



THE PROPOSED NEW UK TAX RESIDENCE TEST – JUNE 2011

On 17 June 2011, the UK government issued a consultation paper outlining its proposals for the introduction of a statutory test to determine whether individuals are resident in the UK for tax purposes.

Residence is a key concept in UK tax law as it determines whether, and to what extent, an individual or trust is subject to UK income tax, capital gains tax and (indirectly) inheritance tax. For example, a person who is not resident in the UK is not subject to UK capital gains tax on the sale of their assets, whether the assets are situated in the UK or not.

If it is enacted, the new test for residence would apply to tax years after 2011/2012. The test would not be used to determine whether someone was resident in earlier years.

What are the present residence rules?

At present, there is no statutory definition of 'residence' in the UK. Residence has been assessed based on caselaw, some statutory rules and guidance issued by HM Revenue and Customs. This has bred uncertainty for those who wish to come to or leave the UK, particularly those who are globally mobile and live and work all over the world as it is difficult for them to be sure that they have entered or left the UK tax system. The proposed SRT is therefore welcome.

The proposed new residency test – leavers and arrivers

The Consultation Paper proposes a new statutory residence test (SRT). The SRT is different depending upon whether a person is an "arriver" or a "leaver" so deciding which you are is the first stage of applying the test.

An arriver is a person who was not resident in the UK throughout the last three tax years.

A leaver is a person who has been resident in the UK in one or more of the last three tax years. There are definitions of other terms used at the end of this note.

The SRT for arrivers

An arriver will NOT be resident in the UK if:

- He spends less than 45 days in the UK in the UK tax year in question; or
- He is present for 45-89 days in the UK in a tax year and he answers no to at least one of questions 1 to 4 below; or
- He is present for 90-119 days in the UK in a tax year and he answers no to at least two of questions 1 to 4 below; or
- He is present for 120-182 days in the UK in a tax year and he answers no to at least three of questions 1 to 4 below.

An arriver WILL be resident in the UK if:

- He is present in the UK for 183 days or more in a tax year; or
- His only home or (if he has more than one home) all his homes are in the UK; or
- He carries out full-time work in the UK; or
- He is present for 45-89 days in the UK in a tax year and he answers yes to all of questions 1 to 4 below; or
- He is present for 90-119 days in the UK in a tax year and he answers yes to at least three of questions 1 to 4 below; or
- He is present for 120-182 days in the UK in a tax year and he answers yes to at least two of questions 1 to 4 below.

The SRT for leavers

A leaver will NOT be resident in the UK if:

- He spends fewer than 10 days in the UK in the tax year in question; or
- He has left the UK to carry out full-time work abroad and has spent no more than 90 days in the UK in the tax year in question and spends no more than 20 days (counted as part of the 90) working in the UK in the tax year in question; or
- He is present for 10-44 days in the UK in a tax year and he answers no to at least two of the questions below; or
- He is present for 45-89 days in the UK in a tax year and he answers no to at least three of the questions below; or
- He is present for 90-119 days in the UK in a tax year and he answers no to at least four of the questions below; or
- He is present for 120-182 days in the UK in a tax year and he answers no to all of the questions below .

A leaver WILL be resident in the UK if:

- He is present in the UK for 183 days or more in a tax year; or
- His only home or (if he has more than one home) all his homes are in the UK; or
- He carries out full-time work in the UK; or
- He is present for 10-44 days in the UK in a tax year and he answers yes to at least four of the questions below; or
- He is present for 45-89 days in the UK in a tax year and he answers yes to at least three of the questions below; or
- He is present for 90-119 days in the UK in a tax year and he answers yes to at least two of the questions below; or
- He is present for 120-182 days in the UK in a tax year and he answers yes to at least one of the questions below.

If there is any conflict (e.g. a person's only home is in the UK but he spends less than 10 days in the UK), certain rules take precedence and the person will need to take advice about their position.

The questions

The questions (referred to as “connection factors” in the consultation paper) are:

1. Is your family resident in the UK?
2. Do you have substantive UK employment (including self-employment)?
3. Do you have accessible accommodation in the UK?
4. Have you spent 90 days or more in the UK in either of the previous two tax years?
5. If you are a leaver, have you spent (or will you spend) more days in the UK in than in any other single country in this tax year?

How might the changes affect you if you are already resident in the UK?

If it becomes law, the SRT will not be applied retrospectively. However, if you have been resident in the UK in the past and/or spend time in the UK each year, the SRT will be relevant to you for the UK tax years after 2011/2012.

The intention is that the principals of residence law, as opposed to the way in which they are applied, will not change overall and therefore it is unlikely that you would be non-UK resident under the old rules but UK resident under the SRT. The government has stated in the consultation paper that the introduction of the SRT should not result in a change in residence status of any individuals. They have therefore not included transitional rules in the new SRT framework. We will make representations to HM Treasury if this is likely to cause problems or uncertainty for our clients.

How might the changes affect you if you are not resident in the UK?

It is unlikely that the rules will result in your becoming UK resident if you only visit the UK and have little other family or financial connection with it.

If you do have family, employment or financial connections, you may use the rules to establish how long you can spend in the UK each year after 5 April 2012 without becoming UK tax resident. Before the final rules come into effect, you should also discuss them with your adviser to check whether you are at risk of becoming UK resident under the new rules and take the steps necessary to ensure that you do not become UK tax resident unless you wish to.

What happens now?

The SRT is not yet law and you should not therefore make any plans based on it in its present form.

There will be a consultation period during which Berkeley Law and other professionals or entities or individuals who have knowledge and experience of this area will be able to make representations to the Treasury about areas of concern.

Other points to note, including “ordinary residence” changes

Ordinary residence is another concept that is important in determining the taxation of individuals who spend time in the UK. As with residence, there is presently no statutory definition and it is proposed that there will be changes to the rules. The Treasury have set out two main options:

1. To abolish the concept of ordinary residence except insofar as it relates to overseas workday relief (which is available to non-domiciled people in connection with foreign employment in certain circumstances); or
2. Continue to have a broader concept of ordinary residence but introduce a statutory test for ordinary residence along the lines described immediately above. Non-ordinary resident status could only be claimed by non-UK domiciled people.

It is also proposed that there will be a new anti-income tax avoidance rule that will prevent individuals from avoiding income tax by being non-UK resident for only a short period (less than five full tax years). It is likely to work in a similar way to the existing capital gains tax anti-avoidance rule.

The meaning of certain terms used in the SRT

<i>Tax year</i>	the UK tax year runs from 6 th April in one year to 5 th April in the next
<i>Day in the UK</i>	a person has been present for a day in the UK if they are in the UK at midnight on that day. There are special rules for travellers in transit.
<i>Full time work abroad</i>	employment abroad under a contract/contracts of employment or holding an office/offices abroad which have combined total hours of 35 hours per week or more or carrying on one or more trades or professions wholly abroad where at least 35 hours on average of work per week is undertaken
<i>Working day</i>	a working day is any day on which three hours of work or more is carried out
<i>Family in the UK</i>	the individual's spouse, civil partner or "common law equivalent" is resident in the UK in all or part of the tax year in question or the individual has children under the age of 18 who are resident in the UK and the individual spends at least 60 days a year with them, whether in or out of the UK. A child may not be treated as UK resident if they are in the UK to attend school and certain other criteria are met.
<i>Accommodation</i>	residential property that an individual has access to for use as a place of residence which is actually used by him or his family as such. Certain types (e.g. shared company flats) do not constitute accommodation.
<i>Substantive employment in the UK</i>	work in the UK for 40 days or more.

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