

STATUTORY RESIDENCE TEST

UK TAX

In the 2011 UK Budget HMRC announced that they would introduce a statutory definition of tax residence. Its aim was to create new rules that provide greater certainty for taxpayers and was simple to use. Following consultation new legislation was introduced and became effective from 6 April 2013.

Details of the test to determine residence status are summarised as follows.

The test has three parts:

- 1) **Automatic Overseas Test** - factors that would be sufficient in themselves to make an individual **not resident**.
- 2) **Automatic UK Test** – an individual who does not meet any of the automatic overseas tests will be automatically UK resident if he meets any of the four automatic UK tests.
- 3) **Sufficient Ties Test** - other connecting factors and day counting rules which will only need to be considered by those whose residence status is not determined by the Automatic Overseas Test or the Automatic UK Test.

AUTOMATIC OVERSEAS TEST

This comprises four conditions, any one of which, if met, will conclusively determine that an individual is **not resident** in the UK for a tax year. The conditions are:-

- that the individual was not resident in the UK in any of the previous three tax years and **is present in the UK for fewer than 46 days** in the current tax year; or
- that the individual was resident in the UK in one or more of the three previous tax years and **is present in the UK for fewer than 16 days** in the current tax year; or
- that in the current year the individual is in **full-time work (i.e. a 35 hour week) abroad for the whole tax year**, and is present in the UK for under 91 days in the tax year of which no more than 30 days are spent working (for over 3 hours per day) in the tax year. Work-related travel time in the UK is treated as work in the UK even though the individual is not in the UK that midnight. If the employment is changed in the period, any gap of up to 30 days between the two employments may be deducted when calculating whether the 35-hour average is met;
- that the individual dies in the current year subject to conditions which include spending fewer than 46 days in the UK.



The new rules specifically exclude “international transportation workers” (e.g. pilots, truck drivers, etc) from the definition of full-time work abroad.

The "presence in the UK at midnight rule" remains to determine day counting, except when counting working days in the UK.

AUTOMATIC UK TEST

An individual who does not meet any of the automatic non-resident conditions will be conclusively **UK resident** for the tax year if they meet any of the following conditions, namely:

- the individual is present in the UK at least 183 days in a tax year; or
- that there is a period of more than 90 consecutive days, part of which falls within the tax year, when they have a home in the UK (disregarding any home at which they are present for fewer than 30 days in the tax year) and no home overseas, or they have one or more homes overseas, but each of those homes is a home in which they have spent fewer than 30, not necessarily consecutive, days in the tax year. A day is considered to be any part of a day. A home need not be a property an individual owns but could be a rented property. A holiday home or temporary retreat will not count for this purpose; or
- the individual carries out **full-time** work (35 hours a week) in the UK. An individual will be automatically UK resident if they work full time in the UK over a continuous period of 12 months and no more than 25% of the duties are carried on outside the UK during the period;
- the individual dies in the current year subject to conditions which include having been UK resident in the previous three tax years due to meeting one of the automatic residence tests, and having their home or at least one of their homes in the UK.

SUFFICIENT TIES TEST

An individual who meets neither of the above automatic tests will need to look at the sufficient ties test. Amongst our Isle of Man resident clients this is likely to affect individuals who spend between 46 and 183 days in the UK.

This test compares the number of days spent in the UK against a small number of connection factors.

An individual who was **not resident in any of the previous three tax years** will need to determine whether they have any of the following ties:

- A UK resident family (taken to be spouse, civil partner or common law equivalent and/or children under 18); (Children being educated in the UK will not be deemed a family connection providing the child spends less than 21 days in the UK outside term time.)
- Substantive employment or self-employment in the UK. "Substantive" means 40 days or more;
- Available accommodation in the UK for a period of at least 91 days in a tax year, spending at least one night in that place during the tax year. The home of a close relative will also be considered to be available accommodation if the individual spends a total of at least 16 nights there in the tax year. If there is a gap of fewer than 16 days between periods when a particular place is available to the individual that place is treated as continuing to be available during the gap. Accommodation will not be treated as being available unless the individual would really be able to stay there for at least a three month period.
- UK presence of more than 90 days in either or both of the previous two tax years.

This table shows how many UK ties are sufficient to be considered UK resident if the individual was **not resident** in all of the three tax years preceding the year under consideration.

Days spent in UK	Number of ties that are sufficient to be considered to be UK resident
Fewer than 46 days	Always non resident
46-90 days	All 4 ties (otherwise non-resident)
91-120 days	At least 3 ties (otherwise not resident)
121-182 days	At least 2 ties (otherwise not resident)
183 days or more	Always resident



An individual who has been **resident in the UK in one or more of the previous three tax years** will need to determine whether they have any of the following ties:-

- A UK resident family taken to be spouse, civil partner or common law equivalent and/or children under 18); (Children being educated in the UK will not be deemed a family connection providing the child spends less than 21 days in the UK outside term time.)
- Substantive employment or self-employment in the UK. "Substantive" means 40 days or more;
- Accessible/available accommodation in the UK for a period of at least 91 days in a tax year, spending at least one night in that place during the tax year;
- UK presence of more than 90 days in either or both of the previous two tax years;
- More time spent in the UK than in any other single country.

The table below shows how many UK ties are sufficient to be considered UK resident:

This table shows how many UK ties are sufficient to be considered UK resident if the individual was resident in any of the three tax years preceding the year under consideration.	
Days spent in UK	Number of ties that are sufficient to be considered UK resident
Fewer than 16 days	Always not resident
16-45 days	At least 4 ties (otherwise not resident)
46-90 days	At least 3 ties (otherwise not resident)
91-120 days	At least 2 ties (otherwise not resident)
121 - 182 days	At least 1 ties (otherwise not resident)
183 days or more	Always resident

ADDITIONAL CONSIDERATION FOR THOSE WHO VISIT THE UK FREQUENTLY – Anti Avoidance Rule

A late addition to the new rules will apply to those who are present in the UK on a large number of days in a tax year without being in the UK at midnight on many of those days.

This new rule will apply only to individuals who:

- **have been resident in the UK for one or more of the three previous tax years;**
- **have at least three ties for the tax year, and**
- **on more than 30 days are present in the UK at some point but not at midnight.**

The effect of this test, when it does apply, is that all the days in excess of the 30 day threshold where an individual was present at some point in the day, are included for the purposes of establishing the number of days the individual has spent in the UK in the tax year.

The new test will not apply for the purposes of applying the Full Time Work Abroad test.

An individual who was resident in the UK in the previous year, who has three ties to the UK, and who spends 35 midnights in the UK will need to consider the number of additional days on which they were present in the UK at some point during the day but left before midnight. If in this example, the individual had spent some time in the UK on an additional 48 days then they would need to add 18 extra days when counting the number of days spent in the UK. This could result in the individual having 3 ties and 53 days in the UK, and thus they would be treated as resident under the sufficient ties test.

Other points to note

Although strictly a taxpayer is either resident or not resident for the whole of the tax year, in certain circumstances when an individual arrives in or leaves the UK, the year is by concession split into periods of residence and non-residence for income tax purposes. HMRC Guidance Note sets out specific circumstances when split year treatment will apply. The conditions for those leaving the UK part-way through a tax year are:

- starting full-time work overseas; or
- going overseas as the partner of someone starting full-time work overseas; or
- leaving the UK to live abroad.

For those arriving in the UK, split year treatment is available in circumstances including coming to live or work full-time in the UK or starting to have a home in the UK (and continuing to have a home in the UK until the end of the following tax year).



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Anti-avoidance legislation has also been introduced to combat the risk of individuals taking advantage of the Statutory Residence Test to engineer a short period of non-residence during which they receive a large amount of income (for example a dividend from a close company). The Statutory Residence Test broadly recreates the existing rules, which apply for Capital Gains Tax. This will mean that some forms of income arising in the period in which the individual is not UK resident will come into charge if the individual becomes UK resident again within a 5 year period.

A new rule will be introduced so that days spent in the UK in “exceptional circumstances” (i.e. where presence in the UK is beyond the individual’s control) will be disregarded for day counting purposes (up to a maximum of 60 days in any tax year). Circumstances will only be considered to be “exceptional” if an event beyond their control occurs while an individual is in the UK and which prevents them from leaving the UK.

The concept of Ordinary residence is abolished.

Legislation to implement these changes is in the Finance Act 2013.

If you would like to know more, please contact

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