

Statutory Residence Test

New legislation was introduced on 6 April 2013 to determine an individual's residency status. The revised Statutory Residence Test is designed to provide simple, transparent and objective legislation to determine residence taking into account the amount of time the individual spends in the UK and, in some cases, the connections that they have with the UK.

The revised Statutory Residence Test consists of three components:-

- ❑ The 'Automatic Overseas Test'
- ❑ The 'Automatic Residence Test'
- ❑ The 'Sufficient UK Ties Test'

Initial Test

If an individual is present in the UK for 183 days or more in any tax year they will be deemed to be a UK resident. If this is not the case it will be necessary to consider the following tests in order until one of them is met.

The Automatic Overseas Tests

If an individual meets any of the following conditions they will be automatically treated as not resident in the UK and there is no need to take into account any connections they have with the UK:-

- ❑ they were resident in one or more of the previous three tax years and are present in the UK for fewer than 16 days in the current tax year, or
- ❑ they were not resident in the UK in all of the previous three tax years and they are present in the UK for fewer than 46 days in the current tax year, or
- ❑ they work overseas full time and:-
 - works in the UK for no more than 30 days. A work day is a day where an individual does more than three hours of work, and
 - spends no more than 90 days in the UK in the tax year.

For these purposes 'work' includes incidental duties such as training, reporting duties and business travel.

The Automatic UK Tests

An individual will be automatically treated as resident in the UK if they did not meet any of the overseas tests, but they meet either of the following conditions:-

- ❑ their only or main home is in the UK. The home must be available to be used for at least 91 days and must actually be used for at least 30 separate days (even for a short time), or
- ❑ They work full time in the UK for a period of at least 365 days, subject to certain conditions.

The Sufficient Ties Test

If the individual's residence position is not determined by the above tests they must look at the number of ties they have with the UK. These ties are combined with day counting into a sliding scale to determine whether an individual is resident or not. The more ties an individual has with the UK the less time he can spend here without becoming UK resident.

The Sufficient Ties are:-

- ❑ **Family** - the individual's spouse or civil partner or 'common law partner' or minor children live in the UK. Time spent in the UK by minor children to attend school will be ignored. Time spent with a minor child will be ignored if an individual sees their child in person for fewer than 61 days in the tax year concerned.
- ❑ **Accommodation** - the individual has accessible accommodation in the UK. An individual has accessible accommodation if they have a place to live in the UK which is available for them to use for a continuous period of at least 91 days in a tax year and they spend at least one night there. There is an exception for the homes of a close relative provided that the individual spends less than 16 nights there during the tax year.
- ❑ **Substantive Work** - an individual works substantively in the UK if they do more than three hours of work a day for an aggregate of at least 40 days in the tax year.
- ❑ **UK presence** - the individual spent more than 90 days in the UK in either of the two previous tax years.
- ❑ **Country** - the individual spends more days in the UK in the tax year than in any other single country. This criteria applies to 'leavers' only (see below)

Leavers

If an individual was resident in one or more of the three tax years immediately preceding the tax year under consideration the position is as follows:-

Days spent in the UK	Impact of connection factors on residence
Fewer than 16 days	Always non-resident
16-45 days	Resident if individual has 4 ties or more
46-90 days	Resident if individual has 3 ties or more
91-120 days	Resident if individual has 2 ties or more
121-182 days	Resident if individual has 1 tie or more
183 days or more	Always resident

Arrivers

If an individual was not UK resident in all of the three tax years preceding the year under consideration the position is as follows:-

Days spent in the UK	Impact of connection factors on residence
Fewer than 46 days	Always non-resident
46-90 days	Resident if individual has 4 ties or more
91-120 days	Resident if individual has 3 ties or more
121-182 days	Resident if individual has 2 ties or more
183 days or more	Always resident

The separate scales for 'arrivers' and 'leavers' reflects the principle that it should be harder for leavers to relinquish UK residence than it is for new arrivers to acquire it.

Split Year Treatment

An individual will normally be treated as either UK resident or non-UK resident for the whole of a tax year. However, in certain circumstances an individual can claim split year treatment. Under the new rules split year treatment may only apply where an individual:-

- ❑ becomes non-UK resident by starting full-time work overseas.
- ❑ becomes non-UK resident because their partner has started full-time work overseas.
- ❑ leaves the UK, ceases to have a home in the UK and becomes resident in another country.
- ❑ comes to live or work full-time in the UK.
- ❑ comes to the UK and starts to have a home in the UK.
- ❑ comes to the UK after ceasing full-time work overseas
- ❑ comes to the UK because their partner ceases full-time work overseas

Temporary Non-residents

Certain income arising during a temporary non-resident period will become taxable on the individuals return to the UK. This is similar to the current rule for capital gains made by temporary non-residents. This rule will apply where the individual:-

- ❑ Has been resident in the UK for a period of at least four of the last seven tax years; and
- ❑ Becomes resident again within five years of leaving.

The rule will apply to the following types of income:-

- ❑ Distributions from close companies
- ❑ Lump sum benefits from employer financial retirement benefits schemes; and
- ❑ Chargeable event gains from life assurance contracts.

Other income earned or arising during the period of non-residence will not be taxable irrespective of the date of return to the UK.

The above summary is based on legislation and guidance published as of 22 May 2018. This summary is intended to provide a general guide and individual advice should be sought about your specific circumstances.