HM Treasury and HM Revenue & Customs (HMRC) have published draft legislation on a new statutory residence test, which will determine whether an individual is resident in the UK for UK tax purposes. This new test will supersede all existing legislation, case law and HMRC guidance.

Further draft legislation is expected this coming Autumn before the new rules take effect from 6 April 2013.

**UK residence for UK tax purposes**

Residence status is important for UK Income Tax and UK Capital Gains Tax purposes and in some cases Inheritance Tax and Corporation Tax.

The new statutory test will provide greater certainty to individuals who are trying to determine whether they are UK resident.

All individuals will be able to spend up to 15 days in the UK in any tax year without becoming resident, and some individuals will be able to spend as many as 182 days in the UK in any tax year without becoming UK resident.

**Day counting**

Under the new rules, you will still need to count all of the days on which you are present in the UK at midnight during each tax year.

The UK tax year is the 12 month period beginning on 6 April and ending the following 5 April.

Some of the tests require you to work out whether you were UK resident in previous tax years; when working this out you need to use the new tests.

As before, a day in transit (where the individual arrives in the UK as a passenger and departs on the next day without having undertaken any activity substantially unrelated to his passage through the UK) will not count as a day present in the UK for these purposes.

There is also provision for exceptional circumstances, where an individual spends a day in the UK for reasons beyond his control (such as a national or local disaster or serious illness). This provision is restricted to 60 days in any tax year.

**Outline of the new statutory residence test**

The proposed residence test will be in three parts:

- The "automatic overseas test" which sets out the factors that would be sufficient in themselves to make an individual conclusively non-resident;
- The "automatic residence test" which sets out the factors that would be sufficient in themselves to make an individual conclusively UK resident; and
- The "sufficient ties test" which contains other connection factors and day counting rules to be considered and applied by an individual whose residence status is not conclusively determined by either of the previous two tests.

**The "automatic overseas test"**

Under the new rules, you will automatically be non-UK resident for a tax year if:

- you have not been resident in the UK in any of the previous three tax years and you spend fewer than 46 days in the UK in the current tax year; or
- you have been resident in the UK in one or more of the previous three tax years and
- spend fewer than 16 days in the UK in the current tax year; or
you leave the UK to work full-time (i.e. a 35 hour week) overseas for the relevant tax year abroad, provided you spend fewer than 91 days in the tax year of which no more than 20 days are spent working (for over 3 hours).

The Government is currently consulting on whether to amend the scope of the full-time work abroad test by either increasing the number of working days allowed in the UK from 20 to 25 or increasing the number of hours which constitute a working day from 3 to 5.

The "automatic residence test"
You will be automatically UK resident under the new rules if:

- you spend more than 182 days in the UK in any one tax year; or
- Your only "home" is in the UK (or if you have two or more homes all of these are in the UK); or
- you carry out full-time work in the UK.

A "home" need not be a property an individual owns but could, for example, be a rented property. An individual would fall under the "only home" condition if his only home (or homes) was in the UK for a period of at least 91 days all or part of which falls within the relevant tax year or two or more separate periods within the tax year which together add up to at least 91 days.

The rules on full-time work in the UK differ from the rules under the "automatic overseas test" (which relate to full time work abroad). An individual would work full time in the UK if he is employed or self-employed in the UK over a continuous period of 276 days, during which period, all or part of which falls within the relevant tax year, there are no significant breaks (of 31 days or more) and no more than 25 per cent of his duties are carried on outside the UK.

In exceptional cases, you may satisfy the conditions of both the "automatic overseas test" and the "automatic residence test" in a tax year. In such circumstances, it is proposed that non-UK resident status would prevail.

If your residence status is not determined under either of the two tests above, you will need to consider the third part of the statutory test and your ties to the UK.

The sufficient ties test
The "sufficient ties test" will only apply where neither the "automatic overseas test" nor the "automatic residence test" is met. Residence is determined by comparing various factors that connect you to the UK with the number of days that you spend in the UK in a tax year.

Different rules apply depending on whether you are an "Arriver" (where you have not been resident in the UK in any of the previous three tax years) or a "Leaver" (where you have been resident in the UK for one or more of the previous three tax years).

The proposed connecting factors (ties to the UK) are:

- having a spouse or civil partner (or common law equivalent), or minor children who is resident in the UK;
- having available accommodation in the UK during the tax year for a continuous period of at least 91 days and at which you spend at least one night;  
- carrying out 40 days or more of work in the UK during the tax year;
- spending more than 90 days in the UK in either or both of the previous two tax years; and
- (for Leavers only) - spending more time in the UK than in any other single country in a particular tax year.

Once you have worked out whether you are an Arriver or a Leaver and how many ties you have to the UK the tables below set out how many days you can spend in the UK in a tax year without becoming UK resident.

<table>
<thead>
<tr>
<th>Number of ties to the UK</th>
<th>Number of days Arrivers can spend in the UK per tax year without becoming UK resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero or one</td>
<td>Up to 182 days</td>
</tr>
<tr>
<td>Two</td>
<td>Up to 120 days</td>
</tr>
<tr>
<td>Three</td>
<td>Up to 90 days</td>
</tr>
<tr>
<td>Four</td>
<td>Up to 45 days</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of ties to the UK</th>
<th>Number of days Leavers can spend in the UK per tax year without becoming UK resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>Up to 182</td>
</tr>
<tr>
<td>One</td>
<td>Up to 120</td>
</tr>
<tr>
<td>Two</td>
<td>Up to 90</td>
</tr>
<tr>
<td>Three</td>
<td>Up to 45</td>
</tr>
<tr>
<td>Four or more</td>
<td>Up to 15</td>
</tr>
</tbody>
</table>

Split-year treatment
Subject to certain conditions the practice of splitting a tax year into periods of residence and non-residence when individuals leave the UK or arrive here during a tax year will continue to apply. Whereas previously this
was allowed by concession, this practice will now be statutory.

Transitional rules
Where an individual needs to know what their residence status was in any of the three years prior to the introduction of the statutory residence test for the purpose of determining their residence in future years under the new rules, he will be allowed to apply the new rules to those preceding years (for this specific purpose only). The existing rules will continue to apply for determining actual residence status and tax liability in the earlier years. Use of these transitional rules will require a formal election.

Other changes
The concept of ordinary residence will be abolished with effect from the tax year 2013/2014 (except in relation to non-domiciled employees who have been resident outside the UK in all of the three tax years prior to coming to the UK to work). Transitional rules will apply.

Act now
Even though the new tests do not take effect until 6 April 2013 you should start to review your pattern of visiting the UK now to ensure that that your residence status does not unintentionally change when the new tests take effect.

If you are non-UK resident but you spend a significant amount of time in the UK, you should keep a careful count of the number of days you spend in the UK. You should consider retaining documentary evidence (such as aeroplane tickets) to prove when you arrived in and left the UK.

Once you are treated as UK resident you will be subject to UK income and capital gains tax. You may also have to pay tax on money that you bring into the UK for investment or to cover living expenses.

If the "sufficient ties test" will apply to you, spending more than 90 days in the UK during the last and current tax years (5 April 2011 to 6 April 2012 and 6 April 2012 to 5 April 2013) may impact upon your residence status in the 2013/14 and 2014/15 tax years. If you are not already doing so, you may want to limit the number of days you spend in the UK during this current tax year to 90 days or less.

The number of days spent in the UK during the last and current tax years will also be relevant when working out whether you were resident in the UK for any of the previous three tax years which is an element of the "automatic overseas test" and the "sufficient ties test.

In summary, the new statutory residence test, if adopted, is generally to be welcomed as it will provide a higher degree of certainty for individuals in determining their tax residence status for UK tax purposes. However, not all individuals’ circumstances will be straightforward and we would recommend obtaining specialist advice well in advance of the introduction of the new rules in April 2013.

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