

Technical Note: Modifications of the Statutory Residence Test in connection with coronavirus

Introduction

In response to the unprecedented health crisis, the UK government has taken steps to welcome to the UK talent and expertise from around the world to help tackle coronavirus.

Legislation is being introduced to provide a new disregard in the Statutory Residence Test (SRT). Provided they meet the specified qualifying conditions, the time spent in the UK by individuals who are in the UK specifically to work on coronavirus related activities will not be taken into account for the purpose of deciding their UK residence status.

This note provides guidance in relation to Finance Bill legislation published alongside this note.

1.1 What is the Statutory Residence Test (SRT)

The SRT is contained in Schedule 45 of the Finance Act 2013 (Schedule 45). It is designed so that individuals are able to use a series of tests in order to determine whether or not they are tax resident in the UK for a tax year.

Broadly a person is UK resident if they meet one of the four automatic residence tests and none of the five automatic overseas tests; or, if they do not meet any of the automatic tests, they meet the sufficient ties test.

HMRC's published guidance on residence can be found in the Residence, Domicile and Remittance Basis Manual – [RDRM11000](#).

1.2 What is changing

For any "relevant period" spent in the UK (see 1.4 below) days and ties are to be disregarded when applying any of the SRT tests. Days are considered as neither spent in the UK nor spent overseas and any UK ties created as a result of the individual's physical presence in the UK, in the relevant period, are ignored for the purpose of the sufficient ties test.

For the purpose of Condition B of [the second automatic UK test](#), where a person has a home overseas, the legislation will be modified so that the home test will have no effect in the relevant period. In all other respects the SRT tests will apply as normal outside of a relevant period.

1.3 Who will qualify

To qualify individuals must be:

- non-UK resident in the tax year 2019-20, even if that is a direct consequence of this measure
- tax resident in another jurisdiction in accordance with the laws of that territory
- present in the UK:
 - i. as a medical or healthcare professional, for purposes connected with the detection, treatment, or prevention of coronavirus disease
 - ii. for purposes connected to the development or production of medical products, (including vaccines) devices, equipment or facilities related to the detection, treatment, or prevention of coronavirus disease

1.4 Relevant Period

The legislation applies to the 2019-20 and 2020-21 tax years. The relevant period is any period from 1 March 2020 to 1 June 2020 in which a qualifying individual is engaged in a qualifying activity.

If an individual departs and then returns to the UK for unrelated purposes, or stops doing the specified activity, but remains in the UK the SRT will apply in the normal way to any days spent in the UK that are outside the relevant period.

The time period to which the disregards apply will be kept under review as the situation changes.

Example 1.

P was not previously resident in the UK. P arrives in the UK on 1 April 2020 to work on coronavirus related work, ceases working on these activities on 1 June 2020 and leaves the UK the following day. In 2020-21 he spends 57 days in the UK and works for 36 of those days on coronavirus related work. The relevant period is 1 April 2020 to 1 June 2020.

Applying automatic tests

First automatic overseas test –

The days spent in the UK in the relevant period are disregarded. P doesn't spend any other days in the UK over the remainder of the year, so P meets the first automatic overseas test.

P is not UK tax resident for 2020-21.

Example 2.

P was resident in the UK in one of the previous three years and has a 90-day tie. He is not married and does not have a UK home, staying in a hotel when in the UK.

P comes to the UK 1 April 2020 and works on coronavirus related work until 1 June 2020 but remains in the UK until 10 July 2020 when he returns to Sri Lanka.

P returns to the UK on 1 February 2021 and remains in the UK until 6 April 2021 when he returns to Sri Lanka.

The relevant period is 1 April 2020 to 1 June 2020.

In total P spends 159 days in the UK, 57 days of which are during the relevant period and he works for 36 of those days on coronavirus related work.

Disregarding days spent in the UK in the relevant period, P spends 102 days in the UK:

2 June 2020 to 9 July 2020 = 38 days

1 February 2021 to 5 April 2021 = 64 days

Applying automatic tests

The days in the UK in the relevant period are disregarded, looking at the remainder of the year, P spends 102 days in the UK.

First and second automatic overseas test

P spends 102 days in the UK, so he does not meet the first or second automatic overseas test.

Third automatic overseas test

P spends 102 days in the UK, so he does not meet the third automatic overseas test.

First automatic UK test

P spends 102 days in the UK so, he does not meet the first automatic UK test.

Second automatic UK test

P doesn't have a UK home, so he doesn't meet the second automatic UK test.

Third automatic UK test

P doesn't work sufficient hours in the UK, so he does not meet the third automatic UK test.

Sufficient ties

As none of the automatic tests are met, the sufficient ties test needs to be considered.

As P was resident in the UK in one of the previous three years and has spent 102 days in the UK (Paragraph 18 of Schedule 45) he will need two ties to meet the sufficient ties test and be UK resident.

- a. Family tie - he is not married and does not have a child under the age of 18
- b. An accommodation tie – there would be an accommodation tie for the period 6 April 2020 to 9 July 2020. As the proposed modification says ties in the 'relevant period' are to be disregarded then the 91-day period falling within the relevant period is ignored and there isn't an accommodation tie. There isn't another continuous period of 91 days within the period when P has a place to live in the UK that is available to him
- c. A work tie – P does not work on 40 days in the UK, but if he had, the work tie in the relevant period would be disregarded
- d. A 90-day tie - P has a 90-day tie
- e. A country tie – P spends 159 days in the UK and could potentially have a country tie. Ties in the 'relevant period' would be disregarded and so only days outside the relevant period would count towards the country tie. P does not have a country tie

P has one tie and does not meet the sufficient ties test.

P is not UK tax resident for 2020-21.

Example 3

P was not resident in the UK in the previous three years. He is married and his wife lives in the UK home. P works full-time overseas.

P comes to UK 1 April 2020 and works on coronavirus related work until 1 June 2020 but remains in the UK until 10 July 2020 when he returns to India. P returns to the UK 1 February 2021 and remains in the UK until 6 April 2021 when he returns to India.

The relevant period is 1 April 2020 to 1 June 2020.

In total P spends 159 days in the UK, 57 days of which are during the relevant period and he works for 36 days on coronavirus related work

Disregarding days spent in the UK in the relevant period, P spends 102 days in the UK:

2 June 2020 to 9 July 2020 = 38 days

1 February 2021 to 5 April 2021 = 64 days

Applying automatic tests

The days spent in the UK in the relevant period are disregarded, looking at the remainder of the year, P spends 102 days in the UK

First and second automatic overseas test

P spends 102 days in the UK, so he does not meet first or second automatic overseas test.

Third automatic overseas test

P spends 102 days in the UK, so he does not meet third automatic overseas test.

First automatic UK test

P spends 102 days in the UK, so he does not meet the first automatic UK test.

Second automatic UK test

Paragraph 8(1) of Schedule 45:

- a. he has a UK home
- b. where he spends a sufficient amount of time
- c. there is at least one period of 91 (consecutive) days
- d. when Condition B is met

Paragraph 8(3) of Schedule 45:

Condition B is

- a. P has an overseas home, but
- b. The overseas home is where P spends no more than a permitted amount of time in Year X

Paragraph 8(5) of Schedule 45:

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 for at least some of the time.

In this case there is potentially a period of 91 consecutive days (6 April 2020 to 9 July 2020) where he spends fewer than 30 days in the overseas home but the proposed modification is that the home test will have no effect in the relevant period.

Third automatic UK test

He does not work sufficient hours in the UK.

Sufficient ties

As none of the automatic tests are met, the sufficient ties test needs to be considered.

As P was not resident in the UK in any of the previous three years and has spent 102 days in the UK (paragraph 19 of Schedule 45) he will need three ties to meet the sufficient ties test and so be UK resident

- a. Family tie - he is married and has a family tie

- b. An accommodation tie – there would be an accommodation tie for the period 6 April 2020 to 9 July 2020 but the proposed modification says ties in the ‘relevant period’ are to be disregarded. However, there is a continuous period of 91 days (ending on 5 April 2021) when P has a place to live in the UK, that is available to him, where he spends at least one night, so there is an accommodation tie.
- c. A work tie – P does not work on 40 days in the UK, but if he had, the work tie in the relevant period would be disregarded.
- d. A 90-day tie – P does not have a 90-day tie
- e. A country tie – does not apply as P was not UK resident in any of the previous three years

P has two ties and does not meet the sufficient ties test.

P is not UK resident 2020-21.

Example 4.

P works full-time overseas and was UK resident in one of the previous three years. P arrived in the UK on 14 March 2020 to visit his family, he intended to spend 2 weeks in the UK and leave the UK on 28 March 2020 to return to Sweden. However due to the international travel restrictions P was unable to leave the UK as planned; he remained in the UK until 1 July 2020, when he was able to return to Sweden and resume his full-time employment.

P returned to the UK in December 2020 and spent 15 days in the UK. P returned to the UK again on 14 March 2021 and spent 15 days in the UK.

When P was in the UK in the period 28 March 2020 to 1 July 2020 he was able to work remotely and did so for more than three hours on a total of 50 days.

P considers he will be covered by the new legislation as he was working in the UK due to coronavirus.

However, P’s work was not specifically related to the coronavirus medical response so he is not entitled to the benefit of the new legislation, but some of the days he spent in the UK can be disregarded as it was due to [exceptional circumstances](#).

As P had planned to be in the UK until 28 March 2020 that period cannot be treated as exceptional circumstances. However, the period from 28 March 2020 to 5 April 2020 will meet the criteria for exceptional circumstances.

P was in the UK from 6 April 2020 to 1 July 2020, due to travel restrictions, this period (86 days) will be covered by exceptional circumstances, but subject to the 60-day limit. In tax year 2020-21 P spent a total of 56 days in the UK, after excluding days spent in the UK due to exceptional circumstances.

P does not meet any of the automatic tests and so his residence falls to be considered under the sufficient ties test. As P was resident in one of the previous three years, he will need three ties to be UK resident with 56 days spent in the UK.

P has a family tie, an accommodation tie and a work tie so he will be UK resident in tax year 2020-21.

Even though some of the days on which P worked are excluded from the day count, due to exceptional circumstances, this does not extend to excluding the days he worked in the UK for the purposes of the work tie.

1.5 How to tell us

For the tax year to 5 April 2020 (2019-20), individuals who are required to complete a Self-Assessment tax return, should provide details at box 40 'Any other information' on the SA109 supplementary page. The information to be included is the amount of days that qualify to be disregarded and also the period covered.

1.6 Record Keeping

Individuals will need to keep records and documents to support their statements made when considering the statutory residence test. Guidance is available at [RDRM12910](#). Individuals should keep evidence and records relating to;

- the nature and duration of their coronavirus related work activities – a work diary/calendar or timesheet is likely to indicate this. It might be found to be beneficial to ensure the diary is sufficiently detailed, maybe reflecting hours worked, and the nature of the work. For example, reviewing and responding to emails, meetings or completing travel claims,
- breaks the individual had from working, for example between jobs, and why,
- any periods of annual, sick, gardening or parenting leave and,
- their contracts of employment, and documentation/communications which relate to these, particularly to curtailment or extension of these or other changes to them.

HMRC will consider the weight and quality of all the evidence as, taken together, a number of pieces of evidence may be sufficiently strong enough to demonstrate their circumstances met the disregard's conditions.