

Briefing Notes



THE STATUTORY RESIDENCE TEST

From 6 April 2013 an individual is a UK resident if he does not meet the automatic overseas test and meets the automatic residence test or if he has sufficient ties with the UK. The details of these tests are as follows:

Automatic Overseas Residence if any of the following apply:

- If you were resident in one or more of the three preceding tax years and spend fewer than 16 days in the UK in the tax year in question.
- If you were not resident in any of the three preceding tax years and spend fewer than 46 days in the UK in the tax year in question.
- If you work full time overseas and you spend fewer than 91 days in the UK and you work in the UK for fewer than 31 days.

Automatic UK Residence if any of the following apply:

- If you spend 183 days or more in the UK.
- There is a period of 91 consecutive days (at least 30 days of which falls in the tax year) when:
 1. You have a home in the UK and during the tax year spend 30 days in that home. And
 2. You have no overseas home, or you do have an overseas home but spend fewer than 30 days in that home during the tax year.
- If you work full time in the UK and more than 75% of the days you work are days on which you do more than three hours work in the UK.

Sufficient Ties: The ties taken into consideration are:

- UK resident dependent family.
- Accommodation available.
- Working in the UK for more than three hours on more than 40 days a year.
- Have spent more than 90 days in the UK in either of the preceding two tax years. • Whether more time is spent in the UK than elsewhere.

Having determined the number of ties, for those who have been resident in at least one of the preceding three tax years they will remain UK resident according to the following table.

Days spent in the UK	Number of ties needed to be a UK resident
16 - 45	At least 4
46 - 90	At least 3
91 – 120	At least 2
Over 120	At least 1

For persons who have not been resident in any of the three preceding tax years UK residence is achieved according to the following table. Note that whether you spent more time in the UK than elsewhere is ignored for this purpose:

Days spent in the UK	Number of ties needed
46 – 90	All four
91 – 120	At least 3
Over 120	At least 2

Key definitions

Work: “Work” takes its everyday meaning and includes all activities carried out in the performance of your duties but can also include time spent on gardening leave, travelling time and job related training. To meet the third automatic overseas test you must not work in the UK for more than three hours a day on more than 40 days. A working day counting towards this 40 days limit need not necessarily be a day of presence (see below) so careful record keeping is necessary. Full time work means an average 35 hour week. Detailed rules set out how to calculate the average. Other than international transportation workers, work is done at the location where it is actually done rather than where an employment is held. Work on a journey is treated as being done inside or outside the UK changing at the time of embarkation or disembarkation.

Day of presence: A day counts as a day of presence if one is present in the UK at midnight. Days in the UK due to exceptional circumstances may be disregarded up to a maximum of 60 days. However there is also a new concept of deemed presence. If an individual has more than three ties with the UK, has been resident in one or more of the preceding three years and makes more than 30 visits to the UK on which he is absent at midnight then all subsequent visits in a fiscal year will count as days of presence regardless of their duration

Dependent family: A dependent family member is the spouse, civil partner or co-habitee of the individual and any minor child. There are specific rules for children at boarding school and for divided families.

There are situations in which the residence status of one spouse may determine the residence of the other. Where this happens, for the purpose of breaking the circle only, the residence of the spouse is disregarded.

Home/Accommodation: A home is something more than accommodation and the tests use both words in slightly different senses. A home is a place that a reasonable onlooker would regard as an individual's home whereas accommodation is a place available at certain times but without amounting to a home in any normal understanding of that term. The legislation tries hard not to define the terms too precisely so as to preserve their natural meaning but there are examples given in guidance as to the sort of distinctions to have in mind where the matter is a determinant and specifically at the treatment of holiday homes. It is important when considering the tests to understand if the question is whether one has a home or merely accommodation.

Split year: Residence status is usually fixed for a whole fiscal year but a year of arrival or departure can be split into resident and non-resident periods in certain cases. This is principally where one starts a new job or makes a home in the UK for the first time. The rules are more restrictive than previously and need careful review to ensure they apply where appropriate.

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