

An introduction to the UK statutory residence test

Introduction

The UK has a single statutory test for tax residence of individuals. This test is comprised of three limbs:

- an automatic overseas test;
- an automatic UK test; and
- the sufficient ties test.

Automatic overseas test

This also has three criteria and if an individual satisfies any of these they will be treated as being non-UK resident:

- they were resident in the UK in one or more of the three previous tax years and were present in the UK for fewer than 16 days in the current year;
- they were not resident in the UK in any of the three preceding tax years and were present in the UK for fewer than 46 days in the current year; or
- they leave the UK to work abroad on a full time basis and are present in the UK for fewer than 91 days and work in the UK for fewer than 31 days during that year (for the purposes of this legislation a work day is any day where an individual works for more than three hours).

Automatic UK test

This has three criteria and if an individual satisfies any of these, and none of the automatic overseas tests are met, they will be treated as being UK resident irrespective of any other factors:

- they spend at least 183 days in the UK during a year;
- they have a home in the UK for all or part of the year, are present at that home for at least 30 (individual or consecutive) days in the tax year; and for at least one period of 91 consecutive days, they either have no home overseas or, if they have one or more homes overseas, they are present at each of those overseas homes for fewer than 30 days; or
- they work full time in the UK for any period of 365 days; during that 365 day period, there is no significant break from UK work; all or part of that 365-day period falls within the tax year; more than 75 per cent of the total number of days in the 365-day period when they do more than three hours work are days when they do more than three hours work in the UK; and, at least one day which is both in the 365-day period and in the tax year is a day on which they do more than three hours of work in the UK.

Sufficient ties test

For individuals who are neither automatically non-resident under the automatic overseas test, nor automatically resident under the automatic UK test, the sufficient ties test applies.

The number of ties that an individual will require in order to have "sufficient" UK ties to be treated as UK resident in a particular year depends on whether the individual was resident in the UK in any of the previous three tax years, and the number of days that the individual spends in the UK in the relevant tax year.

The table below shows the number of UK ties that are sufficient in order to be UK resident where an individual was resident in the UK in one or more of the 3 tax years immediately preceding the current year:

Days spent in the UK in a given year	Number of UK ties that are sufficient	UK ties considered
More than 15 but fewer than 46	4	▪ A family tie
More than 45 but fewer than 91	3	▪ An accommodation tie
More than 90 but fewer than 121	2	▪ A 90 day tie
More than 120	1	▪ A work tie
		▪ A country tie

The table below shows the number of UK ties that are sufficient in order to be UK resident where an individual was resident in the UK for none of the 3 tax years immediately preceding the current year:

Days spent in the UK in a given year	Number of UK ties that are sufficient	UK ties considered
More than 45 but fewer than 91	All 4	▪ A family tie
More than 90 but fewer than 121	3	▪ An accommodation tie
More than 120	2	▪ A 90 day tie
		▪ A work tie

UK ties

Family tie: this applies if an individual has a spouse/civil partner (or a person with whom the individual lives as a spouse) or a child under the age of 18 who is UK resident. The rules are more complex where the child is under 18 in full time education and only UK resident because of their education in the UK.

Accommodation tie: this is satisfied if an individual has access to a place to live in the UK for at least 91 continuous days, and spends at least one night there in the year. The individual does not have to have a legal right to occupy the property, so it includes places owned by relatives etc, although specific rules would apply in those cases.

Work tie: a work tie exists if an individual works in the UK for at least 40 days during the course of a year.

90-day tie: if an individual has been present in the UK for more than 90 days in either of the last two tax years.

Country tie: an individual has a country tie if the UK is the country in which they spent most days during a given year.

Split year treatment

The legislation sets out eight sets of circumstances where an individual might meet the criteria for split year treatment for a particular tax year. If split year treatment applies then, in most circumstances, income and gains from the non-UK part of the year will not be taxed.

Anti-avoidance

The legislation also contains a test of temporary non-residence to prevent people avoiding UK tax by becoming non-resident for relatively short periods of time. Those affected will face a tax charge on capital gains and also certain types of income which arise during the period of temporary non-residence.

A person will be temporarily non-resident if they were 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 the individual must remain non-resident for six years in order to escape the anti-avoidance provisions.

Summary

Although the statutory residence tests are complicated they provide certainty and clarity in most cases.



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