

UK tax residency for individuals

The Statutory Residence Test (SRT) used to assess your UK tax residency position is detailed and complex. HMRC's legislation and guidance alone spans over 150 pages. This is before you refer to the commentary from tax advisers and publications trying to break down the detail into more accurate analysis.

Below is a short overview of some of the factors. Should your residency status be particularly important, we suggest taking professional advice.

The SRT is split into three sections you must complete in order to determine your residency position. These are: automatic overseas tests, automatic UK tests, and sufficient UK ties tests. I have looked at these on the assumption there are no substantial complications, for example the individual dying in the tax year.

All three tests break down your residency position into how many 'days' you have been present in the UK. For these purposes, you should consider the following:

- A 'UK day' – means where you spend the midnight. For example, if you left the UK on an evening flight, this would not be considered a 'UK day' for the purposes of the SRT.

Although the 'midnight rule' usually applies, HMRC has introduced anti-avoidance rules to prevent individuals from regularly leaving the UK before midnight to reduce their UK day counts.

If you spend more than 30 days in the UK in a tax year without being present at midnight, the 'deeming rule' will apply. This means all subsequent days you are present in the UK are counted as UK days even if you have left before midnight.

- A 'UK workday' – is a day in which you complete three hours or more of work whilst physically present in the UK.

It is therefore possible for a day to be considered a 'UK workday', but not a 'UK day'. There are also other definitions of a UK day and workday depending on the legislation in point, for example if you are a Non Resident Director or a Short Term Business Visitor.

If you are globally mobile and travel substantially for work, it's essential to keep an up-to-date calendar with flight details and your work records - as evidence of your presence and work in the UK.

The automatic overseas tests

If any of these tests are satisfied, you would be considered a non-UK resident for tax purposes, and there is no need to continue with the further tests.

The first test is being present in the UK on fewer than 16 days in the tax year, where you have been a tax resident in the UK during at least one of the previous three tax years.

The second is being present in the UK on fewer than 46 days in the tax year, and not being a UK tax resident in any of the previous three tax years.

The third relates to working outside the UK. If an individual satisfies the 'work full-time overseas' criteria (usually considered as averaging at least 35 hours a week working outside the UK), has been present in the UK on fewer than 91 days in the tax year, and worked for fewer than 31 days in the UK during the tax year, they will not be UK resident.

This is the most complex of the automatic overseas tests and there are various ways of calculating whether working full-time overseas applies. This can take into account gaps between employment, along with other disregarded days to calculate whether you are considered to be working 'full-time overseas'.

The automatic UK tests

If you cannot satisfy any of the automatic overseas tests, you must assess your position against the automatic UK tests as follows:

The first - if you spend 183 days or more in the UK, you will be considered a UK resident.

The second is relatively complex and relates to properties and your 'home'. In a nutshell, it relates to where you spend sufficient time in a UK home and insufficient time in a foreign home during the tax year. This looks at a period of 91 consecutive days, where at least 30 fall in the tax year. During this period you have no overseas home, or spend fewer than 30 days in an overseas home during the tax year.

Importantly, a home need not be owned; it could be rented accommodation. A home is generally considered to have some sort of permanence or stability, where a reasonable onlooker with knowledge of the material facts would regard it as that person's home.

If you have access to a UK property, and spend 30 days or more there in a tax year, you should review the details of this test and how they might affect you.

The third automatic UK test is similar to the third automatic overseas test but relates to working in the UK. If you satisfy the criteria of 'working full-time in the UK', you will be considered a UK tax resident for the year. But this is even more complicated and strict, looking at a period of 365 days where only one day needs to be in the tax year. Various calculations may be required to confirm this position.

The sufficient ties test

If you don't meet the criteria for any of the automatic overseas or automatic UK residence tests, you must refer to the sufficient ties test to determine your UK tax residency position. This considers the connections ('ties') you have to the UK and assesses your residency position based on the number of days you are present in the UK.

There are five ties that can connect you to the UK:

1. Family

Your spouse/civil partner, or minor child, is considered a UK tax resident in the year

2. Accommodation

You have available accommodation for a continuous period of 91 days in the tax year that you occupied for at least one night (or stayed 16 nights at a close relative's)

3. Work

You worked whilst in the UK on more than 39 days in the tax year

4. 90 days

You were present in the UK on more than 90 days in either of the two previous tax years

5. Country tie

(Relevant for 'leavers' only - see below) You were present in the UK at least as much as any other country during the tax year

Once you have assessed your ties to the UK, you need to consider your previous tax years too. If you have been a UK resident in any of the previous three tax years you are considered a 'leaver'. If not, you are considered an 'arriver'.

The test looks at your days present in the UK during the tax year. Based on this number, it determines if you are considered a UK tax resident or not. The table below shows the number of days available to spend in the UK before being considered a UK resident.

| Number of ties | UK Days available to 'leavers' | UK Days available to 'arrivers' |
|-------------------|--------------------------------|---------------------------------|
| No Ties to the UK | 182 days | 182 days |
| 1 | 120 days | 182 days |
| 2 | 90 days | 120 days |
| 3 | 45 days | 90 days |
| 4+ | 15 days | 45 days |

As you can see, should you have multiple ties to the UK, it may be the case that you are considered a UK tax resident, even though your time here may not be substantial.

What is split year treatment?

There can be further complications when someone comes to, or leaves, the UK part way through the tax year.

If you are considered a UK resident based on one of the above tests, there are eight specific cases to treat the tax year as a 'split year'. This breaks the tax year into a UK period and a non-UK period.

There are three cases that relate to departing from the UK, and five cases that cover scenarios when someone comes to the UK during the year. These cases relate to your work, your partner's work or your homes. If this could be relevant to you, I suggest you contact a professional to help you understand the rules.

It may be important to satisfy one of these cases to be confident that income and gains before coming to the UK, or after departure, are not included in your UK tax assessment.

Additional complications

There are certain scenarios where 'exceptional days' can be claimed, reducing the number of days of UK presence for certain tests above. These are generally only considered exceptional if they are beyond the individual's control, for example, displacement because of war. An example of a non-exceptional reason would be for elective medical treatment in the UK. Please see our previous article on exceptional days [here](#).

It can also be the case that someone has a UK resident child under the age of 18, but this may not be considered as a 'family tie' for the sufficient ties tests. This may be because the child is resident in the UK solely for their education, and/or the parent spends only a short amount of time in the UK with the child. Should this be relevant, professional advice is essential to clarify the rules.

Someone deemed UK resident under SRT rules who is also tax resident in another country, may be considered 'Treaty Resident' in that other country. But the facts are key, and a specific claim needs to be made.

There are further rules for an individual who was a UK resident previously, has been non-resident for a short period of time, and then become a UK resident again. These 'temporary non-resident' rules can be incredibly costly in certain cases.

Should an individual die in the tax year, there are other tests that have not been reviewed in this guide.

Domicile - some considerations

This guide does not explain the term 'domicile', nor when someone can be considered as non-UK domiciled or 'non-dom'.

If an individual moves to the UK and is classified as a non-dom, there can be further reliefs and claims in respect of 'overseas workdays' in their first three tax years of UK residence. In certain scenarios, the income earned whilst working outside the UK in these first three years may not be liable to UK taxes but it is essential to have the correct bank account structure in place in order to validate the claim.

An individual considered a UK resident, but non-UK domicile, may be able to claim the remittance basis. This limits the exposure to UK taxes of their UK income and gains as offshore income and gains are only taxed if they are 'remitted' to the UK. There can be complications around what is considered a remittance, and there may also be a Remittance Basis Charge payable to HMRC for making the claim.

All of these complications lead to a simple conclusion. If you believe your residency position is important to your tax affairs, we strongly recommend you seek professional help from a tax adviser. These tests, the interaction of the factors and application of the relevant details, can be incredibly complex and are easy to misinterpret. This article is only a **brief** overview of some of the factors that could affect your UK tax position and should not be relied onto assess your own particular UK tax circumstances.

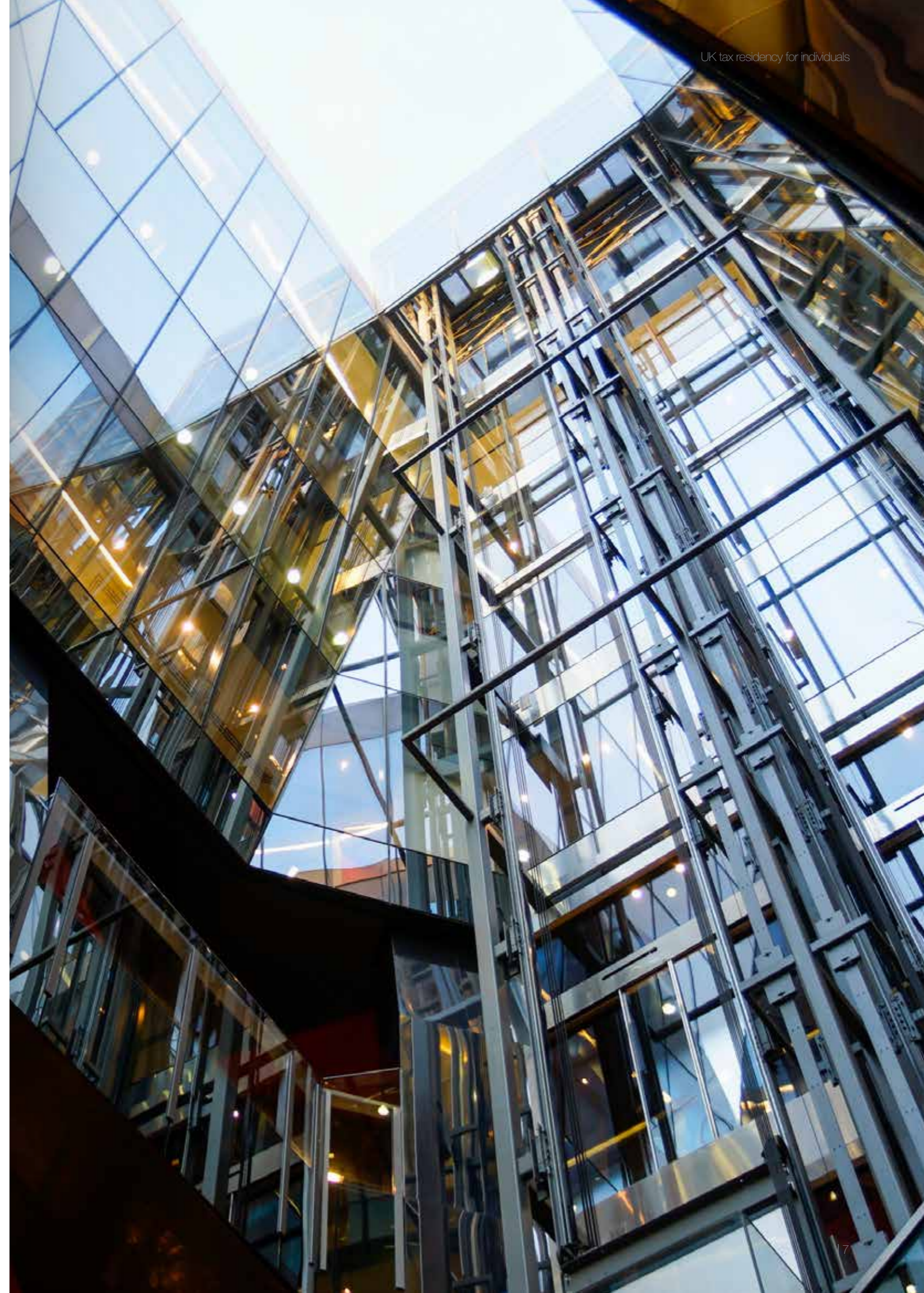
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