

The UK Statutory Residence Test

Background

The Statutory Residence Test (SRT) was introduced by HMRC with the aim of clarifying UK residence for tax purposes. Previously, a decision as to residence was based on limited guidance in conjunction with case law, which was far from clear.

The SRT was introduced in the Finance Act in 2013 and has largely remained unchanged since, although considerable guidance has been issued to support it.

How the SRT works

An individual initially ascertains their tax residence based on three categories, two of which are fairly broad. For those individuals for which neither applies, there is a more complex test, based on a number of factors. These three categories are:

- the automatic overseas tests,
- the automatic UK tests and
- the sufficient ties test.

A “day” in the UK is, generally, where an individual is present at midnight, except in certain very restricted cases when they are merely in transit in the UK.

The basic rule is that an individual is resident in the UK for a tax year and at all times in that tax year (although the effect of this rule is relaxed under split year treatment), if they do not meet any of the automatic overseas tests and they either:

- meet one of the automatic UK tests; or
- meet the sufficient ties test.

In practice an individual will first consider the first condition for automatic UK residence, as being in the UK for 183 days during the tax year will render all the other conditions irrelevant. The next step is to consider the automatic overseas tests, since if any of those are met, the individual is automatically non-resident in the UK. The individual then needs to revert to the automatic UK tests since if any of those are met, they are tax resident in the UK.

The Automatic Overseas Tests

The SRT has four possible scenarios in relation to individuals. If any of them are satisfied, the individual will automatically be non-resident for UK tax purposes. In order for this to apply, the individual:

- was not resident in the UK in all of the previous three tax years and is present in the UK for fewer than 46 days in the current tax year; or
- was resident in one or more of the previous three tax years and is present in the UK for fewer than 16 days in the current tax year; or
- works full-time overseas (with no significant breaks) and is present in the UK in the tax year for fewer than 91 days of which fewer than 31 are spent working for three hours or more; or
- dies in a tax year in which they spent less than 46 days in the UK and was not resident in the UK for either of the previous two tax years.



The Automatic UK Tests

Where the tests above in relation to being non-UK resident do not apply, and an individual meets any of the four conditions set out below, they will automatically be UK resident. In order for this to apply, the individual:

- is present in the UK for 183 days or more in a tax year; or
- has a home in the UK for more than 90 days at which they were present on at least 30 days in the tax year; and, for at least one period of 91 consecutive days, they have either no home overseas, or if they do, they are present at each of the overseas homes on fewer than 30 days in the relevant tax year; or
- works full-time in the UK for at least 12 months (with no significant breaks); or
- dies in the tax year and they were resident in the UK for each of the previous three tax years (under the automatic UK residence tests) and on death, either his only home was in the UK or at least one was in the UK.

The sufficient ties test

If it is not possible to determine whether an individual is resident by either of the sets of “automatic” tests, then it is necessary to consider the “ties” that an individual has to the UK. The fewer ties an individual has with the UK, the more days they can be present without becoming UK tax resident.

The number of days an individual can spend in the UK without becoming tax resident is different for “arrivers” (those who have not been resident in the UK for any of the preceding three tax years) and “leavers” (those who have been resident in the UK in that time frame).

Ties defined

There are five different factors which count as ties for this purpose. These are:

- Family – spouse/civil partner (unless you are separated) or minor children are UK resident;
- Work – the individual undertakes work for more than three hours per day on 40 days or more in a tax year;
- Accommodation – which is available to occupy for a continuous period of 91 days or more in a tax year, and at least one night is spent there in that year; or at least 16 nights in the tax year are spent at the home a close relative;
- 90 day – the individual spent 90 days or more in the UK in either of the two previous tax years;
- Country – the individual spent more days in the UK than any other single country (only applies to leavers). This is only applicable if the individual was resident for one or more of the preceding three tax years.

Days

The number of ties that an individual has to the UK is combined with the number of days they spend in the country, in order to determine whether they are tax resident. The application is as follows:

Days spent in the UK	Impact of ties on UK residence status	
	Arrivers	Leavers
Fewer than 16 days	Always non-resident	Always non-resident
Fewer than 46 days	Always non-resident	Resident if all four ties apply
46 – 90 days	Resident if all four ties apply	Resident if three ties apply
91 – 120 days	Resident if three ties apply	Resident if two ties apply
121 – 182 days	Resident if two ties apply	Non-resident
183 days or more	Always resident	Always resident



Other factors

This guide is a general brief overview of the SRT, which is complex, particularly with regard to the ties test.

In addition, there are a few scenarios where the rules do not apply as shown above.

Exceptional Circumstances

Where an individual is in the UK for 183 days or more in a tax year they will always be resident, irrespective of the reasons for being here. However, it is possible to disregard up to 60 days spent in the UK due to “exceptional circumstances” which are beyond the individual’s control.

Examples of exceptional circumstances include falling ill while in the UK and being unable to travel for a period, or the death of a spouse or civil partner whilst in the UK.

Split year rules

Where an individual leaves or arrives during the year, and provided they meet the requirement, they can apply for “split year” treatment. This means that, during the year, only the income that is earned while UK resident will, generally, be taxable.

Death

Where an individual dies during a tax year, the tests applied in relation to ascertaining UK tax presence are also modified.

Anti-Avoidance

In addition, there is an anti-avoidance provision aimed at preventing those who deliberately try to manipulate the midnight rule. This is designed to catch individuals who were previously UK resident, and who had a number of UK ties, from spending a significant number of days in the UK without being present at midnight.

The result is that, where an individual:

- has been resident in the UK for one or more of the previous three tax years, and
- has at least three ties with the UK, and
- on more than 30 days in the tax year is present in the UK at some point but not at midnight, then
- all such days in excess of 30 are counted as days resident in the UK.

Where the “deeming rules” apply but the days spent in the UK do not exceed 90 in total, this does not constitute a tie under the sufficient ties test.

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SRT flow chart

