

## Determining the UK residence status of a partner of a Tier 1 investor

During every tax briefing meeting we have with Tier 1 investors, there is one question which is always asked, namely 'Is my husband/wife a UK Resident?' Here is a typical example to illustrate the UK Statutory Resident Test.

Mrs Smith is a Tier 1 investor, she and her husband Mr Smith arrived in the UK on 7 July 2013. In the 2013/14 tax year (year ending 5 April 2014), Mrs Smith and her children will stay in the UK, and Mr. Smith will return to China for a while.

Mrs. Smith spends over 183 days in the UK, so she is treated as Automatically Resident.

The question of Mr. Smith's residence status arises and the maximum number days he could remain in the UK and still be treated as Non-Resident.

The answer is that Mr Smith cannot be treated as Automatically Non-Resident or Automatically Resident, he will be regarded as either UK Resident or Non-Resident based on the number of ties he has with the UK, and the number of days spent in the UK.

The relevant ties for 'Arriver' are:

1. The individual's spouse is resident in the UK;
2. Living accommodation is available;
3. Present in the UK on more than 90 days in either of the two previous tax years;
4. Works in the UK for at least 40 days.
5. Spends more times in the UK than other country

Arriver	Days in the UK	Leaver
Not resident in the previous three years		Resident in the previous three years
No. of ties to make you resident		No. of ties to make you resident
at least 2	121 - 182	at least 1
at least 3	91 - 120	at least 2
at least 4	46 - 90	at least 3
Automatically Non-Resident	16 - 45	at least 4

In 2013/14 tax year, assuming Mr Smith doesn't work in the UK for more than 40 days. Mrs Smith is UK resident, and they have a place to live in the UK, therefore, Mr Smith has 2 ties.

- If Mr Smith spends 121 days or more, he is treated as Resident;
- If Mr Smith spends less than 121 days, he is treated as Non-Resident;

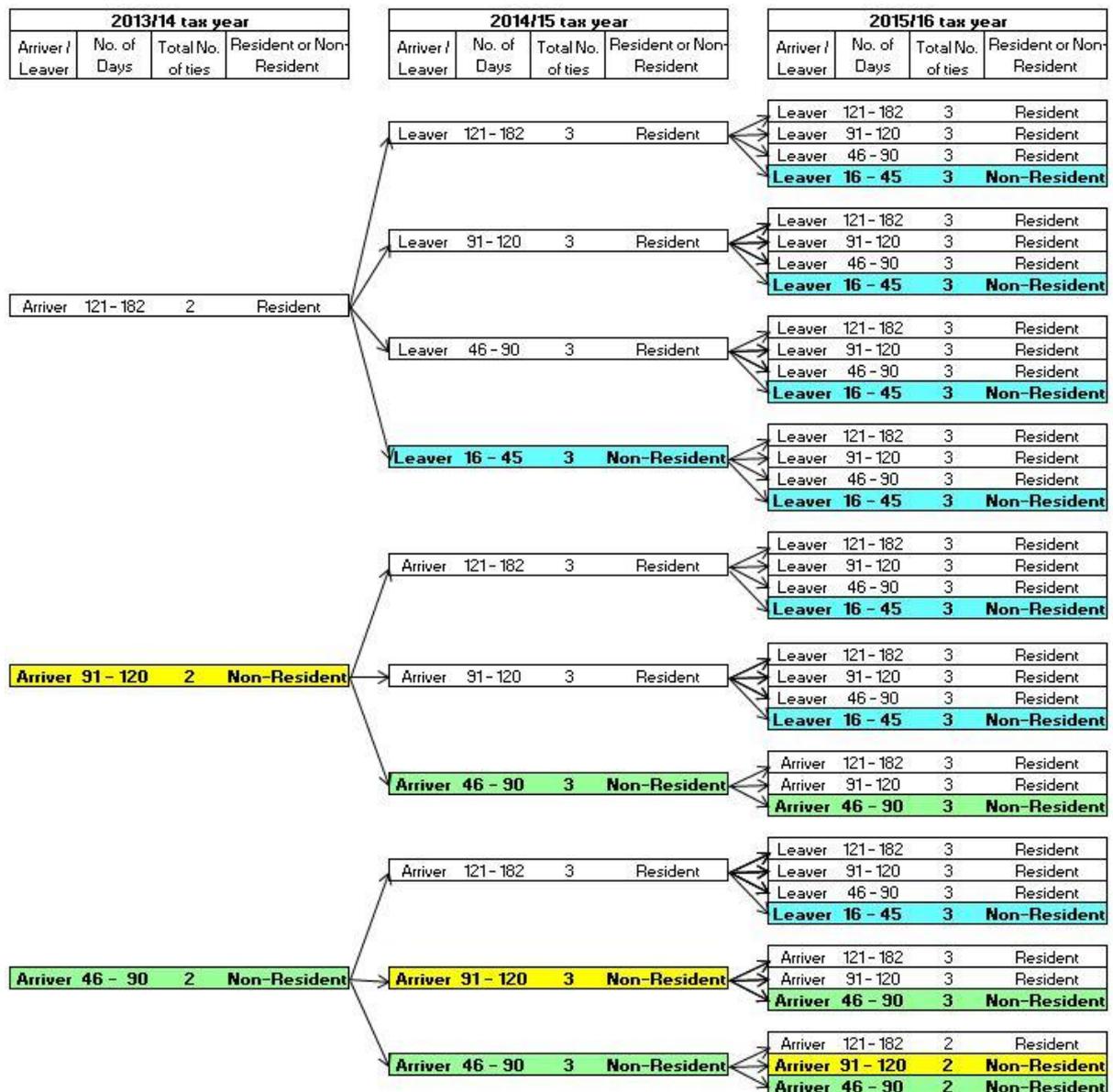
What would be the maximum number days he could stay in the UK in the following two tax years?

If Mr Smith spends more than 121 days in 2013/14 tax year, to be treated as Non-Resident, he can stay no more than 45 days in both of the next two tax years.

If he spends between 91 days to 120 days in 2013/14 tax year, he has to spend less than 90 days in both of the next two tax years to be treated as Non-Resident.

If Mr Smith spends less than 91 days in 2013/14 tax year, he can only stay between 91 days to 120 days in either one of the following two tax years, and in the other tax years, he must spend less than 91 days.

Generally speaking, if Mr Smith spends less than 91 days, he would not be treated as Resident in any of the tax years. If he stays more than 91 days but less than 120 days in a tax year, he must stay less than 91 days in the next two following tax year to keep his Non-residence status.



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