

THE STATUTORY TEST FOR INDIVIDUAL TAX RESIDENCE

The statutory test for tax residence in the UK (referred to as the SRT) is a significant improvement on the old rules but is far from perfect and may leave some individuals, particularly those with an international highly mobile lifestyle, in some uncertainty.



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The SRT came into force on 6 April 2013 and applies for income tax, capital gains tax and inheritance tax purposes. Extended UK residence creates a deemed UK domicile for inheritance tax, income tax and capital gains tax purposes. Those who have been resident in the UK for the specified number of years will no longer be able to use the remittance basis of taxation.

THE NUTS AND BOLTS OF THE STATUTORY TEST

THE BASIC RULE

An individual will definitely be resident in the UK for a tax year if:

- the **automatic residence test** is met for that year; or
- the **sufficient ties test** is met for that year.

If neither of those tests is met for that year, then the individual is not resident in the UK for that year.

There are two elements to the automatic residence test. It will be met if an individual satisfies at least:

- **one of the automatic UK tests**; and
- **none of the automatic overseas tests**.

So effectively the automatic overseas test takes priority. If an individual satisfies any one of the automatic overseas tests then even if they also satisfy one or more of the automatic UK tests they cannot be resident under the automatic residence test.

There are separate tests for determining residence in the year of death of an individual which are not covered in this note.

THE AUTOMATIC OVERSEAS TESTS: CONCLUSIVELY NON UK RESIDENT

Essentially the rules mean that it is easier for an individual to **remain** non UK resident if they have not been resident in the UK in any of the last three tax years than it is to **become** non UK resident if they have been resident in the UK in one or more of the last three tax years.

An individual will **definitely not be resident in the UK** for a tax

...BEING 'PRESENT' IN A HOME DOES NOT INVOLVE STAYING OVERNIGHT AT THE PROPERTY...

year under the SRT if they satisfy one of the **automatic overseas tests**:

- they have been resident in the UK in one or more of the last three tax years and are present in the UK for fewer than **16 days** in the tax year;
- they have not been resident in the UK in any of the last three tax years and are present in the UK for fewer than **46 days** in the tax year; or
- they **work sufficient hours overseas**.

In order to meet the test of working sufficient hours overseas an individual must be present in the UK for less than 91 days in the tax year, the number of days on which they do more than three hours' work in the UK must be less than 31 and there must be no significant breaks from the overseas work (on a change of employer, for example).

THE AUTOMATIC UK TESTS: CONCLUSIVELY UK RESIDENT

An individual will **definitely be resident in the UK** for a tax year if they satisfy any one of the **automatic UK tests** (and none of the automatic overseas tests) as follows:

- they are present in the UK for **183 days** or more in the tax year;

- they have a **'home' in the UK** during all or part of the tax year and certain conditions are met; or
- they **work sufficient hours** in the UK.

The second and third tests require further comment.

'Home in the UK'

This automatic UK test will be met where an individual has:

- a home in the UK for a period of at least 91 consecutive days and in a tax year there are at least 30 separate days on which they are 'present' in that UK home for at least some of the time (no matter how short a time); and
- either (1) has no home overseas or (2) has one or more homes overseas and in the tax year there are fewer than 30 separate days when they are 'present' in any overseas home for at least some of the time (again no matter how short a time).

Being 'present' in a home does not involve staying overnight at the property. Stopping by simply to collect the post or to check the boiler is working would count as 'presence' in the UK or overseas home for the purposes of the test.

Despite calls from the professional bodies during the



consultation process for the SRT there is no proper definition of what will constitute a 'home' for these purposes. It was however clarified that a place used as nothing more than a holiday home or 'temporary retreat' does not count as a home for these purposes.

'Working sufficient hours in the UK'

The third automatic UK test is that an individual works more than a certain number of hours in the UK as assessed over a period of 365 days all or part of which falls within the tax year. Broadly an individual will meet the test where 75% of the total

number of days in the 365 day period on which they do more than three hours' work are days worked in the UK.

The legislation provides a series of steps for establishing, for any given period, whether an individual works sufficient hours in the UK. There are special provisions for dealing with periods of leave or other absence and gaps between employments. These rules are complex and concerns have been raised about the method of calculation, in particular in the case of entrepreneurs and others who do not have a regular 35 hour week working pattern.

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WHAT IS A 'DAY' FOR THE TAX RESIDENCE TEST?

A day counts as a day spent in the UK if an individual is **present in the UK at the end of a day**. So if an individual is in the UK at midnight at the end of the day, the day will count except in two situations.

One is a **transit exemption** for days when an individual arrives as a passenger in transit and departs the following day without engaging in any activity (in particular business) that is 'substantially unrelated' to their passage through the UK.

The other exception is a disregard for days spent in the UK (up to a maximum of 60 days in any tax year) owing to **exceptional circumstances** such as national or local emergencies for example war, civil unrest or natural disasters. Sudden or life threatening illness or injury are also regarded as exceptional circumstances and whilst the legislation does not specify who this might cover, HMRC guidance suggests that in addition to the individual it will cover illness or injury of their spouse, civil partner or dependant child.

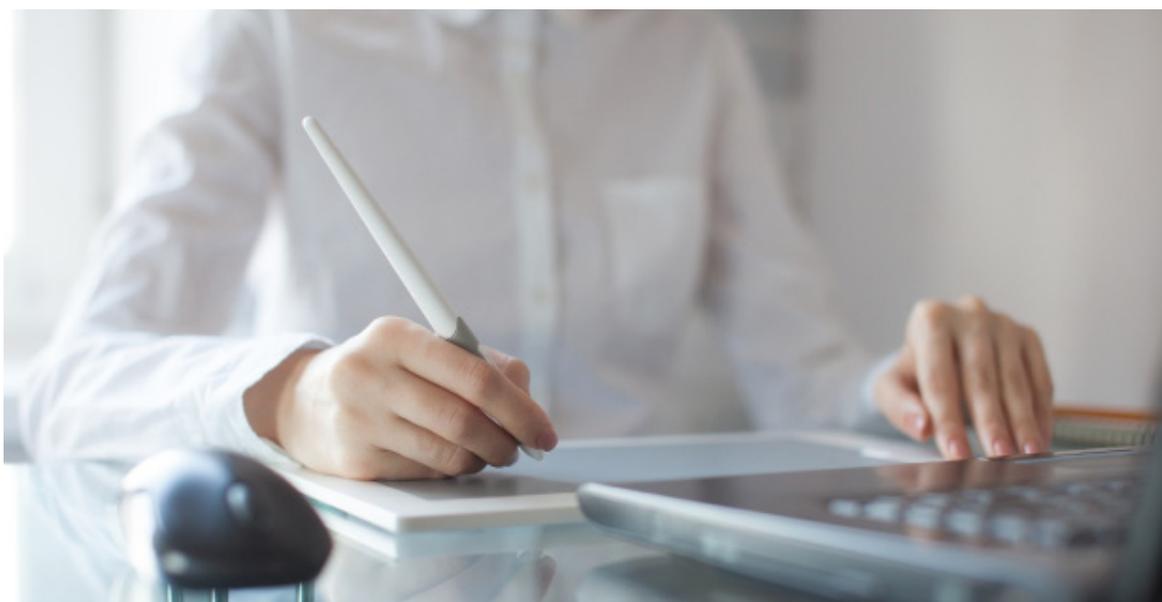
If an individual is not present in the UK at the end of a day, that day will generally not count as a

day spent by them in the UK. There is however an **anti-avoidance rule** which applies to those who have strong ties to the UK and who are present in the UK on more than 30 days in a tax year but are not present precisely at midnight. Its purpose is to stop individuals with strong UK ties timing their arrival and departure times to 'gain' extra days.

Unhelpfully there are different tests for what 'day' means for the purposes of counting days spent in the UK and days spent **working** in the UK. Rather than the midnight test, a working day is one on which the individual does **three or more hours of work**. A key issue that is still not fully resolved is **what constitutes 'work' for the purposes of a working day**.

Obviously time spent in the UK working on papers, answering emails or taking calls will count as work. In addition, time spent in the UK on **work-related travel** will also generally be classed as work from the time the individual disembarks in the UK to the time they get back on board.

Individuals who are internationally mobile will need to maintain detailed daily records of where they worked, and for how long, including



taking account of the new rules about travelling time, and about working when travelling.

DAY COUNTING AND THE SUFFICIENT TIES TEST

The automatic residence test will not provide an answer for a high proportion of international individuals with more complex affairs. These individuals will have to consider whether the alternative **sufficient ties test** is met for the particular tax year. Whether an individual has sufficient UK ties for a tax year will depend on two things: whether or not they were resident in the UK for any of the previous three tax years, and the number of days that they spend in the UK in the tax year.

What constitutes a 'UK tie'?

The UK ties are:

- **a family tie:** UK resident family (ie a spouse, civil partner or 'common law equivalent' resident in the UK and/or minor children resident in the UK where certain conditions are fulfilled);
- **an accommodation tie:** 'accessible' accommodation in the UK where use is made of it during the tax year (subject to exclusions for some types of accommodation);
- **a work tie:** substantive UK employment including self-employment, (ie if working in the UK for 40 or more days in the tax year but not working in the UK full time);

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- **a 90 day tie:** spending more than 90 days in the UK in either of the *previous* two tax years; and
- **a country tie:** this applies to those who have been UK resident in one or more of the previous three tax years, and who in the tax year under consideration spend more days in the UK than in any other *single* country.

A tie will be taken into account if it occurs at any point in the tax year. As a general rule there is no split year treatment if a tie is gained or lost during the tax

year. Therefore in order for a particular tie not to be counted in a tax year it would need to have been 'lost' before the start of that tax year (ie before 6 April). The only option for those with significant ties to the UK who do not wish to be resident here for a tax year will be to restrict the number of days on which they are present in the UK according to the number of ties they have.

The way in which the UK ties are combined with days spent in the UK to determine an individual's residence status in

Not resident in any of the last three tax years	
Impact of UK ties on residence status	Days in the UK
Always non resident	Fewer than 46
Resident if individual has 4 ties or more	46 - 90
Resident if individual has 3 ties or more	91 - 120
Resident if individual has 2 ties or more	121 - 182
Always resident	183 or more
Resident in any of the last three tax years	
Impact of UK ties on residence status	Days in the UK
Always non resident	Fewer than 16
Resident if individual has 4 ties or more	16 - 45
Resident if individual has 3 ties or more	46 - 90
Resident if individual has 2 ties or more	91 - 120
Resident if individual has 1 tie or more	121 - 182
Always resident	183 or more



the tax year is set out in the box overleaf.

Children as a UK tie

A child will not be treated as being resident in the UK for these purposes if their residence is mainly caused by time spent at a UK educational establishment and the child spends no more than 20 days in the UK outside term time. Helpfully it has been agreed that half term and exeat breaks will count as being within term time for these purposes.

A child under 18 who is resident in the UK will only count as a connection factor for the parent if, for all or part of at least 60 days during the tax

year, the parent, whilst in the UK, spends time with them, or lives with them.

The term 'child' includes both natural and adopted children but does not include step-children (unless they have been adopted).

UK accommodation as a tie

An individual will have UK accommodation if they have a place to live in the UK which is available to be used by them for a continuous period of at least 91 days in a tax year and they spend at least one night in that place during the tax year. There is however an exception for stays of less than 16 nights in the home of a

close relative (other than the individual's spouse, partner or minor children).

SPLIT YEAR TREATMENT

The former concessionary 'split year' treatment has now been placed on a statutory footing as part of the SRT. A tax year can be split into periods of residence and non residence for those arriving in the UK or returning after a period of time abroad and also for those leaving the UK, provided certain conditions are met. As already noted, however, split year treatment does not apply when deciding whether or not there is a 'UK tie'.

Split years also count for the purposes of the deemed domicile test which operates for inheritance tax, and (from April 2017) income tax and capital gains tax purposes.

HMRC'S TAX RESIDENCE INDICATOR

HMRC have an online Tax Residence Indicator for individuals to use to help them determine their tax residence by answering a series of questions. Except in the most straightforward of cases this is unlikely to provide a conclusive answer. Its results depend on the user's correct use of complex terms such as 'home' and 'work'. Such terms might be thought to be relatively straightforward. However the legislation uses them in a way that is not intuitive. As mentioned above, this is where the difficulties of the new test lie.

RECORD KEEPING AND REVIEW

The SRT has provided greater certainty than there has been in the past. However, the rules are complex and those with internationally mobile lifestyles and stronger links to the UK will need to ensure that a change in their lifestyle (perhaps one that

they would never normally consider to be a tax matter) does not inadvertently add an additional UK tie which makes them resident in the UK.

It can readily be seen from this summary of the rules that many individuals will need to keep accurate records of their trips to and from the UK. For those spending any time working while they are in the UK, this must include extremely detailed records of what they did or did not do during their visit, from the time they stepped off the train or plane to the moment they stepped back on again.

This publication is not meant as a substitute for advice on particular issues and action should not be taken on the basis of the information in this document alone.

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