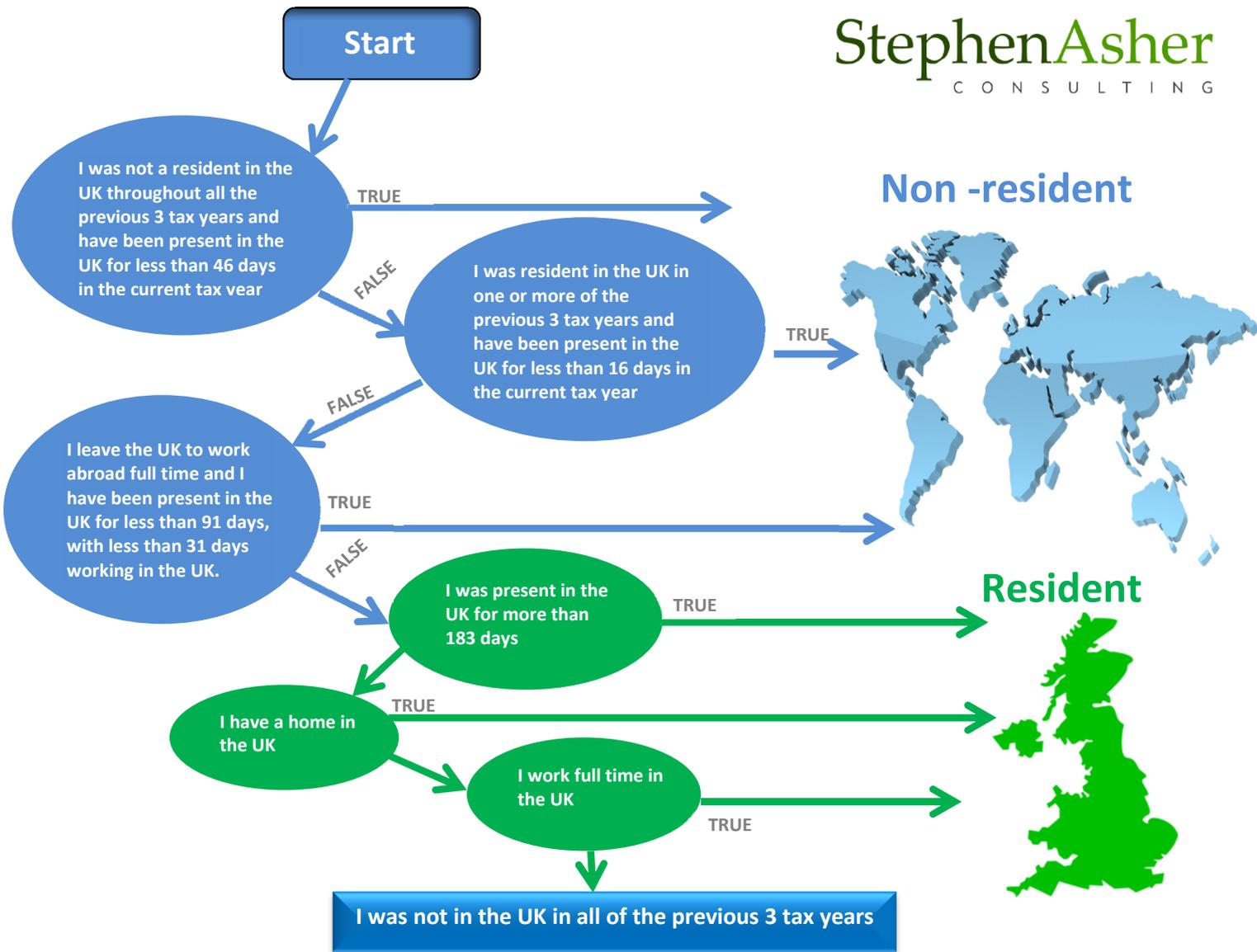
You will have noted that in certain circumstances the residence position for 2013/14 onwards will depend upon an individual’s residence position in the preceding three years 2010/11 to 2012/13. For those years, residence would normally be determined under the old system, with all the uncertainty that can bring. It will therefore be possible to make an irrevocable election to have the earlier years judged according to the new SRT rules.

Conclusion

This is simply an overview of a major change in UK legislation that will have a significant impact on those leaving or coming to the UK.

Record keeping relating to where you spend your days has become more important than ever.

If you believe you may be affected by the SRT, please contact Alison Asher, who will be pleased to discuss your position.



Arrivers

Tick connections

- I have a UK resident family
- I have a substantive UK employment (including self-employment)
- I have accessible accommodation in the UK
- I have been present for 91 days or more in the UK in either of the previous 2 tax years

TOTAL CONNECTIONS

Leavers

Tick connections

- I have a UK resident family
- I have a substantive UK employment (including self-employment)
- I have accessible accommodation in the UK
- I have been present for 91 days or more in the UK in either of the previous 2 tax years
- I have been present in the UK more days than any single country

TOTAL CONNECTIONS

Now count your days in the UK

Arrivers
Always non-resident
Always non-resident
UK resident only if 4 connections
UK resident only if 3 or more connections
UK resident only if 2 or more connections
Always resident

Days
Less than 16
16-45
46-90
91-120
121-182
183 or more

Leavers
Always non-resident
UK resident only if 4 connections
UK resident only if 3 or more connections
UK resident only if 2 or more connections
UK resident only if 1 or more connections
Always resident

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