



UK tax legislation used to determine an individual's UK tax residence is known as The Statutory Residence Test ("SRT").

Summary

The SRT enables individuals to definitively determine whether they are UK tax resident or non-UK tax resident for a UK tax year. It is a complex test and there are many factors and definitions that need to be considered as well as avoidance rules specifically aimed at denying certain SRT benefits where individuals leave and then return to the UK within five years (this being known as a period of temporary non residence).

The SRT is relevant for the following UK taxes; Income Tax, Capital Gains Tax and where relevant; Corporation Tax and Inheritance Tax.

The SRT is a tri-part test followed in order until a test is met. Once a test is met, UK tax residence is determined for the year (i.e. UK resident or not UK resident).

The first test/question to consider is whether an individual has been resident in the UK for 183 days or more in the tax year in question. If yes, they are UK tax resident for that tax year and the SRT ends.

If the individual has not been present in the UK for 183 days in the tax year, the SRT considers, in this order, whether an individual is;

- automatically non-UK tax resident, then
- whether they are automatically UK tax resident, then
- whether they are UK tax resident or not, via the sufficient ties test.

The Automatic Non-UK Residence Test

An individual is automatically not UK tax resident if they meet any of the following;

- they were UK resident in at least one of the three previous UK tax years and spend less than 16 days in the UK during the current UK tax year and do not die in the tax year, or
- they were not UK resident in all the three preceding tax years and have spent less than 46 days in the UK in the current UK tax year, or
- they work full time abroad.

Full time work abroad means working sufficient hours overseas (broadly 35 hours per week) without a significant break. This is a numeric calculation. The maximum number of days that may be spent in the UK in the tax year is less than 91 and the maximum number of workdays in the UK is less than 31.

The Automatic UK Residence Test

An individual will be automatically UK tax resident if;

- They are present in the UK for 183 days or more in the tax year, or
- they have a home in the UK for at least 91 consecutive days, of which at least 30 days are in the tax year concerned, and they are present in that home on at least 30 days in the tax year and
 - the UK home is either their only home or,
 - if they have an overseas home or homes, they are present on less than 30 days in those overseas home(s) in the year, or
- they work full time in the UK (broadly 35 hours or more per week).

The Sufficient Ties Test

If the automatic tests are not met, then the Sufficient Ties Test is considered. This test combines days spent in the UK with "ties" held with the UK described as follows, to determine either UK residence or non-UK residence for the tax year.

Ties

- Family
- Accommodation
- Work
- 90 Day
- Country

Family Tie

A family tie exists if the individual has a spouse, civil partner, partner, or child under 18 who is resident in the UK in the year.

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

Exemptions also exist for minor children who 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 in the year, and they spend one night there in the year.

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

Accommodation is very broadly defined and differs from the definition of home in the general context of the SRT. It is more transient and does not require a degree of stability or permanence and could include an hotel room.

Work Tie

A work tie exists if an individual works for at least 40 days in the UK in the year. A workday is any day where the individual works for three or more hours. Travel within the UK (excluding actual travel to the UK) and training count as work. Voluntary unpaid work is exempt.

90 Day Tie

A 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 applies to individuals who have been UK resident in one of the three preceding tax years and has spent more midnights in the UK than anywhere else. 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 Days and Ties

The number of days spent by an individual in the UK in the tax year determines how many ties are required for the individual to be UK tax resident, based on the following tables;

UK RESIDENT IN 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 Ties
91 - 120 days	Resident if 3 Ties
121 - 182 days	Resident if 2 Ties
183 days or more	Always resident

UK RESIDENT IN 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 Ties
46 - 90 days	Resident if 3 Ties
91 - 120 days	Resident if 2 Ties
121 - 182 days	Resident if 1 Tie
183 days or more	Always resident

Days

Individuals are considered to have spent a day in the UK if they are present at midnight. Transit days and the first 60 days spent in the UK for exceptional circumstances (see below) may be discounted.

Exceptional Days

Exceptional days are broadly days that an individual has spent in the UK that are, by their nature, out of the ordinary and that prevent an individual from being able to leave the UK at the end of a day. Examples include war, civil unrest and the serious or life-threatening illness or injury to the individual.

HMRC has accepted Covid19 as being exceptional and specific guidance is available in this regard.

Deemed Days

The deeming rule applies to an individual with three ties who has been UK resident in one of the three preceding tax years. This rule is pointed toward commuters on UK "day trips". It deems physical presence in the UK at any time of a day as a "qualifying day". Once you have 30 qualifying days from the beginning of the relevant UK tax year, each subsequent qualifying day counts 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 non-UK residence test (full time work overseas).

Death

The first automatic non-UK residence test (less than 16 days in the UK) is not applicable to an individual who dies during the relevant year. Certain of the other tests noted above are also significantly modified depending on the date of death.

Split Tax Year

Individuals are usually treated as UK tax resident or non-UK tax resident for the complete tax year.

There are certain circumstances where the UK tax year can be split between a UK resident part and a non-UK resident part. This usually would be applicable to an individual either leaving the UK or arriving in the UK during a UK tax year.

It may be the case that by being able to split the UK tax year, particularly upon emigration, that liability to UK tax is significantly reduced as for example the UK/Guernsey double tax treaty removes exposure to UK income tax for certain UK source income received in the UK non-resident part of a split year.

Temporary Non UK Residence

If you return to the UK after a period of temporary non UK residence you are likely subject to UK taxation upon certain income or gains made whilst temporarily non UK resident. For these rules to apply your period of non-UK residence must be less than 5 years. In this instance the year commences from the date of first establishing non-UK residence.

For further advice and explanation on the SRT please contact:



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