



## Statutory residence test

# The statutory residence test for the first time defines tax residence for individuals.

### The rules on UK tax residence

For many years the law regarding UK tax residence was largely subjective, the only definitive rule being that a person was resident in the UK if they spent at least 183 days in the UK in a tax year. Everything else was based on case law and on HM Revenue & Customs' guidance and practice.

This position changed from 6 April 2013. The statutory residence test (SRT) for the first time defines tax residence for individuals. It supersedes all existing legislation, case law and guidance.

The following is based upon guidance published by HMRC.

**Under the SRT the basic rule is that you are resident in the UK for a tax year if you do not meet any of the automatic overseas tests and (a) you meet one of the automatic UK tests, or (b) you meet the sufficient ties test.**

### Automatic overseas tests

There are five automatic overseas tests. If you meet any of these tests you will not be considered a UK resident for the tax year in question:

1. You were resident in the UK for one or more of the preceding three tax years but spend fewer than 16 days in the UK in the tax year and do not die during the tax year.
2. You were not resident in the UK for any of the three preceding tax years and spend fewer than 46 days in the UK in the tax year.
3. You work full-time overseas, there are no significant breaks from your overseas work, you spend fewer than 91 days in the UK and the number of days on which you do more than three hours' work in the UK is less than 31.

Tests four and five apply only if the

individual concerned dies during the tax year in question.

### Automatic UK tests

If you do not meet any of the automatic overseas tests, you should look at the four automatic UK tests. If you meet any of these you are considered resident in the UK for the tax year:

1. You spend at least 183 days in the UK in the tax year.
2. There is a period of at least 91 consecutive days (of which at least 30 fall within the tax year concerned) when you have a home in the UK in which you are present for at least 30 days during the tax year and you either have no home overseas or have an overseas home or homes in each of which you spend fewer than 30 days during the tax year.
3. You work 'sufficient' hours in the UK over a period of 365 days during which there are no significant breaks from UK work.

Test four applies only if the individual concerned dies in the tax year in question.

### Sufficient ties test

If you do not meet any of the automatic tests you need to consider the sufficient ties test. Whether you have sufficient UK ties will depend upon whether you were resident in the UK for any of the previous tax years and the number of days that you spend in the UK in the tax year in question. UK ties are defined broadly as follows:

- **Family tie:** your spouse or civil partner or common law equivalent or minor child is resident in the UK.
- **Accommodation tie:** you have accessible accommodation in the UK and make use of it during the tax year.



The SRT provides much-needed certainty to an area of law that was unduly complex and lacking in clarity.

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### Split-year treatment

The SRT puts on a statutory footing the old rules under which an individual who is resident in the UK for a tax year may in certain circumstances 'split' that year such that they are treated as resident for one part of it and non-resident for another. The legislation sets out eight 'cases' where this treatment can apply, including where the individual or their partner cease a period of work overseas; where they cease to have a home in the UK; and where they acquire a home in the UK.

### Transition

The SRT has now been in force since 6 April 2013. The old rules continue to apply for earlier years except that if, in order to determine residence status for 2013/14, 2014/15 or 2015/16 it is necessary first to reach a conclusion as to your status for a pre-SRT year, you may elect for the SRT rules to be applied in respect of that year.

### Conclusion

The introduction of the SRT provided much-needed certainty to an area of law that was unduly complex and lacking in clarity. However, there are aspects of the legislation that are far from straightforward and expert guidance will continue to be essential for any individual whose status is in any way uncertain.

This document is a brief summary of some very detailed provisions – the HMRC guidance alone stretches to 105 pages. No action should be taken without obtaining advice specific to your personal circumstances.

- **Work tie:** you work in the UK for at least 40 days (and for at least three hours a day) during the tax year.
- **90-day tie:** you spent 90 days or more in the UK in either of the previous two tax years.
- **Country tie:** (applies to 'leavers' only – see below): the UK is the country in which you are present at midnight on the greatest number of days during the tax year.

The legislation draws a distinction between those who were not resident in the UK during any of the previous three tax years (known informally as 'arrivers') and those who were resident in the UK in one or more of those preceding three tax years (known as 'leavers'). The number of days spent in the UK is compared with the number of ties to determine residence status as follows:

Days spent in UK	Number of ties which make 'arrivers' resident	Number of ties which make 'leavers' resident
16 - 45	Always non-resident	4 ties or more
46 - 90	4 ties	3 ties or more
91 - 120	3 ties or more	2 ties or more
121 - 182	2 ties or more	1 tie or more

Special calculations apply if the individual concerned dies during the tax year in question.

## The next step

For further information on the statutory residence test, or to arrange a meeting to discuss your specific requirements, please contact one of our team below on 020 7216 4600 or email them at:

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