

THE NEW STATUTORY RESIDENCE TEST

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With effect from 6th April 2013 the residence of an individual for income tax and capital gains tax is to be determined by statutory rules presently contained in the Finance (No 2) Bill 2013 Schedule 43.

The new rules require three steps. First the taxpayer must determine whether under these rules you are automatically resident in the United Kingdom.

Secondly there are rules which determine whether he is automatically non-resident in the United Kingdom.

Finally if a taxpayer falls within neither of the above, then there are special rules which can make the taxpayer resident in the United Kingdom by virtue of his ties with the United Kingdom.

When a Taxpayer is Automatically Resident in the United Kingdom

An individual will be automatically resident in the United Kingdom if he spends at least 183 days in the United Kingdom. There are no exceptions to that rule.

Also a taxpayer would be resident automatically in the United Kingdom if he has his home in the United Kingdom and spends at least 30 days there and he has no home overseas for example. A home for these purposes would not include a holiday home.

The third compulsory residence test is if the taxpayer broadly works full time in the United Kingdom.

There are compulsory tests which if satisfied mean the taxpayer is not resident in the United Kingdom and these rules override all other rules.

If for example the taxpayer has not been resident in the United Kingdom for the three preceding years then he can spend 35 days or less in the United Kingdom without becoming resident in the United Kingdom.

If he has been resident in the UK for any of the three preceding years then he is not resident if he spends less than 16 days in the United Kingdom.

One of the key non-resident rules is that if the taxpayer works full time overseas (the legislation talks in terms of sufficient hours overseas) then the taxpayer will not be resident in the UK.

If neither of the above automatic rules apply the taxpayer may still find himself resident in the United Kingdom if he has sufficient ties with the United Kingdom.

The Tie Charts

The table below (Table I) shows how many UK ties are sufficient to make P resident in the UK in year X where P was resident in the UK for one or more of the three tax years preceding year X:

Table I

<i>Days spent by P in the UK in year X</i>	<i>Number of ties that are sufficient</i>
More than 15 but not more than 45	At least 4
More than 45 but not more than 90	At least 3
More than 90 but not more than 120	At least 2
More than 120	At least 1

The table below (Table II) shows how many UK ties are sufficient to make P resident in the UK in year X in a case where P was resident in the UK for none of the three tax years preceding year X:

Table II

<i>Days spent by P in the UK in year X</i>	<i>Number of ties that are sufficient</i>
More than 45 but not more than 90	ALL 4
More than 90 but not more than 120	At least 3

More than 120	At least 2
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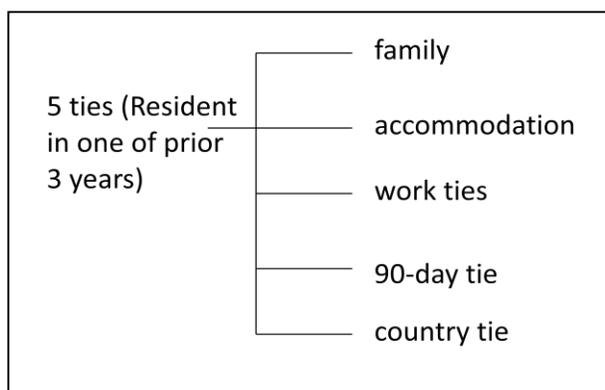
Example

P spends more than 45 but less than 90 days in the UK in 2013/14 and he is governed by Table II. He has 3 ties. These ties are not sufficient to make P resident in the UK. He needs to have had 4 ties to become resident in the UK.

Ties (Sched 43 para 31)

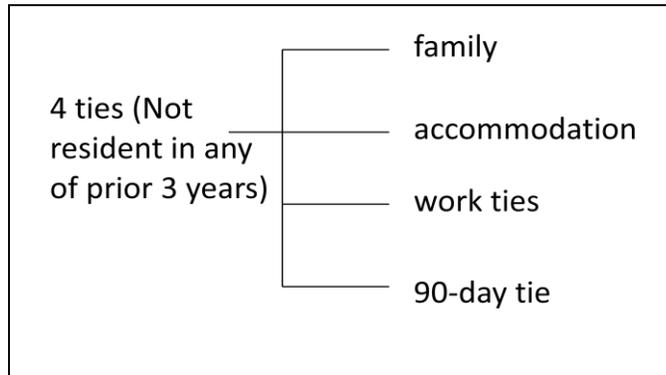
The following are the five ties which apply to **P who has been resident in one or more of the three tax years prior to tax year X**: (Table I is the relevant table):

- (a) a family tie;
- (b) an accommodation tie;
- (c) a work tie;
- (d) a 90-day tie; and
- (e) a country tie.



In the case where **P has not been resident in the UK in any of the three years preceding year X** the following are the four ties (**the country tie is not relevant to this head**) to be taken into account: (Table II is the relevant table):

- (a) a family tie;
- (b) an accommodation tie;
- (c) a work tie; and
- (d) a 90-day tie.



Example

P has been resident in one of the three tax years prior to 2013/14 and his only ties with the UK are a family tie and an accommodation tie. Table I is the relevant table. If he spends more than 45 days but not more than 90 days in the UK he will have needed three ties to become resident; as he has only two, he will not be resident in the UK in 2013/14. Note if he keeps those two UK ties only and spends not more than 90 days per tax year in the UK he will not acquire the 90 day tie.

Example

P is governed by table II. He has none of the table II ties except he visits the UK for up to 182 days. He has not become resident under Table II as he has only acquired one tie (90-daytie). He has not breached the 183 day rule (compulsory residence first test).

Definitions

For the purposes of a new code a day is spent in the United Kingdom if the taxpayer is in the United Kingdom at the end of the day although there are some special rules for people who are travelling through the United Kingdom in a case where the taxpayer may be in the United Kingdom for exceptional circumstances such as a life threatening illness or injury.

A person has a family tie if a relevant relationship exists between that person and another person and that other person is resident in the United Kingdom. This would include a spouse in the United Kingdom and generally a child under the age of 18.

A taxpayer has an accommodation tie in the United Kingdom if he has a place to live in the United Kingdom. This would be the case even if the accommodation is, say, held by an offshore company or overseas settlement. It could also include property owned by a close relative.

P has a work tie if P works in the United Kingdom for at least 40 days in a particular tax year whether continuously or intermittently. For these purposes P works in the United Kingdom for a day if he does more than three hours work in the United Kingdom on that date.

With regard to the 90 day tie, P has a 90 day tie for a tax year if P has spent more than 90 days in the United Kingdom in the tax year preceding the particular tax year or the tax year preceding that tax year or in each of those two years separately.

Finally, the taxpayer has a country tie which is only relevant to Table 1 and this tie would be with the United Kingdom if for example he spent more time in the United Kingdom than elsewhere or in a particular other jurisdiction.

Miscellaneous

Special rules are to apply to split years and the temporary resident rules which are anti-avoidance provisions are to continue ie there are capital gains tax rules which apply if a taxpayer wants to leave the United Kingdom and then realise a capital gain: broadly he has to be overseas for five years.

The concept of ordinary residence is abolished.

Conclusion

The new rules should make the determination of a person's place of residence easier.

Note the bill is still on its journey through Parliament.

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