The UK Statutory Tax Residence Test

From 6 April 2013 a new Statutory Residence Test was introduced in the UK governing the factors to be taken into account in determining if an individual is resident in the UK for tax purposes. This replaces the mainly case law based approach of previous years.

An individual will be automatically resident or automatically non-resident if certain criteria are met, or will otherwise be subject to supplementary tests based on the number of connections with the UK. This article summarises the main features of the Statutory Residence Test but only constitutes generic guidance and individual professional advice should always be sought. Although these rules offer more clarity than before, they are still open to interpretation.

Automatically Non-Resident

An individual is deemed automatically non-resident in the UK if any one of the following three tests is met:

- Resident in the UK in one or more of the three preceding tax years and spends fewer than 16 days in the UK in the tax year

- Not resident in the UK in any of the previous three years and spends fewer than 46 days in the UK in the tax year

- Works full time overseas without any significant breaks from the overseas position and:

  - spends fewer than 91 days in the UK during the tax year, and

  - the number of days spent working in the UK for more than three hours is fewer than 31.

Automatically Resident

An individual is deemed automatically resident in the UK if any one of the following three tests is met:

- Spends 183 days or more in the UK in the tax year

- Has a home in the UK for a period of more than 90 days and:

  - is present in that UK home on at least 30 separate days (individual or consecutive days) during the tax year, and

  - whilst that home is available, there is a period of 91 consecutive days (of which one or more fall into the tax year in question)when either

  - there is no overseas home or there are one or more homes overseas during which the individual is not present for more than 30 days during the tax year.

- Works full-time in the UK for 365 days or more with no significant break from UK work and:

  - all or part of that work period falls within the tax year, and

  - more than 75% of the total number of days in the tax year when working more than three hours work are days spent working in the UK.

Supplementary Tests

If neither automatic test is met, it is necessary to consider the number of ties the individual has with the UK. These supplementary tests examine the number of connections to the UK based upon:

- Family- broadly, an individual will have a family tie where they have a partner (husband, wife, or civil partner) and/or children under 18 resident in the UK.

- Accommodation- an individual will have an accommodation tie where they have a place to live in the UK (Including a holiday home) and it is available for a continuous period of 91 days or more in the tax year, and they spend at least one night there (or 16 nights if the home belongs to a close relative). Gaps of 15 days or fewer will count towards the continuous period of availability.

- Work- an individual will have a work tie if they work more than three hours a week in the UK for an aggregate of 40 days or more in the tax year.

- 90 day tie- an individual will have a 90 day tie if they spend more than 90 days in the UK in either or both of the previous two tax years.

- Country tie- an individual will have a country tie if they spend more midnights in the UK than any other country during the tax year.

For further information or to obtain a professional residence opinion contact Capital Consulting.

Welcome

Welcome to the quarterly bulletin from Capital Consulting.

In this first issue of 2016 we provide an important article about the tax residency rules in the United Kingdom reminding you of the significant changes dating from 2013.

We also provide you with a brief update on the Irish Budget changes for 2016 together with an article on the withholding tax changes in Colombia for 2016.

Our country profiles of this issue cover Argentina and Spain, providing you with a useful summary of living, taxation and social security information for each country.

Finally, we look at the tax news from the UK following the November Autumn statement issued by the Chancellor of the Exchequer.

I hope you will find this new edition useful and would welcome your feedback at news@capitaltaxconsulting.com.

We take this opportunity to wish you all a healthy and prosperous New Year.

D. Michael Cowhie
FCA LL.M in International Tax
news@capitaltaxconsulting.com

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Irish 2016 Budget main highlights

As expected, the marginal rate of income tax will remain at 40% and the lower rate at 20%. The tax bands for the lower rate also remain static at EUR 33'800 for a single individual and EUR 42'800 for a married couple with just one spouse working. High earners get little relief as income in excess of EUR 70'044 will continue to have a marginal tax rate of 52% (made up of 40% income tax, 8% Universal Social Charge (USC) and 4% PRSI).

The USC threshold for imposing the tax will be raised to EUR 13'000 (was EUR 12'012). The rates are progressive from 1% to 8% (on income over EUR 70'044). Medical card holders and those aged over 70 years whose aggregate income is EUR 60'000 or less will pay a maximum rate of 3% (formerly 3.5%). The normal rates of USC apply to those aged 70 years and over, and to medical card holders earning EUR 60'000 and above.

The USC changes are expected to cost the exchequer EUR 772 million in 2016.

The USC, which came into effect on 1 January 2011, is a tax payable on gross income, including notional pay, after any relief for certain capital allowances, but before pension contributions. In 2014, the USC accounted for 21.28% of income tax collected and accounted for 8.8% of total taxes collected so the 2016 Budget measures will have a substantial impact on exchequer returns making continued economic growth an imperative to plug the gap left by these tax cuts.

Country Profile:

Argentina

Capital:	Buenos Aires
Population:	43'131'966 (2015 est.)
Language:	Spanish (official)
Exchange rate:	GBP 1 = ARS 19.5456 (21 December 2015) Argentinean Peso (ARS or $)
Time zone:	GMT-3
Electricity:	230V/50Hz
Cost of living:	Buenos Aires ranked 19th most expensive world city - Mercer Worldwide Survey 2015
Tax year:	1 January to 31 December

Income Tax

Argentina operates on progressive personal income bands which are subject to withholding tax at the progressive rates of 9% (0 to ARS 10'000), 14% (10'001 to ARS 20'000), 19% (20'001 to ARS 30'000), 23% (30'001 to ARS 60'000), 27% (60'001 to ARS 90'000), 31% (90'001 to ARS 120'000), and 35% (income above ARS 120'000.00).

Individuals are considered resident in Argentina as soon as they receive either their residency or work permit. Both residents and non-residents are expected to pay income tax on all Argentinean income; however resident persons shall also pay taxes on overseas income.

Individuals who are present in Argentina for less than six months (183 days) in any 12-month period and derive employment income must pay tax on such income at a special effective flat rate of 24.5%. A standard deduction of 30% of compensation is allowed for expenses incurred in earning income. The remaining 70% of compensation is taxed at a flat rate of 35%, with no other allowable deductions or exemptions, resulting in an effective withholding tax rate of 24.5%.

Argentinean tax legislation considers residents as follows: (1) Native and naturalized Argentine citizens, except for those who have lost their resident status; (2) Foreign individuals who obtained their permanent resident status in the country or who have legally been in the country for a twelve month period by means of temporary authorizations. It is important to note that temporary absences of up to 90 (working or non-working) days within every period of 12 months, shall not break the continuity of being deemed permanent in the country.

Income Tax is payable on an annual basis with five advance payments (every two months). Expenses incurred in generating such income may be deducted from gross income. Local employees are subject to withholding tax at source, for which the employer is responsible as a withholding agent. Capital gains are exempt from income tax, however retirement pensions, retirement compensation and benefits in kind are taxable.

Social Security

Companies must deduct and pay from the employees' salaries the amount related to social security contributions owed by them. The monthly employee social security contributions as per 2015 rates for a services company total 17% (Pension Fund System 11%, Retirement Fund (INSSJP) 3% and Medical Assistance 3%). There is a monthly salary ceiling cap of ARS 43'202.15 effective from 1 March 2015.

The employers' portion of social security contributions amounts to 27%, for a services company (Pension/retirement contributions 21% and Social Health care 6%). There is no salary ceiling applied to the employers' contribution amount.

Argentina has reciprocal social security agreements with Brazil, Chile, France, Italy, Luxembourg, Peru, Portugal, Spain and Uruguay.

Social security contribution exemption is granted on request for foreigners on short-term assignments (less than 2 years with a temporary visa).

Colombia: withholding tax changes in 2016

The monthly withholding tax (retefuente) to apply to workers in 2016 (tax year) will be applicable to salaries starting from COP 4'216'282 (EUR 1'185). The data comes from the preliminary estimate of the Tax Value Unit (UVT), which will be approximately COP 29'752.

The UVT is the starting point used for all payments related to taxes. Before each year end, the Dian (Colombian tax authority) issues a resolution that establishes the official amount for UVT.

The Retefuente is deducted from the employee's taxable remuneration. The taxable remuneration is after deducting retirement (4%), health (4%) and the social security "solidarity" contributions from the monthly gross salary.

Thus, the starting taxable amount subject to retefuente will be COP 3'836'817 (EUR 1'078) in 2016, equivalent to 128.96 UVT. Sometimes, employees with lower monthly salaries are subjected to the withholding tax because the employer's regime includes additional payments (overtime, aid, bonuses and other regular payments received by the employee) in the taxable remuneration calculation.

The minimum sanction to pay Dian (tax authorities) is 10 UVT. Thus, for 2016 this will be COP 297'520 pesos, which means an increase of 3.6% compared to the previous amount of COP 280'279. In case of submitting incomplete or wrong information when registering at the Single Tax Register (RUT), the sanction is equivalent to 100 UVT, i.e. in 2016 COP 2'975'200.

Country Profile:

Spain

Capital:	Madrid
Population:	47'833'842 (December 2015 est.)
Language:	Castilian 74% (official language nationwide), Catalan 17%, Galician 7%, Basque 2%
Exchange rate:	GBP 1 = EUR 1.36 (21 December 2015)
Time zone:	GMT + 1 (+2 from the end of March to the end of October)
Electricity:	230V; 50Hz
Cost of Living:	Madrid dropped to 115th most expensive city in the world Mercer Worldwide Survey March 2015
Tax year:	1 January to 31 December

Income Tax

Tax liability in Spain depends on the individual's residence status. If staying in Spain for more than 183 days per year; or when his/her economic, business or personal centre of interests is located in Spain, the individual will be considered a tax resident by the tax authorities.

Residents are subject to income tax on a worldwide basis, whereas non-residents are taxed on Spanish-source income under a separate regime.

Non-resident tax payers are taxed a flat rate of 24% on income obtained in Spain or arising from Spanish sources. A general rate of 20% applies as of 2015 (19% as of 2016) to non-residents who are tax residents in a country of the European Union (EU) or of the European Economic Area (EEA). Certain requirements have to be met to be able to apply for the non-resident tax regime, as of 1 January 2015:

-the individual has not been a Spanish resident in the past 10 years prior to the flat rate request.

-the employment income obtained in the period of applicability of the flat rate regime should correspond to work performed in Spain only.

-The flat rate applies only to income up to EUR 600'000. Employment income exceeding that amount will be taxable at the regular rate applicable to tax residents.

For residents, tax is calculated using a progressive tax rate which varies depending on the autonomous community where the individual is a tax resident. Income taxes are levied starting from 20% to a maximum of 47%. As of 2016, they will start from 19% to 45%.

Social Security

An individual working in Spain is usually subject to social security contributions on his gross earnings. The Spanish social security system was amended through rules set by Royal decree 16/2013. Contributions are payable as a percentage of salary up to the ceiling of the occupational category. If salary is less than the ceiling of that category, the employer and the employee contribute based on the real wage. There are 11 contribution groups, the lowest being persons under age 18, the highest being engineers and university graduates.

As of 2015, general risk contributions represent 28.3% of an employee's wages with the employer paying 23.6% and the employee paying 4.7%. The rate for the unemployment fund is higher for temporary (6.7%) and part-time temporary (7.7%) contracts.

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UK 2015 Autumn Statement highlights

On 25 November 2015, the Chancellor of the Exchequer unveiled the Autumn Statement to Parliament.

The government is proposing to remove tax relief for ordinary commuting (in general, home-to-work travel and subsistence expenses) for workers who are:

- supplying personal services,
- engaged through an employment intermediary (including umbrella companies, certain employment businesses and personal service companies); and,
- subject to (or to the right of) the supervision, direction or control of any person.

The effect of this will be that individuals whose relationship with their engager is such that they look and act like employees cannot claim relief on the everyday cost of travelling to work, when employed through an intermediary. This will ensure a level playing field for access to tax relief for travel and subsistence.

The Tax and National Insurance Contributions (NIC) effect would arise from 6 April 2016. The government's intention is that where a worker is employed through an employment intermediary, then they will not be entitled to tax and NICs relief on travel and subsistence expenses incurred for home-to-workplace travel although only where they are supplying personal services to an engager, and under the right of supervision, direction or control of any person.

In future, where a worker's employment meets the criteria set out above, the services the worker provides on each engagement will be treated as being a separate employment for the purpose of section 337, 338 and 339 of ITEPA. For the purposes of these sections the worker will therefore be treated in the same manner as those on temporary agency contracts.

The Autumn Statement also referred to the intention of government to take action against those who have used, or continue to use, disguised remuneration schemes and who have not yet paid their fair share of tax. The government will consider legislating in a future finance bill to close down any further new schemes intended to avoid tax on earned income, where necessary, with effect from 25 November 2015.

In its continued efforts to combat tax evasion the government also announced an intention to introduce a new criminal offence of strict liability for failing to declare offshore income and gains; and new civil penalties for deliberate offshore tax evasion, and for those who enable offshore tax evasion. The government will also introduce a new criminal offence for corporations which fail to prevent their agents from criminally facilitating tax evasion by an individual or entity. There will also be a new penalty of 60% of tax due to be charged in all cases successfully tackled by the General Anti-Abuse Rule which will provide an added deterrent to those who enter into abusive tax arrangements.

The Chancellor announced steps to support and encourage home ownership and development, but these measures were accompanied by changes for those acquiring property as investments or as second homes. From April 2016, the purchase of property costing over GBP 40'000 for investment or as a second home will incur a surcharge of 3% on the normal rate of stamp duty land tax (SDLT). An exemption to the surcharge is expected to be made available to companies and funds making significant investments in residential property as these activities are considered to support Government policy of increasing housing supply. The threshold for this exemption is to be subject to consultation, but the initial indication is that it will be targeted at funds owning a minimum of 16 residential properties.

In addition, from April 2019 the due date for the payment of capital gains tax on the disposal of residential property will be accelerated so that it becomes payable 30 days from completion (compared with 31 January following the tax year, as now). This may present practical difficulties with regard to the calculation of tax due in connection with disposals of properties with complex ownership histories.

About Capital Consulting

At Capital Consulting, we believe that working abroad should be an enjoyable and profitable experience. We aim to make consultants' and agencies' lives as straightforward as possible whilst ensuring their affairs are structured in a legitimate and tax efficient manner.

The group has been operating from Neuchâtel, Switzerland, since 1990 and currently has a turnover in excess of CHF 70'000'000. During this time we have built a team of qualified specialists with wide experience in the areas of international contracts, taxation and social security.

We assist consultants globally, providing particularly effective solutions for IT, engineering, financial and telecommunications consultants who earn their living outside their normal country of residence.

To find out how we can help you and your consultants, please contact us:

Capital Consulting SA

Champs-Montants 12b,
2074 Marin, Switzerland
T +41 32 732 9700
F +41 32 732 9701

info@capitaltaxconsulting.com
www.capitaltaxconsulting.com

Capital Consulting Latin America

Rua Fernandes Tourinho 164 /3o andar
Funcionários -Belo Horizonte MG,
30112-000, Brazil
T +55 31 3194 8150
F +55 31 3194 8171

www.capitalconsultinglam.com

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