



# Statutory Residence Test

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The Statutory Residence Test (SRT) was introduced to categorically assess an individual's tax residence status in the UK.

SRT has a three-part core structure and special rules (not covered in this note) also apply to international transport workers and individuals who die in the tax year in question. Here we discuss the basics, however professional advice should be sought as the detail on some of the parts of the test can be complex.

SRT applies on a tax year by tax year basis, being from 6 April in one year until the following 5 April. The first step is to consider the criteria in the automatic overseas test and if any one of these applies, the individual will be conclusively non-resident. If none of the criteria of the automatic overseas test applies then it is necessary to consider the automatic UK test. If any one of the automatic UK test criteria applies, the individual will be conclusively resident for the year.

If none of the automatic overseas or UK tests apply, it is then necessary to determine the individual's residence status for the year through the Sufficient Ties Test.

For the purpose of these tests, a day in which at least three hours of work is undertaken counts as a full work day in the UK.



## 1. Automatic Overseas Test

- Not-resident in the UK for the three previous tax years, and present in the UK for fewer than 46 days in the current year.
- Resident in the UK for one or more of the three previous tax years, and present in the UK for fewer than 16 days in the current year.
- Works 'full-time' (35 hours or more per week on average) overseas in the tax year (employment or self-employment) without a significant break (31 days or more).  
Providing they are present in
- the UK for fewer than 91 days in the tax year and no more than 30 days are spent working in the UK during the year.

## 2. Automatic Residence Test

- Present in the UK for 183 days or more in the tax year.
- Has a home in the UK for more than 90 consecutive days (of which at least 30 fall within the tax year) and is present in that home for 30 days or more in the year. While the individual has that home,
- for a period of at least 91 days, they have no overseas home, or have one or more overseas homes but are present in each for fewer than 30 days in the tax year.
- Works 'full-time' (35 hours or more per week on average) in the UK without a significant break (31 days or more) assessed over a 365-day period, all or part of which falls within the tax year. 75% or more of the days in the period in which more than three hours are worked are days in which the individual does more than three hours of work in the UK

### 3. Sufficient Ties Test

The number of ties (connections to the UK) with the UK determines the number of days the individual may spend in the UK without being treated as resident. Different limits apply to arrivers (individuals who were not resident in the UK in any of the previous three tax years) and leavers (those who were resident in one or more of the previous three tax years).

#### Family tie

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The individual's spouse, civil partner, common-law partner or minor children are resident in the UK in the tax year. Children in education in the UK are not included, providing they spend fewer than 21 days in the UK outside term-time. Nor are minor children resident in the UK, if the individual spends fewer than 61 days in the UK with them during the tax year.

#### Accommodation tie

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UK accommodation is available to the individual for a continuous period of at least 91 days and is used for one or more nights or, if it is the home of a close relative (other than a spouse/partner or minor children) used for 16 or more nights. The individual need not own or hold any interest in the property.

#### Work tie

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The individual works in employment or self-employment in the UK for 40 days or more in the tax year.

#### 90-day tie

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The individual spent more than 90 days in the UK in either of the two previous tax years.

#### Country tie

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The individual spends more days in the UK than any other single country in the tax year. This tie applies to leavers only.

The numbers of ties and days in the UK in the tax year combine as follows:

### Arrivers

Number of days spent in UK	SRT status
Fewer than 46 days	Always non-resident
46-90 days	Resident if 4 or more factors
91-120 days	Resident if 3 or more factors
121-182 days	Resident if 2 or more factors
183 days or more	Always resident

### Leavers

Number of days spent in UK	SRT status
Fewer than 16 days	Always non-resident
16-45 days	Resident if 4 or more factors
46-90 days	Resident if 3 or more factors
91-120 days	Resident if 2 or more factors
121-182 days	Resident if 1 or more factors
183 days or more	Always resident

### Transitional rule

A transitional rule allows an individual to use the SRT to determine residence status for years prior to 2013/14 (for example, to determine whether the individual is a leaver or arriver), but only for the purpose of the SRT. The SRT cannot change the individual's actual residence status for those earlier years.

### **What is a 'day' in the UK?**

Presence in the UK at midnight on a particular day constitutes a day of residence, unless the individual is in transit through the UK, provided that the individual does not engage in any work or social activity whilst in the UK.

However, there is a deeming rule aimed at people who spend a substantial number of days in the UK without being present at midnight. This applies to leavers with three or more ties to the UK who are present in the UK on more than 30 days without being present at midnight on those days (qualifying days). Any qualifying days in excess of 30 are deemed to be days in the UK for SRT day counting purposes.

So if a leaver with three ties was present in the UK for 35 midnights in a year, but also a further 55 qualifying days, his day-count would be 60 days, making the individual UK resident for that year.

### **Exceptional Circumstances**

In counting days of presence in the UK, those resulting from exceptional circumstances can be ignored subject to a maximum of 60 days. Exceptional circumstances normally apply when the individual has no choice concerning the time they spend in the UK, or in returning to the UK, and where the situation is not under their control. HMRC guidance gives examples of a sudden life-threatening illness or injury to the individual or a spouse, partner or dependent child, or local or national emergencies such as civil unrest, natural disaster or the outbreak of war.

Life events such as birth, marriage, divorce and death are not routinely regarded as exceptional circumstances. Neither is choosing to come to the UK for medical treatment, or having to remain in the UK as a result of travel delays or cancellations.

### **COVID-19**

HMRC guidance issued in August 2020 confirms that the following reasons will be considered as exceptional circumstances for individuals spending time in the UK as a result of the pandemic.

Quarantined or self-isolating in the UK as a result of the virus if advised by a health professional or public health guidance.

If official Government advice is not to travel from the UK as a result of the virus.

If you are unable to leave the UK as a result of the closure of international borders.

If you are asked by your employer to return to the UK temporarily as a result of the virus.

A specific exception has also been introduced for medical or healthcare professionals and scientists who are present in the UK for purposes connected to the detection, treatment or prevention of COVID-19. Such individuals can ignore any days in the UK between 1 March 2020 and 1 June 2020 inclusive provided they are resident in another jurisdiction in that tax year. These days do not count towards the 60-day limit.

### **What is a day spent working in the UK or overseas?**

A day in which more than three hours of work is undertaken in the UK counts as a work day in the UK, irrespective of the nature of the work. Similarly, an overseas workday is a day on which more than three hours of work is undertaken outside the UK. For this purpose, work-related training, work-related travel and work undertaken whilst commuting all count as work.

### **Split year**

Although the SRT generally determines a person's residence for a whole tax year, in certain circumstances the year may be split into periods of residence and non-residence. Detailed conditions apply in each case, but the tax year may be split where an individual:

- loses UK residence by starting to work overseas
- gives up a UK home, has their only home outside the UK and becomes resident in an overseas country
- starts to have their only home in the UK in the year
- becomes resident in the UK by starting full-time work in the UK
- resumes UK residence having ceased working full-time overseas
- establishes their only home in the UK.

Split year treatment can also apply to a spouse or partner accompanying an individual transferring to work overseas or in the UK.

### **Temporary non-residence**

Anti-avoidance legislation aims to prevent people from using short periods of non-residence to realise capital gains or receive income free of tax. If an individual has been a UK resident in four of the seven years prior to departure and resumes residence within five years, they will be taxable in the year of return on any of the following that arise during the period:

- capital gains on asset held prior to departure
- dividends from close companies deriving from profits arising prior to departure
- lump sum benefits from Employer Financed Retirement Benefit Schemes (EFRBS)
- chargeable event gains on life assurance contracts.

### **Overseas workday relief**

Non-UK domiciled individuals who have not been resident in the UK in any of the three years prior to their arrival to work in the UK may be able to claim overseas workday relief. If they carry out some of the duties of their employment overseas and do not remit to the UK some or all of the remuneration relating to their overseas duties, they may be able to claim the relief for the tax year of arrival and the subsequent two years.



## Start the conversation

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