

Status: Point in time view as at 17/07/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, PART 1. (See end of Document for details)

SCHEDULES

SCHEDULE 45 **U.K.**

STATUTORY RESIDENCE TEST

PART 1 **U.K.**

THE RULES

Introduction

- 1 (1) This Part of this Schedule sets out the rules for determining for the purposes of relevant tax whether individuals are resident or not resident in the UK.
- (2) The rules are referred to collectively as “the statutory residence test”.
- (3) The rules do not apply in determining for the purposes of relevant tax whether individuals are resident or not resident in England, Wales, Scotland or Northern Ireland specifically (rather than in the UK as a whole).
- (4) “Relevant tax” means—
 - (a) income tax,
 - (b) capital gains tax, and
 - (c) (so far as the residence status of individuals is relevant to them) inheritance tax and corporation tax.
- (5) Key concepts used in the rules are defined in Part 2 of this Schedule.

Interpretation of enactments

- 2 (1) In enactments relating to relevant tax, a reference to being resident (or not resident) in the UK is, in the case of individuals, a reference to being resident (or not resident) in the UK in accordance with the statutory residence test.
- (2) Sub-paragraph (1) applies even if the reference relates to the tax liability of an actual or deemed person that is not an individual (for example, where the liability of another person depends on the residence status of an individual).
- (3) An individual who, in accordance with the statutory residence test, is resident (or not resident) in the UK “for” a tax year is taken for the purposes of any enactment relating to relevant tax to be resident (or not resident) there at all times in that tax year.
- (4) But see Part 3 of this Schedule (split year treatment) for cases where the effect of sub-paragraph (3) is relaxed in certain circumstances.
- (5) This Schedule has effect subject to any express provision to the contrary in (or falling to be recognised and acknowledged in law by virtue of) any enactment.

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The basic rule

- 3 An individual (“P”) is resident in the UK for a tax year (“year X”) if—
- (a) the automatic residence test is met for that year, or
 - (b) the sufficient ties test is met for that year.
- 4 If neither of those tests is met for that year, P is not resident in the UK for that year.

The automatic residence test

- 5 The automatic residence test is met for year X if P meets—
- (a) at least one of the automatic UK tests, and
 - (b) none of the automatic overseas tests.

The automatic UK tests

- 6 There are 4 automatic UK tests.
- 7 The first automatic UK test is that P spends at least 183 days in the UK in year X.
- 8 (1) The second automatic UK test is that—
- (a) P has a home in the UK during all or part of year X,
 - (b) that home is one where P spends a sufficient amount of time in year X, and
 - (c) there is at least one period of 91 (consecutive) days in respect of which the following conditions are met—
 - (i) the 91-day period in question occurs while P has that home,
 - (ii) at least 30 days of that 91-day period fall within year X, and
 - (iii) throughout that 91-day period, condition A or condition B is met or a combination of those conditions is met.
- (2) Condition A is that P has no home overseas.
- (3) Condition B is that—
- (a) P has one or more homes overseas, but
 - (b) each of those homes is a home where P spends no more than a permitted amount of time in year X.
- (4) In relation to a home of P's in the UK, P “spends a sufficient amount of time” there in year X if there are at least 30 days in year X when P is present there on that day for at least some of the time (no matter how short a time).
- (5) In relation to a home of P's overseas, P “spends no more than a permitted amount of time” there in year X if there are fewer than 30 days in year X when P is present there on that day for at least some of the time (no matter how short a time).
- (6) In sub-paragraphs (4) and (5)—
- (a) a reference to 30 days is to 30 days in aggregate, whether the days are consecutive or intermittent, and
 - (b) a reference to P being present at the home is to P being present there at a time when it is a home of P's (so presence there on any other occasion, for example to look round the property with a view to buying it, is to be disregarded).

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- (7) Sub-paragraph (1)(c) is satisfied so long as there is a period of 91 days in respect of which the conditions described there are met, even if those conditions are in fact met for longer than that.
- (8) If P has more than one home in the UK—
- (a) each of those homes must be looked at separately to see if the second automatic UK test is met, and
 - (b) the second automatic UK test is then met so long as it is met in relation to at least one of those homes.
- 9 (1) The third automatic UK test is that—
- (a) P works sufficient hours in the UK, as assessed over a period of 365 days,
 - (b) during that period, there are no significant breaks from UK work,
 - (c) all or part of that period falls within year X,
 - (d) more than 75% of the total number of days in the 365-day period on which P does more than 3 hours' work are days on which P does more than 3 hours' work in the UK, and
 - (e) at least one day which falls in both that period and year X is a day on which P does more than 3 hours' work in the UK.
- (2) Take the following steps to work out, for any given period of 365 days, whether P works “sufficient hours in the UK” as assessed over that period—
- Step 1* Identify any days in the period on which P does more than 3 hours' work overseas, including ones on which P also does work in the UK on the same day. The days so identified are referred to as “disregarded days”.
- Step 2* Add up (for all employments held and trades carried on by P) the total number of hours that P works in the UK during the period, but ignoring any hours that P works in the UK on disregarded days. The result is referred to as P's “net UK hours”.
- Step 3* Subtract from 365—
- (a) the total number of disregarded days, and
 - (b) any days that are allowed to be subtracted, in accordance with the rules in paragraph 28 of this Schedule, to take account of periods of leave and gaps between employments.
- The result is referred to as the “reference period”.
- Step 4* Divide the reference period by 7. If the answer is more than 1 and is not a whole number, round down to the nearest whole number. If the answer is less than 1, round up to 1.
- Step 5* Divide P's net UK hours by the number resulting from step 4.
- If the answer is 35 or more, P is considered to work “sufficient hours in the UK” as assessed over the 365-day period in question.
- (3) This paragraph does not apply to P if—
- (a) P has a relevant job on board a vehicle, aircraft or ship at any time in year X, and
 - (b) at least 6 of the trips that P makes in year X as part of that job are cross-border trips that either begin in the UK, end in the UK or begin and end in the UK.
- 10 (1) The fourth automatic UK test is that—
- (a) P dies in year X,

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- (b) for each of the previous 3 tax years, P was resident in the UK by virtue of meeting the automatic residence test,
 - (c) even assuming P were not resident in the UK for year X, the tax year preceding year X would not be a split year as respects P (see Part 3 of this Schedule),
 - (d) when P died, either—
 - (i) P's home was in the UK, or
 - (ii) P had more than one home and at least one of them was in the UK, and
 - (e) if P had a home overseas during all or part of year X, P did not spend a sufficient amount of time there in year X.
- (2) In relation to a home of P's overseas, P “spent a sufficient amount of time” there in year X if—
- (a) there were at least 30 days in year X when P was present there on that day for at least some of the time (no matter how short a time), or
 - (b) P was present there for at least some of the time (no matter how short a time) on each day of year X up to and including the day on which P died.
- (3) In sub-paragraph (2)—
- (a) the reference to 30 days is to 30 days in aggregate, whether the days were consecutive or intermittent, and
 - (b) the reference to P being present at the home is to P being present there at a time when it was a home of P's.
- (4) If P had more than one home overseas—
- (a) each of those homes must be looked at separately to see if the requirement of sub-paragraph (1)(e) is met, and
 - (b) that requirement is then met so long as it is met in relation to each of them.

The automatic overseas tests

- 11 There are 5 automatic overseas tests.
- 12 The first automatic overseas test is that—
- (a) P was resident in the UK for one or more of the 3 tax years preceding year X,
 - (b) the number of days in year X that P spends in the UK is less than 16, and
 - (c) P does not die in year X.
- 13 The second automatic overseas test is that—
- (a) P was resident in the UK for none of the 3 tax years preceding year X, and
 - (b) the number of days that P spends in the UK in year X is less than 46.
- 14 (1) The third automatic overseas test is that—
- (a) P works sufficient hours overseas, as assessed over year X,
 - (b) during year X, there are no significant breaks from overseas work,
 - (c) the number of days in year X on which P does more than 3 hours' work in the UK is less than 31, and
 - (d) the number of days in year X falling within sub-paragraph (2) is less than 91.
- (2) A day falls within this sub-paragraph if—

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- (a) it is a day spent by P in the UK, but
- (b) it is not a day that is treated under paragraph 23(4) as a day spent by P in the UK.

- (3) Take the following steps to work out whether P works “sufficient hours overseas” as assessed over year X—

Step 1 Identify any days in year X on which P does more than 3 hours' work in the UK, including ones on which P also does work overseas on the same day. The days so identified are referred to as “disregarded days”.

Step 2 Add up (for all employments held and trades carried on by P) the total number of hours that P works overseas in year X, but ignoring any hours that P works overseas on disregarded days. The result is referred to as P's “net overseas hours”.

Step 3 Subtract from 365 (or 366 if year X includes 29 February)—

- (a) the total number of disregarded days, and
- (b) any days that are allowed to be subtracted, in accordance with the rules in paragraph 28 of this Schedule, to take account of periods of leave and gaps between employments.

The result is referred to as the “reference period”.

Step 4 Divide the reference period by 7. If the answer is more than 1 and is not a whole number, round down to the nearest whole number. If the answer is less than 1, round up to 1.

Step 5 Divide P's net overseas hours by the number resulting from step 4.

If the answer is 35 or more, P is considered to work “sufficient hours overseas” as assessed over year X.

- (4) This paragraph does not apply to P if—
- (a) P has a relevant job on board a vehicle, aircraft or ship at any time in year X, and
 - (b) at least 6 of the trips that P makes in year X as part of that job are cross-border trips that either begin in the UK, end in the UK or begin and end in the UK.

- 15 (1) The fourth automatic overseas test is that—

- (a) P dies in year X,
- (b) P was resident in the UK for neither of the 2 tax years preceding year X or, alternatively, P's case falls within sub-paragraph (2), and
- (c) the number of days that P spends in the UK in year X is less than 46.

- (2) P's case falls within this sub-paragraph if—

- (a) P was not resident in the UK for the tax year preceding year X, and
- (b) the tax year before that was a split year as respects P because the circumstances of the case fell within Case 1, Case 2 or Case 3 (see Part 3 of this Schedule).

- 16 (1) The fifth automatic overseas test is that—

- (a) P dies in year X,
- (b) P was resident in the UK for neither of the 2 tax years preceding year X because P met the third automatic overseas test for each of those years or, alternatively, P's case falls within sub-paragraph (2), and

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- (c) P would meet the third automatic overseas test for year X if paragraph 14 were read with the relevant modifications.
- (2) P's case falls within this sub-paragraph if—
- (a) P was not resident in the UK for the tax year preceding year X because P met the third automatic overseas test for that year, and
- (b) the tax year before that was a split year as respects P because the circumstances of the case fell within Case 1 (see Part 3 of this Schedule).
- (3) The relevant modifications of paragraph 14 are—
- (a) in sub-paragraph (1)(a) and (b) and sub-paragraph (3), for “year X” read “the period from the start of year X up to and including the day before the day of P's death”, and
- (b) in step 3 of sub-paragraph (3), for “365 (or 366 if year X includes 29 February)” read “the number of days in the period from the start of year X up to and including the day before the day of P's death”.

The sufficient ties test

- 17 (1) The sufficient ties test is met for year X if—
- (a) P meets none of the automatic UK tests and none of the automatic overseas tests, but
- (b) P has sufficient UK ties for that year.
- (2) “UK ties” is defined in Part 2 of this Schedule.
- (3) Whether P has “sufficient” UK ties for year X will depend on—
- (a) whether P was resident in the UK for any of the previous 3 tax years, and
- (b) the number of days that P spends in the UK in year X.
- (4) The Tables in paragraphs 18 and 19 show how many ties are sufficient in each case.

Sufficient UK ties

- 18 The Table below shows how many UK ties are sufficient in a case where P was resident in the UK for one or more of the 3 tax years preceding year X—

<i>Days spent by P in the UK in year X</i>	<i>Number of ties that are sufficient</i>
More than 15 but not more than 45	At least 4
More than 45 but not more than 90	At least 3
More than 90 but not more than 120	At least 2
More than 120	At least 1

- 19 The Table below shows how many UK ties are sufficient in a case where P was resident in the UK for none of the 3 tax years preceding year X—

<i>Days spent by P in the UK in year X</i>	<i>Number of ties that are sufficient</i>
More than 45 but not more than 90	All 4
More than 90 but not more than 120	At least 3

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More than 120

At least 2

- 20 (1) If P dies in year X, paragraph 18 has effect as if the words “More than 15 but” were omitted from the first column of the Table.
- (2) In addition to that modification, if the death occurs before 1 March in year X, paragraphs 18 and 19 have effect as if each number of days mentioned in the first column of the Table were reduced by the appropriate number.
- (3) The appropriate number is found by multiplying the number of days, in each case, by—

$$\frac{A}{12}$$

where “A” is the number of whole months in year X after the month in which P dies.

- (4) If, for any number of days, the appropriate number is not a whole number, the appropriate number is to be rounded up or down as follows—
- (a) if the first figure after the decimal point is 5 or more, round the appropriate number up to the nearest whole number,
- (b) otherwise, round it down to the nearest whole number.

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