

Statutory Residence Test

At the UK Budget on 23rd March 2011, it was announced that the Government is to consider introducing a statutory residence test.

This test, which would come into force in April 2012, should provide a legal framework by which taxpayers can determine whether they are resident in the UK or not.

Press speculation about this topic is sure to be widespread. The Revenue's attitude on residence rules has become increasingly stringent in recent years, and the legislators have a tricky job on their hands to try to ensure the test is reasonable and useable. Hopefully a sensible solution can be found which satisfies the need of taxpayers, advisers and business for clarity on the one hand, and the Exchequer's need for tax revenue today and tomorrow, on the other.

Whilst crystal ball gazing can always be hazardous, I would expect that certain elements will form part of the test:

(i) Days of presence in the UK - not just in the most recent tax year but perhaps over a period of years. In the last few years Parliament has debated the virtues or otherwise of the Irish and US day counting systems and it is questionable whether the current 91 day average rule will survive. That said, a count of the number of days an individual is in the UK is a measurable and provable fact and so I would be astonished if there wasn't some kind of test along these lines.

(ii) Separate and different sets of conditions may well apply to those who leave the UK to work full-time and those who do not. Any terms should confirm the level of attachment a person in either category may have to the UK to be able to maintain their non-resident status. It is likely that items to be taken into account would include the availability of accommodation in the UK (which was in statute law until 6 April 1993) and in the host country, the location of immediate family members, the question of whether a person is resident in their host country for tax purposes, and where the duties of any employment are undertaken.

(iii) Some form of requirement for registration and deregistration for tax purposes in the UK might be introduced – i.e. an administrative step to prove that a person has left the UK or has returned. This is already a feature of many European tax systems.

There is a further facet to this. Will the new residence test help those people who are UK resident presently to break residence in the future? Or will it merely be a guidance mechanism to help non-residents stay non-resident, or to capture the unwary non-resident? It is too early to say for sure. However, it is unlikely that the new test will be entirely satisfactory to everyone. There will be winners and losers and inevitably there will be devil in the detail which will complicate any interpretation.

As with so much government legislation, time will tell. On a positive note The Fry Group expects to be fully involved in the government's consultation process. After dealing with clients and residence issues for many years we are well placed to try to ensure that the test provides a sensible, useful framework for determining residence status.

If you have a concern about residence, and your exposure to UK tax whilst living overseas please [click here](#) to get in touch with your usual Fry contact or call 01903 231545.

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