

UK Statutory Residence Test

Following lengthy consultation the Statutory Residence Test (“SRT”) was introduced with effect from 6 April 2013.

The Three Part Test

To determine whether an individual is UK resident it is necessary to consider whether they meet any of the Automatic Overseas Tests, Automatic Residence Tests or Sufficient Ties Tests.

Each test should be considered in turn meaning, for example, if any of the Automatic Overseas Tests are met in a tax year, it is not necessary to consider any of the subsequent tests.

The Automatic Overseas Test

An individual will be conclusively non-resident providing they meet one of the following:

-  Having been UK resident in at least one of the previous three UK tax years, they spend less than 16 days in the current UK tax year and they do not die in the tax year; or
-  They were non UK resident in all of the three preceding tax years and have spent less than 46 days in the UK in the current UK tax year; or
-  They leave the UK to carry out full time work abroad which means they work sufficient hours overseas without a significant break, and the number of days spent in the UK is less than 91 and the number of days spent working in the UK is less than 31.

The Automatic Residence Test

Broadly speaking, an individual will be automatically resident should they meet any one of the following:

-  They are present in the UK for 183 days or more in a UK tax year; or
-  They have a home in the UK for at least 91 days, they are present at that home for at least 30 days in the year and it is either their only home or they spend less than 30 days in their overseas homes in the year; or
-  They work sufficient hours in the UK without a significant break.

Broadly, sufficient hours is defined as full time or 35 hours per week. A significant break is more than 30 days and a day spent working defined as more than 3 hours work in a day.

The Sufficient Ties Test

Should an individual not satisfy either Automatic Test they are required to consider the Sufficient Ties Test. This test combines certain factors connecting individuals to the UK with time spent in the UK to determine UK tax residence. The factors are:

Family Ties

A family tie exists if there is a relevant relationship with a UK resident person. A relevant relationship includes a spouse, civil partner, partner and minor children.

Exemptions exist for minor children where the amount of time spent with the child is for less than 61 days in the relevant year. A day is any day where any time is spent with the child.

Exemptions also exist for minor children that are only in the UK for full-time education and who spend 20 days or less in the UK other than during term-time.

Accommodation Tie

An accommodation tie exists if an individual has a place to live in the UK which is available for a continuous 91 day period and they spend at least one night there in the year.

The property need not be owned and if the property belongs to a close relative, as defined, then the individual must spend at least 16 days there in the tax year.

Accommodation is broadly defined as any accommodation and differs from the definition of home in the context of the automatic tests, in that “accommodation” is regarded to be more transient and does not require a degree of stability or permanence.

Work Tie

A work tie exists if an individual works for at least 40 days in the UK in the year. A work day consists of three or more hours. Travel (excluding travel to the UK) and training time counts as work but voluntary work is exempt.

90 Day Tie

The 90 day tie exists if an individual spends more than 90 days in the UK in either of the two preceding tax years.

Country Tie

The country tie only applies to individuals who have been UK resident in one of the three preceding tax years.

If an individual spends more midnights in the UK than anywhere else they will have a country tie. A tie breaker exists in favour of the UK should they spend the same number of midnights in the UK and another country.

Number of UK Ties

The number of days spent by an individual in the UK in a relevant year determines how many ties are required for the individual to be UK resident, as follows.

UK RESIDENT FOR NONE OF THE 3 PRECEDING TAX YEARS	
DAYS IN UK	IMPACT OF CONNECTION
45 days or less	Always non-resident
46 - 90 days	Resident if 4 connections
91 - 120 days	Resident if 3 connections
121 - 182 days	Resident if 2 connections
183 days or more	Always resident

UK RESIDENT AT LEAST ONE OF THE 3 PRECEDING TAX YEARS	
DAYS IN UK	IMPACT OF CONNECTION
15 days or less	Always non-resident
16 - 45 days	Resident if 4 connections
46 - 90 days	Resident if 3 connections
91 - 120 days	Resident if 2 connections
121 - 182 days	Resident if 1 connection
183 days or more	Always resident

Days

Individuals are considered to have spent a day in the UK if they were present at midnight. Transit days and the first 60 days spent in the UK for "Exceptional Circumstances" are discounted.

A deeming rule applies if an individual has three ties and has been UK resident in at least one of the three preceding tax years. This rule deems presence in the UK during any part of a day (even if not present at midnight) as a "qualifying day". Once you have accrued 30 qualifying days since the beginning of the relevant UK tax year, each and every subsequent qualifying day will also count

as a day for determining the number of days spent in the UK under the SRT. The deeming rule does not apply to the third Automatic Overseas Test.

SRT in the Year of Death

As indicated above the first automatic overseas test does not apply to an individual who dies during the relevant year. There are also additional automatic overseas tests in respect of individuals who die during a relevant year. The other tests may also need modifying depending on the date of death.

Split Year

Individuals are treated as UK resident for a complete tax year, and as such are broadly subject to UK tax on worldwide income and gains, other than special rules for individuals who are non-UK domiciled.

However there are certain circumstances where the UK tax year can be split which can limit the liability to UK taxation on non-UK source income.

Summary

The SRT is a welcome introduction and should allow individuals to definitively decide whether they are resident or non-resident for the purposes of UK taxes. This is a vast improvement on the outdated case law and HMRC guidance that preceded the SRT.

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