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THE UK STATUTORY RESIDENCE TEST: AN OVERVIEW

With effect from 6 April 2025 the UK abandoned the residence and domicile-based system of taxation which had been in place for 200 years and moved to a residence only basis of taxation for income, capital gains and inheritance tax purposes.

An individual's residence status alone will therefore determine their UK tax status. Although situs of assets and source of income will remain important.

For individuals who become resident in the UK for the first time after 6 April 2025 and who are not settlors or beneficiaries of pre-existing trusts or companies, domicile should not be relevant to their UK tax position; for others, transitional reliefs and the ability of HMRC to enquire into past tax years means that the concept of domicile will remain relevant for years to come.

INTRODUCTION

The UK statutory residence test (**SRT**) broadly looks at the number of days that a person has spent in the UK in any given tax period and certain factors which tie an individual to the UK. It was introduced for tax years from 6 April 2013 and is certainly a big step forward from the previous rules which were based on case law and Revenue practice. However, the rules can be complex to apply, particularly for those with an international lifestyle, and detailed advice tailored to each individual family member will be needed.

Where it is necessary to determine a person's residence status for tax years prior to 2013 the old rules will apply.

The SRT consists of three parts:

- + the automatic overseas test,
- + the automatic UK test, and
- + the sufficient ties test

It is necessary to consider each part in turn, starting with the automatic overseas test. If an individual meets any of the conditions in this test, they are automatically non-resident and the other parts of the SRT do not need to be considered. If none of the conditions in the automatic overseas test are met, then it is necessary to move on to the automatic UK test. If any of the conditions in this test are met, an individual will be automatically UK resident.



If none of the conditions in either of the automatic tests are met then it is necessary to apply the sufficient ties test.

Neither an individual's nationality nor their visa status is relevant for determining whether or not that individual is resident under the SRT. By way of example, there is no automatic exemption for individuals of any age who may be present in the UK solely to attend school or university. Their residence status will be determined by reference to the three-part test mentioned above.

References below to a tax year are to the period 6 April to 5 April.

SPLIT YEAR TREATMENT

Under the SRT, an individual is either UK resident or non-UK resident for the whole of the tax year in question. However, in certain limited circumstances, split year treatment can apply. The tax year is 'split' into the UK part in which the individual is charged to tax as a UK resident and the overseas part in which, for most purposes, they are charged to tax as a non-UK resident.

There are eight cases in which split year treatment can apply, including when an individual:

- + starts full-time work overseas
- + leaves the UK and ceases to have a UK home
- + starts full-time work in the UK
- + returns to the UK following a period of full-time work overseas

Various conditions apply to each case which must all be satisfied if split year treatment is to apply.

Split year treatment does not apply for all tax purposes and, importantly, a 'split' year will still count as a year of residence when considering the new long-term residence test for inheritance tax purposes and also when looking at the availability of the four-year foreign income and gains regime which applies for income and capital gains tax purposes. If you would like more information on the new tax regime, please ask for a copy of our 'Moving to the UK' note.

ARRIVERS AND LEAVERS

The SRT makes a distinction between 'arrivers' (those who were not UK resident in any of the previous three tax years) and 'leavers' (those who were UK resident in any of the three previous tax years). Essentially those who have closer links to the UK will need to spend less time in the UK in any particular year if they are to avoid becoming UK resident.

WHAT IS A DAY?

This is an important part of the test; a day generally only counts if a person is present in the UK at midnight. There are specific rules for determining what counts as a workday or a day spent in an overseas home when applying the various tests. There is a special rule for those passing through the UK in transit to another destination on a through ticket. Transit days will not count provided that between their arrival and departure the passenger does not engage in any activities which are substantially unrelated to their passage through the UK. Holding a business meeting at their airport hotel or even just catching up with friends for a meal would mean that the day of arrival would count.

There is a particular anti-avoidance rule which applies for those who have a close connection with the UK and might otherwise circumvent the rule by being in the UK for many days a year but always flying home before midnight.

AUTOMATIC OVERSEAS TEST

The automatic overseas test conditions are:

- + resident in the UK for one or more of the previous three tax years and spend fewer than 16 days in the UK in the current tax year
- + not resident in the UK for any of the previous three tax years and spend fewer than 46 days in the UK in the current tax year
- + work full-time overseas for the whole of the current tax year, without any significant breaks, and spend fewer than 91 days in the UK in the current tax year, of which no more than 30 days are spent working



AUTOMATIC UK TEST

The automatic UK test conditions are:

- + spending 183 days or more in the UK in the current tax year
- + having a home in the UK for all or part of the current tax year, and for a 91-day period either:
 - + not having a home overseas, or
 - + having one or more overseas homes but spending fewer than 30 days at each of them in the current tax year
- + working full-time in the UK over a 365-day reference period without any significant breaks and with at least 75% of the days being UK workdays and part of that period falls in the current tax year

SUFFICIENT TIES TEST

Under this part of the SRT, the number of ties which an individual has to the UK will determine how many days they can spend in the UK in the tax year without becoming UK resident.

The ties that are relevant are:

Family tie: a spouse, civil partner or common-law partner (unless separated) will count as a tie. In addition, if minor children are resident in the UK, a family tie exists unless the parent sees them in the UK on fewer than 61 days in the tax year or they are in full-time education in the UK and spend fewer than 21 days in the UK outside of term time. Term time for this purpose includes any half term breaks.

Accommodation tie: having a place to live in the UK that is available for at least 91 consecutive days in the tax year and spending at least one night there in the tax year, or at least 16 nights if the place belongs to a close relative.

Work tie: working in the UK for at least 40 days in the tax year. If you work for at least three hours a day that is a working day. Making business calls and dealing with emails counts as work for the purposes of this tie.

UK presence tie: spending more than 90 days in the UK in either of the previous two tax years.

Country tie: spending more days in the UK than in any other single country in the tax year. However, this is an additional tie which only applies to leavers.

The following tables show the number of days a person can spend in the UK depending on whether they are an arriver or a leaver and how many ties they have.

Arrivers

Number of ties	Number of days permitted in the UK before you are treated as UK resident
0	182
1	182
2	120
3	90
4	45

Leavers

Number of ties	Number of days permitted in the UK before you are treated as UK resident
0	182
1	120
2	90
3	45
4	15
5	15

There are detailed provisions in the SRT regarding each tie and various words are carefully defined. Some tests or ties are particularly difficult to apply in practice and there are various traps. There is also guidance setting out HMRC's view on various aspects of the SRT. Detailed information needs to be provided by the individual so that tailored advice can be given on the application of the SRT.



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