

## Working Abroad and the Statutory Residence Test (Previously the “Full Time Work Abroad” Test)

A statutory definition of tax residence has been introduced in the UK with effect from 6 April 2013 and the information contained herein is a very brief overview of the legislation included in the Finance Act, and updated guidance issued by HMRC in late-August 2013.

### The Statutory Residence Test’s ‘basic rules’

The first step in establishing UK residence will be to look at the ‘basic rules’, which will establish whether an individual is either:

- conclusively non-resident: ‘the automatic overseas test’, or
- conclusively resident: ‘the automatic residence test’
- or whether, if neither of these apply, it will be necessary to consider other connection factors and day counting: ‘the sufficient ties test’.

### The automatic overseas test

One of the ‘automatic overseas tests’ will apply when, broadly, an individual leaves the UK to carry out full-time work abroad for at least a complete tax year. Provided they are present in the UK for no more than 90 days in the relevant tax year and no more than 30 days are spent working in the UK in that tax year, the individual should be treated as non-UK resident. However, the requirements of this newly-defined test are far more onerous than those working overseas have been used to, and what has always been known as the ‘Full-time work abroad’ test is now referred to in the legislation as the ‘Sufficient Hours Overseas’ test.

### The ‘Sufficient Hours Overseas Test’

The broad criteria for meeting this test are as follows:

- you work sufficient hours overseas during the tax year concerned, and
- during the tax year, there are no significant breaks from overseas work, and
- the number of days in the tax year that you do more than 3 hours’ work in the UK is less than 31, and
- you spend less than 91 days in the UK in the tax year.

### Definition of ‘sufficient hours overseas’

You will be considered to be working sufficient hours overseas if you work for an average of at least 35 hours per week, whether you are an employee or self-employed. Whilst this sounds simple enough, the way the test works is complex and highly prescriptive – and it is in fact possible to be contracted to work a 35 hour week, but still fail, depending upon the amount of leave taken. In order to calculate whether the test is met, it will be necessary to add up the total number of hours that you actually work overseas in every tax year (rather than the hours specified in your contract) – and HMRC will be entitled to ask for evidence of this.

When calculating the average time worked, the length of the period should be reduced by sick leave, and ‘reasonable’ periods of annual leave (including parenting leave), even if that leave is taken abroad. “Non-working days” (such as weekends and public holidays) may need to be deducted along with the leave period, depending on when the leave period starts and/or finishes. It will therefore be necessary under the new regime to retain full details of such leave, including precise dates.

Any time spent working in the UK will not count towards your average hours, and only limited gaps between employments can be deducted from the period over which you calculate the average (see below). If you have more than one overseas job or trade, it will be necessary to aggregate the hours worked in each when calculating your average hours.

**Significant breaks from overseas work**

You will have a significant break from your overseas work if at least 31 days go by and not one of those days is a day on which you work for more than three hours overseas, or would have worked for more than three hours, but do not do so because you are on leave. A break of more than 30 days (other than for leave) will mean that you cannot qualify for full-time work overseas under this test.

In addition, if you change employment, or finish one contract to start another, and there is a gap in your working life, you can only deduct up to 15 days from the period over which you calculate the average for the 'sufficient hours overseas' strand of the test. If the gap is longer, any days over the 15 cannot be deducted.

**Spending less than 91 days in the UK in the tax year**

If you are not present in the UK at the end of a day, that day will not usually count as a day spent in the UK. However, if you are present in the UK on more than 30 days without being present at the end of that day, and have several UK ties in the tax year, then days when you leave before midnight may need to be added to the days that you must count towards the 90 day limit.

**A potential trap if the 'Sufficient Hours Overseas Test' is not met**

If you work overseas but fail the 'sufficient hours overseas' test for some reason, and do not have what can be classified as an overseas home, but do have a UK home in which you spend more than 30 days during the tax year, you would be treated as being UK resident throughout the tax year concerned based on this new legislation – even if you would otherwise qualify to be non-UK resident under the 'sufficient ties test'. Whilst a leased overseas property would certainly count as a home, HMRC guidance indicates that one that is occupied under licence (such as employer provided accommodation) would not, unless it is continuously available for your exclusive use as your home.

**Conclusions**

- Although the new regime should give greater certainty (especially for those with simple tax affairs), it is definitely much more complicated.
- Keeping full, detailed records will be vital going forward (such as work contracts; details of leave periods and actual hours worked for each job; precise summaries of days spent and worked and in which countries; flight boarding passes; tenancy or employer-provided accommodation occupation agreements etc)
- Many individuals will be well advised to keep a proportion of their income aside just in case they fall back into the UK tax net, particularly if working in an unstable job.

All of the terms used in these tests have detailed definitions in the legislation, and there is still a great deal of complexity in the detail for those whose affairs are not straightforward. Advice should always be sought concerning any areas of doubt.

For further information please contact Anne Wright on 00 44 [0]1473 220092 or email [anne.wright@ensors.co.uk](mailto:anne.wright@ensors.co.uk)

*This information only provides a broad overview of the new regime and is given by way of general guidance only - so no action should be taken solely on the basis of the information contained herein. No liability is accepted by the firm for any actions taken without seeking appropriate professional advice.*