

Residence in the UK

Background

For the purposes of UK income tax, from 6 April 2013 residence is determined under the Statutory Residence Test (SRT). Residence is determined for each income tax year to 5 April.

Structure of SRT

The Statutory Residence Test has the following structure-

- Automatic overseas tests (AOTs). An individual is not UK resident if he or she meets any of the AOTs.
- Automatic UK tests (AUKTs). An individual is UK resident if he or she meets any of the AUKTs.
- Sufficient ties test (STT). If the residence of an individual is not determined by either of the AOTs or AUKTs, then it is decided by applying the STT.

The tests are carried out in the above order.

General points

Some general points to note are-

- The above rules are used to decide whether an individual is resident in the UK. There are separate rules for deciding whether an individual who is resident in the UK is to be treated as being resident in Scotland or resident elsewhere in the UK.
- The SRT applies in the same way to UK domiciled and non UK domiciled individuals.
- There are special provisions relating to parts of a tax year, known as a split year. These provisions are not covered in this summary.

Days in the UK

The number of days that an individual spends in the UK is important. For most purposes, a day counts as being in the UK if the individual is present in the UK at midnight. There are some exceptions to this general rule.

Summary only

The comments that follow are designed only to give an overview of the SRT rules. The precise facts and the details of the rules should be considered before concluding on the residence status for a tax year.

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AOTs

There are five AOTs. Meeting any of these five AOTs means that an individual is not UK resident. Two out of the five AOTs apply only in the year of death.

The three remaining deal with the following situations-

- The first AOT deals with the situation where an individual was resident in one or more of the three preceding tax years.
- The second AOT deals with the situation where an individual was not resident in any of the three preceding tax years.
- The third AOT deals with the situation where an individual works overseas.

The maximum number of days of presence in the UK to be within each of the AOTs is given in the table below, together with a compressed summary of the conditions for that AOT.

AOT	Days in UK	Brief details
<i>First</i>	<16	Resident within last three years
<i>Second</i>	<46	Not resident in last three years
<i>Third</i>	<91	"Full time work abroad"; < 31 days' UK work

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AUKTs

There are four AUKTs. Meeting any of these means that an individual is UK resident. One of AUKTs applies only in the year of death, and is not described in this summary.

The first of the two remaining AUKTs is straightforward. It applies when an individual spends at least 183 days in the UK in the tax year.

The second of the two remaining AUKTs relates to the situation where the individual has a home in the UK available during all or any part of the year. This AUKT is complex, and, somewhat simplified, the key points can be summarised as follows-

- A home, for this purpose, can be either owned, rented or otherwise made available.
- This AUKT considers the number of days in the year when the individual is present in the UK home. For this purpose, unlike the general day count, any visit to the home counts, however short, towards the total. The days need not be consecutive.
- This AUKT also considers whether the individual has a home overseas. Again, the overseas home can be owned, rented or otherwise made available.
- This AUKT only applies when the home is available for at least 91 days in the tax year.

If the individual has no overseas home, this AUKT applies where the individual is present in the UK home for at least 30 days.

If the individual has an overseas home, the rule is more complicated. The AUKT still requires that the individual has a presence for at least 30 days, but does not apply if there is no 91-day period in which the individual does not spend at least 30 days in the overseas home.

The third of the remaining AUKTs deals with the situation where, broadly, an individual works in the UK for a 365-day period (usually spanning more than one tax year and part of which falls in the tax year under consideration). The full details of this AUKT are complex.

STT

The sufficient ties test is considered if, but only if, residence is not determined under the AOTs or AUKTs.

The STT operates differently for arrivers (individuals who have not been resident in any of the preceding three income tax years) and for leavers (individuals who have been resident in at least one of the three preceding income tax years).

There are five possible ties to the UK, as follows-

- Family tie.
- Accommodation tie.
- Work tie.
- 90-day tie.
- Country tie.

Each of these possible ties are outlined below. However, only the first four are considered for arrivers.

Family tie: A family tie exists where there is a spouse, or a person with whom the individual is living together as husband and wife, or a child under 18, who is also a UK resident. There are however detailed rules which in most circumstances would exclude a child who is in full-time education.

Accommodation tie: An accommodation tie exists if the individual has a place to live in the UK for a continuous period of at least 90 days.

Work tie: A work tie exists if the individual works for at least 40 days in the UK in the income tax year.

90-day tie: An individual has a 90-day tie if he or she has spent more than 90 days in the UK in either or both previous two tax years.

Country tie: An individual has a country tie if he or she has spent more days in the UK in the tax year than any other country.

STT rule

The STT considers-

- The number of days that the individual spent in the UK, and
- The number of ties with the UK.

Arrivers: The following table summarises for arrivers the number of ties that are sufficient to make an individual a UK resident for the income tax year. If there are not sufficient ties for the given number of days spent in the UK, then the individual is not UK resident.

Days in UK	Number of ties that are sufficient
More than 45 but not more than 90	All four
More than 90 but not more than 120	At least three
More than 120	At least two

Leavers: The following table summarises for leavers the number of ties that are sufficient to make an individual a UK resident for the income tax year. If there are not sufficient ties for the given number of days spent in the UK, then the individual is not UK resident.

Days in UK	Number of ties that are sufficient
More than 15 but not more than 45	At least 4
More than 45 but not more than 90	At least 3
More than 90 but not more than 120	At least 2
More than 120	At least 1

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Legislation

- Finance Act 2013, Schedule 45.

Commentary

- Simons Taxes E6.102.
- HMRC Guidance Note for Statutory Residence Test: RDR3

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