

The UK statutory residence test

The UK has a statutory test for tax residence. We set out below the details of the legislation, together with further detail provided in HMRC's [guidance note](#) of December 2016.

The statutory residence test

The legislation is split into four parts:

- Part 1 contains the rules to be applied in determining whether a person (referred to as “P” in the legislation) is or is not UK resident for a particular tax year (“year X” in the legislation).

There are three separate tests as follows:

- The automatic overseas tests whereby a person satisfying any of these tests will be non-resident and no further tests are examined. However, if none of the automatic overseas tests is satisfied you turn to;
 - The automatic UK tests whereby a person satisfying any of these tests will be UK resident and no further tests are examined. However, if none of the automatic UK tests is satisfied you turn to;
 - The sufficient ties test. This will apply to persons who are neither automatically non-resident under the automatic overseas tests nor automatically resident under the automatic UK tests. A number of ties are counted in relation to such a person in determining whether or not they are UK resident for a particular year.
- Part 2 is headed “Key concepts” and contains definitions of the terms used for the three tests in Part 1. There are further definitions in Part 5 which should also be referred to where appropriate.
 - Part 3 is headed “Split year treatment” and defines when a tax year can be split between a resident and non-resident period.
 - Part 4 is headed “Anti-avoidance”. This Part puts on a more comprehensive statutory basis the definition of temporary non-residence and the tax position of persons who are temporarily non-resident.

The three tests of residence

- An individual (P) is resident in the UK for a tax year (“year X”) if;
 - the automatic overseas test is not met; and either
 - the automatic UK residence test is met for that year; or
 - the sufficient ties test is met for that year.

- Where the automatic overseas test is not met, if neither the automatic UK residence test nor the sufficient ties test is met for the year, P is not resident in the UK for that year.

The automatic overseas tests

There are three automatic overseas tests.

- P was resident in the UK for one or more of the three tax years preceding year X and the number of days in year X that P spends in the UK is less than 16.
- P was resident in the UK for none of the three tax years preceding year X and the number of days P spends in the UK in year X is less than 46.
- The third automatic overseas test is satisfied if:
 - P works full time overseas for year X;
 - during year X, there are no significant breaks from overseas work (with a ‘significant break’ having the same meaning as under the third automatic UK test);
 - the number of days in year X on which P does more than three hours’ work in the UK is less than 31; and
 - the number of days in year X that P spends in the UK is less than 91 (and for this purpose ignoring the deeming rule in the definition of days spent in the UK referred to below under Key Concepts).

There are two further automatic overseas tests which apply if P dies in year X.

The automatic UK tests

An individual will be UK resident if any one of the three automatic UK tests is met and none of the automatic overseas tests is met. The automatic UK tests are as follows:

- The first automatic residence test will be satisfied if P spends at least 183 days in the UK in year X.
- The second automatic residence test will be satisfied if:
 - P has a home in the UK during all or part of the year;
 - P is present in the UK home on at least 30 days (individual or consecutive days) during year X; and
 - while P has that UK home, there is a period of 91 consecutive days at least 30 days of which fall within year X when P:
 - has no overseas home; or
 - has one or more overseas homes in none of which P is present on more than 29 days (not necessarily consecutive days) during year X.

This wording means that P can be resident even if he has overseas homes, unless P has been present in one of them on at least 30 days in year X.

The third automatic UK test is satisfied if:

- P works full time in the UK for 365 days or more;
- during that period there are no significant breaks from UK work;
- all or part of that period falls within year X;
- more than 75 per cent of the days in the 365 day period when P does more than three hours of work are days on which P does more than three hours of work in the UK; and
- at least one day in year X is a day on which P does more than three hours of work in the UK.

For the purposes of the third automatic UK test a significant break from UK work is a period of at least 31 days none of which are days on which P does more than three hours' work in the UK or are days on which P would have done so but for being on sick leave or a reasonable amount of annual or parenting leave.

There is a fourth automatic UK test applying where P dies during year X.

The sufficient ties test

The number of ties that P will require in order to have "sufficient" UK ties (defined below in the Key Concepts section) to be treated as UK resident depends on whether P was resident in the UK in any of the previous three tax years and the number of days that P spends in the UK in year X.

The table below shows how many UK ties are sufficient in a case where P was resident in the UK in one or more of the three tax years immediately preceding year X:

Days spent by P in the UK in year X	Number of UK ties that are sufficient	UK ties
More than 15 but fewer than 46	4	— a country tie — a family tie
More than 45 but fewer than 91	3	— an accommodation tie — a 90 day tie
More than 90 but fewer than 121	2	— a work tie
More than 120	1	

The table below shows how many UK ties are sufficient in a case where P was resident in the UK for none of the three tax years preceding year X:

Days spent by P in the UK in year X	Number of UK ties that are sufficient	UK ties
More than 45 but fewer than 91	All 4	— a family tie — an accommodation tie
More than 90 but fewer than 121	3	— a 90 day tie
More than 120	2	— a work tie

Key concepts

A number of key concepts are defined in Part 2. These include the following:

Days spent

If P is present in the UK at the end of a day, that day counts as a day spent by P in the UK. There are three exceptions:

- A day does not count if P is in transit through the UK and does not engage in activities that are to a substantial extent unrelated to P's passage through the UK.
- Secondly, P's presence is disregarded if P would not be present in the UK at the end of the day but for exceptional circumstances beyond P's control that prevent P from leaving the UK if P intends to leave the UK as soon as circumstances permit.

Annex B to the [guidance note](#) sets out HMRC's interpretation of "exceptional circumstances". HMRC take a relatively narrow view, indicating that local or national emergencies or a sudden serious or life threatening illness or injury to the individual (or their partner or dependent child) may be treated as exceptional, whereas life events (such as marriage or death) or travel problems will not usually be regarded as exceptional. In any event, a maximum of 60 days in the UK can be disregarded under this rule.

- Thirdly, P is deemed to be present in the UK even if not here at the end of a day if: (i) P has at least three UK ties in year X; (ii) the number of days in year X when P is present in the UK at some point during (but not at the end of) the day is more than 30; and (iii) P was resident in the UK for at least one of the three tax years preceding year X. If these conditions are satisfied, P will be deemed to have spent each such day after the first 30 such days in the UK. This deeming rule does not apply in deciding if P has a 90 day tie (see below) in ascertaining whether P has three UK ties for the purpose of this deeming rule.

Section 7 of HMRC's [guidance note](#) advises the taxpayer to keep records of travel details or tickets and boarding cards.

Home

A home can be any place (including a vehicle or vessel) which an individual uses with a sufficient degree of permanence or stability. There is no requirement that P has any legal ownership or interest in the property concerned so, for example, if P lives with his parents then their property may be his home.

As set out in Annex A to the [guidance note](#), HMRC “consider that a person’s home is a place that a reasonable onlooker with knowledge of the material facts would regard as that person’s home.” A place may be a home even if not occupied by P, for example if occupied by P’s spouse and children or temporarily unavailable because of renovation.

A property will not be P’s home if made available to let commercially, provided P and his family retain no right to live there. Furthermore, a property which is used as nothing more than a holiday home, temporary retreat or similar where P spends time for occasional short breaks which provide “distinct respite from [P’s] ordinary day to day life” will not be a home. However, if P’s use of the holiday home is such that he in fact uses it as a home for parts of the year, it will be treated as a home for the purposes of the statutory residence test.

Section 7 of HMRC's [guidance note](#) indicates that in reviewing whether or not P has a home at a particular place, HMRC will consider (amongst other factors) the level of usage demonstrated by utility bills, membership of clubs, mobile phone usage, engagement of domestic staff, insurance documents, the address to which personal post is sent, where P’s driving licence is registered, registration with local doctors, payment of local municipal taxes and bank accounts linked to the address.

Work

P is considered to be working if he does something in the performance of the duties of an employment or in the course of a trade carried on by P. Trade includes anything treated as a trade for income tax purposes which would therefore include a property rental business.

A voluntary post for which P has no contract of service does not count as work for the purpose of the statutory residence test.

Time spent working includes travelling time to the extent that P works during the journey or the cost would have been a deductible expense for tax purposes if incurred by P himself. Time spent working can also include time on-call or on stand-by.

Section 7 of HMRC's [guidance note](#) sets out the kind of records taxpayers should keep in relation to their work, including contracts of employment and a calendar indicating hours worked, nature and location of work, leave taken and breaks from work.

Location of work

Work is done where it is actually done, regardless of where the employment is held or the trade carried on by P. Work done in the course of travelling to or from the UK is assumed to be done overseas.

Full time work

P works full time in the UK or overseas if the number of hours per week averaged over the period is 35 hours or more.

UK ties

This definition is relevant for the sufficient ties test. The number of UK ties that will be relevant will depend on whether P was resident in the UK for one or more of the three tax years preceding year X.

If P was resident in the UK for one or more of the preceding three tax years, the following ties count as a UK tie: a family tie, an accommodation tie, a work tie, a 90 day tie and a country tie.

If P was resident in the UK for none of the prior three tax years, the country tie is disregarded.

Family tie

P has a family tie for a year if he or she has a spouse or civil partner or unmarried partner from whom P is not separated or P is a parent of a child under the age of 18 and the partner or child concerned is resident in the UK for that year. The fact that P has a minor child is disregarded if P sees the child in the UK for fewer than 61 days in the year.

A child of P who is under 18 and in full time education and only UK resident because of their education in the UK is treated (for the purpose of the “family tie” test) as non-resident if the number of days the child spends in the UK outside of term-time is less than 21 (half-term breaks being treated as part of term-time for this purpose).

In applying the family tie test, the residence of any other person is determined without reference to the question of whether P is UK resident.

Accommodation tie

The accommodation tie is satisfied if P has a place to live in the UK which is available for a continuous period of at least 91 days during the year provided that P spends at least one night at that place in year X. There is no requirement for P to have an interest in or a legal right to occupy the accommodation, nor that the accommodation is a "home".

If the accommodation belongs to a close relative of P, the accommodation tie will only be satisfied if P spends a total of at least 16 nights there. Close relative is defined in part 2 "key concepts".

If P has a property in the UK which he has let out commercially, it will not constitute an accommodation tie unless he has retained a right to use the property.

Work tie

A person has a work tie for a year if he or she works in the UK for at least 40 days (whether continuously or intermittently) in year X. For this purpose P works in the UK for a day if P does more than three hours' work in the UK on that day.

90 day tie

This tie is satisfied if P has spent more than 90 days in the UK in the tax year preceding year X, the tax year preceding that tax year, or in each of those tax years.

Country tie

P has a country tie for year X if the country in which P is present for the greatest number of days at the end of the day is the UK. If P is present at the end of the day for an equal number of days in more than one country and one of those countries is the UK the country tie will be met if that number of days is the greatest number of days spent in any country in year X.

Split year treatment

In certain circumstances a tax year can be split between a UK and an overseas period.

Broadly speaking, the effect of split year treatment is that the taxpayer is taxed as a non-resident during the overseas part of the year.

Where the taxpayer meets the criteria for split year treatment under more than one case, priority is given to the case where the overseas part of the year is the shortest.

Case 1: starting full time work overseas

This will apply if:

- the taxpayer was resident in the previous tax year and on a day in the relevant tax year the taxpayer starts to work full time overseas for a period which continues until the end of the relevant tax year;
- in the part of the tax year beginning with that day, the number of days on which the taxpayer does more than three hours' work in the UK and the number of days the taxpayer spends in the UK (but ignoring the deeming rule in the definition of days spent under Key Concepts above) does not exceed 30 days and 90 days respectively.

These numbers of days are reduced to a lower figure by reference to the number of months in the year before the taxpayer commences full time work overseas. For example if the taxpayer left the UK on 6 October (six months into the tax year) the days after the taxpayer leaves that he works in the UK for more than three hours and the days he spends in the UK should not exceed 15 and 45 respectively; and

- the taxpayer is not resident in the UK in the next tax year after the person left the UK as a result of the third automatic overseas test (full time work abroad).

Case 2: accompanying spouse leaving the UK

Where a person leaves the UK to work overseas, split year treatment can also apply to an accompanying spouse, civil partner or unmarried partner.

Case 3: leaving the UK to live abroad

Split year treatment will apply where:

- on a day in the relevant tax year the taxpayer ceases to have any home in the UK and from then onwards the taxpayer has no home in the UK for the rest of the year;
- in the part of the relevant tax year beginning with the day that the taxpayer ceases to have any home in the UK, he or she must spend fewer than 16 days in the UK;
- the taxpayer is not resident in the UK for the next tax year; and
- by the end of the period of six months beginning with the day the taxpayer ceases to have a home in the UK he or she has a sufficient link with a country overseas. The taxpayer has a sufficient link with a country overseas if:
 - (i) he or she is resident there under the local law; (ii) he or she is present in the that country at the end of each day in the six month period; or (iii) his or her only home or homes are in that country.

Case 4: persons coming to live in the UK

This will apply if the taxpayer:

- was not resident in the UK in the previous tax year;
- during the relevant tax year the taxpayer begins for the first time in that year to meet the only home test and continues to meet that test for the rest of the tax year. The only homes test is satisfied if the taxpayer's only home or homes are all in the UK; and
- did not have sufficient UK ties in the period before meeting the only homes test in the year.

Case 5: persons coming to work full time in the UK

This will apply if the taxpayer:

- was not resident in the UK in the previous tax year;
- during the relevant tax year begins a period of at least 365 days of full time work in the UK; and
- did not have sufficient UK ties in the part of the relevant year before beginning work.

Case 6: persons ceasing full time work overseas

This provision will apply if:

- the taxpayer was not resident in the UK in the previous tax year because the taxpayer met the third automatic overseas test for that year (working full time abroad);
- the taxpayer was however UK resident in one or more of
- the four years before that (i.e. it is designed to cover
- people who have left the UK to work abroad for a short
- period and are now returning to the UK);
- on a day within the relevant tax year the taxpayer ceases full time work overseas;
- in the part of the tax year ending on that day, the number of days in which the taxpayer does more than three hours of work in the UK and the number of days the taxpayer spends in the UK (ignoring the deeming rule) must not exceed 30 days and 90 days respectively (with those limits being apportioned according to the number of whole months of the tax year remaining after the overseas work period ends); and
- the taxpayer is resident in the UK for the next tax year.

Case 7: accompanying spouse arriving in the UK

Where a person arrives in the UK on ceasing to work full time overseas, split year treatment can also apply to an accompanying spouse, civil partner or unmarried partner.

Case 8: starting to have a home in the UK

This provision, unlike Case 4, enables a person who retains a home abroad to benefit from split year treatment. Split year treatment will apply where:

- the taxpayer was not resident in the UK in the previous tax year;
- at the start of the year the taxpayer had no home in the UK but there comes a day for the first time in that year when the taxpayer does have a home in the UK and continues to do so for the rest of that year and the whole of the next tax year;
- for the part of the year before the taxpayer acquires a UK home he or she does not have sufficient UK ties; and
- the taxpayer is resident in the UK for the whole of the next tax year.

Temporary non-residence

The purpose of this part of the legislation is to prevent the avoidance of UK tax during a period of non-residence of a comparatively short duration. Capital gains, foreign income remitted during temporary non-residence, dividends from UK and non-UK close companies, certain employment income, pension income, chargeable event gains from certain insurance policies and loans to participators in close companies that arise during a period of temporary non-residence are all taxed in the year the taxpayer returns to the UK

A person will be temporarily non-resident if he or she was resident in the UK in at least four out of the seven tax years preceding the year of departure, and the individual remains non-resident for five years or less.

Unless split year treatment applies, this means that an individual must be non-resident for six tax years in order to avoid the temporary non-residence rules.

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