

FINANCE ACT 2013 — STATUTORY RESIDENCE TEST [UPDATED]

Tolley® Guidance

August 2013

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Finance Act 2013 — statutory residence test [updated]

Produced by Tolley

[UPDATED 2: This news item was updated on 19 July 2013 for Royal Assent to Finance Bill 2013.]

[UPDATED: This news item was updated on 12 July 2013 for the amendments tabled by the Government on 13 June and which were agreed on 18 June. For a summary of the changes see the [Government amendments to the statutory residence provisions](#) news item. Note that, as a result of amendments to the Bill during the parliamentary process, the statutory residence test provisions are now contained in Schedule 45 rather than Schedule 43.]

Residence is one of the two key factors that needs to be considered when deciding whether, or to what extent, an individual is liable to tax in the UK. The other factor being domicile. The concept of ordinary residence was abolished from 6 April 2013 (subject to transitional provisions). See the [Finance Act 2013 — abolition of the concept of ordinary residence \[updated\]](#) news item.

From 6 April 2013, residence is decided by applying a statutory test. This news item covers the differences between the [Finance Act 2013](#) version of the legislation published on 28 March 2013 (as amended on 18 June 2013) and the version published on 11 December 2012. This news item also provides further detail of the statutory provisions with references to the guidance issued by HMRC on 8 May 2013.

For details of the other provisions contained within the [Finance Act 2013](#) in relation to residence, see the following news items:

- [Finance Act 2013 — codification of split year treatment for residence \[updated\]](#)
- [Finance Act 2013 — temporary non-residence application to income and gains \[updated\]](#)

Note that both the split year and temporary non-residence rules will very frequently need to be considered, as well as the statutory residence test rules, in order to work out the taxpayer's position.

The position for many individuals will be very complicated. HMRC published an [on-line residence indicator](#) on 31 May 2013, which gives an 'indication' of a person's residence position. However, this first version does not deal with the interactions between the statutory residence test and the split year and temporary non-residence rules (although this may follow in a later version).

The statutory residence test came into effect following Royal Assent to Finance Bill 2013 and has retrospective application from 6 April 2013. It applies for income tax, capital gains tax, inheritance tax and corporation tax (to the extent that the residence status of individuals is relevant to the latter two taxes). The statutory residence test will not be used for national insurance purposes.

[FA 2013, s 215](#) and [Sch 45, para 153](#)

This news item is only intended to be a summary of the rules governing the statutory residence test and is not a substitute for reading the Finance Act 2013 provisions in relation to each point which is relevant to your client(s).

Differences from the second version of the draft legislation

There are differences between [Finance Act 2013, Sch 45](#) and the [second version](#) of the draft legislation, which include:

- automatic UK test - the definition of 'full-time' for the working in the UK test has been significantly amended. In fact the term 'full-time' has been dropped altogether. Instead the average hours worked in the UK is assessed over a 365 day period (weekly UK hours of 35 or more are sufficient). This requires strict contemporaneous record keeping by the individual
- automatic UK test - amendment of the 'home in the UK' test
- automatic UK test - amendment of the test which applies if the individual dies in the tax year to include a condition which applies if the individual had a home overseas in the period to the date of death
- automatic overseas test - again, the definition of 'full-time' for the working abroad test has been significantly amended. Instead of using the term 'full-time' the average hours worked abroad is assessed over the tax year (weekly overseas hours of 35 or more are sufficient)
- automatic overseas test - the addition of a new test relating to the year of death (taking the total number of tests to five)
- international transport workers - this term has been removed and the definition of people caught by this anti-avoidance rule has been relaxed
- the transitional provisions have been extended due to amendments to the Sch 45, Part 3 (split year treatment)

These changes are discussed further below.

Overview of the statutory residence test

The statutory residence test is a three part test: an automatic non-residence test (not a statutory term), an automatic residence test and a sufficient ties test.

The basic rule is that an individual is UK resident for a tax year if:

- the automatic residence test is met for the year, or
- the sufficient ties test is met for the year

[FA 2013, Sch 45, para 3](#)

The automatic resident test is met for the tax year if the individual meets:

- at least one of the automatic UK tests, and
- **none** of the automatic overseas tests

[FA 2013, Sch 45, para 5](#)

The sufficient ties test is met for the tax year if the individual:

- meets **none** of the automatic UK tests and **none** of the automatic overseas tests, but
- has sufficient UK ties for that year

[FA 2013, Sch 45, para 17](#)

Therefore, an individual cannot be UK resident if he meets any of the automatic overseas tests — because he cannot also fall within either the automatic residence test or the sufficient ties test.

The place to start when determining residence status under the statutory residence test is with the automatic overseas tests. You then move to considering the automatic UK tests. If none of the automatic overseas tests and none of the automatic UK tests are met you then need to consider the sufficient ties test.

The automatic overseas tests, automatic UK tests and sufficient ties tests are all considered in detail below.

Note that the conditions of the tests are modified for those who work on ships, planes or lorries. These people were known as 'international transport workers' under previous draft versions of the legislation, but are referred to in [Finance Act 2013, Sch 45](#) as people with a 'relevant job' on board a vehicle, aircraft or ship.

Automatic overseas test

There are five automatic overseas tests, which are that the individual:

1. was resident in the UK for one or more of the previous three tax years and is present in the UK for fewer than 16 days in the current tax year (and it is not the year of death)
2. was not resident in the UK for all of the previous three tax years and he is present in the UK for fewer than 46 days in the current tax year
3. meets the 'work abroad' test *

4. dies in the tax year having spent fewer than 46 days in the UK and was not resident in the UK in both of the two previous tax years
5. dies in the tax year and would have been treated as meeting the working abroad test if the conditions were modified to take into account the death (and conditions are met as to his residence status in the previous two years)

[FA 2013, Sch 45, paras 11-16](#)

* This test has been revised in the [Finance Act 2013](#) and is discussed below.

If any of these tests are met then the individual is not resident in the UK in that tax year.

[FA 2013, Sch 45, paras 3-5](#) as read with para 17

See the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item for the definition of 'work' and for how day-counting works. In particular, be aware that there are stricter deeming rules for the main tests than apply for the UK presence tie for the sufficient ties test set out later in this news item.

Work abroad

See the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item for the definition of 'work'.

In order for the 'work abroad' condition to be met, the individual must:

- 'work' sufficient hours abroad (assessed over the tax year)
- have no significant breaks (31 continuous days or more) from the overseas 'work'
- spend no more than 30 days 'working' in the UK in the tax year, and
- be present in the UK for fewer than 91 days in the tax year (not including days deemed to be spent in the UK under the anti-avoidance rule discussed in 'day-counting' in [the Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item)

[FA 2013, Sch 45, para 14; HMRC guidance](#) , para 1.5

Note that although the term 'full-time' has been removed from this test in [Finance Act 2013](#), you still need to determine whether the person works an average of 35 hours per week abroad over the course of the tax year by applying the five step calculation in FA 2013, Sch 45, para 14(3). Any hours worked abroad on days where more than three hours' work is performed in the UK are disregarded.

See the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item for details of how to calculate whether the individual has worked sufficient hours.

The difficulty with this 'sufficient hours' calculation is not the calculation itself but the enormous amount of record keeping that is required on the part of the taxpayer. The taxpayer needs to keep a daily working hours timesheet, noting whether this work was performed in the UK or abroad and whether it is performed during occasions of business travel. The taxpayer needs to have at least a basic knowledge of the definition of work for the statutory residence test so that he can keep sufficient details in the timesheet to enable his adviser to apply the test. The level of record keeping required is exceedingly onerous and will be more difficult for those who are not already used to keeping timesheets.

Note that the conditions for work abroad do not match the conditions for work in the UK and that the 'work abroad' test does not apply to those who have a 'relevant job' on board a vehicle, ship or aircraft. These rules are covered towards the end of this news item.

[FA 2013, Sch 45, para 14\(4\)](#)

Automatic UK tests

There are four automatic UK tests. As stated at the beginning of this news item, the individual is UK resident if he meets any one of these tests, and does not meet any of the automatic overseas tests. The tests are that the individual:

- is present in the UK for 183 days or more in the tax year
- has a 'home' in the UK *
- carries out 'work in the UK', * or
- dies in the tax year, has a home in the UK and was resident in the UK for the previous three tax years (and the immediately preceding year was not a split year). Note that there is no requirement that the person is actually present in the UK in the year of death *

[FA 2013, Sch 45, paras 6-10](#)

* These tests have been revised in [Finance Act 2013](#) and are discussed below.

Again, see the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item for the definition of 'work' and for how day-counting works. As pointed out above, there are stricter deeming rules for the main tests than apply for the UK presence tie for the sufficient ties test set out later in this news item.

Home in the UK

This test has been revised again in [Finance Act 2013](#). The test is met if all of the following three conditions are met:

1. the individual has a home in the UK for all or part of the tax year
2. he is 'present' at that UK home (whilst it is his home) for a total of at least 30 days during the tax year
3. there is at least one period of 91 consecutive days:
 - a) which occurs while the individual has that UK home
 - b) where at least 30 days of that 91 day period falls in the tax year, and
 - c) where throughout that 91 day period the individual (i) has no home overseas or (ii) has one or more home(s) overseas but where he is 'present' there for a total of fewer than 30 days during the tax year

[FA 2013, Sch 45, para 8](#); [HMRC guidance](#) , paras 1.22-1.23

See [Example 1](#). Other examples can be found in the [HMRC guidance](#) (examples 4 to 7).

In relation to (3)(c) in the above list, that condition will be met if either (i) or (ii) or a combination of the two is met during the 91 day period.

The individual is 'present' in the home if he is there at any point during the day, no matter how short the length of time.

[FA 2013, Sch 45, para 8\(4\), \(5\)](#)

If the individual has more than one home in the UK, the test must be applied to each home separately (not in aggregate). This means those with more than one home in the UK could spend time in a number of homes in succession and not be caught by this rule as any home in which the individual is present for less than 30 days in the tax year is ignored. Similarly, presence in any place which is not considered a 'home' is ignored.

[FA 2013, Sch 45, para 8\(8\)](#); [HMRC guidance](#) , paras 1.29-1.30

See the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item for the definition of 'home'.

You may find the flowcharts on page 19 of the [HMRC guidance](#) useful in applying the home in the UK test.

Working in the UK

See the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item for the definition of 'work'.

This test is satisfied if the individual:

- 'works' sufficient hours in the UK as assessed over a period of 365 days and part of this period falls into the tax year
- has no significant breaks (31 continuous days or more) from UK 'work', and
- 'works' for more than three hours in the UK for more than 75% of the working days (a work day is a day on more than three hours' work is performed)

[FA 2013, Sch 45, para 9](#); [HMRC guidance](#), paras 1.33

Note that although the term 'full-time' has been removed from this test in [Finance Act 2013](#), it is used in the [HMRC guidance](#) and, since the aim is to determine whether the person works an average of 35 hours or more per week in the UK by applying the five step calculation in [FA 2013, Sch 45, para 9\(2\)](#), this is most people's understanding of full-time. Any hours worked in the UK on days where more than three hours' work is performed overseas are disregarded.

See the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item for details of how to calculate whether the individual has worked sufficient hours.

As noted above in connection with the working abroad test, the real difficulty with this 'sufficient hours' calculation is the staggering amount of record keeping that is required on the part of the taxpayer. The guidance above regarding timesheets also applies to this working in the UK test.

It is important to be aware that the working hours need to be assessed over "any given period of 365 days" and, per para 9(1)(c), this test is assessed if **any** part of the 365 day period falls in the tax year (even if this is only one day). On this basis, the taxpayer will need to continually assess this every day until the test is satisfied. At the point the test is satisfied, it can be ignored for the rest of the tax year. The test needs to be reassessed at the start of the next tax year, at which point the review cycle begins again.

[FA 2013, Sch 45, para 9\(2\)](#)

Also, it is easy to forget the 75% condition. If there is a period of 365 days when the taxpayer worked sufficient hours in the UK, but he does not then meet the 75% condition relating to that 365-day period, you must consider whether there is another 365-day period (of which part falls into the tax year) when he does meet the 75% test. If there is no such period, the working in the UK test is not met. See [Example 2](#) and Examples 10-11 of the HMRC guidance.

[HMRC guidance](#) , paras 1.34

Note that the conditions for working in the UK do not match the conditions for working abroad and that the 'working in the UK' test does not apply to those who have a 'relevant job' on board a vehicle, ship or aircraft. These rules are covered towards the end of this news item.

[FA 2013, Sch 45, para 9\(3\)](#)**Dies in the tax year**

This test was revised by a Government amendment to the Finance Bill which was tabled and approved in June 2013. For details of the test and the new condition which applies if the individual had a home overseas in the period to the date of death, see the Government amendments to the statutory residence provisions news item.

[FA 2013, Sch 45, para 10](#)**Sufficient ties test**

It is only if none of the automatic overseas tests and none of the automatic UK tests are met that you need to consider the sufficient ties test. Under the sufficient ties test, the individual's connecting factors with the UK must be taken into account along with the number of days spent in the UK in the tax year.

The connecting factors are:

- family — the individual's spouse / civil partner / common law partner / minor children are resident in the UK ([FA 2013, Sch 45, paras 32-33](#); [HMRC guidance](#) , paras 4.1-4.9, Annex C)
- accommodation — the individual has accessible accommodation in the UK and makes use of it during the tax year (see below) ([FA 2013, Sch 45, para 34](#); [HMRC guidance](#) , paras 4.10-4.14, Annex A)
- work — the individual does at least 40 days 'work' in the UK in the tax year (see the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) for the definition of 'work') ([FA 2013, Sch 45, para 35](#); [HMRC guidance](#) , para 4.15)
- UK presence in previous tax years — the individual spent more than 90 days in the UK in either or both of the previous two tax years (see the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item for details of day-counting) ([FA 2013, Sch 45, para 37](#); [HMRC guidance](#) , para 4.16)
- 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 (this connecting factor only needs to be considered in relation to 'leavers', see below) ([FA 2013, Sch 45, para 38](#); [HMRC guidance](#) , paras 4.17-4.18)

[FA 2013, Sch 45, para 31](#)

The application of the sufficient ties test depends on the individual's previous UK residence.

If the individual was not UK resident in any of the three preceding tax years, the number of days he can spend in the UK is higher than if he was resident during one or more of those years. The original consultation document called the first group 'arrivers' and the second group 'leavers', although these labels may cause confusion where the person is neither an arriver nor a leaver (eg when deciding the residence of someone who arrived in the UK in the previous tax year).

A table showing the interaction between the two is set out below:

| | Not UK resident in any of the three preceding tax years ('arrivers') | Resident in the UK for one or more of the three preceding tax years ('leavers') |
|--------------------|--|---|
| Fewer than 16 days | Always non-resident | Always non-resident |
| 16-45 days | Always non-resident | Resident if four or more connecting factors |
| 46-90 days | Resident if four connecting factors | Resident if three or more connecting factors |
| 91-120 days | Resident if three or more connecting factors | Resident if two or more connecting factors |
| 121-182 days | Resident if two or more connecting factors | Resident if one or more connecting factors |
| 183 days or more | Always resident | Always resident |

[FA 2013, Sch 45, paras 18-19](#)

This table should be adjusted when applying the sufficient ties test in the year of death. See Tables C and D of the [HMRC guidance](#).

See the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item for how day-counting works.

HMRC has provided a list of the type of records that should be retained to support connections to the UK. See the [HMRC guidance](#), para 7.6.

Accommodation

The individual has UK accommodation if:

- he has a place to live in the UK
- it is available to be used by him for a continuous period of at least 91 days in the tax year, and
- he spends at least one night in it during the tax year

[FA 2013, Sch 45, para 34\(1\)](#)

There is no requirement that the individual has to own, lease or have any legal right to occupy the accommodation. The definition of a 'place to live' specifically includes the individual's home or any 'holiday home or temporary retreat (or something similar)'. HMRC states that the difference between 'accommodation' and a 'home' is that accommodation is more transient and does not require a degree of stability and permanence. See Examples A12 to A19 of the HMRC guidance. 'Home' is defined in [the Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item. For details of what is not considered accommodation, see the HMRC guidance, paras A40-A42.

[FA 2013, Sch 45, para 34\(3\),\(4\); HMRC guidance](#) , paras A27-A39

Regularly booking accommodation at the same hotel appears to be sufficient to fall within the accommodation tie. Note that gaps of fewer than 16 days mean that the whole period is treated as continuing to be available. This can quite easily distort the facts for overseas executives who spend one night in the UK every two weeks - the gap between visits will be ignored and the individual can find themselves with a UK tie.

[FA 2013, Sch 45, para 34\(1\)-\(3\)](#)

A limited exemption excludes accommodation held by close relatives which may be 'available' to the individual all year round, so long as the individual spends fewer than 16 days in that accommodation in the tax year. As a result of the exemption, the connecting factor would not be triggered by staying in the UK with parents over the Christmas period (for example). However, note that this applies only to 'close' relatives as defined. Aunts, uncles and cousins are excluded, as are children and grandchildren under the age of 18.

[FA 2013, Sch 45, para 34\(5\), \(6\)](#)

Transitional rules

In order to apply the new statutory residence test, an individual may need to know his residence status for the previous three years (and possibly for the previous five years if Case 6 applies in relation to split year treatment, see [the Finance Act 2013 — codification of split year treatment for residence \[updated\]](#) news item).

Where any of the previous tax years occur before the 2013/14 tax year, strictly the individual needs to assess his residence status under the old rules. See the [Residence](#) guidance note.

However, to provide certainty for the individual, a transitional rule allows the individual to elect to use the statutory residence test for those earlier years — but only for the purposes of working out how to apply the new test. The election is **irrevocable** and must be made by the first anniversary of the end of the relevant tax year (ie 5 April 2015 for the 2013/14 tax year). This means that separate elections will need to be made in respect of the tax years 2013/14 to 2017/18 as appropriate. The election can be made on the Tax Return for the year (provided it is submitted by the deadline for making the election) or as a stand alone election in writing. Whilst the elections for each tax year must be separate, it is possible to make them in one letter to HMRC or on the next Tax Return (which is likely to be the 2012/13 Return). Making the elections together would have the advantage of ensuring these are processed together.

[FA 2013, Sch 45, para 154; HMRC guidance](#) , paras 8.1-8.8 (note that this guidance was published prior to the June 2013 amendments to the Finance Bill)

Individuals cannot elect to use the statutory residence test to determine their actual residence status prior to 2013/14. They must use the rules in place in those earlier years.

See [Example 3](#).

People with a relevant job (ie international transport workers)

Special rules apply to a person who has a 'relevant job' on board a vehicle, aircraft and ship. These people were formerly termed 'international transport workers' by the draft legislation and this term might be useful still when explaining the rules to clients.

These people are workers (whether employed or self-employed) whose job it is to work on board a vehicle as it makes international journeys (eg airline crew, ferry staff, lorry drivers). In deciding whether the person has a 'relevant job', the legislation states that this is the case if 'substantially all of the trips made in performing these duties are ones that involve crossing international boundar[ies]'. HMRC indicates that 'substantially' is to be interpreted as being 80% or more. Incidental duties should be ignored.

[FA 2013, Sch 45, para 30; HMRC guidance](#) , paras 2.27-2.30

If an individual has a 'relevant job' **at any time in the tax year** and undertakes six or more cross-border trips which either begin or end in the UK in the tax year, then:

- the working in the UK test does not apply
- the working abroad test does not apply, and
- such workers must consider the other tests when determining their residence status

[FA 2013, Sch 45, paras 9\(3\), 14\(4\)](#)

This means that the only time that the definition of 'work' needs to be considered in relation to international transport workers is in relation to the sufficient ties test. If the international journey begins in the UK the individual is treated as having done at least three hours of work in the UK, and thus treated as having carried out a day of work in the UK. If the international journey begins overseas and ends in the UK, the individual is treated as having done three hours work overseas and so having an overseas workday. If, on the same day, the worker both starts a journey and finishes a journey in the UK then he is treated as having a UK workday. See Example 28 of the [HMRC guidance](#) . If the journey lasts more than one day, each day is considered separately. See Example 29 of the HMRC guidance.

[FA 2013, Sch 45, para 36\(3\)-\(7\)](#)

What do you need to do?

The facts and circumstances of inbound and outbound expatriates should be analysed to understand how these rules affect them and what action is necessary (or what the consequences of not taking action will mean). For example, some non-residents may need to renegotiate their UK duties with their employers in order to remain automatically non-resident.

Also, it is a good idea to start to collate information now in relation to the 2012/13, 2011/12 and 2010/11 tax years to help you decide whether it is in the client's best interest to make an election under [FA 2013, Sch 45, para 154](#) (see 'Transitional rules' above).

You may want to write to those clients who are affected to suggest a review of their circumstances in light of the statutory residence test. See the [Standard document — letter to clients regarding the statutory residence test \[updated\]](#) for sample wording, although this needs to be tailored depending on the client's circumstances. Note that this letter has been updated to reflect the [Finance Act 2013](#) legislation.

You may also wish to discuss the impact of the abolition of ordinary residence in this letter, if that is relevant to your client. See the [Finance Act 2013 — abolition of the concept of ordinary residence \[updated\]](#) news item.