

New Clause 21: Modifications of the statutory residence test in connection with the coronavirus

Summary

1. The new clause modifies the statutory residence test (SRT) so that a day on which an individual is required to be in the UK in order to undertake work specifically related to coronavirus will be disregarded for the purposes of determining whether they are tax resident in the UK in either tax year 2019-20 or 2020-21.

Details of the clause

2. Subsection (1) provides that this clause applies for determining whether a person is UK tax resident in both tax years 2019-20 and 2020-21. It only applies in relation to tax year 2020-21 where the person is not resident in the UK for 2019-20, including as a result of applying this clause. It also defines “relevant tax” as having the meaning given by paragraph 1(4) of Schedule 45 to the Finance Act 2013.
3. Subsection (2) provides that, for the years mentioned in subsection (1), Schedule 45 the SRT, is modified in accordance with subsections (3) to (13).
4. Subsection (3) modifies paragraph 8 of Schedule 45. A person meets paragraph 8, the second automatic UK test, when they spend enough time in a UK home during the tax year and, under Condition B of that test, spend no more than a permitted amount of time in a home, or homes, overseas. 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. This will ensure that an individual does not become UK resident by virtue of having their only home in the UK.
5. Subsection (4) modifies paragraph 22 of Schedule 45, which defines ‘days spent’ for the purpose of the SRT. The modification provides for a third case when a day is not counted as a day in the UK by inserting new subparagraphs 22(7) to (12). These provide that a day is not counted if the day falls in the period beginning with 1 March 2020 and ending with 1 June 2020, if the person is in the UK in order to carry out specified coronavirus disease related work and is otherwise resident for tax purposes in another country. The specified time period and work is amendable by HM Treasury regulations.
6. Subsection (5) modifies paragraph 23 of Schedule 45 to provide that time spent in the UK should be discounted for the purposes of being in the UK for over 30 days under the deeming provisions.

7. Subsection (6) modifies paragraph 28 of Schedule 45, which applies in calculating the “reference period” (a step taken in determining whether a person works “sufficient hours in the UK” or “sufficient hours overseas” as assessed over a given number of days). The new clause inserts new paragraph 28(2)(ba) to reduce the number of days in the given period to take account of emergency volunteering leave under Schedule 7 to the Coronavirus Act 2020.
8. Subsection (7) modifies paragraph 29 of Schedule 45, which provides that there is a “significant break from UK work” or a “significant break from overseas work” if, in either case and amongst other things, a relevant day is not a day on which the person would have done more than 3 hours’ work in the UK or overseas (as the case may be) but for being on annual leave, sick leave or parenting leave. The new clause extends these disregards to also disregard any emergency volunteering leave taken for reasons connected to coronavirus disease.
9. Subsection (8) modifies paragraph 32 of Schedule 45, which applies the family ties conditions with effect to partners, spouses and children. Normally a person must see their child on a least 61 days of the year to have a UK tie. The modification provides that on those days a person sees their child in the period beginning with 1 March 2020 and ending with 1 June 2020, and the person is in the UK in order to carry out specified coronavirus disease related work and is otherwise resident for tax purposes in another country, these days will now be disregarded from this total.
10. Subsection (9) modifies paragraph 34 of Schedule 45, which provides for the UK accommodation ties. A person must have a home in the UK that is available to them to use for a continuous period of at least 91 days and they must spend at least one night in that home to have a UK accommodation tie. The modification disregards these conditions and a day is not counted if the day falls in the period beginning with 1 March 2020 and ending with 1 June 2020, if the person is in the UK in order to carry out specified coronavirus disease related work and is otherwise resident for tax purposes in another country.
11. Subsection (10) modifies paragraph 35 of Schedule 45, which considers UK work ties in a year. If someone works for more than 40 days in a year (a day being considered as working for more than 3 hours), then the modification allows a disregard of any day if the day falls in the period beginning with 1 March 2020 and ending with 1 June 2020, if the person is in the UK in order to carry out specified coronavirus disease related work and is otherwise resident for tax purposes in another country.
12. Subsection (11) modifies paragraph 37 of Schedule 45, which applies for the 90-day tie. A person will have a 90-day tie for a particular year if they have spent more than 90 days in the UK in the preceding tax year or the tax year preceding that tax year, or each of those tax years separately. The modification will disregard any day if the day falls in the period beginning with 1 March 2020 and ending with 1 June 2020, if the person is in the UK in order to carry out specified coronavirus disease related work and is otherwise resident for tax purposes in another country.
13. Subsection (12) modifies paragraph 38 of Schedule 45, which applies in determining country ties. A person will have a country tie for a particular year if the country in

which they meet the midnight test for the greatest number of days in that year is the UK. The modification will disregard any day if the day falls in the period beginning with 1 March 2020 and ending with 1 June 2020, if the person is in the UK in order to carry out specified coronavirus disease related work and is otherwise resident for tax purposes in another country.

14. Subsection (13) modifies paragraph 145 of Schedule 45 to insert a definition of “coronavirus disease” for the purpose of the new provisions.

Background note

15. The SRT was introduced in 2013 to replace the mostly case law based definition of residence. The intention was to provide greater clarity and certainty to individuals when determining their residence status for UK tax purposes. The SRT is designed so that people can use a series of tests to determine whether they are resident or non-resident in the UK.
16. Broadly, under the SRT an individual is UK resident for a tax year if they meet one of four automatic residence tests and none of five automatic overseas tests, or meet the ‘sufficient ties’ test.
17. Due to the coronavirus pandemic, the UK government wants to encourage non-UK resident workers to come to the UK to work on various aspects of combatting the disease. Although they would currently only be taxed on their UK source income, any days present in the UK would count towards their total time spent in the UK under the SRT and therefore potentially change their residence status.
18. The new clause modifies the SRT so that the days certain individuals are present in the UK for reasons specifically related to coronavirus will be discounted for the purposes of determining whether they are tax resident in the UK in either tax year 2019-20 or 2020-21.
19. This is in line with the government’s policy of supporting work to combat the effects of the coronavirus in the UK.