



HM Revenue
& Customs

**Scottish Rate of Income Tax – Technical Guidance on
Scottish Taxpayer Status**

Technical Note
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Introduction

The Scottish rate of income tax (SRIT), as introduced by the Scotland Act 2012, will be charged on the non-savings and non-dividend income of those defined as Scottish taxpayers and will start from April 2016.

The definition of a Scottish taxpayer is focused on where an individual lives, or resides, in the course of a tax year. Scottish taxpayer status applies for a whole tax year - it is not possible to be a Scottish taxpayer for part of a tax year.

For the vast majority of individuals, the question of whether or not they are a Scottish taxpayer will be a simple one – they will either live in Scotland and thus be a Scottish taxpayer or live elsewhere in the UK and not be a Scottish taxpayer.

Whether or not an individual is a Scottish taxpayer will not, however, be simple in all cases. This draft technical guidance provides initial detail on the manner in which HM Revenue and Customs (HMRC) will interpret some of the terms used in the sections of the Scotland Act 2012, which set out the definition of a Scottish taxpayer.

This draft guidance is of a technical nature and intended for HMRC officials administering SRIT and the external tax advisory and business community. **A wider range of simpler, general guidance and advisory products to assist taxpayers in understanding what SRIT might mean for them, will be provided later in the year.**

HMRC is also currently working closely with Ministry of Defence on the preparation of separate guidance to ensure that all service personnel will have clarity on how SRIT will apply to their individual circumstances prior to its introduction. This guidance will be available later this year.

HMRC are seeking views on whether this draft guidance provides clarity on the principles by which Scottish taxpayer status should be decided. If you would like to comment responses should be sent by 31 July 2015 to the following email address: sritguidancejune15.technicalnoteresponses@hmrc.gsi.gov.uk or by post to:

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Background - Definition of a Scottish Taxpayer

The Scotland Act 2012 inserts new sections 80D-80F into the Scotland Act 1998 which define who will be a Scottish taxpayer for the purposes of the Scottish rate. There are a number of steps to determine this.

Firstly, in order for an individual to be a Scottish taxpayer, they must be UK resident for tax purposes – an individual who is not UK tax resident cannot be a Scottish taxpayer.

The remaining parts of the definition are based on the location of an individual's sole or main place of residence. If they have one place of residence and this is in Scotland, they are a Scottish taxpayer.

Individuals who have more than one place of residence in the UK need to determine which of these has been their main place of residence for the longest period in a tax year – if this is in Scotland, they are a Scottish taxpayer. For example, if an individual with a single place of residence moves house into or out of Scotland part way through a tax year, whether they will be a Scottish taxpayer in that year will depend upon which house is their main place of residence for the longer amount of time.

Individuals who cannot identify a main place of residence will need to count the days they spend in Scotland and elsewhere in the UK – if they spend more days in Scotland, they will be a Scottish taxpayer.

An individual who meets the definition of a Scottish taxpayer will be a Scottish taxpayer for a whole tax year.

There are separate rules which apply to MSPs, MPs representing a constituency in Scotland and MEPs representing Scotland. Such individuals will automatically be treated as Scottish taxpayers, irrespective of where their sole or main residence is located or of where they spend the most days in the UK.

SCOTTISH TAXPAYERS - DRAFT TECHNICAL GUIDANCE

Introduction

The definition of a Scottish taxpayer is focused on where an individual lives, or resides, in the course of a tax year, not where they work.

Scottish taxpayer status applies for a whole tax year - it is not possible to be a Scottish taxpayer for part of a tax year.

An individual will be a Scottish taxpayer if they are **resident in the UK for tax purposes** and, in the course of a tax year, they satisfy any of three tests

1. they are a **Scottish Parliamentarian** (page 8)
2. they have a “**close connection**” to **Scotland** (page 9), through either:
 - having only a single “place of residence” (page 10), which is in Scotland
 - where they have more than one “place of residence”, having their “main place of residence” (page 11) in Scotland for at least as much of the tax year as it has been in another part of the UK
3. where no “close connection” to Scotland (or any other part of the UK) exists - through **day counting**. If the individual spends at least as many days in Scotland as elsewhere in the UK (page 17)

For the vast majority of individuals, the question of whether or not they are a Scottish taxpayer will be a simple one – they will either live in Scotland and thus be a Scottish taxpayer or live elsewhere in the UK and not be a Scottish taxpayer.

Whether or not an individual is a Scottish taxpayer will not, however, be simple in all cases. This chapter provides further guidance on some of the terms used in the sections of the Scotland Act 2012, which set out the definition of a Scottish taxpayer.

“Scottish Parliamentarian”

All Scottish Parliamentarians will be Scottish taxpayers regardless of where they live.

An individual is a Scottish Parliamentarian for a tax year if, for the whole or any part of that tax year, they are:

- a member of Parliament for a constituency in Scotland
- a member of the European Parliament for Scotland
- a member of the Scottish Parliament

“Close Connection”– “place of residence” in the UK

The means by which “close connection” can be established are set out by section 80E of Scotland Act 1998¹

Key to establishing whether a “close connection” exists is where an individual lives - the location of an individual’s “place of residence” (page 11).

Single place of residence in the UK

Where an individual has just one place of residence in the UK in the course of a tax year and that place of residence is in Scotland, they will have a “close connection” to Scotland and be Scottish taxpayer for that tax year.

Where that place of residence is located in another part of the UK they will have a “close connection” to that part of the UK and will not be a Scottish taxpayer.

Two or more places of residence in the UK

Where, in the course of a tax year, an individual has more than one place of residence in the UK, they will have a “close connection” with Scotland and be a Scottish taxpayer, if their main place of residence has been in Scotland for more of the tax year than in any other part of the UK. So:

- where, in the course of a tax year, an individual has had more than one “main place residence” but all in the same part of the UK, they will have a “close connection”, to that part of the UK. If that part of the UK is Scotland they will be a Scottish taxpayer
- where in the course of a tax year, an individual has a “main place residence” in Scotland and elsewhere in the UK, then whether a “close connection” with Scotland exists will be determined by whether his or her main place of residence was in Scotland for at least as much of the year as it was elsewhere in the UK

¹ Section 80E of the Scotland Act 1998 was inserted by section 25 of the Scotland Act 2012.

Meaning of “Place of Residence”

This term is not defined by the legislation so must be given its ordinary meaning. For an individual its ordinary meaning is the dwelling in which that person habitually lives: in other words his or her home. This interpretation is supported by considerable case law (page 14). Places of temporary accommodation, for example hotels and holiday homes do not constitute a “place of residence”

For the majority of individuals their place of residence will be simple to identify - not all individuals though have simple living arrangements. However, even for those with more complicated arrangements, whether a place is their home, where they habitually live, is central to establishing whether it constitutes a “place of residence” for the purposes of Scottish taxpayer status.

The concept of residence is used elsewhere in tax and non-tax legislation and **case law** relating to these rules provides useful additional indication as to which factors are illustrative of whether a location constitutes “a place of residence” in the context of deciding Scottish taxpayer status (page 16).

Based on this case law, when considering whether a location constitutes a “place of residence” for the purposes of Scottish taxpayer status one should bear the following factors in mind:

- it is possible for an individual to have more than one “place of residence”, for example a flat in town and a house in the country
- an individual must have actually lived in a place for it to constitute a “place of residence”. For example, owning a property, without ever visiting or staying at it, will not make it an individual’s “place of residence”
- living in a place only occasionally or for a short period of time does not preclude it constituting a “place of residence”; however a degree of permanence or continuity is required to turn occupation into residence. For example occasionally staying as a guest at the house of a friend will not make it a “place of residence”
- ownership by the individual is not required for a dwelling to be a “place of residence”, rented or work provided accommodation can be where an individual habitually lives – their home
- a “place of residence need not be a building – boats, caravans, lorries, any form of transport or mobile home can constitute a “place of residence”, if that is the individual’s home

Ultimately, however, whether a place constitutes a “place of residence”, for the purposes of Scottish taxpayer status, will be dependent on the facts of an individual circumstance.

Meaning of “Main place of residence”

Where, in a tax year, an individual has two or more “places of residence” in the UK, section 80C (3) applies to decide if a “close connection” with Scotland or another part of the UK exists. Central to that test is establishing an individual’s “main place of residence”.

A “main place of residence” is not necessarily the residence where the individual spends the majority of their time, although it commonly will be. A “main place of residence” is the “place of residence” with which the individual can be said to have the greatest degree of connection.

Whether a place constitutes a “main place of residence” is a matter of fact and all of the facts and circumstances of the particular case must be considered to arrive at a conclusion.

The following list of points to consider, although not exhaustive, may be useful in establishing whether a place constitutes a “main place of residence”:

- if the individual is married or in a civil partnership, where does the family spend its time?
- if the individual has children, where do they go to school?
- at which residence is the individual registered to vote?
- how is each residence furnished?
- where are the majority of the individual’s possessions kept?
- which address is used for correspondence?
 - Banks and Building Societies or credit cards
 - HMRC
 - utility bills
- where is the individual registered with a doctor / dentist?
- at which address is the individual’s car registered and insured?
- which address is the main residence for council tax?

Close Connection - Examples

1. Throughout the whole of the tax year Sharon lives in a flat in Dumfries but is employed by a company based in Carlisle, where her office is situated.

The location of your employer or where you work is not relevant to deciding whether you are a Scottish taxpayer. Although Sharon works in England, her place of residence is in Scotland, so Sharon is a Scottish taxpayer.

2. Ravi is retired and lives in Liverpool. As well as his state pension Ravi also has a monthly income from a private pension with an Edinburgh based pension firm

The location of the pension provider from whom a pension is received is not relevant to deciding whether you are a Scottish taxpayer. Ravi's place of residence is in England so he is not a Scottish taxpayer.

3. Throughout the whole of a tax year, Mohammed lives with his wife in Huddersfield and works as a long distance lorry driver. His work regularly takes him away from home for days at a time, travelling across the UK, driving overnight, often in Scotland.

Notwithstanding the fact that he spends considerable time in many different parts of the UK, especially in Scotland, Mohammed has only one place of residence in the UK. Since that place of residence is in England he is not a Scottish taxpayer

4. Bob has worked and owned a flat in Bristol for many years. He spends the working week in the Bristol flat but he spends each weekend at a house he owns outside of Oban, where he likes to go walking and fishing. Both properties are furnished with Bob's possessions but his doctors, electoral and car registration are all in Bristol.

Bob has two places of residence but his main place of residence is in Carlisle, as this is the residence with which he has the closest connection and in which he spends the most time. Bob is therefore not a Scottish taxpayer

5. Sally is single with no children and has lived and worked in London for a number of years. In May she is offered a new job with a firm based in Dundee and decides to accept the offer. She sells her London home and starts the new job in July, moving to a rented house close to her new office.

Sally has two main places of residence in the tax year but her main place of residence was in Scotland for more of that year than it was in England. A “close connection” with Scotland exists, so Sally is Scottish taxpayer for the whole of that tax year.

6. Throughout the tax year, Jack is employed by an oil company working four weeks on/four weeks off, on a rig in Scottish waters. When not working Jack lives at the house that he owns with his long-term partner and children in Leicester. All of his possessions are in Leicester, his car is registered and he is registered to vote in Leicester.

Jack’s main place of residence is in Leicester. His family and his possessions are there and he spends all his non-working time there - he is thus not a Scottish taxpayer.

7. Ruth is employed by an oil company working four weeks on/four weeks off, on a rig in Scottish waters. Ruth is single and has no children. When not on the rig she stays in work-related accommodation near Aberdeen but spend most of her non-working time visiting friends or on holiday. She keeps some of her possessions in storage near Aberdeen but the majority are at her mum’s home in Belfast which she also uses as her address for bank and other correspondence, although she seldom visits.

Ruth has no place of residence. Mum’s house is not a “place of residence” as Ruth does not reside there. Neither the rig nor the on-shore work accommodation are places of residence as there is little permanence or continuity in their occupation – none of her possessions are sited in them – there is no close connection. Ruth’s Scottish taxpayer status will be decided by day counting.

8. Tom has lived and worked in Birmingham for a number of years. In March he is offered a fixed one year secondment by his employers, starting in April, at their branch in Glasgow. Tom rents out his Birmingham home and moves into a house provided by his employer just outside of Glasgow. He changes his home address for bank, credit card and energy suppliers to the new house and registers with a doctors’ surgery and to vote in Glasgow.

Despite still owning a house in Birmingham and intending to return there once his one year secondment has ended, Tom does not live there during the year. Tom's sole main place of residence is in Glasgow, so he has a close connection with Scotland and is thus a Scottish taxpayer.

9. Jane has a family home in Kilmarnock with her husband and children but works in Cardiff. To avoid the commute she rents a flat in Cardiff which she furnishes herself and where she keeps some of her possessions and stays during the week, returning to the family home in Kilmarnock each weekend. Sarah's Kilmarnock address is where she is registered with a doctor and to vote and is used for all personal matters and correspondence.

Despite having a place of residence in Cardiff throughout the tax year, Jane's main place of residence is her family home in Kilmarnock. Jane therefore has a "close connection" to Scotland and is thus a Scottish taxpayer.

10. Solomon is a student at university in Glasgow, living in house with friends from his course. He works part-time to help cover his rent and tuition fees and his name is on the phone and utility bills for the house. His parents live in Norwich and he returns to the family home outside of every term time. He never got round to changing the correspondence address on his bank and credit card accounts from the family home in Norwich, most of his possessions are there and his electoral and doctors registration are also in Norwich.

Solomon's main place of residence, the place with which he has closest connection is his parent's house, his family home in Norwich. Solomon is not a Scottish taxpayer.

11. Rebecca is a student at university in Stirling and lives in a shared house with friends from the course. She works part-time to help cover rent and tuition fees and her name is on the phone and utility bills for the house. Her parents live in Cardiff. The correspondence address on her bank and credit card accounts is still at her parents' house and many of her possessions are there, however, Rebecca spends her university holidays in the house in Stirling, working full-time, only occasionally staying at her parent's house.

Rebecca has only one place of residence – Stirling. While she uses her parent's home for correspondence and many of her possessions are there she spends very little time there so it cannot constitute her place of residence.

12. Meera and her husband own and run a successful multi-national business. They have no children or close family. Both travel extensively on business, occasionally staying in hotels but usually basing themselves at houses they own in a variety of UK and overseas locations. Despite this travel both are resident in the UK for tax purposes. They are registered to vote at their London residence but have numerous bank accounts and cars registered at different addresses.

Meera and her husband have numerous “places of residence” but it is not possible to identify one of these as their “main place of residence” – Scottish taxpayer status should be decided for each by a day count for days spent in Scotland and elsewhere in the UK

13. Javier is a US Citizen, employed by a US Company. He is sent on a 2 year assignment to work for a company in Scotland. Javier will be a UK resident under the Statutory Residence Test (SRT) from the date of his arrival in the UK. Javier rents a house in Scotland for 2 years for himself. His family remain in the US throughout the assignment and Javier returns home to the US for holidays.

Since Javier is UK resident for tax purposes and his place of residence in the UK is in Scotland, he has a close connection with Scotland and is therefore a Scottish Taxpayer.

“Residence”: Relevant Tax Case Law

Residence is a concept used in Capital Gains Tax private residence relief, in relation to which there are many tax cases, which are of relevance to interpreting “residence” in the context of Scottish taxpayer status.

In *Sansom v Peay* (52TC1) Brightman J summarised the relief as,

“To exempt from liability to Capital Gains Tax the proceeds of sale of a person’s home.”

In *Frost v Feltham* (55TC10), where the Court was asked to decide which of an individual’s residences was his main residence, Nourse J stated,

“A residence is a place where somebody lives.”

These quotations clearly emphasise the point that a residence is an individual’s ‘home’. There is, however, no minimum period of occupation that would enable an individual to establish a residence.

This was confirmed by Millet J in *Moore v Thompson* (61TC15) where he stated,

“It is clear that the Commissioners were alive to the fact that even occasional and short residence in a place can make that a residence; but the question was one of fact and degree for the Commissioners.”

Every case must be decided upon its own particular facts. The meaning of the word ‘residence’ was considered further in the case of *Goodwin v Curtis* (70TC478).

In 1983 Mr Goodwin set up a company to acquire Hazleton Manor Farmhouse. At that time he was buying it with a view to making it a home for himself and his family. On 1 April 1985 Mr Goodwin acquired the farmhouse from the company, but prior to the completion of his purchase he had instructed agents to sell the farmhouse. At the time of his acquisition he had separated from his wife and he took up temporary residence in the farmhouse until 3 May 1985 when the farmhouse was sold. Mr Goodwin contended that the farmhouse was his only or main residence.

In the High Court, Sir John Vinelott drew heavily on the observations of Lord Denning and Widgery L.J. in *Fox v Stirk, Ricketts v Registration Officer for the City of Cambridge*

[1970] 3 All ER 7, (see page 16) and he also quoted with approval the line taken by Brightman J in *Sansom v Peay* (52TC1). Sir John said,

“Amongst the factors to be weighed by the Commissioners are the degree of permanence, continuity and the expectation of continuity. On the facts found by the Commissioners in this case...

...in my judgment, they were fully entitled to take the view that the farmhouse was used not as a residence but as mere temporary accommodation for a period that the taxpayer hoped would be brief and which in fact lasted some 32 days between completion of the sale to him and the completion of the sale by him.”

The Court of Appeal upheld the decision of the Commissioners and the High Court that Mr Goodwin had not established a residence in the farmhouse; it had merely provided temporary accommodation. Millett L J stated in the Court of Appeal,

“What I derive from Viscount Cave’s speech is that the word ‘reside’ is an ordinary word of the English language and is eminently suitable for a lay tribunal such as the General Commissioners to apply.” He went on,

“they (the Commissioners) must be taken to have accepted the Revenue’s submission that the quality of the taxpayer’s occupation of the farmhouse did not have a sufficient degree of permanence, continuity or expectation of continuity to justify its description as residence.”

And later,

“Temporary occupation at an address does not make a man resident there. The question whether the occupation is sufficient to make him resident is one of fact and degree for the Commissioners to decide.” He went on to say,

“The substance of the Commissioners’ finding taken as a whole, in my judgment, is that the nature, quality, length and circumstances of the taxpayer’s occupation of the Farmhouse did not make his occupation qualify as residence.”

Schiemann LJ added,

“I agree with the judgment that has just been delivered. I accept, as did the Commissioners, the Crown’s contention that in order to qualify for the relief a taxpayer must provide some evidence that his residence in the property showed some degree of permanence, some degree of continuity or some expectation of continuity.”

“Residence”: Relevant NonTax Case Law

Outside the field of taxation there are many circumstances in which the identification of an individual’s residence is important. Whilst the meaning of a word must always be considered by reference to the particular context in which it is used, the following cases illustrate important factors that should be considered when considering whether a location constitutes “a place of residence” for the purposes of Scottish taxpayer status.

One such example is the identification of the constituency in which an individual is resident for the purpose of voting. Under the Representation of the People Act 1948, entitlement to vote was given to persons resident in a constituency on a qualifying date. In the case of *Fox v Stirk, Ricketts v Registration Officer for the City of Cambridge* [1970] 3 All ER 7 the Court of Appeal considered whether students should be resident in the constituency of the University that they attended. In his judgment, Lord Denning M.R. cited a passage from the speech of Viscount Cave L.C. in *Levene v. Inland Revenue Commissioners* [1928] AC 217

“... the word 'reside' is a familiar English word and is defined in the Oxford English Dictionary as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'.”

Lord Denning went on to say

“I derive three principles. The first is that a man can have two residences. He can have a flat in London and a house in the country. He is resident in both. The second principle is that temporary presence at an address does not make a man resident there. A guest who comes for the weekend is not resident. A short stay visitor is not resident. The third principle is that temporary absence does not deprive a person of his residence. If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account.”

Further to this Lord Widgery commented,

“This conception of residence is of a place where a man is based or where he continues to live, the place where he sleeps and shelters and has his home. It is imperative to remember in this context that 'residence' implies a degree of permanence. In the words of the Oxford English Dictionary, it is concerned with something which will go on for a considerable time. Consequently a person is not entitled to claim to be a resident at a given town merely because he pays a short, temporary visit. Some assumption of permanence, some degree of continuity, some expectation of continuity, is a vital factor which turns simple occupation into residence.”

No “close connection”– “days spent” in Scotland or another part of the UK

Where an individual does not have a “close connection” with Scotland or another part of the UK, they may still be a Scottish taxpayer if they satisfy the requirements of section 80F which operates by way of a test of the number of days spent in Scotland against those spent in other parts of the UK.

It is important to remember that day counting is only required where it is proved impossible to identify any “place of residence” which was an individual’s “main place of residence” for at least part of a tax year. Where a “main place of residence” can be established a “close connection” will exist, either with Scotland or another part of the UK and Scottish taxpayer status will be established in this manner.

Where an individual spends at least as many days in Scotland as elsewhere in the UK they are a Scottish taxpayer

What is meant by a “day spent”?

Where an individual has spent a day is decided by where they are at the end of the day (midnight).

However, where an individual is in a part of the UK at midnight merely because they are in transit, that day does not count as a “day spent” in that location.

An individual is to be considered as in transit when travelling from one country outside the UK to another country outside the UK, and whilst en route:

- they arrive in the UK as a passenger, and
- leave the UK the next day; and
- do not, between their arrival and departure, engage in any activities that are to a substantial extent unrelated to their passage through the UK.

For example - merely taking dinner or breakfast at a hotel, in the normal course of events, would be related to their passage. In contrast enjoying a film at the local cinema, taking part in a work meeting or catching up with friends or work colleagues should be considered substantially unrelated to the individual’s passage through the UK.

Record keeping

What records should I keep for Scottish taxpayer purposes?

You will need to keep records and documents to support the statements you make when you are considering your Scottish taxpayer status.

In many cases your circumstances will be straightforward and you will not need to retain paperwork over and above any documentation you might normally be expected to keep for your own or your employer's purposes.

Place of Residence and Main Place of Residence

When considering whether you had a place of residence or main place of residence in the UK, HMRC would look for evidence to establish your presence at a particular home and whether or not a home existed. The following information would help establish the facts.

- general overheads - utility bills which may demonstrate that you have been present in that home, for example, telephone bills or energy bills, which demonstrate usage consistent with living in the property
- tv/satellite/cable subscriptions
- local parking permits
- membership of clubs, for example sports, health or social clubs
- mobile phone usage and bills pointing to your presence in a country
- lifestyle purchases pointing to you spending time in your home – for example, purchases of food, flowers and meals out
- presence of your spouse, partner or children
- increases in maintenance costs or the frequency of maintenance, for example having your house cleaned more frequently
- insurance documents relating to that home
- SORN notification that a vehicle in the UK is 'off road'
- re-directed mail requests or the address to which you have personal post sent
- the address to which your driving licence is registered
- bank accounts and credit cards linked to your address and statements which show payments made to utility companies

- evidence of local municipal taxes being paid
- registration, at your address, with local medical practitioners
- credit card and bank statements which indicate the pattern and place of your day by day expenditure

The above list is not definitive; no one piece of evidence will demonstrate the existence of a place or main place of residence. HMRC will consider the weight and quality of all the evidence as, taken together, a number of pieces of evidence may be sufficiently strong to establish a place or main place of residence.