



New UK Statutory Residence Test (SRT)

The UK residence test is being amended by the UK Finance Bill 2013 and the new Statutory Residence Test (SRT) is scheduled to come into effect on 06 April 2013.

HMRC have published a Guide to the draft legislation (available [here](#)). There are special rules for deceased taxpayer cases which are covered in the HMRC Guidance Note but not dealt with below.

There are up to 3 stages involved in determining residence, as follows:

- A taxpayer is automatically non-resident for a tax year if he meets any one of 3 automatic overseas tests (see below).
- If a taxpayer does not meet any of automatic overseas tests he should look at the automatic UK tests (see below), and if he meets any of the automatic UK tests he is resident.
- If he does not meet any of the automatic UK tests he will need to consider the sufficient ties test (see below).

A chart illustrating the new statutory residence test is available [here](#).

Automatic Overseas Tests

A taxpayer is automatically non-resident if any of the following automatic overseas tests are met.

First Automatic Overseas Test

The taxpayer was:

- resident in the UK for one or more of the three tax years preceding the tax year, and
- spent fewer than 16 days in the UK in the current tax year (note that if an individual dies in the tax year then this test does not apply).

Second Automatic Overseas Test

The taxpayer was:

- resident in the UK for none of the three tax years preceding the tax year, and

- spent fewer than 46 days in the UK in the current tax year.

Third Automatic Overseas Test

The taxpayer:

- works full-time overseas for the tax year without any significant breaks from that overseas work,
- spent fewer than 91 days (excluding deemed days) in the UK in the tax year, and
- the number of days in the tax year in which he worked for more than three hours in the UK is fewer than 31.

Automatic UK Tests

If a taxpayer does not meet the automatic overseas tests he looks at the automatic UK tests and if he meets any one of these tests he is resident.

First Automatic Residence Test

The taxpayer spends 183 days or more in the UK in the tax year.

Second Automatic Residence Test

The taxpayer has a home in the UK for a period of more than 90 days, and is present in that UK home on at least 30 separate days (individual or consecutive days) during the tax year, and there is a period of 91 consecutive days (part or all of which falls into the year in question) during which the taxpayer has the UK home when he:-

- does not have a home overseas, or
- has one or more homes overseas but is not present in any overseas home for more than 30 (not necessarily consecutive) days during the tax year.

For the purposes of this test any place where the taxpayer is present for fewer than 30 separate days (individual or consecutive days) in the tax year is disregarded. A person will be considered to have been present at his home if he has been there in

person at any time during the day in question, for any length of time, so it is not necessary to be there at midnight in order for the day to be counted.

Third Automatic Residence Test

The taxpayer works full-time in the UK for 365 days or more with no significant break from UK work and:

- all or part of that work period falls within the tax year, and
- more than 75% of the total number of days in the tax year when the taxpayer does more than three hours work are days when he does more than three hours work in the UK.

Significant Ties Tests

If the taxpayer does not meet any of the automatic overseas tests or any of the automatic UK tests, he should use the sufficient ties test to decide his UK residence status for a tax year.

What counts as a UK tie varies according to whether the taxpayer was UK resident for any of the three tax years before the tax year under consideration, and the number of days spent in the UK in the tax year under consideration.

If the person was not UK resident for any of the three tax years before the tax year under

consideration, he will need to consider the following UK ties:

- a family tie
- an accommodation tie
- a work tie, and
- a 90-day tie

If the person was UK resident for one or more of the preceding three tax years he will also need to consider if he has a country tie.

The number of days spent in the UK in a tax year dictates the number of UK ties that are needed to be UK resident (see the tables below).

A Family Tie

A person has a family tie for the tax year under consideration if any of the following people are UK resident for tax purposes for that year:

- a husband, wife or civil partner (unless the parties are separated)
- a partner, if a couple are living together as husband and wife or as civil partners
- a child, if under 18-years-old, unless the taxpayer sees the child in person in the UK on a total of 60 days or fewer in the tax year concerned, or (in the year the child turns 18) on a total of 60 days or fewer in the part of the tax year before the 18th birthday. Any day or part of a day on which the child is met in person is included in this day count.

"Leaving the UK" - i.e. you were resident in one or more of the three tax years preceding this tax year

<u>Days spent in the UK</u>	<u>UK ties needed</u>
16 - 45	All 4
46 - 90	At least 3
91 - 120	At least 2
Over 120	At least 1

"Arriving in the UK" - i.e. you were not resident in any of the three tax years preceding this tax year

<u>Days spent in the UK</u>	<u>UK ties needed</u>
46 - 90	All 4
91 - 120	At least 3
Over 120	At least 2

Any children who are under 18 years of age who stay in the UK during term-time to attend full-time education, and who spend fewer than 21 days in the UK outside of term-time, are not included in this test.

Accommodation Tie

- A taxpayer has an accommodation tie for a tax year if he has a place to live in the UK and,
- it is available for a continuous period of 91 days or more during that year, and
- he spends one or more nights there during that year, or (if it is at the home of a close relative) 16 or more nights there.

A close relative for the purposes of the accommodation tie is defined as a parent or grandparent, brother or sister, or child or grandchild aged 18 or over. Close relatives can be blood or half-blood relatives, related through marriage or civil partnership, or related through adoption.

Gaps of 15 days or fewer in the availability of the accommodation will count towards the continuous period of availability.

Work Tie

A person has a work tie for a tax year if he does more than three hours work a day in the UK for an aggregate of at least 40 days in that year.

90-day Tie

A taxpayer has a 90-day tie for a tax year if he has spent more than 90 days in the UK in either or both of the previous two tax years.

Country Tie

A person has a country tie for a tax year if the UK is the country in which he was present at midnight for the greatest number of days in that year.

If the number of days on which he was present at midnight is the same in two or more countries in a tax year, and one of those countries is the UK, then he will have a UK country tie for that tax year

if there is no country in which he spends a greater number of days.

Days spent in the UK may be disregarded if the individual's presence in the UK is due to exceptional circumstances beyond their control. This will usually only apply to events that occur while an individual is in the UK and which prevent them from leaving the UK.

Split Year Treatment

Under the statutory residence test, a person is either UK resident or non-UK resident for a full tax year and at all times for that tax year.

However, if during a year he leaves the UK to live or work abroad or comes from abroad to live or work in the UK he may be entitled to split the tax year into two parts:

- a UK part in which UK taxes arise on the basis he was UK resident; and
- an overseas part in which taxes are largely charged as if he was a non-UK resident.

Transitional Provisions

When considering the residence status for the tax year 2013-14, the residence status in the tax years 2012-13, 2011-12 and 2010-11 will need to be taken into account.

The new statutory residence test was not in place in these tax years and transitional provisions have been introduced for tax years where one or more of the three tax years prior to the year under consideration is a tax year prior to 2013-14.

For the purpose of determining UK residence status in the tax years 2013-14, 2014-15 and 2015-16, a taxpayer can elect to determine his residence status for tax years prior to 2013-14, by reference to the SRT rules even though these new rules were not in place in those tax years.

The election would not change the actual tax residence status for the year or years to which the election applies, nor does it affect the taxpayer's tax liability in those years.

© O'Hanlon Tax Limited 2013