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The New United Kingdom Statutory Residence Rules

By Alexander M. G. Gelardi

Introduction

With the global economy, many U.S. executives are sent to the United Kingdom (UK) and/or other parts of Europe to work for short-term or long-term assignments. Even if based in the United States or continental Europe, executives of multi-national corporations can often work in the UK. These executives can be resident in more than one country under the tax laws of each country in which they work. Since the UK taxes persons who are resident in the UK, it is important to ascertain whether the executive is so resident under UK law.

Before April 6, 2013, there was no statutory definition of residence in the UK. Much of the practical definition came from the courts and government's publications. There were generally two definitions: "resident" and "ordinary resident." The fiscal authority, Her Majesty's Revenue and Customs (HMRC)¹ stated its view of the definition of residency in IR20.² This publication was then updated from April 6, 2009, as HMRC6.³ At this time a major tax case concerning residency and its definition in IR20 was going through the courts eventually being finally decided in the Supreme Court.⁴ The case regarding the residency status of Robert Gaines-Cooper, who was a Seychelles resident but was found to be a resident in the UK. It was generally considered that the *Gaines-Cooper* case gave the impetus to the government to clarify the definition of resident by statute. This statute was



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the Finance Act 2013 (FA 2013).⁵ Section 218 and Schedule 45 FA 2013 set out the new statutory rules for a taxpayer to be resident in the UK. Section 219 and Schedule 46 FA 2013 removes the concept of “ordinary resident” completely.

It is important to keep in mind that the UK tax year runs from April 6 to April 5 of the following calendar year. Thus, the reference to “year” in UK tax law (and this article) is to the tax year, not the calendar year (unless otherwise indicated).

The New UK Residency Rules

The new statutory rules for residency in the UK are set out in section 218 and Schedule 45 FA2013. These rules set out who is a resident and who is a nonresident of the UK. The statute sets out a number of “UK tests” for UK residency and a number of “overseas tests” for non-UK residency. This set of tests is somewhat complex and takes up about 66 pages of legislation.

The basic rule seems quite simple stating that a taxpayer is a resident of the UK for a tax year if either of two tests are met for that year. The two tests are the “automatic residence test” and the “sufficient ties” test.⁶ However, that is not as simply as it seems. The “automatic residence test” is met if any one of the “automatic UK tests” are met, and none of the “overseas tests” are met.⁷ There are three main “automatic UK tests” plus a fourth that relates to a taxpayer who dies in the year under consideration.⁸ There are, also, three main “automatic overseas tests” plus two more relating to a taxpayer who dies in the year under consideration. The tests are to be looked at in order starting with the first “automatic UK test.” If the first “automatic UK test” is not satisfied, then three main “automatic overseas tests” are to be considered. If any of these tests are satisfied, then the taxpayer is a nonresident of the UK. If all of the three “automatic overseas tests” are not satisfied, then the second and third main “automatic UK tests” are considered. If neither of these two tests is satisfied, then the sufficient ties test is considered.⁹ See Appendix 1 for a flowchart of the decision tree.

First Automatic UK Test

The taxpayer meets the “first automatic UK test” if the time spent in the UK is 183 or more days.¹⁰ This is the most important test, and, if satisfied, the taxpayer is resident in the UK for the entire year (subject to the split-year provisions, see below).¹¹ A taxpayer is generally regarded as being in the UK for a day if he

is in the UK at the end of the day, which is generally defined as being midnight.¹² If the “first automatic UK test” is not satisfied then the three main “automatic overseas tests” are considered.

Automatic Overseas Tests

If the taxpayer meets any of the “automatic overseas tests,” then he is regarded as not being resident in the UK for the year. Thus, a taxpayer should consider these tests before considering the second and third “automatic UK tests.”

First Automatic Overseas Test

This test relates to a taxpayer who was regarded as being resident in the UK in one or more of the three prior years. If the taxpayer is in the UK for less than 16 days in the tax year under consideration, the taxpayer is not resident.¹³ This test does not apply to a taxpayer who dies in the year.

Second Automatic Overseas Test

This test relates to a taxpayer who was *not* regarded as being resident in the UK for any for the prior three years. In this test, if the taxpayer is in the UK for less than 46 days in the year, then he is not resident in the year under consideration.¹⁴ Again, this test does not apply to a taxpayer who dies in the year.

Third Automatic Overseas Test

The third automatic overseas test is mainly concerned with a taxpayer who works abroad for “sufficient hours” and has no significant breaks from the overseas work.¹⁵ There are two other conditions; the number of days spent in the UK for the year must be less than 91, and the number of days the taxpayer works for more than three hours in the UK must be less than 31.¹⁶

Sufficient Overseas Hours

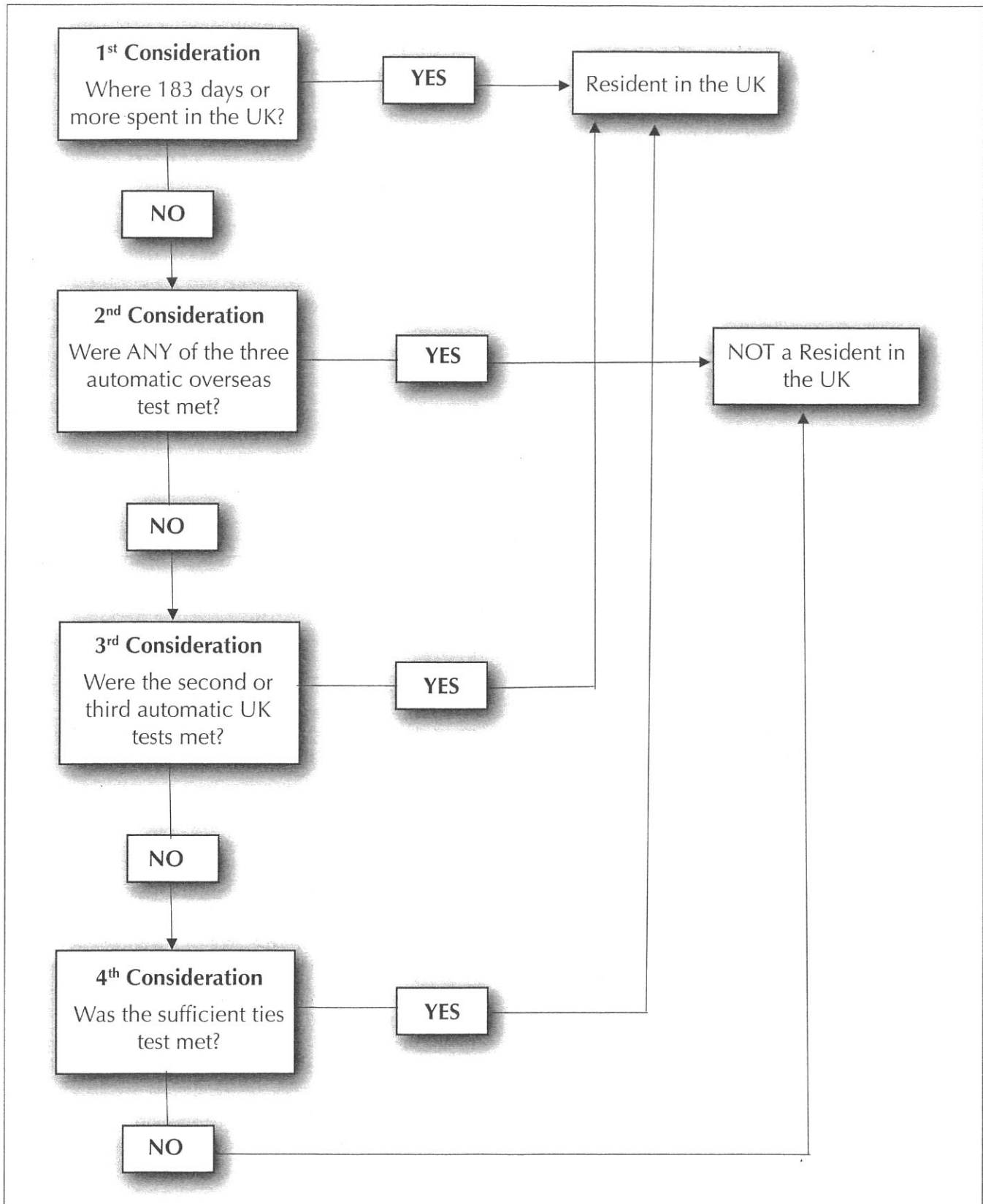
To ascertain whether a taxpayer has worked overseas for “sufficient hours,” usually at least 35 hours on average, the number of hours worked abroad is calculated using five steps.¹⁷

Step 1: The taxpayer has to identify “disregarded days;” the days on which he has worked more than 3 hours in the UK. These days can include days on which some work was also done overseas.

Step 2: Compute the “net overseas hours.” These are the total number of hours the taxpayer has worked overseas in the year (but excludes the “disregarded days” from Step 1).

APPENDIX 1

Diagram. Overview of Statutory Tests



Step 3: Compute the “reference period.” This is 365 days (366 days if the year includes February 29th). Then deduct from the 365 (or 366) any disregarded days (from Step 1) and any days that the taxpayer did not work, or could not work, due to one of the following—(a) annual vacation, (b) sick leave, due to illness or injury, (c) reasonable parenting leave, (d) gaps between employment¹⁸ (this does not apply to a self-employed taxpayer), and (e) nonworking days that are “embedded” within blocks of leave. These generally would be weekend days for a taxpayer whose normal working week is Monday to Friday and public holidays (as long as the taxpayer is not usually required to work on a weekend or public holiday).¹⁹ “Embedded” days also include nonworking days that precede or follow at least three days of annual, parental or sick leave.²⁰ As part days can be included in the calculation, if the “embedded” days due to annual, parental or sick leave do not add up to a whole number, then the number is rounded down.²¹

Step 4: Divide the “reference period” calculated in Step 3 by seven. If the answer is greater than one and not a whole number then round down. If the answer is less than one then round up to one.

Step 5: Divide the “net overseas hours,” as calculated in Step 2 above, by the number from Step 4 above. If the answer in Step 5 is 35 hours or more then the taxpayer has “sufficient overseas hours,” and the third automatic overseas test is satisfied.

A taxpayer who satisfies any of the three “automatic overseas tests” would not be resident in the UK. If none of these “automatic overseas tests” are satisfied, then the second and third “automatic UK tests” must be considered.

Second Automatic UK Test

This test applies to a taxpayer who has, or had, a home in the UK at some time during the tax year in which the taxpayer spends at least some time, not matter how short, on at least 30 days.²² That 30-day period must fall in a 91-day (consecutive) period during which the taxpayer has the UK home and either does not have a home overseas, or, if he has one or more homes overseas, does not spend more than a “permitted amount of time” in the overseas home or homes.²³ The 91-consecutive-day period does not have to fall within one tax year, but the 30-day period does. No more than a “permitted amount of time” in the overseas home or homes means the taxpayer is present less than 30 days in the home or homes in the year.²⁴ The 30 days referred to in this “second

automatic UK test” need not be consecutive.²⁵ If the taxpayer has more than one UK home, this “second automatic UK test” is to be considered separately for each UK home.²⁶ If one UK home satisfies the test, then that is sufficient for the test to be satisfied. If the “second automatic UK test” is satisfied then the taxpayer is resident in the UK. If “second automatic UK test” is not satisfied, the taxpayer must consider the “third automatic UK test.”

The Third Automatic UK Test

The third automatic overseas test is mainly concerned with a taxpayer who works in the UK for “sufficient hours” over a 365-day period (all or part of which falls within the tax year) and has no significant breaks from the UK work.²⁷ At least 75 percent of the total days in the 365-day period must be days on which the taxpayer works more than three hours in the UK.

For example, Joan is transferred from the United States to the UK and arrives there on August 4, 2014. She begins the job on August 5, 2014. The transfer ends on July 31, 2015, and she leaves the UK on August 15, 2015, 376 days after her arrival in the UK. Using a 365-day period from August 4, 2014, to August 4, 2015, Joan calculates that she worked full-time in the UK without taking any significant breaks. Part of the period of 365 days falls within the 2014-2015 tax year and part falls within the 2015-2016 tax year. During that 365-day period, Joan calculates that she has for over three hours on 260 days, of which 221 days she worked in the UK for more than three hours. Therefore, Joan has worked in the UK for more than three hours for 85 percent of the 260 days. At least one day when she does more than three hours work in the UK falls within the tax year 2014-2015 therefore Joan is resident in the UK under the third automatic UK test for tax year 2014-2015. Also, as part of the 365-day period falls in the 2015-2016 tax year and as Joan had at least one day on which she worked in the UK for more than three hours she meets the third automatic UK test for that year as well.

“Sufficient UK hours” is calculated using the five steps as were used in calculating the “sufficient overseas hours” in the “third automatic overseas test,” except the work is in the UK and not overseas. At least 35 hours per week on average has to be worked in the UK.

Step 1: The taxpayer has to identify “disregarded days;” the days on which he has worked more than 3 hours overseas. These days can include days on which some work was done in the UK.

Step 2: Compute the "net UK hours." These are the total number of hours the taxpayer has worked in the UK in the year (but excludes the "disregarded days" from Step 1).

Step 3: Compute the "reference period." This is calculated in the same manner as set out in Step 3 of the "sufficient hours" of the "third automatic overseas test" above. As before, this is 365 days (366 days if the year includes February 29th) less any "disregarded days" (from Step 1) and any days that the taxpayer did not work, or could not work for the same reasons as set out previously.

Step 4: Divide the "reference period" calculated in Step 3 by 7. If the answer is greater than one and not a whole number then round down. If the answer is less than one then round up to one.

Step 5: Divide the "net UK hours," as calculated in Step 2 above, by the number from Step 4 above. If the answer in Step 5 is 35 hours or more then the taxpayer has "sufficient UK hours" and, if all the other conditions are met, the "third automatic UK test" is satisfied.

If none of the UK or the overseas automatic tests is satisfied, the taxpayer needs to consider the "sufficient ties test."

The Sufficient Ties Test

The "sufficient ties test" establishes whether the taxpayer has sufficient ties to be regarded as resident in the UK. The test is based on the number of days in the UK and the number of ties.²⁸ The number of ties

needed to be UK resident is dependent on whether the taxpayer was resident in one or more of the three years prior to the year in question.²⁹ See Tables 1 and 2 in Appendix 2.

UK Ties

If the taxpayer was resident in the UK in one or more of the prior three years then the ties to be considered are: (a) a family tie, (b) an accommodation tie, (c) a work tie, (d) a 90-day tie and (e) a country tie.³⁰ If the taxpayer was not resident in the UK in any of the prior three years, the ties are (a) to (d) only.³¹ In other words, the country tie does not apply to this latter situation.

Family Tie

The taxpayer has a family tie if he has a relevant relationship with a person who is resident in the UK for tax purposes.³² A relevant relationship means the taxpayer has a spouse (or civil partner) or lives with another person as husband and wife, or as a civil partner. If the spouses or civil partners are separated by court order, deed of separation or in a way this is likely to be permanent, then there is no relevant relationship.³³

There is also a family tie if the taxpayer has a child who is under 18 years of age who is resident in the UK, and the taxpayer sees the child in the UK for all, or part, of at least 61 days.³⁴ If the child is in full-time education in the UK and spends less than 21 days in the UK outside term time, that child is not regarded as being resident in the UK.³⁵

APPENDIX 2

Table 1. Taxpayer was resident in the UK in at least one of the prior three years.

Days in the UK in the year	No UK ties	One UK tie	Two UK ties	Three UK ties	Four or more UK ties
15 days or less	Nonresident	Nonresident	Nonresident	Nonresident	Nonresident
16 to 45 days	Nonresident	Nonresident	Nonresident	Nonresident	Resident
46 to 90 days	Nonresident	Nonresident	Nonresident	Resident	Resident
91 to 120 days	Nonresident	Nonresident	Resident	Resident	Resident
121 to 182 days	Nonresident	Resident	Resident	Resident	Resident
183 or more days	Resident	Resident	Resident	Resident	Resident

Table 2. The taxpayer was NOT resident in the UK in any of the prior three years.

Days in the UK in the year	No or One UK tie	Two UK ties	Three UK ties	Four or more UK ties
45 days or less	Nonresident	Nonresident	Nonresident	Nonresident
46 to 90 days	Nonresident	Nonresident	Nonresident	Resident
91 to 120 days	Nonresident	Nonresident	Resident	Resident
121 to 182 days	Nonresident	Resident	Resident	Resident
183 or more days	Resident	Resident	Resident	Resident

Accommodation Tie

The taxpayer has an accommodation tie if the taxpayer has a place to live in the UK, that place is available to the taxpayer for at least 91 days, and the taxpayer spends at least one night in that place.³⁶ A place to live in the UK includes one or more homes, a holiday home, a temporary retreat or any accommodation available to the taxpayer.³⁷ There does not have to be a legal right to the accommodation, it just has to be available.³⁸

If the available accommodation is in the home of a close relative, the provision above for the taxpayer spends one night in the accommodation is amended to at least 16 nights.³⁹ A close relative is (a) parent, (b) a grandparent, (c) a brother or sister, (d) a child aged 18 or more or (e) a grandchild aged 18 or more. In each case a relationship by half-blood, by marriage or by civil partnership are included.⁴⁰ Adopted children are also classified as close relatives.

Work Tie

The taxpayer has a work tie to the UK if he works for at least 40 days in the UK in the tax year. The days can either be continuous or intermittent. A work day is a day on which the taxpayer does more than three hours work in the UK.⁴¹

90-day Tie

The taxpayer has a 90-day tie if he has spent more than 90 days in the UK in either or both of the prior two tax years.⁴²

Country Tie

The country tie test is only used for taxpayers who were resident in the UK for at least one of the three years prior to the year in question. It is not used for a taxpayer who had not been resident in the UK in any of the prior three years.

If the taxpayer is present in more than one country in the tax year, the country tie is satisfied if the taxpayer is present in the UK for more days than he is present in any other country.⁴³ Present in a country is defined as being in the country at midnight.⁴⁴

It is possible for a taxpayer to spend the same number of days in more than one country and if that number is the greatest of the number of days in any country, and one of those countries is the UK, then the country test is satisfied. For example, if the taxpayer is present in the UK for 87 days, in France for 87 days, in Italy for 65 days, in Switzerland for 60 days, in Germany for 45 days and in the United

States for 21 days, the taxpayer would have satisfied the country tie test. Tables 1 and 2 in Appendix 2 show effect of the number of ties and days in the UK needed to determine a taxpayer's residency status.

In all the tests, where the reference is to days spent in the UK, the taxpayer has to be in the UK at midnight of that day. Even if the taxpayer arrives at a minute to midnight, he is treated as being in the UK for the day. However, exceptions are made if the taxpayer would not have been in the UK at midnight except for extraordinary circumstances, and the taxpayer intends to leave the UK as soon as the circumstances permit.⁴⁵ Extraordinary circumstances include: war, civil disturbances, natural disasters and life-threatening illnesses or injury.⁴⁶

To recap briefly, the tests above are to be considered in the order set out in the flowchart of Appendix 1. The first "automatic UK test" is the most important test. If a taxpayer is in the UK for 183 days or more, then he is resident in the UK for the full year, subject to the split-year rules, below. If the first "automatic UK test" is not satisfied, then three main "automatic overseas tests" are to be considered, followed by the second and third main "automatic UK tests" and finally the sufficient ties test.

Split-Year Rules

The normal rule is that if a taxpayer is regarded as resident in the UK, he is regarded as being resident in the UK for the full year. However, this rule is relaxed for taxpayers arriving in the UK or leaving the UK.⁴⁷ This is known as a "split-year." In a split-year a taxpayer can be resident in the UK for part of the year and not resident for the remaining part of the year. Under the old rules, the split-year provisions were allowed by HMRC through an extra-statutory concession.⁴⁸ The Finance Act 2013 codifies and expands the split-year rules.

The split-year rules apply only to taxpayers who would otherwise be regarded as resident in the UK for the full year. The split-year rules are split into eight cases, three (Cases 1 to 3) relate to taxpayers leaving the UK part-way through the year (leaver) and five (Cases 4 to 8) relate to taxpayers arriving in the UK part-way through the year (arriver).⁴⁹

Case 1: Leaver—Starting Full-time Work Overseas

This case applies where a taxpayer (a) is resident in the UK in the year,⁵⁰ (b) was resident in the UK in the prior year (whether or not it was a split-

year),⁵¹ (c) is not resident in the following year due to meeting the “third automatic overseas test,”⁵² and (d) satisfies the “overseas work criteria” in the relevant period.⁵³ The relevant period (the overseas part of the year) is the part of the year from the time the taxpayer leaves the UK, works for more than three hours overseas and ends on the last day of the year.⁵⁴ The “overseas work criteria” is similar to the “third automatic overseas test” as adapted to the part of the year the taxpayer is overseas. For instance, the 365 days referred to in Step 3 of the “sufficient overseas hours” test are amended to the “number of days in the period;” “the period” is the part of the year after the taxpayer left the UK. The “less than 91 days” permitted in the UK are amended to the maximum days permitted in the UK as calculated by the formula— $90 \times (\text{number of whole months in the relevant period} \div 12)$.⁵⁵ The “less than 31 days” the taxpayer is permitted to work for more than three hours in the UK are amended to the maximum days permitted to work for more than three hours in the UK as calculated by the formula— $30 \times (\text{number of whole months in the relevant period} \div 12)$.⁵⁶ “Works sufficient hours” overseas, are similarly amended to take into account the period after leaving the UK.

Case 2: Leaver—Partner of a Taxpayer Starting Full-time Work Overseas

The partner of a taxpayer to whom Case 1 applies can also have a split-year.⁵⁷ A partner is the taxpayer's spouse (or civil partner) or a person who lives with the taxpayer as husband or wife, or as a civil partner.⁵⁸ The partner has to (a) be resident in the UK in the year,⁵⁹ (b) have been resident in the UK in the prior year (whether or not it was a split-year),⁶⁰ and (c) not be resident in the UK in the following year.⁶¹ The partner must move overseas to join the taxpayer and continues to live with the taxpayer while the taxpayer is working overseas.⁶² The overseas part of the split-year begins on the day the partner moves overseas, or the day the taxpayer's overseas part starts (from Case 1), if later. The maximum days permitted in the UK during the overseas period for the partner is calculated by the formula— $90 \times (\text{number of whole months in the relevant period} \div 12)$.⁶³

Case 3: Leaver—Ceasing to Have a UK Home

A split-year can also be had by a taxpayer who stops having a UK home and goes overseas. Again, the taxpayer must (a) be resident in the UK in the year,⁶⁴

(b) have been resident in the UK in the prior year (whether or not it was a split-year),⁶⁵ and (c) not be resident in the UK in the following year.⁶⁶ The taxpayer must have had one, or more, homes in the UK at the beginning of the year, but at some point in the year must not have had any homes in the UK and continue not to have any homes in the UK for the remainder of the year.⁶⁷ Another condition is that at the end of a six-month period starting from the day the taxpayer has no UK home, the taxpayer must have a “sufficient link” with a country overseas.⁶⁸ A “sufficient link” is if the taxpayer is resident for tax purpose in the overseas country, is present in the overseas country at the end of each day of the six-month period or has his only home (or homes) in that country (and no other country).⁶⁹ From the time the taxpayer has no UK home, he is permitted to be in the UK for fewer than 16 days.⁷⁰

It is possible for a leaver taxpayer to fall under all three of the Cases above. In order to determine which day the overseas period starts, there is a hierarchical order. Case 1 takes precedence over Case 2, which takes precedence over Case 3.⁷¹

A taxpayer who takes up UK residency in a year can have a split-year, if the taxpayer falls within one of five cases (Cases 4 to 8).

Case 4: Arriver—Starting to Have a Home in the UK Only

The taxpayer must be resident in the UK in the year but not have been resident in the UK in the prior year.⁷² At the beginning of the year the taxpayer must not have had a home in the UK, but sometime during the year the taxpayer acquires a home in the UK.⁷³ The taxpayer may have one or more homes, but all the homes must be in the UK.⁷⁴ In the part of the year before the taxpayer acquires a UK home, the taxpayer may not have sufficient number of ties with the UK.⁷⁵ In order to ascertain if the taxpayer has sufficient ties, the number of permitted days in the UK in the overseas part of the year (*i.e.*, before a UK home is acquired) as set out in Tables 1 and 2 have to be amended. This is done by reducing the days as set out in the tables by multiplying the days by $A \div 12$, where A is the number of months before a UK home is acquired.⁷⁶ For example, if the UK home was acquired on July 12, the 15 permitted days limit is amended to 5 ($15 \times (4 \div 12)$), the 45 permitted day limit is amended to 15 ($45 \times (4 \div 12)$), *etc.* See Table 3 in Appendix 3 for the full substitutions.

APPENDIX 3

Table 3. Permitted days in left-hand column of Tables 1 and 2 are amended to:

	Day on which the taxpayer acquires a UK home falls between:											
	6 Apr to 30 Apr	1 May to 31 May	1 Jun to 30 Jun	1 Jul to 31 Jul	1 Aug to 31 Aug	1 Sep to 30 Sep	1 Oct to 31 Oct	1 Nov to 30 Nov	1 Dec to 31 Dec	1 Jan to 31 Jan	1 Feb to 29 Feb	1 Mar to 5 Apr
For 15 days substitute	1	2	4	5	6	7	9	10	11	12	14	15
For 45 days substitute	4	7	11	15	19	22	26	30	34	37	41	45
For 90 days substitute	7	15	22	30	37	45	52	60	67	75	82	90
For 120 days substitute	10	20	30	40	50	60	70	80	90	100	110	120

Source: HMRC

Case 5: Arriver—Starting to Full-Time Work in the UK

A taxpayer who comes to start full-time work in the UK can also have a split-year.⁷⁷ The taxpayer must be resident in the UK for the year and not have been resident in the UK in the prior year.⁷⁸ The taxpayer must meet the “third automatic UK test” sometime in the year but must not have sufficient UK ties in the part of the year before meeting that UK test. Again, when considering the UK ties, the permitted days in the UK are amended as in Table 3, for the overseas period (*i.e.*, before starting full-time UK work).⁷⁹ The overseas part of the year is from the beginning of the year to the time the taxpayer satisfies the “third automatic UK test” by working full-time. The rest of the year is the UK resident part of the year.

Case 6: Arriver—Ceasing Full-Time Work Overseas

This case relates to a taxpayer who works overseas for a relatively short time and then stops that work and becomes resident in the UK again. The conditions are that the taxpayer was not resident in the year before stopping working overseas because he had satisfied the “third automatic overseas test” in that year and was resident in the UK in the following year (whether or not that following year was a split-year).⁸⁰ However, the taxpayer must have been resident in the UK for one, or more, of the four years before the year prior to the year in which the taxpayer stops the overseas work.⁸¹ For instance, if the taxpayer ceases the overseas work during the 2016-2017 year, he must not have been resident in the UK in the 2015-2016 year but must have been resident in the UK in at least one of the four tax years prior to 2015-

2016. In calculating the “sufficient overseas hours” of the “third automatic overseas test,” the days are amended for the UK period and the overseas period in a similar manner as Case 1 but with the appropriate adjustments for overseas or UK hours worked.⁸² The overseas part of the year is from the start of the year to the time the taxpayer stops satisfying the “third automatic overseas test.”

Case 7: Arriver—Partner of a Taxpayer Ceasing Overseas Work

In set of similar rules to Case 2, the partner of a taxpayer, who ceases overseas work and who satisfies the criteria of Case 6 in the year or prior year, also can have a split-year in the year of arriving in the UK. The partner must (a) not have been resident in the UK in the prior year,⁸³ (b) be resident in the UK in the current year, (c) be resident in the UK in the following year (whether or not that following year is a split-year),⁸⁴ (d) moves to the UK to be with the taxpayer,⁸⁵ and (e) before the day of arrival, either does not have a home in the UK or, if the partner has homes both in the UK and overseas, more time is spent in the overseas home, and the partner spends no more than the permitted days in the UK.⁸⁶ Again, the permitted days in the UK are 90 days as reduced by the number of months before the date of arrival divided by 12.⁸⁷ The partner is regarded as arriving in the UK on the later of (a) the day the partner actually arrives in the UK or (b) the day the taxpayer is regarded as arriving in the UK under the provisions of Case 6.⁸⁸ The part of the year before the deemed date of arrival is the overseas part, and the rest of the year is the UK part of the year.

Case 8: Arriver—Starting to Have a Home in the UK

This case is different from Case 4 in that Case 8 does not prevent a taxpayer from having a home overseas. The taxpayer must be resident in the UK in the year but not have been resident in the UK in the prior year.⁸⁹ At the beginning of the year the taxpayer must not have had a home in the UK, but sometime during the year the taxpayer acquires a home in the UK. The taxpayer must continue having a home in the UK for all of that year and the following year.⁹⁰ The taxpayer must be resident in the UK in the following year, but, unlike the other Cases, that following year must not be a split-year.⁹¹ In the part of the year before the taxpayer acquires a UK home, the taxpayer may not have sufficient number of ties with the UK.⁹² In order to ascertain if the taxpayer has sufficient ties, the number of permitted days in the UK in the overseas part of the year (*i.e.*, before a UK home is acquired) as set out in Tables 1 and 2 has to be amended. This is done by reducing the days as set out in the tables by multiplying the days by $A \div 12$, where A is the number of months before a UK home is acquired.⁹³ Again, see Table 3 in Appendix 3 for the substitutions. In this Case, there is no prohibition to having an overseas home. The UK part of the year is from when the UK home is acquired to the end of the year.

If the taxpayer satisfies more than one of Cases 4 to 8, then, generally, the earliest day the year can be “split” is the day for determining the overseas part and the UK part of the year.⁹⁴

Record Keeping

The residency tests and rules refer to the amount of time the taxpayer spends in the UK and overseas, whether a home is kept in the UK or overseas and the time and places worked. These tests will require the taxpayer to keep numerous records to prove his movements and working time. The records would include (a) evidence of days worked in the UK or overseas (such as work diary/calendar showing place, hours and type of work, evidence and days of annual, sick or other leave and employment contracts); (b)

evidence of where the taxpayer’s personal life is lived (such as travel documents to show when arriving or leaving the UK, credit card/banks statements to show pattern and place of expenditure, evidence where spouse and children live, membership of sports, health or social clubs, cell phone usage and bills pointing to the taxpayer’s presence in a country); and (c) proof of homes in the UK or overseas (such as purchase/rental agreements, payment of municipal taxes, address on driver’s license, insurance documents, registration with local doctors). HMRC gives a number of longer lists of the type of evidence that should be kept.⁹⁵ The items on the lists are not definitive, and no one piece of evidence would be determinative. HMRC determines the weight and quality of all the evidence.⁹⁶

Conclusion

In the global economy, U.S. executives can work all over the world. How they are taxed is dependent on the tax rules in the countries where the work is carried out or where the executive is based. Prior to April 5, 2013, the UK did not have any statutory definition as to which taxpayers were resident in the UK. Taxpayers had to rely on the courts and HMCR’s rules and interpretations. From April 5, 2013, UK residence is set out in the statutes. As this article shows the new law is quite complex and requires taxpayers and their advisors to be aware of the nuances. The basic analysis of the taxpayer’s residency status is set out in Appendix 1. The simplest condition is that if the taxpayer is in the UK (meaning at midnight) for 183 days or more in a tax year then that taxpayer is resident in the UK. However, even that basic rule is relaxed for taxpayers to come to, or leave, the UK by the complex split-year rules. The split-years tests (both as arrivers and leavers) are particularly important for U.S. executives who are assigned to the UK for a few years only. If the taxpayer is regarded to be a resident of the UK, he is taxed by the UK, generally, on his world-wide income, though this can be ameliorated for taxpayers who are not domiciled in the UK.

ENDNOTES

¹ At the time, the fiscal authority was called the Inland Revenue (IR).

² IR20—Residents and nonresidents. Liability to tax in the United Kingdom.

³ HMRC6—Residence, Domicile and the remittance basis.

⁴ [2011] UKSC 47, R (on the application of *Gaines-Cooper*) (Appellant) v. The Commissioners for Her Majesty’s Customs and Revenue (Respondent).

⁵ Finance Act 2013 (c.29).

⁶ Para. 3 Schedule 45 FA 2013.

⁷ Para. 5 Schedule 45 FA 2013.

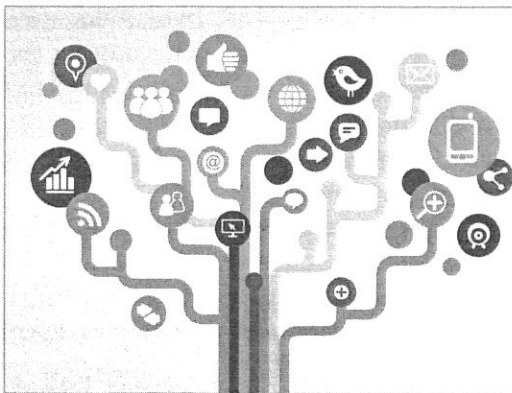
⁸ This article does not consider the special rules for taxpayers who die.

⁹ Para. 1.1 RDR3 Guidance Note: The Statutory Residence Test. HMRC, August 2013.

¹⁰ Para. 7 Schedule 45 FA 2013.

ENDNOTES

- ¹¹ In this paper a taxpayer will be referred to a "he," *etc.*, rather than "he or she," *etc.*, for the sake of brevity.
- ¹² Sub-para. 22(1) Schedule 45 FA 2013 and Para. 3.1 RDR3.
- ¹³ Para. 12 Schedule 45 FA 2013.
- ¹⁴ Para. 13 Schedule 45 FA 2013.
- ¹⁵ Sub-para. 14 (1)(a) and (b) Schedule 45 FA 2013.
- ¹⁶ Sub-para. 14 (1)(c) and (d) Schedule 45 FA 2013.
- ¹⁷ Sub-para. 14 (3) Schedule 45 FA 2013.
- ¹⁸ The gaps in employment have a maximum of 15 days between each employment gap. Thus, if the taxpayer is unemployed for 20 days between employment 1 and employment 2, he reduces the "reference period" by only 15 days. If he has another 12 days unemployment between employment 2 and employment 3, he reduces the "reference period" by all of those 12 days as well. However, the maximum for all gaps is 30 days no matter how many different employments in the year. Sub-para. 28 (9) Schedule 45 FA 2013.
- ¹⁹ Normal weekends or public holidays in-between working days are not subtracted when computing the "reference period."
- ²⁰ Para. 28 Schedule 45 FA 2013. For example, the weekend days before and after a five-day (Monday to Friday) annual leave would count as embedded days.
- ²¹ Sub-para. 28 (7) Schedule 45 FA 2013.
- ²² Para. 8 Schedule 45 FA 2013. There is no need to be in the home at midnight.
- ²³ Sub-para. 8 (1), (2) and (3) Schedule 45 FA 2013.
- ²⁴ Sub-para. 8 (5) Schedule 45 FA 2013.
- ²⁵ Sub-para. 8 (6) Schedule 45 FA 2013.
- ²⁶ Sub-para. 8 (8) Schedule 45 FA 2013.
- ²⁷ Para. 9 Schedule 45 FA 2013.
- ²⁸ Para. 17 Schedule 45 FA 2013.
- ²⁹ Para. 18 Schedule 45 FA 2013.
- ³⁰ Sub-para. 31 (2) Schedule 45 FA 2013.
- ³¹ Sub-para. 31 (3) Schedule 45 FA 2013.
- ³² Sub-para. 32 (1) Schedule 45 FA 2013.
- ³³ Sub-para. 32 (5) Schedule 45 FA 2013.
- ³⁴ Sub-para. 32 (2) and (4) Schedule 45 FA 2013.
- ³⁵ Sub-para. 33 (3) and (4) Schedule 45 FA 2013.
- ³⁶ Sub-para. 34 (1) Schedule 45 FA 2013.
- ³⁷ Sub-para. 34 (3) Schedule 45 FA 2013.
- ³⁸ Sub-para. 34 (4) Schedule 45 FA 2013.
- ³⁹ Sub-para. 34 (5) Schedule 45 FA 2013.
- ⁴⁰ Sub-para. 34 (6) Schedule 45 FA 2013.
- ⁴¹ Para. 35 Schedule 45 FA 2013.
- ⁴² Para. 37 Schedule 45 FA 2013.
- ⁴³ Sub-para. 38 (1) Schedule 45 FA 2013.
- ⁴⁴ Sub-para. 38 (3) Schedule 45 FA 2013.
- ⁴⁵ Sub-para. 22 (4) Schedule 45 FA 2013.
- ⁴⁶ Sub-para. 22 (5) Schedule 45 FA 2013. Natural disasters probably do not include fog delaying flights (*viz.* Orson Wells' character in the film "The V.I.P.s").
- ⁴⁷ Para. 40 Schedule 45 FA 2013.
- ⁴⁸ Extra-statutory concession A11.
- ⁴⁹ Sub-para. 43 (1) Schedule 45 FA 2013.
- ⁵⁰ Sub-para. 43 (1) (a) Schedule 45 FA 2013.
- ⁵¹ Sub-para. 44 (2) Schedule 45 FA 2013.
- ⁵² Sub-para. 44 (4) Schedule 45 FA 2013.
- ⁵³ Sub-para. 44 (3) Schedule 45 FA 2013.
- ⁵⁴ Sub-para. 44 (3) (a) and (b) Schedule 45 FA 2013.
- ⁵⁵ Sub-para. 44 (8) and (9) Schedule 45 FA 2013. The period from April 1 to April 5 is treated as a whole month in the formula except that for a person leaving between April 1 and April 5 the permitted days in the UK is 0. For example, if the taxpayer left the UK on September 20, then the permitted days in the UK would be $52 (90 \times (7 \div 12))$. If the result of the calculation is not a whole number it is rounded down.
- ⁵⁶ Sub-para. 44 (8) and (9) Schedule 45 FA 2013. This is similar to the note above, except 30 days is used instead of 90 days. For example, if the taxpayer left the UK on September 20, then the maximum permitted days working in the UK would be $17 (30 \times (7 \div 12))$. Again, round down, if necessary.
- ⁵⁷ Sub-para. 45 (3) Schedule 45 FA 2013.
- ⁵⁸ Sub-para. 52 (4) Schedule 45 FA 2013.
- ⁵⁹ Sub-para. 43 (1) (a) Schedule 45 FA 2013.
- ⁶⁰ Sub-para. 45 (2) Schedule 45 FA 2013.
- ⁶¹ Sub-para. 45 (6) Schedule 45 FA 2013.
- ⁶² Sub-para. 45 (4) Schedule 45 FA 2013.
- ⁶³ Sub-para. 45 (9) and (10) Schedule 45 FA 2013.
- ⁶⁴ Sub-para. 43 (1) (a) Schedule 45 FA 2013.
- ⁶⁵ Sub-para. 46 (2) Schedule 45 FA 2013.
- ⁶⁶ Sub-para. 46 (5) Schedule 45 FA 2013.
- ⁶⁷ Sub-para. 46 (3) Schedule 45 FA 2013.
- ⁶⁸ Sub-para. 46 (6) Schedule 45 FA 2013.
- ⁶⁹ Sub-para. 46 (7) Schedule 45 FA 2013.
- ⁷⁰ Sub-para. 46 (4) Schedule 45 FA 2013.
- ⁷¹ Para. 54 Schedule 45 FA 2013.
- ⁷² Sub-para. 47 (2) Schedule 45 FA 2013.
- ⁷³ Sub-para. 47 (3) Schedule 45 FA 2013.
- ⁷⁴ Sub-para. 47 (5) Schedule 45 FA 2013.
- ⁷⁵ Sub-para. 47 (4) Schedule 45 FA 2013.
- ⁷⁶ Sub-para. 47 (5) Schedule 45 FA 2013.
- ⁷⁷ Para. 48 Schedule 45 FA 2013.
- ⁷⁸ Sub-para. 48 (2) Schedule 45 FA 2013.
- ⁷⁹ Sub-para. 48 (3) Schedule 45 FA 2013.
- ⁸⁰ Para. 49 Schedule 45 FA 2013.
- ⁸¹ Sub-para. 49 (2) Schedule 45 FA 2013.
- ⁸² Sub-para. 49 (7), (8) and (9) Schedule 45 FA 2013.
- ⁸³ Sub-para. 50 (2) Schedule 45 FA 2013.
- ⁸⁴ Sub-para. 50 (6) Schedule 45 FA 2013.
- ⁸⁵ Sub-para. 50 (4) Schedule 45 FA 2013.
- ⁸⁶ Sub-para. 50 (5) Schedule 45 FA 2013.
- ⁸⁷ Sub-para. 50 (9) and (10) Schedule 45 FA 2013.
- ⁸⁸ Sub-para. 50 (7) Schedule 45 FA 2013.
- ⁸⁹ Sub-para. 51 (2) Schedule 45 FA 2013.
- ⁹⁰ Sub-para. 51 (3) Schedule 45 FA 2013.
- ⁹¹ Sub-para. 51 (5) Schedule 45 FA 2013.
- ⁹² Sub-para. 51 (4) Schedule 45 FA 2013.
- ⁹³ Sub-para. 51 (7) and (8) Schedule 45 FA 2013.
- ⁹⁴ Para. 55 Schedule 45 FA 2013.
- ⁹⁵ Para 7 RDR3.
- ⁹⁶ Para. 7.4 RDR3.



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