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## Statutory residence test - United Kingdom

**Following the high profile Gaines Cooper judgement, the residence test in the UK is undergoing a long awaited clarification process.**

### Background

The government announced in the 2011 Budget that it would publish a consultation on a statutory residence test for tax purposes. That consultation has concluded, and following an assessment of the issues raised in the responses to the consultation, the Government reaffirmed its commitment to the legislation, but has decided that it will be deferred until 6th April 2013.

The proposed statutory residence test will apply:

- Only to individuals, not companies.
- Only for the purposes of income tax, capital gains tax ("CGT") and inheritance tax. It will not, therefore, affect existing definitions for the purposes of national insurance contributions or other non-tax purposes.

The test consists of three parts.

- Individuals will always be non-resident if they fall within Part A. If they do not fall within Part A, they will always be resident if they fall within Part B. That is, Part A and Part B are not mutually exclusive, but Part A prevails.
- Individuals who fall within neither Part A nor Part B will be resident if they satisfy the required number of connection factors in Part C. The required number varies according to days spent in the UK in the tax year concerned.
- Part C is designed to make it more difficult to become non-resident when leaving the UK after a period of residence than to become resident when arriving in the UK. The number and weight of connection factors is therefore different for those arriving and leaving.

### Part A - conclusive non-residence factors

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

- They were not resident in the UK in any of the previous three tax years and were present in the UK for fewer than 45 days in the current tax year.
- They were resident in the UK in one or more of the previous three tax years but were present in the UK for fewer than ten days in the current tax year.
- They left the UK to carry out full-time work abroad, provided they:
  - They are present in the UK for fewer than 90 days in the tax year; and
  - They spend no more than 20 days working in the UK in the tax year.

An individual who does not satisfy any of these conditions should move on to Part B.

## Part B - conclusive residence factors (subject to Part A)

If Part A does not apply, an individual is resident in the UK for a tax year if they meet any of the following conditions:

- They were present in the UK for 183 days or more in the tax year.
- They have only one home and that home is in the UK, or they have two or more homes and all of these homes are in the UK.
- They carry out full-time work in the UK.

An individual who does not satisfy any of the conditions in Part A or Part B should move on to Part C.

## Part C - connection factors

If an individual does not fall within either Part A or Part C of the test, they must consider whether the connection factors in Part C apply.

Arrivers and leavers

Part C of the test distinguishes between:

- Arrivers - individuals who were not UK resident in any of the previous three tax years.
- Leavers - individuals who were resident in one or more of the previous three tax years.

The first four connection factors apply to both arrivers and leavers:

- Family. The individual's spouse, civil partner or common law equivalent (if not separated from them) or minor children (those under 18) are resident in the UK.
- Accommodation. The individual has accessible accommodation in the UK and makes use of it during the tax year, subject to exclusions for some types of accommodation.
- Substantive work in the UK. The individual does substantive work in the UK (but does not work in the UK full time, which would make him resident under Part B of the test).
- UK presence in previous tax years. The individual spends 90 days or more in the UK in either of the previous two tax years.

The fifth connection factor applies only to leavers:

- More time in the UK than in other countries. The individual spends more days in the UK in the tax year than in any other single country.

## Table - connection factors required to be UK resident

Days spent in UK	Number of connection factors required to be UK resident	
	Arrivers	Leavers
Fewer than 10 days	Always non-resident under Part A	Always non-resident under Part A
10-44 days	Always non-resident under Part A	4 or more
45-89 days	4	3 or more
90-119 days	3 or more	2 or more
120-182 days	2 or more	1 or more
183 days or more	Always resident under Part B	Always resident under Part B

## Definitions

Accommodation. This means residential property that is:

- accessible to be used by an individual as a place of residence; and
- used by the individual or their family as a place of residence.

There are specific exclusions for accommodation provided by an employer that is also used by other employees not connected to the individual, short leases, accommodation accessible to the individual's minor child as a student at a UK educational establishment, short-term hotel accommodation and temporary lodging with relatives.

Day of presence in the UK. There will be no change to the rule based on presence in the UK at midnight at the end of a day, or to the rules on transit (i.e. time spent in the UK purely whilst in transit to another country).

Family. An individual has family in the UK in a tax year if either of the following applies:

- the individual's spouse, civil partner or common law equivalent is resident in the UK for any part of that tax year, unless separated from the individual under a court order or separation agreement, or where the separation is likely to be permanent; or
- the individual's minor children are resident in the UK and the individual spends time with those children, or lives with them, for any part of 60 days or more (in the UK or elsewhere) during that tax year. A child whose residence is mainly caused by time spent at a UK educational establishment will not be treated as resident if the child spends fewer than 60 days in the UK when not present at the establishment and the child's main home is not in the UK.

The terms "common law equivalent" and "main home" are not defined.

Full-time work abroad. The individual must work abroad for at least 35 "combined total hours" per week (on average if self-employed) for at least one full tax year. (This suggests that at least 35 hours must actually be worked, making the test more stringent than the test below for full-time work in the UK.)

Full-time work in the UK. The individual must work in the UK for at least 35 "combined contracted hours" per week (on average if self-employed) for a continuous period of more than 9 months and undertake no more than 25% of the duties outside the UK during that period.

Only home. A single home that is UK, or two or more homes that are all in the UK. There is no definition of "home".

Substantive employment (including self-employment). This means working in the UK for 40 or more days in the tax year. It can include days on which the individual is not present in the UK at the end of the day.

Working day. Only days on which the individual works for at least three hours count. This can include days on which the individual is not present in the UK at the end of the day.

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