

# Proposed UK Statutory Definition of Tax Residence

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# Current Residence Position

- **No full statutory definition of tax residence**
- **Current rules for residence are:**
  - **Spend greater than 183 days or more in the UK**
  - **Come to the UK with the intention of living permanently or to work for an extended time and with no particular end date**
  - **Stay 91 days or more per year (average) over a four-year period**
  - **Come to the UK for a purpose**
  - **Usually live in the UK and go abroad for short periods**
  - **Nature of connections with the UK taken into account**
- **Individual can be resident even where the person spends fewer than 90 days per year in the UK if there are other connecting factors**
- **HMRC admit that the existing rules are “vague, complicated and perceived to be subjective”!**

# **Statutory Definition of Tax Residence: Consultation by HMRC**

**Effective from 6 April 2012**

- New Statutory Residence Test to be introduced to reduce uncertainty**
- Based on combination of days and factors**
- Concept of ordinary residence may be reviewed**
- Anti-avoidance rules to be introduced**

# **Distinction between “Arrivers”, “Leavers” and “Workers”**

- **Arrivers – individuals who were not UK resident in all of the previous 3 tax years**
- **Leavers – individuals who were resident in one or more of the previous 3 tax years**
- **Workers – those leaving or arriving in the UK to carry out full-time work (defined as working 35 hours or more per week)**

# Three-Part Test

- **Part A: contains conclusive non-residence factors to make an individual not resident**
- **Part B: contains conclusive residence factors to make an individual resident**
- **Part C: contains other connection factors and day counting rules to be applied by those whose residence status is not determined by Part A or Part B**

# Part A: conclusive non-residence

- Non-resident in the UK in all of the previous 3 years and are present for less than 45 days in the current tax year (arrival)
- Resident in the UK on one or more of the previous three years at present in the UK for fewer than 10 days in the current tax year (leavers)
- Leave the UK to carry on full time work abroad – must have stayed less than 90 days in the tax year and spent no more than 20 working days in the UK (workers)

## **Part B: conclusive residence**

- **Are present in the UK for 183 days or more in the tax year or**
- **Have only one house and that home is in the UK (or have two or more homes and all of these are in the UK) or**
- **Carry out full-time work in the UK**

# **Part C: other connection factors and day counting**

- **Only applies where residence is not determined by Part A or Part B**
- **5 connection factors**
  - **Family**
  - **Accommodation**
  - **Substantive work in the UK**
  - **UK presence in previous year**
  - **More time in the UK than in other countries**



# Part C: Arrivers

Days spent in the UK	Impact of connection factors on residence status
Fewer than 45 days	Always non-resident
45-89 days	Resident if individual has 4 factors (otherwise not resident)
90-119 days	Resident if individual has 3 factors or more (otherwise not resident)
120-182 days	Resident if individual has 2 factors or more (otherwise not resident)
183 days or more	Always resident

# Part C: Leavers

Days spent in UK	Impact of connection factors on residence status
Fewer than 10 days	Always non-resident
10-44 days	Resident if individual has 4 factors or more (otherwise not resident)
45-89	Resident if individual has 3 factors or more (otherwise not resident)
90-119 days	Resident if individual has 2 factors or more (otherwise not resident)
120-192 days	Resident if individual has 1 factor or more (otherwise not resident)
183 days or more	Always resident

# **Split Year Treatment**

**Applies where an individual:**

- comes to the UK to take up permanent residence; or**
- Leaves the UK to take up permanent residence abroad; or**
- Loses UK residence when leaving to work full-time outside the UK.**

**Extra Statutory Concessions to be incorporated into legislation.**

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