STATUTORY DEFINITION OF TAX RESIDENCE

BRIEFING

January 2014

OVERVIEW

The 2013 Finance Act received Royal Assent on 17 July. With this, a Statutory Residence Test (SRT) has finally been enacted. This detailed briefing analyses both the statutory provisions and the guidance published by HMRC.

The SRT is based on the principles that:

- Residence should have an adhesive character. It should be more difficult for those who are resident and seek to leave the UK (referred to as "leavers") to lose their UK resident status, than for those who visit the UK, without having been UK resident in any of the three preceding tax years (referred to as "arrivers"), to acquire UK residence.
- Alongside physical presence, certain factors linking an individual to the UK may need to be considered in determining residence. The SRT, therefore, takes into account both time spent in the UK (UK days) and a limited number of specified UK ties.

In addition to the basic SRT (explained in sections 1 to 6), there are statutory split year rules (see section 7) and additional anti-avoidance provisions for temporary non-residents (see section 8).

The concept of ordinary residence is abolished for the purposes of Income Tax, Capital Gains Tax, Inheritance Tax and (where relevant) Corporation Tax (see section 10). There are transitional provisions so as not to disadvantage individuals who were not ordinarily resident as at 5 April 2013.

Relief for overseas workdays is retained for internationally mobile employees (see section 11). The scope has been restricted so that it is now only available to foreign domiciliaries. The relief itself, however, has been widened so that it is now available for the first three tax years of residence for all qualifying "arrivers", regardless of how long they intend to stay in the UK.

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Not appropriate if the individual concerned died in the tax year

Question 1: Did you spend at least 183 days (see 5.1and 5.2 for definition of days) in the UK in the tax year? → Yes UK resident for the tax year

↓ No

Question 2: Did you meet any of the following three tests in the tax year: → Yes Not UK resident for the tax year

i) Fewer than 16 UK days test (see 3.2)
ii) Fewer than 46 UK days test (see 3.3)
iii) The "sufficient hours" working overseas test (see 3.4)

↓ No

Question 3: Did you meet any of the following tests in the tax year: → Yes UK resident for the tax year

i) Only "substantive home" in the UK (see 4.3)
ii) The "sufficient hours" working in the UK test (see 4.4)

↓ No

Question 4: Did you meet the "sufficient ties" test for the tax year (see section 6)?

→ Yes UK resident for the tax year

→ No Not UK resident for the tax year

To determine if you meet the "sufficient ties" test answer the following questions:

Question 4a: Were you an "arriver" (see 6.1) or "leaver" (see 6.2) for the tax year?

Question 4b: How many of the following UK ties did you have in the tax year?

i) The family tie (see 6.4)
ii) The accommodation tie (see 6.5)
iii) The work tie (see 6.6)
iv) The 90 day tie (see 6.7)
v) The country tie (see 6.8 - only relevant for "leavers")

Question 4c: How many days (see 5.1 and 5.2 for definition of days) did you spend in the UK in the tax year?

Question 4d: Using the table below and your answers to questions 4a to 4c were you UK resident or not UK resident?

Days	Arrivers	Leavers
Fewer than 16	Always non-resident	Always non-resident
16 to 45	Always non-resident	4 UK ties = UK residence
46 to 90	4 UK ties = UK residence	3 UK ties = UK residence
91 to 120	3 UK ties = UK residence	2 UK ties = UK residence
121 to 182	2 UK ties = UK residence	1 UK tie = UK residence
183 days or more	Always UK resident	Always UK resident

1. When will the SRT apply?

The SRT is effective from 6 April 2013 for the purposes of Income Tax, Capital Gains Tax ("CGT") and, in so far as it is relevant, Inheritance Tax ("IHT") and Corporation Tax. For these purposes it generally supersedes all existing legislation, case law and guidance. The only exception is with respect to the Constitutional Reform and Governance Act 2010, which has priority, so MPs and active members of the House of Lords will continue to be deemed UK resident.

An individual's residence status for previous tax years will still have to be determined according to the former, uncertain, principles. The SRT has transitional provisions (see section 9) but these are relevant only when assessing past ties for the application of the SRT in 2013/14 onwards. The SRT cannot be applied retrospectively so as to determine an individual's residence status for earlier tax years.

The SRT is not currently applied for other purposes where residence is a determining factor. In particular, the SRT does not apply for the purposes of National Insurance contributions or tax credits.

2. How does the new SRT work?

2.1 Overview

It is simplest to think of the SRT as being divided into three parts:

- the "automatic overseas" tests;
- the "automatic residence" tests; and
- the "sufficient ties" test.

Each test takes account of days when an individual is present in the UK. These are referred to as "UK days". Days on which work is carried out in the UK are separately defined as "UK workdays".

The three parts of the SRT are ranked in order of priority. An individual seeking to determine his or her position should start with the "automatic overseas" tests. There are potentially five such tests, although the fourth and fifth only apply to an individual who dies during the relevant tax year and so will generally be irrelevant. If one or more of the five tests is met the individual is automatically not UK resident in the tax year.

It is only where none of the "automatic overseas" tests are met that an individual has to consider the "automatic residence" tests. There are potentially four such tests with the fourth only applying to an individual who dies during the relevant tax year. Where none of the "automatic overseas" tests are met, and one or more of the "automatic residence" tests is met, the individual will automatically (and conclusively) be UK resident.

The individual should only progress to the third part of the SRT - the "sufficient ties" test - when none of the "automatic overseas" tests or the "automatic residence" tests has provided an answer (that is, not one of the nine tests is met for the year in question). The "sufficient ties" test takes account both of UK days and certain UK connecting factors. It is based on two underlying principles:

- The more time an individual spends in the UK, the fewer UK ties are required for the individual to be UK resident.
- The test for "leavers" should be more stringent than for "arrivers".

To fuse physical presence (day count) and the UK connecting factors into a composite tiebreaker test, scales are used to determine whether an individual is or is not UK resident. The UK day count is banded, with each band being allocated a specified number of UK ties. If that number is met or exceeded, the individual will be UK resident. The lower the day count, the more UK ties an individual can have and still be non-UK resident.

There are different scales for "leavers" and "arrivers". "Leavers" have one additional UK tie to consider (see section 6) and the table for "leavers" is more stringent, in that where UK ties are the same "leavers" are permitted fewer UK days than "arrivers".

Special rules apply if someone dies in the tax year.

The SRT is subject to the general rule that deems a member of one of the Houses of Parliament to be UK resident and domiciled for tax purposes.

2.2 Day counting

The current definition of a "UK day" (presence in the UK at midnight) is retained, subject to the anti-avoidance provision explained below. A let out for transit passengers is retained (broadly, where just one midnight is spent in the UK and the only substantive activities are with respect to travelling through the UK). In addition, a day may be disregarded if there are exceptional reasons for someone's presence, but subject to a maximum of 60 such days per tax year.

It is important to remember that the term "UK workday" is defined differently to a "UK day". A UK

workday is a day on which more than 3 hours of work is carried out in the UK.

2.3 Material released by HMRC

2.3.1 HMRC guidance

HMRC has published on its website various information and guidance.

At the time of writing, as well as basic introductory guidance on the "Residence" webpages, there is the following:

- A detailed Guidance Note on the Statutory Residence Test (SRT) referred to as "RDR3". The current version is dated December 2013 and is the second edition (post Royal Assent). In a welcome move there is an "Updates" page listing the changes made to the version published in August 2013.
- A Guidance Note on Overseas Workday Relief (OWR) referred to as "RDR4". The current version was published in May 2013 (so before Royal Assent and caveated as such).
- An on-line tool referred to as the "Tax Residence Indicator". The current version of the tool, released in December 2013, is termed a "pilot version". It is expected that a final version will be released later this year.

In addition an updated version of HMRC's guidance on "Residence Domicile and the Remittance Basis" was published in October 2013. Previously known as HMRC6, this is renumbered as RDR1 and mainly covers the taxation of non-UK residents and domicile and remittance basis issues, referring to RDR3 for a detailed discussion of the new SRT.

Where relevant, HMRC Guidance is considered in the analysis which follows.

2.3.2 Tax return pages

At the time of writing, draft tax return pages for 2013/14 can be accessed from http://hmrc.gov.uk/sa_drafts/pdf2014.htm.

The supplementary pages dealing with residence and the remittance basis have been amended several times (the current version being the fourth and published on 15 October 2013). Currently, fourteen specific questions regarding residence status are included. These questions require either a date, numerical or "cross in the box or leave blank" answer and can be summarised as follows:

1) Residence status for 2013/14 (a cross indicating non-UK residence).
2) Eligibility for overseas workday relief a cross indicating eligibility).
3) Whether 2013/14 is to be considered a split year (a cross indicating that it is).
4) Residence status for 2012/13 (a cross indicating UK residence).
5) Whether the overseas workday relief relates wholly or in part to an amount earned prior to 2013/14 (a cross indicating that it does).
6) If UK residence started in 2013/14 the date of arrival in the UK.
7) If UK residence ceased in 2013/14 the date of leaving the UK.
8) Whether the individual was resident in the UK in any of the previous three tax years (a cross indicating that he or she was resident in this period).
9) Whether the individual had a home overseas in 2013/14 (a cross indicating that he or she did).
10) Number of days spent in the UK during 2013/14 (including exceptional days).
11) Number of days attributed to exceptional circumstances.
12) Number of ties to the UK the individual had in 2013/14.
13) Number of UK workdays in 2013/14.
14) Number of overseas workdays in 2013/14.

The explanatory notes are not yet available.

2.3.3 Online tool

HMRC has produced an interactive online tool, which is referred to as the "Tax Residence Indicator". At the time of writing it can be accessed at http://tools.hmrc.gov.uk/rift/screen/SRT+-+Combined/en-GB/summary?user=guest.

The Tax Residence Indicator tool is not sophisticated enough to be able to determine the residence status of someone who dies during the relevant tax year.

Generally, it works by either asking various pertinent questions that have a mixture of yes/no answers, having a drop down menu of answers to choose from, or requiring numbers to be entered.

Apart from the first question (which asks for the individual's name), these questions are answered either by putting a dot in the "yes" or the "no" box, clicking on one of the options in the drop down menu, or by inputting a figure (for the various questions involving day counting).

Once all the questions have been answered, the result screen comes up with the residence determination and a PDF file (that can be printed off or saved) showing all the answers provided to the

questions and the conclusion as to the residence status of the individual based on that data.

Individuals who use the Tax Residence Indicator are advised to keep a copy of the print out for future reference in case of an enquiry by HMRC.

The current version of the tool, released in December 2013, is termed a "pilot version". It is expected that a final version will be released later this year.

HMRC will not confirm that it will be bound by the answer the Tax Residence Indicator tool provides. This is claimed to be due to concern that the user might have interpreted a concept or term incorrectly or just input incorrect data. However, where HMRC accepts that the questions have been answered correctly, it seems that it will accept that it is bound by the residence determination.

3. The "automatic overseas" tests - conclusive non residence

3.1 Overview

Regardless of any other factor (save for being a member of one of the Houses of Parliament), an individual will not be UK resident if one (or more) of the following five tests is met:

- The "fewer than 16 UK days" test.
- The "fewer than 46 UK days" test.
- The "sufficient hours" working overseas test.
- The first test specific to those who die in the tax year.
- The second test specific to those who die in the tax year.

3.2 The "*fewer* than 16 UK days" test

An individual (regardless of his or her previous pattern of UK residence) will be non-UK resident if present in the UK for fewer than 16 days in the tax year.

This test does not apply to someone who dies in the tax year. Such a person will have to meet one of the other four tests to be automatically non-UK resident in the year of death.

3.3 The "*fewer* than 46 UK days" test

An individual will be non-UK resident if he or she:

- is present in the UK for fewer than 46 days in the tax year; and
- was not UK resident in any of the preceding three tax years.

3.4 The "sufficient hours" working overseas test

3.4.1 Overview

The way in which the non-statutory rules on UK residence were operated up to 6 April 2013 was more favourable to those who left the UK to work full time abroad than to other categories of individuals.

Where an individual left the UK, to begin a contract of employment for full-time work abroad that spanned at least one whole tax year, and UK visits were kept below 91 days on average, HMRC would accept that the individual was non-UK resident without looking for further evidence of a loosening of social and economic ties with the UK (meaning that the individual's family could remain in the UK).

This "lighter touch" was seen as encouraging UK business, and it has been felt desirable to reproduce this as closely as possible in the new SRT. This is what the "sufficient hours" working overseas test seeks to do.

An individual will be non-UK resident for a given tax year if ALL four of the following conditions are satisfied:

- He or she works "sufficient hours" overseas (see 3.4.2). The legislation sets down a prescriptive methodology to establish whether, after adjusting the 365 day averaging period (366 days if a leap year) by subtracting certain days (broadly UK workdays, reasonable holiday leave, reasonable sick leave and parenting leave), over 35 hours a week on average have been worked overseas.
- There are no "significant breaks" (see 3.4.3) from overseas work.
- The number of UK workdays in the tax year is fewer than 31. This means that an individual could spend up to 30 working days in the UK, carrying out substantive duties, and still qualify.
- He or she is present in the UK for fewer than 91 days in the tax year.

When considering this test, both UK workdays and days of UK presence (UK days) have to be taken into account. The two definitions are quite separate:

- A UK workday is a day on which more than 3 hours of work is carried out in the UK ("work"

includes incidental and non-incidental duties and most business travel and training).

- A UK day is one on which the individual is in the UK at midnight. The anti-avoidance provision described in section 2 above does not apply, and days where the transit exemption applies, or where presence has resulted from exceptional circumstances, are disregarded.

It will be clear that a day can count as a UK workday and not be a day of UK presence and vice versa. Careful record keeping will be necessary.

The calculation will often be complex and specialist advice should be taken. In practice, it will often be necessary to work for more than 37 hours in any working week.

Within the specified limits the test allows an individual to carry out substantive duties in the UK without jeopardising his or her non-UK residence status. Remuneration related to the performance of non-incidental duties in the UK remains, however, fully liable to UK Income Tax.

This test does NOT apply to someone who:

- has a relevant job on board a vehicle, aircraft or ship at any time in the tax year; and
- makes at least 6 job-related trips involving cross border travel (ie ones that begin or end in the UK).

3.4.2 The definition of "sufficient hours" working overseas

The legislation sets down a prescriptive methodology that has to be followed to establish if sufficient hours have been worked overseas. If the individual has more than one employment, or carries on more than one trade during the tax year (whether consecutively or concurrently), the hours worked should be aggregated for this. The process is as follows:

1) The number of "disregarded days" in the tax year has to be ascertained. A "disregarded day" is any UK workday (as defined at 5.4).
2) The total "net overseas hours" must be obtained by adding up the total number of hours worked overseas in the tax year but excluding any hours spent working overseas on "disregarded days" (as in step 1).
3) The "reference period" must be determined. This is done by subtracting from 365 (or 366 for a Leap Year) the total number of "disregarded days", and also the following days:
   a) Reasonable amounts of annual leave and parenting leave.
   b) Reasonable amounts of sick leave.
   c) Non-working days (for example weekends or Bank Holidays, if the individual is not expected to work on these days) "embedded" (as defined – see 5.8.5) within a block of leave falling into either of the above two categories.
   d) Gaps of up to 15 days between employments but subject to an overall maximum of 30 days.
4) Divide the reference period arrived at in step 3 by 7 (rounding down but with a minimum result of 1).
5) Divide the "net overseas hours" figure arrived at in step 2 by the figure arrived at in step 4.

If, at the end of this procedure, the answer is 35 or more, sufficient overseas hours have been worked in the tax year for the individual to comply with this part of the "automatic overseas" test. If the answer is less than 35 then the test is failed.

EXAMPLE

Jane works in Bermuda during 2013/14. Will she have worked overseas for "sufficient hours" to qualify?

She works for the first employer for ten weeks. During this period she works in the UK for one week (working for eight hours on each of five separate working days). The remaining nine weeks are spent working in Bermuda. She works five days a week for eight and a half hours per day.

She had a four-week gap (only 15 days of which can reduce the reference period – see (d) above) and then started work as a self-employed individual with a specific project to complete. She works for four weeks, working six days a week for nine and a half hours per day.

She then has a two-week gap (fourteen days, all of which can be taken off the reference period as she will not breach the aggregate 30 days figure) before starting work for another employer. She works for this employer for the rest of the tax year (32 weeks) working five days a week for seven hours per day apart from:

- *five days of sickness; and*
- *two weeks of holiday, so ten working days with two embedded days (one weekend).*

Following the five-step process:

1) *There are five "disregarded days" in the tax year.*

2) *Her net overseas hours are 1,730.50.*

   ((9 x 5 x 8.5) + (4 x 6 x 9.5) + (32 x 5 x 7))

3) *The reference period is 314 days.*

   (365 – 5 – 15 – 14 – 5 – 10 – 2)

4) *The 314 day reference period divided by 7 gives 44 weeks (rounding down to the nearest whole).*

5) *Jane's average weekly hours are 39.3 (1,730.50 hours divided by 44 weeks).*

Jane therefore satisfies the "sufficient working hours overseas" test.

3.4.3 "Significant breaks from overseas work"

A "significant break from overseas work" is defined as a continuous period of 31 days or more during which the individual (i) is not simply absent from work because of annual leave, parental leave or illness; and (ii) does not work for more than 3 hours overseas per day.

3.4.4 Definitions

Section 5 includes a detailed discussion of the meaning (see 5.6) and location (see 5.67) of work for the purposes of the SRT.

3.5 The first test specific to those who die in the tax year

Someone who dies will not be UK resident in the tax year of death, if he or she had spent fewer than 46 days in the UK in that year and either:

- had not been resident in the UK for either of the preceding two tax years; or
- was not resident in the UK in the preceding tax year and had qualified for split year treatment (see section 6) for part of the tax year before that as a result of:
  - Case 1 – starting full time work overseas (see 7.2 below).
  - Case 2 - accompanying a partner who qualifies under case 1 (see 7.3 below).
  - Case 3 – no longer having a home in the UK (see 7.4 below).

3.6 The second test specific to those who die in the tax year

Someone who dies will not be UK resident in the tax year of death if:

- he or she would have met the full time working abroad test for that year looking just at the period up to death; and
- the individual qualified as not resident under the "sufficient hours" working overseas test (see.3.4) either:
  - in the two preceding tax years; or
  - in the preceding tax year, having qualified for split year treatment (see section 6) in the tax year before that under case 1 (starting full time work overseas).

4. The "automatic residence" tests - conclusive UK residence

4.1 Overview

Provided none of the "automatic overseas" tests (described in section 3 above) is met an individual will be UK resident if one (or more) of the following four "automatic residence" tests is met:

- Present in the UK for 183 days or more.
- The only substantive home in the UK.
- "Sufficient hours" worked in the UK.
- A test specific to those who die in the tax year.

4.2 The 183 UK days test

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

4.3 The "only substantive home" in the UK test

In the course of discussions over the terms of the SRT, it became clear that having an "only home" in the UK during the tax year, even for only a short time, is considered by the Government to be such a significant tie that, unless one of the "automatic overseas" tests applies, it should cause a person to be UK resident. Accordingly, the SRT provides that someone will be UK resident for a tax year if:

- During the tax year, the individual has at least one "home in the UK" where he or she spends at least 30 days (such days do not need to be consecutive and partial days count).
- There is at least one period of 91 consecutive days (at least 30 days of which must fall within the tax year) during which he or she:
  - has a home in the UK; and
  - does not have a "substantive home overseas".

A "substantive home overseas" is one in which the individual has spent at least 30 days during the tax year. Days need not be consecutive, and for these purposes presence at any point during the day will count. Where an individual has more than one home overseas, he or she must be present in at least one of the homes for at least 30 days. As such, presence in two foreign homes for only 25 days each would not qualify.

To avoid being UK resident because of this test, an individual either has to ensure that he or she:

- does not spend 30 days in a UK home; or
- retains a "substantive home overseas" throughout the tax year concerned.

There is a trap, if someone with a UK home disposes of their only qualifying foreign home without acquiring another within three months (91 days). There will be cases where the split year rules will not provide adequate relief (though if such a person is dual resident, treaty relief may be available).

Given the complexity of these provisions, in cases where the inadvertent acquisition of UK residence status would have materially adverse tax consequences for an individual, specific advice should be sought BEFORE any changes are made to any properties used as "homes".

4.4 The "sufficient hours" work in the UK test

4.4.1 Overview

Full time work in the UK is seen by the Government as another fundamental tie, which should cause a person to be seen as UK resident. Provided none of the automatic overseas tests applies, an individual will be UK resident for a given tax year if ALL of the following four conditions are met:

- He or she works "sufficient hours" in the UK (See.4.4.2), over a period of 365 days (all or part of which falls within the relevant tax year). This is a test corresponding to that applying to overseas work and seeks to establish whether, after adjusting the 365 day averaging period by subtracting days falling within certain designated categories (broadly overseas workdays, reasonable holiday leave, reasonable sick leave and parenting leave), over 35 hours a week on average have been worked in the UK.
- On at least one day, falling within both the period above and the relevant tax year, the taxpayer works more than 3 hours in the UK.
- During the period there are no "significant breaks" from the UK (see 4.4.3).
- More than 75% of the total number of workdays within the 365 day period are UK workdays.

Since the test looks at a 365 day period (only one day of which, in theory, needs to be in the relevant tax year), an individual could be resident as a result of meeting this test when he or she comes to the UK late in the tax year – but only if none of the automatic overseas tests apply (see section 3). In such cases it is likely that split year treatment will apply as a result of meeting the case 5 conditions (see section 7).

This test does NOT apply to someone who:

- has a relevant job on board a vehicle, aircraft or ship at any time in the tax year; and
- makes at least 6 working trips which are cross border (ie which either begin or end in the UK).

4.4.2 The definition of "sufficient hours" work in the UK

As with the "sufficient hours" work overseas test the legislation sets down a prescriptive methodology to determine if "sufficient hours" have been worked. Broadly, the rules seek to establish whether, after adjusting for "disregarded days", on average over a 365 day period (at least one day of which falls within the relevant tax year) 35 hours a week are worked in the UK.

If an individual has more than one employment, or carries on more than one trade during the period (whether consecutively or concurrently), the hours worked should be aggregated when determining whether the test has been met.

The following five-step calculation process must be used:

1) The number of "disregarded days" in the period has to be ascertained. A "disregarded day" is any day during which more than 3 hours of work is carried on overseas (even if work is also carried out in the UK on that day).
2) The "net UK hours" figure must be obtained by adding up the total number of hours that an individual has worked in the UK in the period but excluding any hours spent working overseas on "disregarded days" (see step 1).
3) The "reference period" must be determined. This is done by subtracting from 365 the total number of "disregarded days" (see step 1), and the following:
   a) Reasonable amounts of annual leave and parenting leave.
   b) Reasonable amounts of sick leave.

c) Non-working days (for example weekends or Bank Holidays if the individual is not expected to work on these days) embedded within a block of leave falling into either of the above two categories.

d) Gaps during employment (provided no work is carried out in the gap period) with up to 15 days being allowed for one change of employment and a maximum of 30 days where there is more than one change of employment.

4) Divide the reference period arrived at in step 3 by 7. Provided the answer is greater than 1, round down to the nearest whole (rounding up to 1 if the answer is less than 1.

5) Divide the "net UK hours" figure arrived at in step 2 by the figure arrived at in step 4.

If, at the end of this procedure, the final answer is 35 or more, sufficient UK hours will have been worked in the tax year for the individual to be UK resident under this part of the test. If the final answer is fewer than 35, then the test is failed meaning that the individual will not qualify as being automatically UK resident under the "sufficient hours" work in the UK test.

4.4.3 "Significant breaks" from UK work

There will be a "significant break" from UK work if there is a continuous period of 31 days or more during which time:

- the individual does not work in the UK for more than 3 hours per day on any day throughout the period; and
- the reason for this is not because of absence due to annual leave, parental leave or illness.

4.4.4 Definitions

Section 5 includes a detailed discussion of the meaning (see 5.5) and location of work (see 5.6) for the purposes of the SRT.

4.5 The test specific to those who die in the tax year

Someone who dies will be considered UK resident in the tax year of their death if the following conditions are all met:

- In the three tax years preceding the year of death, he or she was UK resident by virtue of meeting one of the automatic residence tests. Where the transitional election (see section 8) is not made and residence status for tax years prior to 2013/14 needs to be established (that is for tax years before the SRT is effective) this will have to be determined in accordance with the principles previously applying.
- The preceding tax year would not qualify as a split year, even assuming non-UK residence for the tax year of death.
- When the individual died either: (i) his or her only home (or homes) was in the UK; or (ii) he or she had a home in the UK and a home overseas but insufficient time was spent in the overseas home.

Where there is a home overseas in the year of death sufficient time will have been spent there where: (i) there were at least 30 days in aggregate when the individual was present in the home; or (ii) the individual was present there on each day of the tax year up to and including the day on which he or she died. For these purposes, a day counts provided the individual is in the property at some point during the day and the property is a home of the individual on that day.

5. Special definitions

5.1 UK days - the basic rule

5.1.1 Overview

Subject to anti-avoidance measures applicable to those making repeated trips (see 5.2) the existing statutory definition of UK days is to be retained for the purposes of the SRT. This means that a day will generally count as one of UK presence where the individual is in the UK at the end of that day (meaning at midnight).

Days on which he or she is in the UK at midnight will not be counted if either: (i) the transit exemption; or (ii) the exceptional circumstances conditions are met.

5.1.2 The transit exemption

The transit exemption applies to someone who:

- arrives in the UK on day one;
- leaves the UK the next day (day two); and
- during the time between arrival and departure, does not engage in activities that are to a substantial extent unrelated to his or her passage through the UK.

5.1.3 Exceptional circumstances

Up to 60 days of UK presence may be disregarded where presence is due to exceptional circumstances. The 60 day total is an aggregate limit for any tax year. The circumstances

contributing to it do not need to be the same. Within this limit a day will be disregarded if both of the following conditions are met:

Condition 1

The first condition is that the individual would not be present in the UK at the end of the day but for exceptional circumstances that:

- are beyond the control of the individual; and
- prevent the individual from leaving the UK.

Strictly, exceptional circumstances will not apply in respect of events that bring an individual back to the UK. Note particularly the following in Annex B, paragraph B19 of RDR3:

"Life events such as birth, marriage, divorce and death are not routinely regarded as exceptional circumstances. Choosing to come to the UK for medical treatment or to receive elective medical services such as dentistry, cosmetic surgery or therapies will not be regarded as exceptional circumstances."

However, RDR3 suggests that HMRC will be sympathetic in extreme circumstances. Annex B, paragraph B12 states:

"There may also be limited situations where an individual who comes back to the UK to deal with a sudden life-threatening illness or injury to a partner or dependent child can have those days spent in the UK ignored under the SRT subject to the 60-day limit."

Annex B, paragraph B16 to 17:

"Exceptional circumstances will generally not apply in respect of events that bring you back to the UK. However, there may be circumstances such as civil unrest or natural disaster where associated FCO advice is to avoid all travel to the region.

Individuals who return to and stay in the UK while FCO advice remains at this warning level would normally have days spent in the UK ignored under the SRT, subject to the 60-day limit."

Condition 2

The second condition is that the individual must intend to leave the UK as soon as the circumstances permit. In RDR3, HMRC states that it will generally accept there was such intention where the individual does in fact leave the UK as soon as the exceptional circumstances have ended.

Where the 60 day maximum is exceeded

If the UK days claimed as exceptional exceed 60 in the relevant tax year, then the excess will count as days of UK presence.

Examples of exceptional circumstances

Included within the legislation are the following examples of circumstances that may be "exceptional":

- national or local emergencies such as war, civil unrest or natural disasters; and
- a sudden or life threatening illness or injury.

HMRC accepts, at Annex B, paragraph B11 of RDR3, that there may be exceptional circumstances where an individual needs to stay in the UK to deal with a sudden life-threatening illness or injury to a spouse/civil partner, cohabitee or minor child.

5.2 UK days - the deeming rule

The midnight rule will be overridden where certain conditions are met. This new deeming rule has been introduced to prevent perceived potential manipulation of the "midnight rule", and will only impact on individuals who:

- have been UK resident in at least one of the preceding three tax years;
- have three or more ties to the UK in the tax year; and
- are present in the UK but leave before midnight on more than 30 occasions.

Where these conditions are met the midnight rule will be overridden (though see 3.4), so that from (and inclusive of) the 31st occasion on which the individual is present in the UK but leaves before midnight, all days when he or she is present will be taken into account as days of UK presence, regardless of the length of time spent here.

From a practical perspective, where the deeming rule is engaged, the simplest way to calculate the UK days figure is to:

- count UK midnights as normal;
- add to this figure the number of days spent in the UK where the individual left prior to midnight; and
- subtract 30 from this total.

EXAMPLE

In 2013/14 Megan has three UK ties (work, accommodation and family) and was UK resident in 2010/11. During the tax year she spent 60 midnights in the UK. In addition there were 70 days

during which she was in the UK but left prior to midnight.

The deeming rule is engaged as she was UK resident in one of the three preceding tax years, has three UK ties and spent over 30 days in the UK without being present at midnight.

Her UK days for 2013/14 are 100 (60 + 70 – 30).

5.3 Days spent in a period

References in the SRT to days spent in the tax year (or, for the purposes of the split year provisions, the given period) refer to total days spent in aggregate whether continuously or intermittently.

5.4 Workday

A workday is a day on which more than 3 hours of work is carried out. A UK workday is a day on which more than 3 hours of work is carried out in the UK. As is explained at 5.6, work includes incidental and non-incidental duties and most business travel and training.

5.5 Home

5.5.1 "Meaning of home"

A full definition of "home" is not provided in the 2013 Finance Act clauses. The following points are, however, made:

- A home may be a building, part of a building or a vehicle, vessel or structure of any kind.
- Somewhere that an individual uses periodically as nothing more than a holiday home or temporary retreat (or something similar) does not count as a home.
- A place may be an individual's home even if he or she has no interest in it (so a property that an individual rents can be his or her home, as can one occupied beneficially). However, a legal interest in a property does not of itself make it a "home". This will be the case even if the property has previously been used in that way, if the person concerned has really moved out, and it has ceased to be a residence for him or her.

The lack of a clear definition of "home" introduces uncertainty into the SRT. Calls for a precise legislative definition have been rejected on the basis that the meaning of "home" is the common one and to be interpreted and applied in a wider range of circumstances than a narrow definition would permit.

5.5.2 The HMRC Guidance

In RDR3 and the glossary to RDR1 it is stated by HMRC "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".

In RDR 3 the following points are made by way of setting down guidelines as to HMRC's interpretation of when a property will and will not be an individual's "home":

- Ownership or a legal form of tenancy makes no difference. For example a property that an individual rents, or which he or she shares with parents, another member of their family or others will be a home if they use it as their home.
- A property (or vehicle) that an individual never stays in will not be their home.
- A place can still be a home even if an individual does not stay there continuously. If, for example, someone moves out temporarily but their spouse and children continue to live there, then it is still likely to be their home.
- The fact that other members of the family do not visit a particular property does not mean, when taken in isolation, that the home cannot be a home of the individual.
- If an individual moves out of their home temporarily it may still remain a home (though see the comments in 5.5.3).
- A place used as a home will remain a home even if it is temporarily unavailable. For example, because of damage or renovation. However, a place that has never been capable of functioning as a home cannot be a home. For example, a property purchased in such a state of disrepair that it is not capable of being lived in, is not a "home" until such time as it becomes habitable.
- If a property is available for letting to third parties, and no rights of occupation or use of the property are retained during the letting period, it will not be a "home" even if it had been previously.

Both RDR1 and RDR3 contain sections on record keeping, with a section on the evidence HMRC would want to take into account in considering whether a property is a "home". Record keeping is discussed in this briefing at 12.2.2 below.

5.5.3 Concerns with the HMRC Guidance

The guidance within RDR3 on the meaning of "home is inconsistent. It is stated that if an individual moves out of his or her home temporarily the property may still remain a home. This principle seems to be applied by HMRC

where a home is temporarily unavailable as it has become uninhabitable due to damage or renovation works.

However, in considering whether someone has a substantive home in the UK, the view is expressed (see example 8 within RDR3) that a professional cricketer, who comes to the UK for the summer, renting out her home in New Zealand for only 92 days, would cease to have a home abroad, because of the letting.

It is hard to see why a property, which is unavailable because of temporary letting, should be regarded any differently from one that is uninhabitable due to flooding or fire damage.

The question of when an individual first has a "home" is also considered in RDR3, with the following statement being made:

"Your home starts to be your home as soon as:

- *it is capable of being used as your home, for example, you have taken ownership of it, even if it is temporarily unavailable because of renovation*
- *you actually use it as your home.*

If the first point above is satisfied, but in fact you never actually use it as your home, then it will not be your home."

HMRC give two examples:

- In the first the individual moves their belongings in and spends one night in the property before moving out for a month whilst renovations occur. HMRC take the date that belongings were moved in (and the one night spent in the property) as the date from which the property became a "home".
- In the second example the date belongings were moved in and the taxpayer's wife and children took up residence is taken by HMRC as the date when the property becomes the taxpayer's home.

HMRC, therefore, see the moving in of belongings and the first night the property is used as the home or family home as crucial. It is thought that moving in belongings only would not be sufficient for a property to be seen as a "home" where neither the individual nor his close family (spouse/ partner/minor children) have spent a night in the property. However, to avoid any difficulty it is suggested that where the date a property becomes a "home" matters for UK tax purposes the moving in of possessions is timed so as to tie in with the date on which it is desirable for the property to be seen in this way.

5.6 Work

5.6.1 Overview

An individual is considered to be "working" at any time when he or she is engaged either:

- In the performance of employment duties – i.e. duties, the emoluments from which would, if taxable in the UK, be classified as employment income.
- In a trade carried on alone or in partnership. This will be the case if, were expenses to be incurred, these would be deductible in computing taxable profits.

As noted, a working day is one on which more than three hours are worked.

5.6.2 Travelling

Ordinary commuting

Time spent in the course of ordinary commuting is not, in and of itself, counted as time spent working. However, any time during a commute that is actually spent working, for example reading and sending e-mails, will be counted.

Travelling time

Time spent travelling (other than between home and work) is counted as time spent working if:

- The cost of the journey would be an allowable expense. Typically this will include: (i) travel to client premises; (ii) travel from home to a temporary workplace; or (iii) travel between workplaces.

  or

- The individual actually works during the journey.

5.6.3 Training

Time spent in training counts as time spent working if:

- the training is provided or paid for by an employer to help the individual in performing his or her duties;

  or

- in the case of someone engaged in a trade (either alone or in partnership), if the cost of the training can be deducted in calculating profits.

Training undertaken at personal cost by an employee will not count as work.

5.6.4 Gardening leave

RDR3 states that: *"Your time spent working includes instances where your employer instructs you to stay away from work, for example while serving a period of notice while you remain on the payroll."* This means that time spent in the UK when an individual is on "gardening leave" will count as UK workdays. This is a potential trap where an individual is trying to either:

- qualify for automatic non-residence under the "sufficient hours" working overseas test; or
- if the "sufficient ties" test is in point (see section 6) to avoid having a UK work tie.

5.6.5 Unpaid work

Work does not have to be paid to count for the purposes of the SRT. Generally, an office or employment will count provided there is a contract. So, for example, a role as non-executive director would count for these purposes.

By contrast, voluntary work where there is no contract does not count for the purposes of the SRT (and so voluntary work abroad may not count for the overseas tests).

5.7 Location of work

5.7.1 Overview

The basic principle is that, regardless of where the employment is exercised or with whom it is held, work is carried out where the duties are actually performed.

5.7.2 Work carried out in the course of travelling

The basic principle applies where travel involves crossing a land border (for example from Northern to Southern Ireland).

There is a specific provision to cover situations where work is carried out in the course of travelling by air, sea or through the Channel Tunnel (or any other sea tunnel). For the purposes of the SRT work will be deemed to be carried out overseas if someone is travelling:

- from an embarkation point overseas to a disembarkation point in the UK, or
- from an embarkation point in the UK to a disembarkation point overseas.

When travelling by Eurostar, embarkation and disembarkation will occur where the train is boarded or where the traveller gets off. So, if someone is travelling by Eurostar, any work done in the course of the journey will be deemed to be overseas work. Similarly, for air travel, embarkation and disembarkation take place when the individual gets on and off of the plane. However, in this case it will mean that on arrival, UK working time might commence before a passenger clears immigration. In addition any time travelling from the airport to the final work destination will count as time spent working.

5.7.3 Work carried out on board vehicles, aircrafts or ships

There are special deeming rules that govern the location of work carried out by a worker who:

- has a relevant job on board a vehicle, aircraft or ship at any time in the tax year; and
- at least 6 of the trips the individual makes in the tax year as part of the job are cross-border trips that either begin in the UK, end in the UK or begin and end in the UK.

When engaged in such activities such workers are deemed to carry out:

- more than 3 hours work in the UK (thus the day counts as a UK working day) on any day on which they start an international journey from the UK;
- less than 3 hours work in the UK (so the day is not counted as a UK working day) on any day on which someone arrives in the UK from a journey which began abroad; and
- more than 3 hours work (thus making the day a UK day) on any day on which they both leave from and return to the UK (it makes no difference whether the journey or journeys started and finished are related).

The rules are applied on a day-by-day rather than journey-by-journey basis.

Of course, the general rule will mean that any day where travel is solely within the UK will count as a UK workday if more than 3 hours is worked.

5.8 Definitions for the "sufficient hours" working tests

5.8.1 Reasonable

When considering whether the amount of annual or parenting leave is reasonable, the nature of the work and the customs or laws of the country or countries where the individual is working should be taken into account.

5.8.2 Parenting leave

The term includes maternity leave, paternity leave, adoption leave and parental leave

5.8.3 Sick leave

Absences from work where the individual cannot reasonably be expected to work as a result of illness or injury.

5.8.4 Non-working day

A non-working day is any day when the individual is not normally expected to work (according to the contract of employment or the usual work pattern) and does not in fact work.

5.8.5 Embedded

Non-working days are "embedded" within a block of leave where:

- at least three consecutive days of leave are taken before the non-working day or series of non-working days in question; and
- there are at least three consecutive days of leave taken after the series of non-working days.

6. The "sufficient ties" test

Where none of the automatic overseas" tests or the "automatic residence" tests have been met, the number of UK days has to be considered in relation to the number of defined UK ties which the individual has.

The rules are stricter for "leavers" (individuals who were UK resident in one or more of the preceding three tax years) than for "arrivers" (all other individuals), as the rules allow "leavers" fewer UK days than "arrivers" if UK residence is to be avoided.

Sub-sections 6.1 and 6.2 set down the general rules for "arrivers" and "leavers". Sub-section 6.3 explains how these general rules have to be adjusted should an individual die in the relevant tax year.

6.1 "Arrivers"

The term applies to those who have not been UK resident for any of the previous three tax years. They have to take account of the following UK ties:

- the family tie (broadly, a UK resident partner and/or UK resident minor children);
- the accommodation tie (a place to live);
- the work tie (at least 40 UK workdays in the tax year); and
- the 90 day tie (more than 90 days of UK presence in either or both of the two preceding tax years).

All these terms are defined (see 6.4 below).

A UK tie will count if it exists at ANY point in the relevant tax year. It does not need to apply throughout the tax year. Consequently, if someone wishes to reduce his UK ties to allow him to spend more days in the UK as a non-resident than previously, he will have to take action in the preceding year.

Subject to the absolute limit of 182 UK days, the lower the number of UK ties, the higher the number of UK days the individual can spend in the UK without being UK resident.

The arrivers table:

UK days	Impact on UK ties
Fewer than 46 days	Should not be applying this test. The individual meets one of the "automatic overseas tests" and is not UK resident
46 to 90 days	Can have **three UK ties** and still be not UK resident
91 to 120 days	Can have **two UK ties** and still be not UK resident
121 to 182 days	Can have **one UK tie** and still be not UK resident
183 days or more	Should not be applying this test. One of the "automatic residence tests" is met and the individual is UK resident

It is important to recognise that even where the individual is non-resident, a UK presence in excess of 90 days in any tax year will automatically constitute a UK tie for the following two tax years. This might mean that the individual has to reduce either other UK ties, or his/her UK day count in those years to avoid residence.

6.2 "Leavers"

The term applies to individuals who have been UK resident in one or more of the preceding three tax years. As a consequence, becoming UK resident for just one year will result in the individual being classed as a leaver for the next three UK tax years. The following constitute UK ties for "leavers":

- the family tie (a UK resident partner and/or UK resident minor children);
- the accommodation tie (a place to live);
- the work tie (at least 40 UK days in the tax year);
- the 90 day tie (more than 90 days of UK presence in either or both of the two preceding tax years); and
- a country tie (where there is no other country in which the individual spends more midnights).

As listed at 6.1 a UK tie will count if it exists at ANY point in the relevant tax year. It does not need to apply throughout the tax year.

It is likely that anyone who has been UK resident in one or more of the preceding three tax years will have spent 90 days or more in the UK in one or other (or both) of the previous two tax years. Such individuals will, therefore, have already racked up one UK tie that they can do nothing about. If, for example, they want to be able to visit the UK for between 45 and 90 days in each of the next two tax years they will have to ensure they have no more than one other UK tie.

The leavers table:

UK days	Impact on UK ties
Fewer than 16 days	Should not be applying this test. One of the "automatic overseas tests" is met and the individual is not UK resident
16 to 45 days	Can have **three UK ties** and still be not UK resident
46 to 90 days	Can have **two UK ties** and still be not UK resident
91 to 120 days	Can have **one UK tie** and still be not UK resident
121 to 182 days	No UK ties possible if UK residence is to be avoided
183 days or more	Should not be applying this test. One of the "automatic residence tests" is met and the individual is UK resident

6.3 The "sufficient UK ties" test - death in the tax year

Where an individual dies in the tax year the "sufficient UK ties" test has to be modified. Spending fewer than 16 days in the UK will not be sufficient to ensure non-residence. Instead, for the year of death, the leavers table must always be adjusted as follows:

UK days	Impact on UK ties
Up to 45 days	Can have **three UK ties** and still be not UK resident
46 to 90 days	Can have **two UK ties** and still be not UK resident
91 to 120 days	Can have **one UK tie** and still be not UK resident
121 to 182 days	No UK ties possible if UK residence is to be avoided
183 days or more	Should not be applying this test. One of the "automatic residence tests" is met and the individual is UK resident

If death occurs on or after 1 March in the relevant tax year (that is when there are 36 days or less of the tax year remaining) the standard table (see 6.1) can be used for arrivers and the modified table above for leavers.

In all other cases (that is where the death occurs between 6 April and 28/29 February) the days in the relevant table (that is 6.1 for arrivers, and 6.3 for leavers) have to be reduced by a figure referred to as "the appropriate number". This number is found by multiplying the number of days within each banding range by A/12, where "A" is the number of whole months remaining in the relevant tax year after the month in which the individual dies (rounding down for anything below point 5 and up otherwise).

RDR3 contains tables (Table C for "leavers" and Table D for "arrivers") setting down the number of allowable days depending on the month in the tax year that the individual has left (or arrived in) the UK.

6.4 UK ties – the family tie

6.4.1 Overview

An individual will meet the family ties test if, at any time in the tax year, he or she:

- has one (or more) relevant relationship(s); and
- one or more individuals with whom he or she has a relevant relationship is (or are) resident in the UK in the relevant tax year.

An individual is said to have a relevant relationship if he or she has:

- A spouse, civil partner or someone with whom he or she is living, as with a spouse or civil partner.

- A child or children (whether natural or adopted) under the age of 18.

Such a person is referred to hereafter as an RI (related individual).

6.4.2 Spouse/civil partner or cohabitee

The normal definitions apply when considering whether an individual has a UK resident spouse/civil partner. A spouse or civil partner from whom the individual is separated under a court order, or separation agreement, or where the separation is likely to be permanent, is disregarded.

There is no special definition of cohabitee. The position is covered in RDR3 by the following comment: *"there is no minimum period for cohabitation; it is a question of fact as to whether two individuals are living together as spouses or civil partners"*.

Recognising the potential circularity problem (since the family ties test would work both ways), solely when considering the residence status of a spouse, civil partner or cohabitee for the purposes of the family tie test, the fact that the spouse or partner has a tie to the individual is disregarded. This is best explained by way of an example.

EXAMPLE

Lulu and her husband Philippe have no children.

They both need to determine whether they are UK resident for 2013/14 and none of the automatic overseas tests or the automatic residence tests apply. Neither has been UK resident in one or more of the preceding three tax years. They each have a 90 day tie and a work tie but do not have an accommodation tie. Their UK days are 100 in each case.

Both need to determine whether they are UK resident or not using the sufficient ties test. Given their day count and two definite UK ties the question as to whether each has a family tie is crucial.

Since both Lulu and Philippe have relevant relationships only with each other, their relationships can be disregarded, so they do not have a family tie.

Consequently, each only has two UK ties in the tax year and neither is UK resident (the table within sub-section 6.1 shows as "arrivers" they could have spent up to 120 days in the UK without being UK resident).

6.4.3 Minor children

For the purposes of the family tie, any minor child of the individual (natural children or adopted) is taken into account, unless, in the relevant tax year, the individual sees the child in the UK:

- on fewer than 61 days in total; or
- where the child turns 18 in the relevant tax year, on fewer than 61 days in total prior to the child's 18th birthday.

For these purposes any UK day on which the individual sees the child will be counted, whether it is for the whole or part of the day.

There are special rules that apply when a child is in full time education in the UK. When considering whether the individual has a family tie because of the child (but not when considering the child's own personal residence status), the child will be disregarded if he or she:

- is in full time education (at school, college, university or other educational establishment in the UK) in any part of the relevant tax year;
- would not be resident in the UK if the time he or she spent at the educational establishment during term-time were disregarded; and
- spends fewer than 21 days in the UK outside term time.

Term time includes both half term breaks and other periods within a term, even if there is no teaching. Different schools have different term dates and what constitutes term time will depend on the specific school or schools the child attends during the tax year. It will be a matter of fact.

6.5 UK ties – the accommodation tie

6.5.1 Overview

An individual is treated as having a UK accommodation tie if all three of the following conditions are met:

- He or she has a place to live in the UK.
- The place is available to the individual to use for a continuous period of at least 91 days in the tax year. Gaps of fewer than 16 days are ignored.
- He or she spends at least one night there during the tax year. This provision is relaxed where the accommodation belongs to a close relative. In such cases up to 15 nights can be spent there in a tax year without the accommodation tie being met.

6.5.2 Place to live in the UK

A place to live is defined more widely than a home. It covers a home, a holiday home, a temporary

retreat and anything similar. There is no requirement for the individual to have an interest in the accommodation or any legal right of occupation. It can include a particular hotel room, but also the hotel itself. As such, using the same hotel (albeit staying in different rooms and for single nights) with gaps of fewer than 16 days between visits could be caught if he or she comes and goes repeatedly over a 91 day period.

The difference between a property that is a "home" and one that is merely a "place to live" is considered in the various HMRC Guidance. The main difference is said to be that a place to live (or available accommodation) *"can be transient and does not require the degree of stability or permanence that a home does"*.

The following points can be extracted from HMRC's guidelines as to whether accommodation, or a place to live, will be regarded as available:

- The question does not depend on ownership, tenancy or legal right to occupy.
- Accommodation can be of any type. For example, accommodation provided by an employer, a holiday home, a temporary retreat or something similar will all qualify.
- Accommodation is regarded as available to an individual for a continuous period of 91 days if the individual is able to use it, or it is at his or her disposal, at all times throughout that period disregarding any gap of fewer than 16 days. If a relative were to invite someone for a visit, that will not of itself mean that the accommodation would be regarded as being "available". However, it will be a tie if:
  - it is available to the individual over a continuous period of 91 days, with gaps of fewer than 16 days; and
  - the individual uses it.

  Similarly, a casual offer from a friend to "stay in my spare room any time" will not constitute an accommodation tie unless the friend really is prepared to offer the room for 91 days at a time (whether he or she actually does so or not).
- It is possible to have more than one place in the UK that counts as available accommodation. However, this would only constitute one tie, no matter how many different places of accommodation are available.

6.5.3 Close relative

Close relative includes (whether by blood, half-blood, marriage or civil partnership): a parent or grandparent, brother or sister, child aged 18 or over, or a grandchild aged 18 or over.

The definition of close relative purposely DOES NOT include a spouse/civil partner/co-habitee. The reason for this is that where a spouse or partner retains UK accommodation, a single night spent there by the visiting partner would be sufficient to meet the accommodation tie test (as HMRC maintain that in such circumstances the partner always has a place to live in the UK). Consequently, anyone seeking to avoid having an accommodation tie should never stay overnight in the partner's accommodation.

The 15 night de minimis disregard does not provide that much time for an individual to visit parents etc. As such, unless the individual stays in hotel accommodation, this tie may be difficult to avoid where the individual has close family requiring attention in the UK.

6.6 UK ties – the work tie

An individual will have a UK work tie if he or she works in the UK for at least 40 days (whether continuously or intermittently) in the tax year. The definition of workday is one on which more than three hours of work is carried out. This definition is applied for all purposes of the SRT.

Whilst voluntary work does not count as "work" for these purposes, it is not necessary for work to be paid. This means that it is, for example, not possible to avoid having a UK tie by working as an unpaid non-executive director in the UK.

From a practical perspective, if someone is going to work for more than three hours in the UK on any given day it would make sense to concentrate as much work as possible over as few days as possible, so as to limit the number of UK work days.

Subject to any treaty relief, unless the UK duties performed are 'merely incidental' to an employment abroad, any emoluments received will be fully subject to UK tax regardless of whether or not there is a UK work tie.

See 5.7.3 for an explanation of the special rules that apply to determine if an international transportation worker has carried out a day of work either in the UK or overseas.

6.7 UK ties –the 90 day tie

An individual will be said to have a 90 day tie if he spends more than 90 days in the UK in EITHER or BOTH of the preceding two tax years.

6.8 UK ties - Country tie

The country tie applies only to leavers and is designed to make leaving more difficult for those who do not move to another country but travel about. Someone will have a country tie if, in the relevant tax year, there is no other country in which he or she spends more midnights.

In practical terms this means that to avoid the UK country tie the individual must spend more midnights in the tax year in another country than he or she does in the UK.

Country is defined to include a state or territory. Some concern has been expressed as to how this will be interpreted for individuals who spend time in different states or cantons of a Federation. The position is covered in RDR3 by the statement that: *"For the purposes of this SRT test presence at midnight in any state, territory or canton in which a country is subdivided is regarded as presence at midnight in that country"*.

7. Split years

7.1 Overview

Before 2013/14 there were no statutory provisions allowing a tax year to be split, the general principle being that residence in any part of a tax year equated to residence for the entire year. Split year treatment was, in practice, available either:

- Where a relevant Double Tax Agreement applied to determine residence in another state; or
- Through claiming relief under Extra Statutory Concessions that allowed a tax year to be split (where specified qualifying conditions were met and there was no tax avoidance motive).

For 2013/14 onwards, these Extra Statutory Concessions have been withdrawn and legislation has been incorporated in the SRT.

To be eligible for split year treatment, the individual must first be UK resident in the year under the SRT. Where this is the case, there are eight situations (referred to as cases) in which it will be possible to split a tax year:

- Case 1 – starting full time work overseas.
- Case 2 – accompanying a partner who qualifies under case 1.
- Case 3 – ceasing to have a home in the UK.
- Case 4 – starting to have an "only" home in the UK.
- Case 5 – starting to work full time in the UK.
- Case 6 – returning to the UK after full-time work overseas.
- Case 7 – accompanying a partner who qualifies under case 6.
- Case 8 – starting to have a home in the UK.

The conditions that have to be met in order to qualify for split year treatment under one or more of these cases are discussed at 7.2 to 7.9 below.

Where split year treatment applies, the tax year is divided into a UK resident part and a non-UK resident part. Technically, where someone qualifies for split year treatment, he or she will be UK resident throughout the tax year, but taxed as a non-resident for the appropriate part. Broadly, UK tax will not be due on foreign income or gains arising or accruing, unless anti-avoidance provisions (see section 8) affecting a temporary non-resident, returning after fewer than 5 tax years abroad, apply. However, this is not always the case as relief is given to specific categories of income and gains. For example, split year relief does not apply to income attributed to an individual under the Income Tax transfer of assets abroad provisions. Specialist advice, should, therefore, be taken to establish the exact tax position.

It is possible that a taxpayer could qualify for split year treatment under more than one of the cases. As each case has specific rules for determining the date of arrival or departure, there are specific provisions that determine the order of priority as between them. Where a taxpayer meets the criteria for two or more of cases 1 to 3:

- Case 1 has priority over both case 2 and case 3; and
- Case 2 has priority over case 3.

Where a taxpayer meets the criteria for two or more of cases 4 to 8;

- If two or more of cases 4, 5 and 8 apply but neither case 6 nor case 7, the case which has priority is the one with the earliest split year date. Where the earliest split year date is the same for more than one case these cases have equal priority.
- If case 5 and case 6 apply priority is given to whichever case has the earlier split year date. If both have the same date then case 6 has priority.
- If case 5 and case 7 apply but not case 6 priority is given to whichever case has the earlier split year date. If both have the same date then case 7 has priority.

These statutory rules will often make obtaining split year treatment more difficult than under the Extra Statutory Concessions. It will, however, be possible to split a year of departure for CGT purposes notwithstanding that the individual has been UK resident for four or more of the last seven tax years (which was not previously the case). Where someone has previously been UK resident for such a period, he or she will need to remain outside of the UK for at least five years to avoid being caught by the anti-avoidance provisions (see section 7).

Given the prescriptive nature of the statutory provisions, either pre-departure or pre-arrival planning is crucial.

Split year treatment applies just to an individual's personal tax situation. It does not apply if the individual also acts as a Personal Representative and there are special provisions where the individual acts as a Trustee. An individual Trustee is not regarded as UK resident, for the purposes of determining the residence status of the Trust, where:

- split year treatment applies; and
- the entire period during which the individual is a Trustee falls within the overseas part of the split year.

7.2 Case 1- starting full time work overseas

7.2.1 Overview

For an individual leaving the UK (that is someone who was UK resident in the previous tax year) who would otherwise be UK resident for the entire tax year, the UK tax year will be split provided:

- There is at least one period (consisting of one or more days) during the tax year, that starts with a day on which the individual carried out more than three hours of work overseas and ends on the last day of the tax year, and during this period the individual satisfies the "overseas work" criteria.
- The individual is not UK resident in the next tax year as a result of meeting the "automatic full time work abroad" test (see section 3.4).

A period will satisfy the "overseas work" criteria where:

- The individual works "sufficient hours" overseas (see below).
- There are no "significant breaks" from overseas work (see 3.4.3).
- The total number of UK workdays in the period does not exceed the permitted limit (see 7.2.3).
- UK days of presence do not exceed the permitted level (see 7.2.3).

Where case 1 applies, the non-UK resident part of the year commences on the day the individual starts to work full time abroad.

7.2.2 Sufficient hours overseas.

The meaning of "sufficient hours overseas" test is very similar to that explained at 3.4 for the third "automatic overseas" test (working full time abroad). However, rather than looking at the whole tax year only the relevant period is to be considered, so the five steps are as follows:

1) The number of "disregarded days" in the period under consideration must be ascertained. A "disregarded day" is any day during which more than 3 hours of work is carried on in the UK (even if on that day work is also carried on overseas).

2) The "net overseas hours" figure must be obtained by adding up the total number of hours that an individual has worked overseas in the period under consideration but excluding from this computation any hours spent working overseas on "disregarded days" (see step 1).

3) The "reference period" must be determined. This is done by subtracting from the total number of days in the period under consideration the total number of disregarded days (see step 1) along with the following (in the period under consideration):

   a. Reasonable amounts of annual leave and parenting leave (maternity leave, paternity leave, adoption leave or parental leave).

   b. Reasonable amounts of sick leave.

   c. Non-working days (for example weekends or Bank Holidays if the individual is not expected to work on these days) embedded within a block of leave falling into either of the above two categories.

   d. Gaps during employment (provided no work is carried out in the gap period) with 15 days being allowed for one change of employment and, if there is more than one change of employment, a maximum deduction equal to the permitted UK workdays limit (see below).

4) Divide the reference period arrived at in step 3 by 7. Provided the answer is greater than 1 round down to the nearest whole (rounding up to 1 if the answer is less than 1.

5) Divide the "net overseas hours" figure arrived at in step 2 by the figure arrived at in step 4.

If at the end of this procedure the final answer is 35 or more, sufficient overseas hours have been worked in the period under consideration. If the final answer is less than 35 then this part of the test is failed meaning that the individual will not qualify for split year treatment under case 1.

7.2.3 Other definitions

The workday definition (in excess of 3 hours of work) and UK days (present in the UK at midnight) are aligned with the main SRT definitions.

The permitted UK workdays and UK days limits are found by apportioning the allowable limits for the whole tax year provided in the "automatic full time work overseas" test (that is by apportioning 30 allowable UK workdays and 90 allowable days of UK presence). For the purposes of the apportionment calculation the standard limits are adjusted to reflect the months of non-residence (rounding up for a part month).

For example, if the individual starts his or her overseas employment on 17 October there would be six whole months (October to March) to be taken into account, which would allow 15 UK workdays and 45 days of UK presence. Where the calculation does not result in a whole number round down for anything below point 5 and up for everything else.

RDR3 contains a table (Table E) setting down the number of allowable days depending on the month that the individual has left the tax year.

7.3 Case 2 – accompanying a partner who qualifies under case 1

For an individual leaving the UK (that is someone who was UK resident in the previous tax year), who would otherwise be UK resident in the relevant year, the tax year can be split where he or she meets all of the following conditions:

- In either the relevant tax year or the preceding year, his or her partner meets the criteria set down in case 1 above and the couple had been living in the UK together either at some point in the relevant tax year or in the preceding year.
- At some point in the relevant tax year he or she joins the partner who is working full time abroad, so they can live together overseas. The day the individual joins their partner overseas will be the deemed departure date unless the partner's full time work abroad starts on a later date (in which case that later date will be the deemed departure date).
- From the deemed departure date onwards he or she:
  - — has a home overseas and, if there is also a UK home, the individual spends more time living in the overseas home than the UK one;
  - — does not exceed the number of permitted UK days of presence as described in case 1 above.
- He or she is not UK resident for the next tax year.

Where case 2 applies, the non-UK resident part of the year commences on the later of: (i) the day the individual's partner starts to work full time abroad; and (ii) the day the individual joins their partner overseas.

"Partner" is defined as a spouse, civil partner or a partner with whom the individual co-habits.

7.4 Case 3 – ceasing to have a home in the UK

For an individual leaving the UK (that is someone who was UK resident in the previous tax year and would otherwise be UK resident for the year concerned, the year of departure will be split if that person, not falling within case 1 or case 2 above, meets all of the following conditions:

- At the start of the relevant tax year the individual's normal home was in the UK, but at some point in the tax year, he or she ceases to have a home in the UK and does not reacquire one during the remainder of the tax year.
- From the date that the individual ceases to have a home in the UK to the end of the relevant tax year, the individual spends fewer than 16 days (midnights) in the UK.
- The individual is not UK resident for the next tax year.
- Within 6 months of not having a home in the UK, the individual has a "sufficient link" with a country overseas.

An individual has a sufficient link with a country overseas provided at least one of the following conditions is met:

- the individual is considered to be a resident of that country in accordance with its tax laws;
- the individual has been present in that country (in person) at the end of each day of the 6 month period (that is the six months after the individual ceases to have a home in the UK); or
- the individual's only home is in that country or, if

the taxpayer has more than one home, they are all in that country.

Where case 3 applies, the non-UK resident part of the year commences on the day the individual ceases to have a home in the UK.

The old requirement to leave the UK for residence abroad for a period in excess of three years (broadly assumed to be the practice prior to 2013/14 where the full time work abroad conditions were not met) has, therefore, been modified (requiring only non-residence in the tax year following that of departure). However, the requirement to avoid having a home in the UK emphasises the need for the severance of ties. In addition, the extended anti-avoidance provisions relating to temporary non-residence (see section 8) invalidate the tax benefits of short-term foreign residence for many purposes.

7.5 Case 4 – starting to have an "only home" in the UK

7.5.1 Overview

For an arriver (someone who was not resident in the UK in the preceding tax year and who would otherwise be UK resident for the entire tax year), the tax year is split where the following conditions are met:

- At the start of the relevant tax year the individual did not meet the "only home" test (see 7.5.2 below).
- Things change, with the result that during the tax year, and for the remainder thereof, the individual has his or her only home in the UK.
- For the part of the relevant tax year before the date the individual first met the "only home" test, he or she would not fall to be considered UK resident by virtue of the "sufficient ties" test.

For the purposes of split year treatment under case 4, the "sufficient ties" test (see section 6 above) is modified with the UK days allowed in the scale tables being reduced in proportion to the number of whole months before the date the individual first met the "only home" test. RDR3 contains a table (Table F) setting down the number of allowable days depending on the month in which the individual first satisfies the "only home" test.

Where case 4 applies, the UK part of the tax year starts from the date that the "only home" test.

7.5.2 The "only home" test

The "only home" test is met if:

- the taxpayer has only one home and that home is in the UK; or
- the taxpayer has more than one home and all of them are in the UK.

7.6 Case 5 – starting to work full-time in the UK

For an arriver (someone who was not resident in the UK in the preceding tax year and who would otherwise be UK resident for the entire tax year), the tax year is split where the following conditions are met:

- He or she works "sufficient hours" in the UK (see 4.4.2) over a period of 365 days.
- The period begins with a day that falls within the relevant tax year and on which the individual carries out more than 3 hours of work in the UK.
- During the period:
  - there are no "significant breaks" from UK work (see 4.4.3); and
  - more than 75% of the total number of days within the period on which the taxpayer carried out more than 3 hours of work are days on which the taxpayer works in the UK.
- For the part of the relevant tax year before the period of full time work in the UK starts, he or she would not be considered UK resident by virtue of the "sufficient ties" test.

For the purposes of split year treatment under case 5, the "sufficient ties" test (see section 6 above) is modified with the UK days allowed in the scale tables being reduced in proportion to the number of whole months before the date the individual started full-time work in the UK. RDR3 contains a table (Table F) setting down the number of allowable days depending on the month in which the individual started full-time work in the UK.

Where case 5 applies the UK part of the tax year starts from the date that the first qualifying period of full time work in the UK starts.

7.7 Case 6 returning to the UK after full-time work overseas

7.7.1 Overview

For an arriver (someone who was not resident in the UK in the preceding tax year and who would otherwise be UK resident for the entire tax year), the tax year is split where the following conditions are met:

- The individual was not UK resident in the preceding tax year because he or she met the

third (full-time work abroad, see 3.4) "automatic overseas" test.

- The individual had been UK resident for one or more of the four tax years immediately preceding the previous tax year.
- He or she satisfies the "overseas work criteria" for at least one period that: (i) begins on the first day of the tax year; and (ii) ends with a day that falls within the relevant tax year and on which the individual carries out more than 3 hours of work overseas.
- The individual is resident in the UK in the next tax year (whether or not it is a split year).

Where case 6 applies, the UK part of the tax year starts from the day after the end of the overseas period.

7.7.2 Overseas work criteria

The following conditions have to be met for a period to satisfy the "overseas work criteria":

- The individual works "sufficient hours" overseas (see below).
- There are no "significant breaks" from overseas work (see 3.4.3).
- The total number of UK workdays in the period does not exceed the permitted limit.
- UK days of presence do not exceed the permitted level.

The "sufficient hours" test for the purposes of case 6 is identical to that explained for case 1 (starting full time work overseas) at 7.2.2 the only difference being the periods being considered:

- For case 1 the period starts with a day, which falls within the relevant tax year, on which the individual carried out in excess of three hours of work overseas and ends on the last day of the tax year.
- For case 6 the period starts on the first day of the tax year and ends with a day, which falls within the relevant tax year, on which the individual carries out more than 3 hours of work overseas.

The workday definition (in excess of 3 hours of work) and UK days (present in the UK at midnight) are aligned with the main SRT definitions.

The permitted UK workdays and UK days limits are found by apportioning the allowable limits for the whole tax year provided in the "automatic full time work overseas" test (that is by apportioning 30 allowable UK workdays and 90 allowable days of UK presence). For the purposes of the apportionment calculation the standard limits are adjusted to reflect the months of non-residence (rounding up for a part month).

RDR3 contains a table (Table G) setting down the number of allowable days depending on the month that the individual ceases full time work abroad.

7.8 Case 7- accompanying a partner who qualifies under Case 6

For an arriver (someone who was not resident in the UK in the preceding tax year and who would otherwise be UK resident for the entire tax year), the tax year is split where the following conditions are met:

- In either the relevant tax year or the preceding year, he or she has a partner who meets the criteria set down within case 6 above.
- At some point in the relevant tax year the individual moves to the UK to continue living with their partner who has moved/relocated to the UK. The day the individual moves to the UK to live with his or her partner will be the deemed arrival day, unless the partner's qualifying UK residence period starts from a later date (in which case that later date will be the deemed arrival day).
- Before the deemed arrival day the individual:
  - Had a home overseas and, if there is also a UK home, the individual spends more time living in the overseas home than the UK one.
  - Does not exceed the number of permitted UK days of presence as explained in the discussion of case 6 (returning to the UK after full time work overseas) above.
- The individual is resident in the UK in the next tax year (whether or not it is a split year).

Where case 7 applies, the general rule is that the UK resident part of the year commences the day the individual joins their partner in the UK. However, this will not be the case where the partner's UK residence period starts from a later date. In such cases both partners will be deemed to commence UK residence on the same date.

Partner is defined in 7.3 above.

7.9 Case 8 – starting to have a home in the UK

For an arriver (someone who was not resident in the UK in the preceding tax year and who would otherwise be UK resident for the entire tax year) the tax year is split where the following conditions are met:

- At the start of the relevant tax year the individual did not have a home in the UK.
- Things change with the result that during the tax year and for the remainder thereof, the individual has a home in the UK.
- For the part of the relevant tax year before the date the individual first had a home in the UK, he or she would not be considered UK resident by virtue of the "sufficient ties" test.

For the purposes of split year treatment under case 8, the "sufficient ties" test (see section 6 above) is modified with the UK days allowed in the scale tables being reduced in proportion to the number of whole months before the date the individual first starts to have a home in the UK. RDR3 contains a table (Table F) setting down the number of allowable days depending on the month in which the individual started to have a home in the UK.

Where case 8 applies, the UK part of the tax year starts from the date that the individual starts to have a home in the UK.

7.10 Trustees and Personal Representatives

Split year treatment applies only to the relevant individual's personal tax situation. It does not apply where he or she is acting as a Personal Representative or Trustee.

There are, however, special provisions where the individual acts as a Trustee. An individual Trustee is not regarded as UK resident, for the purposes of determining the residence status of the Trust, where:

- split year treatment applies to the individual personally; and
- the entire period during which the individual is a Trustee falls within the overseas part of the split year.

There are no such provisions for Personal Representatives.

8. Anti-avoidance provisions

8.1 Overview

Leaving the UK obviously allows for UK tax to be avoided. There are specific anti-avoidance provisions, which apply where:

- the individual was UK resident in at least four of the seven tax years of assessment immediately preceding the year of departure; and
- the number of whole tax years in the years falling between the tax year of departure and the tax year of return is fewer than five.

Before 6 April 2013, these provisions only applied (so as to tax the income or gains in the year of return) to capital gains; offshore income gains; income withdrawals under certain foreign pension schemes; income withdrawals under registered pension schemes; and remittances of relevant foreign income.

The SRT enables individuals to manage their affairs so as to leave the UK and be certain of being non-UK resident for a tax year, even when absence from the UK is for fewer than 5 years. To prevent tax being avoided by individuals arranging matters so as to receive substantial income (relating to years when they were UK resident) during a temporary period of non-UK residence the anti-avoidance provisions applying to such individuals have been widened.

The target is income where the time of receipt can be determined by the emigrating person. As such, from 6 April 2013 there are anti-avoidance provisions which tax:

- distributions from close companies (and companies that would be close if they were UK resident);
- chargeable event gains from life assurance contacts; and
- various pension benefits.

The provisions are complex. Broadly, the aim is to tax in the year of return income and/or gains which have been accumulated prior to leaving the UK and which are received or realised in the period of temporary non-residence.

The opportunity was also taken to re-write the pre-existing legislation, which was introduced piecemeal and, in some cases, had been modified more than once. To tie in with the new statutory split year provisions, an individual now has only to be non-UK resident for more than 5 years to avoid the anti-avoidance provisions, rather than for five *tax* years.

8.2 Effective date

The new legislation is effective where the individual leaves the UK in 2013/14 or thereafter. This means that only the old rules can apply to individuals who left the UK prior to 6 April 2013. The one exception to this is the offshore income gains (OIG) provisions. The OIG anti-avoidance legislation is found within Regulations (rather than primary legislation) and the commencement provisions are different, but as there were already temporary anti-

avoidance provisions catching OIGs prior to 6 April 2013, this is not so significant.

9. Transitional provisions

9.1 The election

The SRT came into force from 6 April 2013 and does not apply to determine residence in any prior tax year. However, when applying the test or deciding upon eligibility for split year treatment, it may be necessary to determine someone's residence status for a tax year prior to 2013/14. Where this is the case, it is possible to elect that in determining an individual's residence under the SRT for 2013/14 to 2017/18, his or her status in the years 2010/11 to 2012/13 should be determined as if the SRT had applied in those earlier years. The deadline for the election is one year after the end of the relevant tax year. The election can be made either on the individual's tax return or in a standalone letter to the individual's HMRC office.

This election is effective only in relation to determining the individual's residence status for 2013/14 onwards, and will have no impact on his or her actual taxable status for those earlier years (which still have to be determined according to the former, uncertain, principles).

Some commentators have expressed concern that use of the election might be seen by HMRC as an indication that the person concerned is not confident of his or her status under the current law. Whether or not this will be the case, there will be situations where the election should be considered, for example:

- Where non-residence status in earlier years is not important (as the tax at stake may be insignificant when double tax relief is considered) but certainty for 2013/14 to 2017/18 is.
- Where the individual is resident in the UK for the pre-commencement tax year, but would not have been had the SRT been in force.

9.2 Split year references

Some of the SRT provisions depend on whether there was a split year in earlier periods. Before 2013/14 there were no statutory split year provisions. There is, therefore, a transitional provision allowing split years in the past to be determined in accordance with the relevant ESC.

There is also a special transitional rule that applies when considering the position of individuals and their partners who return to the UK in 2013/14 from working full time overseas.

9.3 Champions League Final 2013

Nothing within the SRT legislation is to be seen as having priority over the special legislation passed in the 2012 Finance Act in relation to the Champions League Final 2013.

10. Ordinary residence

For Income Tax, CGT, IHT and (where relevant) Corporation Tax, the concept of ordinary residence has been abolished from 2013/14 onwards. The concept will, however, remain for the purposes of National Insurance and when considering tax credits. Overseas workday relief is being retained (see below).

Except where transitional provisions apply (see below), this means that now:

- only foreign domiciliaries can claim the remittance basis; and
- the attribution of income arising in foreign entities to UK residents (known as the "transfers of assets abroad code") can apply to all UK residents.

Those who were resident but not ordinarily resident in the UK at the end of 2012/13 benefit from transitional provisions, so that they should be no worse off as a result of the change:

- in all cases for tax year 2013/14;
- if the individual was not UK resident in the tax year 2010/11 but was in 2011/12, for tax years 2013/14 and 2014/15; and
- if the individual was not UK resident in 2010/11 for tax years 2013/14, to 2015/16.

In broad terms, for the years where the transitional provisions apply to them, qualifying individuals will be treated for UK tax purposes as if ordinary residence status had not been abolished.

11. Overseas workday relief

11.1 The provisions

The general rule is that the remittance basis can apply to employment income only where the foreign employment is with an overseas employer and the employment duties are wholly performed abroad (with the exception of incidental UK duties). It can be very difficult for employment income to come within the remittance basis because of this and a specific rule has always applied to mitigate the severity of the general rule for short term UK

residents. "Overseas workday relief" is the term used when referring to this relief.

Prior to 6 April 2013, "overseas workday relief" could be claimed by a remittance basis user for the tax years during which the individual remained not ordinarily UK resident. Provided the income was paid into an offshore account, it meant that the remittance basis could be claimed in connection with foreign employment duties where a single contract covered both UK and overseas duties. This relief was very valuable to internationally mobile employees (and their employers). As such, the relief has been retained but only for foreign domiciliaries.

From 6 April 2013 "overseas workday relief" can be claimed for a tax year if all of the following conditions are met:

- the individual is domiciled outside the UK;
- he or she came to the UK as an "arriver" (that is someone who had not been UK resident for any of the previous three tax years); and
- the claim relates to one of the first three tax years of UK residence (counting the year of arrival as the first year even though it is unlikely to be a full year).

Allowing relief for the first three tax years of residence, regardless of the intentions of the employee as to UK residence thereafter, is a particularly welcome change as it provides certainty and may help attract highly skilled internationally mobile workers to the UK. As a further relief for such individuals the 2013 Finance Act has enacted special rules (based on a previous Statement of Practice) to enable a simplified version of the mixed fund rules to apply, if certain conditions are met, to the offshore account into which overseas earnings are paid. These special rules are discussed in our briefing for foreign domiciliaries (available from the news section of our website).

11.2 Record keeping

RDR1 contains a section setting down the records that HMRC expect an individual claiming "overseas workday relief" to keep. It is stated that the records kept need to be sufficiently detailed to enable the individual to determine days spent working in the UK and those working abroad and that the records kept should allow the individual to:

- identify earnings he/she has received for duties carried out in the UK
- make claims under relevant double taxation agreements.

Where there are associated employments it is stated that HMRC is likely to test the arrangements and may wish to examine records referring to the location when carrying out duties of the overseas employment. Examples of records that HMRC consider might be required are:

- business diaries which show where duties were performed and the nature of duties performed;
- business emails;
- time-sheets;
- expenses claims and receipts for the reimbursement of expenses including travel costs incurred during an overseas visit;
- travel itineraries;
- boarding cards for flights in and out of the UK;
- telephone records.

It is also stated that accurate records are required showing the individual's daily location where long-term incentive plans and share-related rewards are in point (since for these too a calculation of the UK element will need to be made).

12. Practicalities

12.1 Planning

Where it is important to ensure that someone is not UK resident in 2013/14, it might be possible to plan now so as to ensure that he or she is able to meet one of the "automatic overseas" tests.

Reducing the day count to fewer than 16 days (or fewer than 46 days for "arrivers") for 2013/14 may not be practical. However, where there is work overseas it might be possible to qualify for automatic non-UK residence under the full-time overseas test. The increase to 30 allowable UK days may be very helpful in this respect.

Meeting one of the "automatic overseas" tests would be ideal. Where this is not possible, and non-UK residence is important, it is critical to avoid meeting one of the "automatic residence" tests. The 183 UK days test is well known, so should not catch anyone out. It also seems unlikely that the test of full time work in the UK will be met inadvertently.

The "only home in the UK" test could, however, be a problem even where an individual spends most of his or her time travelling abroad, as their way of life may mean that they do not have an overseas home. If establishing an overseas home is not possible, and

UK days cannot be restricted so as to meet one of the automatic overseas residence tests, steps should be taken to ensure there is no UK home (remembering that extended or repeated use of the same hotel could cause it to be considered a home).

Where there is both a UK home and a home overseas it will be crucial to ensure that sufficient time is spent in the home overseas. Particular care will be required if there is a UK home and the only overseas home is disposed of. To avoid inadvertent difficulties, advice should be taken in advance prior to any changes being made to the number of homes in existence or to the way those homes are used.

Where it is clear that none of the automatic tests will be met, consideration has to be given to the number of days an individual would like to spend in the UK and whether UK ties need to be severed, so as to ensure that he or she remains non-resident.

For 2013/14, ties may already have been brought into being. To avoid UK residence it might now be necessary to reduce future UK days in the current year (although it is still not too late for 2013/14 to ensure the country tie is not met). Cutting ties would be helpful so as to allow a higher UK day count in 2014/15.

In some cases the SRT will provide greater freedom, as those who have very few UK ties (particularly where they come within the "arrivers" category) will be able to spend more days in the UK and remain conclusively non-resident than would be considered wise under the old rules. For others, change might be required with a choice having to be made between cutting down UK ties, the number of days spent in the UK in the tax year or a combination of both.

There may be times when an individual cannot afford to have both the family tie and the accommodation tie. It may be that it is not practical to take steps to avoid the family tie. In such circumstances it would be very easy for the individual to be caught out by acquiring an accommodation tie through use of accommodation relating to their spouse/civil partner/cohabitee. To avoid this the individual should only use hotel rooms (remembering to stay at a range of different hotels).

12.2 Record keeping

Both RDR1 and RDR3 make it clear that HMRC expects individuals to retain records and documents in order to support the underlying factual matrix of assertions that go into their determination of UK residence status. The specific evidence required will depend on the specific factual assertion. The following subsections summarise the HMRC commentary on what are potentially the most problematic evidential issues that individuals may have.

12.2.1 Day count

In terms of day count as well as keeping a detailed record of which countries he or she has spent days and midnights in an individual is advised to retain travel details (if booked on-line this would include email confirmations), booking information, tickets and boarding cards (where these are given out).

Where an individual wants to claim that a day or days should be disregarded due to exceptional circumstances the individual is advised to record the time spent in the UK owing to exceptional circumstances, what the exceptional circumstances were, and (where possible), what the individual did to minimise the time spent in the UK (for example, making alternative travel arrangements).

12.2.2 "Home" and "available accommodation"

Details are given about the evidence that HMRC will look for to establish when an individual is using a particular residence as a "home". The guidance, within both RDR1 and RDR3, states that the following information, whilst not definitive, will help establish the facts:

- When the individual is present in the property.
- How long the individual has owned, rented or used the property.
- Any time the property was unavailable for use by the individual, for example because it was rented out.
- General overheads - utility bills may demonstrate that an individual has been present in that property, for example, telephone bills or energy bills, which demonstrate usage commensurate with living in the property.
- TV/satellite/cable subscriptions.
- Local parking permits (or, conversely, formal notification that a vehicle is off-road).
- Membership of clubs, for example sports, health or social clubs.
- Mobile phone usage and bills pointing to the individual's presence in a country.
- Lifestyle purchases pointing to the individual spending time in the property – for example, purchases of food, flowers and meals out.

- Presence of the individual's spouse, partner or children.
- Engagement of domestic staff or an increase in their hours.
- Security arrangements.
- Increases in maintenance costs or the frequency of maintenance, for example having the property cleaned more frequently.
- Insurance documents relating to the property.
- Formal notification that a vehicle in the UK is 'off road'.
- Re-directed mail requests.
- The address to which personal post is sent.
- The address at which the individual's driving licence is registered.
- Bank accounts and credit cards linked to the address and statements which show payments made to utility companies.
- Evidence of local municipal taxes being paid.
- Whether the individual has registered at the address with local medical practitioners.
- What private medical insurance the individual has, is it an international policy?
- Credit card and bank statements, which indicate the pattern and place where the individual's expenditure takes place.

In considering whether a property has either become or ceased to be a "home" HMRC will want to look at various evidence such as utility bills showing a change in usage, changes notified to municipal authorities and what has been said to the provider of the buildings and contents insurance.

12.2.3 Working hours and location of work

The HMRC Guidance, within both RDR1 and RDR3, states that the following records should be kept where working in the UK or abroad is relevant to an individual's residence status:

- The split in the individual's working life between the UK and overseas (including training, being on standby and travelling), recording days on which more than three hours of UK work was carried out.
- The nature and duration of the work done. A work diary/calendar or timesheet is likely to indicate this. The guidance suggests that it may be helpful to ensure the diary/timesheet entry is detailed so as to reflect hours worked and the nature of the work (for example reviewing and responding to emails, meetings, or filing travel claims).
- Details of breaks the individual has from working, for example being between jobs, and why these breaks have occurred.
- Where relevant, details of the individual's periods of annual leave, sick leave and parenting leave.
- The time (if any) that an individual spent visiting dependent children (those under the age of 18) when they are in the UK.
- Time the individual has spent in the UK owing to exceptional circumstances;
  - what the circumstances were;
  - what the individual did to mitigate them where that was possible (for example making alternative travel arrangements).
- The individual's contracts of employment and documentation/communications that relate to these (particularly to curtailment or extension of the employment terms or other changes to them).

12.2.4 Other information

RDR1 suggests that various other information should be kept depending on the individual's specific circumstances.

- If the individual leaves the UK to live or work abroad in the tax year, then:
  - the date he/she left the UK;
  - visa or work permit applications (if these were required);
  - contracts of employment.
- If the individual comes to live or work in the UK in the tax year, then:
  - the date he/she arrived in the UK;
  - visa or work permit applications (if these were required);
  - documentation relating to the individual taking up employment or ceasing his/her previous employment.

- Where the individual has a home or available accommodation in the tax year:
  - when he/she was present at his/her home or homes, or other available accommodation
  - how long he/she owned or rented those homes, for example when he/she purchased, sold or leased those homes; and
  - any time the home was unavailable for his/her use, for example because it was rented out.
- Where the country tie is in point, details of which countries the individual has spent days and midnights in during the tax year are required meaning that the following documentation is required:
  - travel details;
  - booking information;
  - tickets and boarding cards.

12.3 The wider anti-avoidance provisions

When contemplating a period of short-term non-UK residence after 6 April 2013, the additional anti- avoidance provisions (see section 8) need to be taken into account and factored into any cash flow forecast that might be prepared.

12.4 Where an individual wants to be UK resident

In some cases UK residence may be desirable but the individual may not meet any one of the automatic residence tests and may have very few UK ties (and may not be in a position to establish additional ties). In such cases from 2013/14 onwards it may be necessary for the individual to increase their UK days in order to be UK resident under the SRT.

Where it is matters for tax purposes it is just as necessary for an individual to take advice to ensure UK residence is retained as when an individual is trying to shed their UK residence status.

13. Next steps

Individuals affected by the SRT will be particularly those who:

- want to become non-resident for UK tax purposes, or ensure that they remain so; or
- intend to become UK resident (or indeed, want to ensure that they remain so).

All such individuals should consider the impact of the SRT. Given the potential complexities specialist advice is recommended, so if UK residence status is important to you please get in touch with your usual Rawlinson & Hunter contact.

The information contained in this briefing does not constitute advice and is intended solely to provide the reader with an outline of the provisions. It is not a substitute for specialist advice in respect of individual situations.

Rawlinson & Hunter is a partnership registered to carry on audit work in the UK and Ireland and regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales. Details about our audit registration can be viewed at www.auditregister.org.uk under reference C005362660 for the UK and at www.cro.ie/auditors under reference EWC005362660 for Ireland.

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