Statutory Residence Test

Under the Statutory Residence Test\(^1\), the new definition states that an individual is to be regarded as 'temporarily non-resident' if the temporary period of non-residence is five years or less. This is a change from the previous temporary non-residence provisions, which apply if there are fewer than five tax years ('intervening years') between the year of departure and the year of return. The new rule applies for individuals who leave the UK on or after 6 April 2013.

In paragraph 6.2 of RDR3, HMRC states ‘…for the special rules to not apply, your period of temporary non-residence has to be for more than five years; it does not have to be for five complete tax years.’ In certain circumstances, an individual will need to remain outside of the UK for six tax years in order not to be regarded as ‘temporarily non-resident’.

Example

An individual:
- Leaves the UK on or before 5 April in one year (e.g. 4 April 2015);
- stays outside the UK for five complete tax years (being both tax years and calendar years);
- returns to the UK on 6 April or later during the following tax year (6 April 2020).

The individual is not, at any point, treaty resident in another country and is not eligible for split-year treatment in the year of arrival or departure. Under the new rules, the individual will be temporarily non-resident as the period of non-residence will be precisely five years and not more. Therefore, they would have to remain outside the UK until 6 April 2021 in order not to be regarded as temporarily non-resident.

\(^1\) https://www.gov.uk/government/publications/rdr3-statutory-residence-test-srt