LTS TAX
Chartered Tax Advisers

UK Statutory Residence Test

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The SRT enables individuals to definitively determine whether they are UK tax resident or non-UK tax resident for a UK tax year.

As tax residence is the primary determinant of the extent to which an individual is subject to tax in the UK, understanding the SRT is relevant and of importance for Income Tax, Capital Gains Tax and Inheritance Tax purposes.

The SRT is a three-part test followed in order until a test is met. Once a test concludes a person's UK tax residence status (i.e. UK tax resident or non-UK tax resident), there is no need to consider the latter tests.

The three tests are:

> the Automatic Non-UK Tax Residence Tests;
> the Automatic UK Tax Residence Tests; and
> the Sufficient Ties Test.

The tests are complex and, whilst the key points are discussed below, there are many specific factors and definitions that need to be considered when applying the SRT. There are also wider considerations such as the possible application of a Double Tax Treaty where an individual is also resident in another jurisdiction, as well as possible targeted anti-avoidance legislation which may apply to short periods of absence from the UK. Given these complexities, specific advice tailored to an individual's personal circumstances should be sought for any tax year in which they are present in the UK.

The Automatic Non-UK Tax Residence Test

An individual is automatically non-UK tax resident if they meet any of the following:

- the individual was UK tax resident in at least one of the three previous UK tax years and spends fewer than 16 days in the UK during the current UK tax year;
- they were not UK tax resident in the three preceding tax years and spend fewer than 46 days in the UK in the current UK tax year;
- they work full time abroad, the conditions for which are:
  - working sufficient hours overseas (broadly 35 hours per week, on average);
  - having no significant break (of 31 days or more from overseas work);
  - spending fewer than 91 days in the UK in the tax year; and
  - undertaking fewer than 31 days of work (being more than 3 hours in any single day) whilst physically present in the UK in the tax year.

The Automatic UK Tax Residence Test

An individual is automatically UK tax resident if:

- they are present in the UK for 183 days or more in the tax year;
- their "only home" is in the UK, the conditions for which are:
  - the individual has a home in the UK for at least 91 consecutive days;
  - at least 30 of those days fall within the tax year concerned;
  - they are present in that home on at least 30 days in the tax year; and either
    - they have no overseas home; or
    - they have an overseas home but are present in that home for fewer than 30 days in the tax year.
- they work full time in the UK (broadly at least 35 hours per week, on average) in any 365-day reference period starting or ending at any point in the tax year in question.

The Sufficient Ties Test

If the Automatic Tests are not met, then the Sufficient Ties Test applies. This test considers both days spent in the UK and the number of "ties" held with the UK.

Ties are:

- family
- accommodation
- work
- 90 Day
- country

Family Tie

A family tie exists if the individual has a UK tax resident spouse or civil partner (or common law equivalent), or a UK tax resident minor child (under the age of 18) in the relevant tax year.

Exemptions exist in certain circumstances for minor children in full time education (who spend limited time in the UK outside of term time) or where time is spent with the child in the UK on fewer than 61 days in the year.

Accommodation Tie

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

Accommodation encompasses any place which is available for the individual to stay in. This may include owned or rented accommodation, vehicles, vessels, temporary accommodation, holiday homes and, in certain circumstances, even hotel rooms.

Work Tie

A work tie exists if an individual works for at least 3 hours on more than 40 days whilst present in the UK in the year.

For employees, work generally includes activities carried out in the performance of their employment duties. If an individual is self-employed, it covers the activities they carry out in the course of their trade or vocation. As such, this may encompass such activities (although this is not an exhaustive list) as travel for work purposes, attending training courses, responding to emails or work calls and being on call.

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 only to individuals who have been UK tax resident in one of the three previous tax years and have spent more midnights in the UK than in any other single country. 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.

Number of days spent in the UK during the tax year	UK resident in at least one of the previous three tax years	UK resident in none of the previous three tax years
15 days or less	Always non-UK tax resident	Always non-UK tax resident
16-45 days	UK tax resident with 4 ties	Always non-UK tax resident
46-90 days	UK tax resident with 3 ties	UK tax resident with 4 ties
91-120 days	UK tax resident with 2 ties	UK tax resident with 3 ties
121-182 days	UK tax resident with 1 tie	UK tax resident with 2 ties
183 days or more	Always UK tax resident	Always UK tax resident

Day Counts

For the purpose of the SRT an individual is considered to have spent a day in the UK if they are present in the UK at midnight.

There are three exceptions to this rule:

> transit days
> exceptional days
> deemed days

The first two exceptions allow for days where the individual is present in the UK at midnight to be disregarded for the purpose of the various SRT day count tests.

Deemed days can include days of presence in the UK in the day count tests irrespective of presence at midnight.

Transit Days

Days where an individual is present in the UK because they are travelling from one country to another via the UK are not counted towards the relevant day count tests.

A day is exempt under these provisions provided that the individual only spends one night in the UK, arrives and leaves as a passenger, and does not undertake any activities that are to a substantial extent unrelated to their passage through the UK.

Exceptional Days

Days where an individual is present in the UK due to "exceptional circumstances" may not count towards the relevant day count tests under the SRT for up to a maximum of 60 in any tax year.

For a day to qualify as "exceptional" the following must apply:

> the circumstances are out of the ordinary;
> the circumstances are beyond the individual's control;
> the individual would not otherwise be present in the UK at midnight;
> the circumstances prevent the individual from leaving the UK; and
> the individual leaves the UK as soon as those circumstances permit.

HMRC examples include war, civil unrest and the serious or life-threatening illness or injury to the individual.

The application of these rules can be contentious and HMRC typically take a very narrow view on what qualifies as exceptional.

Deemed Days

Under the deeming rule days of presence in the UK when not also present at midnight may count as a "day" for the purpose of the SRT.

The deeming rule applies in very limited circumstances where an individual:

- has at least three ties (as determined under the Sufficient Ties Test) to the UK;
- was UK tax resident in at least one of the three preceding tax years; and
- is present in the UK on more than 30 days at some point during the day whilst not also being present at midnight. (e.g. if the individual flies in and out of the UK on the same day).

Where this is the case, each day of presence in the UK when not also present at midnight over the 30-day threshold will count as a day for the purpose of the SRT.

The deeming rule does not apply to the third Automatic Non-UK Tax Residence Test (full time work overseas).

Death

There are various modifications to the SRT in the year of death which can result in the deceased being considered to have remained UK tax resident.

Split Tax Year

Individuals are usually treated as UK tax resident or non-UK tax resident for the entirety of a UK tax year.

However, where an individual relocates part way through a UK tax year (either to or from the UK), subject to meeting certain criteria, the tax year may be able to be split into a period of UK tax residence and a period of non-UK tax residence for most tax purposes.

There are 8 cases where split year treatment may apply:

1. starting full time work overseas;
2. the partner or someone starting full time work overseas;
3. ceasing to have a home in the UK;
4. starting to have a home in the UK only;
5. starting full time work in the UK;
6. ceasing full time work overseas;
7. the partner of someone ceasing full time work overseas; and
8. starting to have a home in the UK.

Each case requires several conditions to be met in the year of relocation and, potentially, in the preceding or following tax years.

Treaty residence

Where an individual is determined to be UK tax resident under the SRT but is also resident in another jurisdiction for tax purposes, consideration may need to be given to the individual's "treaty residence position" if there is a double taxation agreement ("DTA") between the UK and that other jurisdiction.

Whilst the specific provisions of each DTA need to be reviewed, treaty residence is generally determined based on specific tests which should be considered in order until one test is met, at which point the latter tests need not be considered. If a test cannot be clearly determined, the next test should be considered. The tests, set out in the OECD model tax treaty, consider where an individual has:

- their permanent home available to them
- their centre of vital interests
- their habitual abode
- nationality
- mutual agreement between the jurisdictions.

Once treaty residence is determined the remaining articles of the DTA prescribe which jurisdiction has taxing rights over any income or gains.

Temporary Non-Residence Rules (TNRR)

The TNRR are targeted anti-avoidance rules which aim to prevent an individual from achieving a UK tax advantage by spending short periods as a non-UK tax resident.

These rules apply to individuals who:

- are non-UK tax resident for a period of less than 5 complete years; and
- immediately before this period of non-UK tax residence were solely UK tax resident in at least 4 of the 7 preceding tax years.

Where applicable, the individual may be subject to UK Income Tax and Capital Gains Tax on certain income and gains arising during the period of non-UK tax residence in the year of return to the UK.

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