

# GOVERNMENT AMENDMENTS TO THE STATUTORY RESIDENCE PROVISIONS

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## Government amendments to the statutory residence provisions

*Produced by Tolley*

On 13 June 2013 the Government tabled amendments to the provisions in Finance Bill 2013 that dealt with the statutory residence test (which includes split year treatment and temporary non-residence).

These changes relate to:

- a correction of a drafting error within the third automatic UK test (working sufficient hours in the UK)
- expansion of the fourth automatic UK test (which applies where the individual dies in the UK)
- a very minor change in the definition of accommodation for the sufficient ties test which puts the common sense interpretation of Sch 45, para 34(4) beyond doubt
- a new condition is inserted into split year treatment Case 6 (comes to the UK after ceasing to work abroad) in relation to residence status in prior years
- a correction of a drafting omission in relation to split year treatment Case 7 (accompanying a partner who comes to the UK after ceasing work abroad)
- a very minor change to the calculation of the adjusted days for the sufficient ties test for split year treatment Case 8 (so that the wording in Case 8 matches the wording in Cases 4 and 5)
- a complete change to the order of priorities to splitting the residence status in the tax year where more than one Case applies
- the extension of the transitional provisions for a further two tax years

There are no changes to the temporary non-residence provisions.

These amendments were agreed by the Public Bill Committee on 18 June 2013 and Royal Assent was given on 17 July 2013. 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.

These amendments are discussed in more detail below. [The Finance Act 2013 — statutory residence test \[updated\]](#) and [Finance Act 2013 — codification of split year treatment for residence \[updated\]](#) news items have been updated to reflect these amendments and discuss the full provisions in detail.

## Statutory residence test

The new rules are covered in detail in the [Finance Act 2013 — statutory residence test \[updated\]](#) news item. You are recommended to read that news item first before continuing as the commentary below assumes a familiarity with the rules.

## Working in the UK

There was an inadvertent error in the Sch 45, para 9(1)(e) as drafted. This meant that although the individual had to work 'sufficient hours' in the UK over a 365 day work period (part of which must fall within the tax year in question) and at least one day in the UK in that tax year must be a day on which he does more than three hours' work in the UK, there was no link between the two.

As is explained in the [explanatory notes](#) to amendment 125, this meant that the test could be satisfied if the 365 period ended in, say, May (with no days of working more than three hours in the UK in that tax year) but there was a solitary seven hour work day in the following March.

The amendment ensures that the day on which more than three hours' work is performed must fall into both:

- the 365 day period, and
- the tax year in question

## Dies in the tax year

The original FB 2013 version of the fourth automatic UK test applied if the individual:

- died in the tax year
- had 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 was no requirement that the person is actually present in the UK in the year of death.

The Government amendment adds a further condition which applies if the individual has a home overseas in which he did not spend a 'sufficient amount of time' during all or part of the tax year. This means that he was present in the home (during the time in which it was his home) for a total of fewer than 30 days during the tax year (up to and including the date of death). 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 10\(1\)\(e\), \(2\)-\(3\)](#)

If the individual has more than one home overseas, the test must be applied to each home separately (not in aggregate). As long as the individual does not spend a 'sufficient amount

of time' in each overseas home in the tax year, this condition is met. This means if that he is present in any of his overseas homes for 30 days or more in the tax year (up to and including the date of death) the condition is not met and therefore the fourth automatic UK test is not met.

[FA 2013, Sch 45, para 10\(1\)\(e\), \(4\)](#)

Essentially, the details of this new condition mirror the conditions in relation to overseas home(s) in the second automatic UK test (home in the UK), see the [Finance Act 2013 — statutory residence test \[updated\]](#) news item.

The definition of home is discussed in the [Finance Act 2013 — statutory residence test — important definitions \[updated\]](#) news item.

### **Sufficient ties test — accommodation tie**

The Government amendment to the definition of accommodation clarifies that, as far as the individual is concerned, accommodation can still be 'available' to him even if he has no legal right to occupy it. This was the way that most people had read this subsection even without the amendment, however the tweak to the language is welcome.

[FA 2013, Sch 45, para 34\(4\)](#)

### **Split year treatment**

The new rules are covered in detail in the [Finance Act 2013 — codification of split year treatment for residence news](#) item. You are recommended to read that news item first before continuing as the commentary below assumes a familiarity with the rules.

### **Case 6 — comes to the UK after ceasing to work abroad**

There are a number of conditions which must be met in order to split the UK residence status of someone who comes to the UK after ceasing work abroad. The first condition relates to the individual's residence status in the previous tax year; the individual must be not resident in the UK in the previous tax year because he worked sufficient hours abroad (ie met the third automatic overseas test), see the [Finance Act 2013 — statutory residence test \[updated\]](#) news item.

A further condition in relation to prior year residence status has been added via the Government amendment. In addition to the above, the individual must have been UK resident for one or more of the four tax years immediately preceding that previous tax year.

[FA 2013, Sch 45, para 49\(2\)](#)

On the original reading it had seemed that this Case might have been aimed at those returning to the UK after working abroad, but no part of the conditions reflected this. The amendment confirms that this Case is aimed at returners, although only those who have been outside the UK for the short to medium term. Those who have been away from the UK for longer periods will not fall within this Case.

For example, say Carol returns to the UK in the 2015/16 tax year. In order to meet the split year residence conditions for Case 6 she would have to be:

- non-resident in the UK in the 2014/15 tax year because she worked sufficient hours abroad (ie met the third automatic overseas test), and
- was resident in the UK in one or more of the tax years 2010/11 to 2013/14 inclusive

Due to this amendment, the transitional provisions have also been altered (see below).

### **Case 7 — accompanying a partner who comes to the UK after ceasing work abroad**

In order to apply Case 7, the individual may need to know whether his partner met the conditions for Case 6 in the tax year of the individual's arrival or the previous year.

The Government amendment corrects a drafting omission. Where the individual comes to the UK in 2013/14 it is impossible for the partner to have met the conditions in Case 6 in the 2012/13 tax year as the rules were not in force in that year. Therefore the Government has inserted a new transitional rule which means that in this situation the partner would need to fall within [ESC A11](#) (for income tax) and [ESC D2](#) (for capital gains tax).

[FA 2013, Sch 45, para 156](#)

### **Case 8 — starts to have a home in the UK which continues throughout the following tax year**

When deciding whether Case 8 applies, it is necessary to examine the individual's ties to the UK in conjunction with the number of days they were present in the UK in the tax year prior to the date he starts to have a home in the UK. The sufficient ties test is modified so that the limits on the UK days reflects the fact that the period under scrutiny is not a whole tax year.

The Government amendment ensures that the definition of 'A' (the numerator of the fraction that is used to calculate the limits on the number of UK days) is the same as in Cases 4 and 5, which was the original intention.

[FA 2013, Sch 45, para 51\(7\)](#)

This was the way that most people had read this subsection even without the amendment; however the tweak to the language is welcome.

### **Priority if more than one Case applies to the individual in the same tax year**

In order to decide whether a taxpayer qualifies for split year treatment in the tax year, in theory you need to consider all the Cases relating to arrival or departure as appropriate as multiple Cases may apply.

The Government amendment changes the order of priority where the individual meets the conditions for more than one Case.

Prior to the amendment, the Case which produced the shortest period of non-residence (termed the 'overseas part' in the legislation) took priority.

Under the revised rules, when an individual leaves the UK the priority between Cases is specified. A Case earlier in the list has priority over a Case later in the list. The order which applies is:

- a) Case 1
- b) Case 2
- c) Case 3

#### [FA 2013, Sch 45, para 54](#)

This means that you may not need to actually work through every Case to see if it applies to the individual. You should consider each Case in the priority above and stop when the individual meets the conditions for that Case. So, for example, if Case 1 applies you do not need to consider Cases 2 and 3. Similarly, if Case 1 does not apply and Case 2 does, you do not need to consider Case 3.

The order which applies when an individual comes to the UK is much more complicated, and depends which combination of Cases apply. See the [Flowchart — split year treatment on arrival in the UK \(2013/14 onwards\)](#).

#### [FA 2013, Sch 45, para 55](#)

Unfortunately this means that you may have to consider all the Cases. You should use the above flowchart to determine which Cases you need to consider and at which point you can stop.

### **Transitional provisions**

In order to apply the new statutory residence test and split year Cases, an individual may need to know his residence status for the tax years prior to the introduction of the rules in 2013/14. In order to provide certainty for the individual, the transitional provisions allow 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, not for the purposes of his tax position in those earlier years.

These transitional provisions now apply up to and including the 2017/18 tax year (previously only up to the 2015/16 tax year). This is because someone who arrives in the UK will need to know his UK residency status for five tax years prior to the tax year of arrival under the amendments to Case 6 discussed above.

#### [FA 2013, Sch 45, para 154\(1\)\(a\)](#)

Note that if the individual arrives in the UK in 2013/14 and needs to assess his residence status in 2012/13 for the purposes of Case 6, the person will be treated as non-resident in

that year if he worked abroad full-time for the whole of the tax year. This is because the third automatic overseas test did not exist in 2012/13.

[FA 2013, Sch 45, para 154\(5\)\(c\)](#)

For further discussion of the transitional provisions, see the [Finance Act 2013 — statutory residence test \[updated\]](#) news item.

### **What do you need to do?**

There are no specific recommended actions in relation to the Government amendments themselves, other than to familiarise yourself with the new rules as they are extremely complicated and, in some areas, completely counter-intuitive for advisers who have worked in this field for a number of years.

For more general commentary on the actions you may need to take in relation to the new statutory residence test, see the following news items:

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