

The Statutory Residence Test

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INTRODUCTION

Since 6 April 2013, an individual's residence status in the United Kingdom for each tax year has been determined by the The Statutory Residence Test ("SRT"). The objective of the SRT is to alleviate uncertainty surrounding an individual's tax residency. Extensive guidance and examples as to how the rules operate have been published by HM Revenue & Customs.

The test comprises three parts: first a test of automatic non-residence, second a test of automatic UK tax residence, and a third test for those who are neither automatically resident nor non-resident, who instead need to consider the extent of their connections ("ties") to the UK to determine their residence status.

1. AUTOMATIC NON-RESIDENCE

An individual will be automatically non-resident for a given tax year if any of the following conditions are met:

- the individual spends fewer than 16 days in the UK,
- if UK resident in none of the previous three tax years, the individual spends fewer than 46 days in the UK,
- the individual works full time overseas, and spends fewer than 91 days in the UK each year (excluding qualifying days under the 'deeming rule' - see below), and of which fewer than 31 days are workdays. There are detailed guidelines as to how full time work overseas is determined which require consideration of all the facts (including periods of leave from work).

2. AUTOMATIC UK RESIDENCE

An individual will be automatically resident in the UK for a tax year if any of the following conditions are met:

- the individual spends 183 days or more in the UK,
- the individual's only home (or all of the individual's homes) is in the UK, and was their home for more than 90 days, and that the individual was present there for 30 days. This is often referred to as the "only home test" or the "second automatic test",

- the individual works full time in the UK and at least 75% of their working days are spent in the UK.

A UK day is defined as a day when an individual is in the UK at midnight. However, a UK day for the purpose of being present in a home is defined as spending any part of a day there (i.e. there is no requirement to be there at midnight).

3. THE 'SUFFICIENT TIES' TEST

Individuals who are neither automatically resident nor automatically non-resident must consider the number of connections or 'ties' that they have to the UK.

There are five potential connection factors for those individuals who have been resident in the UK during at least one of the previous three tax years:

- a) Family tie
- b) Accommodation tie
- c) Work tie
- d) 90 day tie
- e) Country tie

For those who have not been UK resident during any of the previous three tax years, the 'country tie' is omitted giving a maximum of four connection factors.

A) Family tie

An individual has a family tie with the UK if their spouse, civil partner or common law equivalent, or minor child is resident in the UK.

However, a UK resident minor child will only be a connection factor for a parent if that parent sees the child in the UK for more than 60 days in a tax year.

Furthermore, solely for the purposes of determining a parent's family ties, a minor child in full time education in the UK will only be considered to be UK resident if they spend more than 20 days in the UK away from the educational establishment outside term time.

B) Accommodation tie

An individual has an accommodation tie if the individual has a home or other accommodation available to them for a

continuous period of at least 91 days, and the individual spends at least one night at that accommodation during the tax year. For these purposes, if there is a gap of fewer than 16 days when the accommodation is not available to them, this gap is ignored and the property is treated as being available throughout this gap.

Available accommodation includes holiday homes or similar, and it is not necessary for the individual to either own or hold any interest in the property.

For individuals who have accommodation in the UK available to them which belongs to a close relative, defined as parents, grandparents, siblings, adult children or adult grandchildren, then this will only be considered available to them for the purpose of the accommodation tie if they actually spend more than 15 nights at that accommodation during a tax year.

C) Work tie

An individual has a work tie if the individual works in the UK for at least 40 days in a tax year. For these purposes a UK work day is one where more than 3 hours' work is done in the UK. There are detailed rules about what work-related travel amounts to time spent at work in the UK.

D) 90 day tie

An individual has a 90 day tie if they spent more than 90 days in the UK in either of the previous two tax years.

E) Country tie

An individual has a country tie if they spend more days in the UK than in any other single country during the tax year. This is only relevant for those who have been UK resident during the previous three years.

Based on the number of connections an individual's residence will be determined based on the number of days spent in the UK in a particular tax year as summarised in the tables below:

Individual was UK resident in one or more of the previous three tax years:

Impact of connection factors on residence	Days spent in the UK
Always non-resident	Fewer than 16
Resident if individual has 4 factors or more	16 - 45
Resident if individual has 3 factors or more	46 - 90
Resident if individual has 2 factors or more	91 - 120
Resident if individual has 1 factor or more	121 - 182
Always resident	183 or more

Individual was non-UK resident in all of the previous three tax years:

Always non-resident	Fewer than 46
Resident if individual has 4 factors	46 - 90
Resident if individual has 3 factors or more	91 - 120
Resident if individual has 2 factors or more	121 - 182
Always resident	183 or more

DEFINITIONS OF KEY TERMS

Day in the UK

A UK day is defined as a day when an individual is in the UK at midnight. Anti-avoidance rules can deem a day on which an individual is not present at midnight to nevertheless count as a UK residency day in certain specific circumstances – see 'The Deeming Rule' below.

Days spent in the UK may be ignored if the individual's presence in the UK is due to exceptional circumstances beyond their control. This will usually only apply to events that occur while an individual is in the UK and which prevent them from leaving the UK. A maximum of 60 days may be disregarded in this way in any one tax year.

UK Workday

A UK workday is one on which an individual works for 3 hours or more while present in the UK. It does not matter whether the individual is present at midnight, and so a day spent working in the UK can be a UK workday even if the individual departs before midnight

Home

The concept of a 'home' is particularly important in helping individuals to determine their UK resident status under the second automatic UK test, and is discussed at considerable length in HMRC's published guidance.

HMRC consider the term 'home' to take its ordinary meaning: that is, a place which a reasonable onlooker with knowledge of the material facts would regard as an individual's home. Essentially, any residential dwelling where an individual can choose to stay at will.

Importantly, it is not necessary for a property to be owned, rented or any formal arrangement to be in place for it to be considered a 'home'. Consequently, the house of a parent, friend or other family member which is generally made available to an individual for them to stay may be a home for the purposes of the SRT.

TEMPORARY NON-RESIDENCE

There are rules to prevent individuals creating artificial short term periods of non-residence during which they receive income which accrued during a period when there were UK resident, and which would otherwise have been liable to UK tax. These are similar to the existing capital gains tax anti-avoidance provisions, such that a previously resident individual who becomes UK resident again within five years of leaving is

liable to income tax in the year of return on income which arose during the period of non-residence.

SPLIT YEAR TREATMENT

Under the SRT, an individual is either resident or non-resident for a complete tax year. This can lead to the peculiar result that an individual can be treated as UK resident from the start of a tax year on 6 April, even if they spend no time whatsoever in the UK until some time after the start of the tax year (and similarly if they leave the UK before the end of a tax year on 5 April).

The SRT contains provisions which allow a tax year to be split into periods before and after arrival or departure in certain circumstances with the effect that income arising either before arrival or after departure was treated as if it arose to the individual when they were non-resident.

The tax year can be split in the following situations:

- Where an individual becomes non-resident by taking up a full time employment abroad and limits their subsequent time in the UK (according to pro-rated thresholds). The rule applies to the spouse or partner of those who work full time abroad subject to certain conditions.
- Where an individual becomes non-resident by establishing their only home in a country outside the UK and does not return to the UK for more than 15 days during the remainder of the tax year and either within six months of departure becomes tax resident in that country or is present outside the UK for six months consecutively.
- Where an individual becomes resident by virtue of their only home being in the UK.
- Where an individual becomes resident by starting full time employment in the UK.
- Where an individual resumes UK residence following a period of full time employment abroad and either takes up full time employment in the UK or has their only home in the UK.
- Where an individual becomes resident by starting to have a home in the UK (whilst retaining an overseas home).

There are also specific rules to determine the residence for individuals in the tax year of their death.

THE DEEMING RULE

To prevent any manipulation of the day counting rules a 'deeming rule' for day counting purposes takes into account the days in which the individual was present in the UK but not at midnight, known as 'qualifying days'. The first 30 qualifying days are ignored. After the 30 day threshold, any additional qualifying days are added to the day count for residence purposes.

The deeming rule only applies if an individual:

- has three or more connection factors to the UK, and
- has been present in the UK on more than 30 days (but not at midnight), and
- was UK resident in one or more of the previous three tax years.

The deeming rule does not apply in determining the '90 day tie'.

OTHER POINTS OF INTEREST

Overseas Workday Relief

Overseas Workday Relief provides a partial tax exemption for earnings from employment carried on partly abroad and partly in the UK during the first three years of tax residence. It is only available to non-UK domiciled individuals who receive part of their earnings abroad, and do not remit the overseas portion of their earnings into the UK.

CONCLUSION

The Statutory Residence Test enables an individual to conclusively determine their UK residence status for a tax year in almost any set of circumstances. However, the rules are particularly complex, and the published guidance for taxpayers runs to over a hundred pages.

It will be necessary for some individuals to review their affairs frequently (at least once a year and preferably before the start of a new tax year).

There are onerous record-keeping requirements for individuals in order to prove where they spend their time when this is relevant to their tax status.

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