

Tax/international

Are you resident in the UK?

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Does it matter?

Whether you are resident in the UK is important in determining the extent to which you are liable to pay UK tax. Broadly, a non-UK resident individual is only subject to tax on his UK source income and has no liability, at present, to UK Capital Gains Tax (although this is changing for residential property in the UK). In contrast, a UK resident is potentially liable to UK tax on his worldwide income and capital gains.

What is the test?

From April 6 2013 onwards, whether an individual is resident in the UK for tax purposes is determined by the Statutory Residence Test. It provides certain circumstances:

- when an individual is definitely not resident in the UK (“automatic overseas tests”);
- when an individual is definitely resident (“automatic residence tests”); and
- other circumstances where there is a middle ground (“sufficient ties test”).

They are applied in that order of priority and explained in simple terms in the next three sections.

Am I definitely not resident? (automatic overseas tests)

If you have not been resident in the UK in any of the last three tax years and you have been in the UK for no more than 45 days in the current tax year, you will definitely not be resident. A UK tax year is from April 6 to April 5.

If you have been resident in the UK for any of the last three tax years and you have been in the country for no more than 15 days in the current tax year, you will definitely not be resident.

In order to determine whether or not you have been resident in the UK in any of the last three years, you can elect to use the Statutory Residence Test. Otherwise this would be determined by the law prior to April 6 2013, which is not clear.

You will also definitely not be resident in the UK if you leave the UK to work full-time abroad and satisfy the specific conditions of that test.

Am I definitely resident? (automatic residence tests)

If you spend 183 days or more in the UK in a tax year then you will definitely be resident in the UK for that year.

You will definitely be resident in the UK if you have a home in the UK and you are present in that home for 30 or more separate days in the current tax year and either you have no home overseas or you have one or more homes overseas but you are present in each on fewer than 30 separate days.

You will also definitely be resident in the UK if you work full-time (on average at least 35 hours per week) over a 365 day period without a significant break and more than 75% of those days are in the UK.

Might I be resident? (sufficient ties test)

In short, there is a sliding scale dictating whether or not you will be resident. The sliding scale is based on the number of days you spend in the UK and the number of ties you have. The scale is different depending on whether you are an “arriver” or a “leaver”.

Arriver = not resident in the UK in the last three tax years

Leaver = resident in the UK in the last three tax years

Days in the UK	Arrivers	Leavers
No more than 15	Always non-resident	Always non-resident
16 – 45	Always non-resident	4 UK ties = UK resident
46 – 90	4 UK ties = UK resident	3 UK ties = UK resident
91 – 120	3 UK ties = UK resident	2 UK ties = UK resident
121 – 182	2 UK ties = UK resident	1 UK tie = UK resident
183 or more	Always UK resident	Always UK resident

Ties

- **Family:** your spouse or civil partner or common law equivalent (provided you are not separated from them) or minor children are resident in the UK.
- **Accommodation:** accommodation available in the UK (subject to exclusions for some types of accommodation).
- **Substantive employment in the UK:** you have substantive employment in the UK (40 working days or more; one working day = three or more hours' work).
- **UK presence in the previous year:** you spent 90 days or more in the UK in either of the previous two tax years.
- **More time in the UK than in other countries:** only relevant for leavers.

It should be noted that this article is a general summary of the law. It should not replace legal advice tailored to your specific circumstances. ◆

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