



## STATUTORY RESIDENCE TEST

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The rules regarding residency, previously based on outdated guidance and case law, were finally replaced by the Statutory Residence Test with effect from 6 April 2013. These aim to provide clear tests as to an individual's residence.

Under the revised rules, in order to be treated as non-UK resident you have to meet one of the automatic overseas residency tests. If one of those tests are not met, you then look at whether you are resident under the automatic UK residency tests. If you do not meet the automatic tests, you would need to look at the sufficient ties tests.

Before looking at the detail of the tests, if you spent more than 183 days in the UK then you will definitely be UK resident under the legislation and there is no need to look at the residency tests any further.

### AUTOMATIC OVERSEAS TEST

This test will be met if the individual:

1. is present in the UK for fewer than 16 days in the tax year if they have been resident in at least one of the previous three tax years
2. is present in the UK for fewer than 46 days in the tax year and they have not been resident in any of the previous three tax years
3. carries out full-time work abroad (35 hours per week on average) and:
  - a. spends 30 days or less working in the UK
  - b. is present in the UK for 90 days or less in total

### AUTOMATIC UK TEST

This test will be met if the individual meets one of the following conditions and none of the automatic overseas tests:

1. is present in the UK for 183 days or more in a tax year
2. has a home in the UK in which the individual stays for 30 days or more and, if they have a home overseas, they stay there for less than 30 days
3. carries out full-time work in the UK (broadly this means working here for 35 hours per week on average)

### SUFFICIENT TIES

For those individuals who are not conclusively resident or non-resident using the tests above, the sufficient ties test must be applied. The sufficient ties test sets out five 'UK ties':

1. a UK resident family (spouse/civil partner/minor child)
2. has a home in the UK in which they stay for at least one night or stay in a friend's/relative's house for more than 16 nights
3. works in the UK for more than 40 days (including self-employment)
4. 90 days or more spent in the UK in one of the last two tax years
5. spending more days in the UK in the tax year than in any other single country (ignore this if you have not been resident in the UK in the previous 3 tax years)

An individual must first determine how many UK ties apply to them. They will then need to compare this to the tables below to determine if they are UK resident or not. A day is counted if you are present in the UK at midnight <sup>(1)</sup>. The table below shows how many days a taxpayer can spend in the UK without becoming UK resident:

*(1) If you have left the UK in the last 3 years and make more than 30 trips back to the UK in any tax year then the day of departure is counted as a day in the UK from the 31st trip if you have more than 3 ties to the UK.*

Connection Factors	Been resident in the UK in any of the past 3 tax years	Not been resident in the UK in any of the past 3 tax years
1	Up to 120 days	Up to 182 days
2	Up to 90 days	Up to 120 days
3	Up to 45 days	Up to 90 days
4	Up to 15 days	Up to 45 days
5	Up to 15 days	N/A

Please note that different rules/numbers of days apply in the year of death which are not covered here.

## SPLIT YEAR TREATMENT

If you become resident or cease to be resident part way through a tax year, it is possible to split the year into periods of residence and non-residence provided certain conditions are met. The first condition before looking at the tests, whether you are leaving or arriving in the UK, is that you have to be resident under the automatic UK test or the sufficient ties test. There are then separate tests to be met depending on whether you are arriving or leaving the UK which are set out below.

## LEAVING THE UK

To access the split year treatment in the year you leave the UK, you will need to have been resident in the previous tax year and in the year of departure and meet one of the following tests:

1. Leave to work full-time overseas until the end of the following tax year i.e. you now meet the third automatic overseas test
2. You accompany your partner when they move overseas to work full-time
3. You cease to have a home in the UK until the end of the tax year
4. Under all three tests you must be non-UK resident in the following tax year as well e.g. if you leave the UK in the 2019/20 tax year you must remain non-resident until at least 6 April 2021

## ARRIVING IN THE UK

In order to qualify for the split-year treatment in the year of arrival you must have been non-resident in the previous tax year and meet one of the following tests:

1. You start to have your only home in the UK
2. You start to work full-time in the UK and continue to do so for at least a year
3. You cease to work full time overseas and you have been resident in the UK in one of the four previous tax years
4. You are accompanying a spouse who meets the conditions of 3 above
5. You start to have a home in the UK (not necessarily your only home as in the first test above) and are UK resident for that year under one of the automatic or sufficient ties tests

In the year of arrival or departure the days you can spend in the UK under the various sufficient ties tests are apportioned. HMRC provide tables to assist with working out these time apportionments based on the month in which you arrive or leave the UK.



## TEMPORARY NON-RESIDENCE

Historically it has been possible to become non-resident for a short period and pay out company dividends, and other sources of income under your control, whilst being non-resident such that the income was not taxable in the UK. To prevent this, from 6 April 2013 new 'temporary' non-residence rules were introduced. The new legislation applies where:

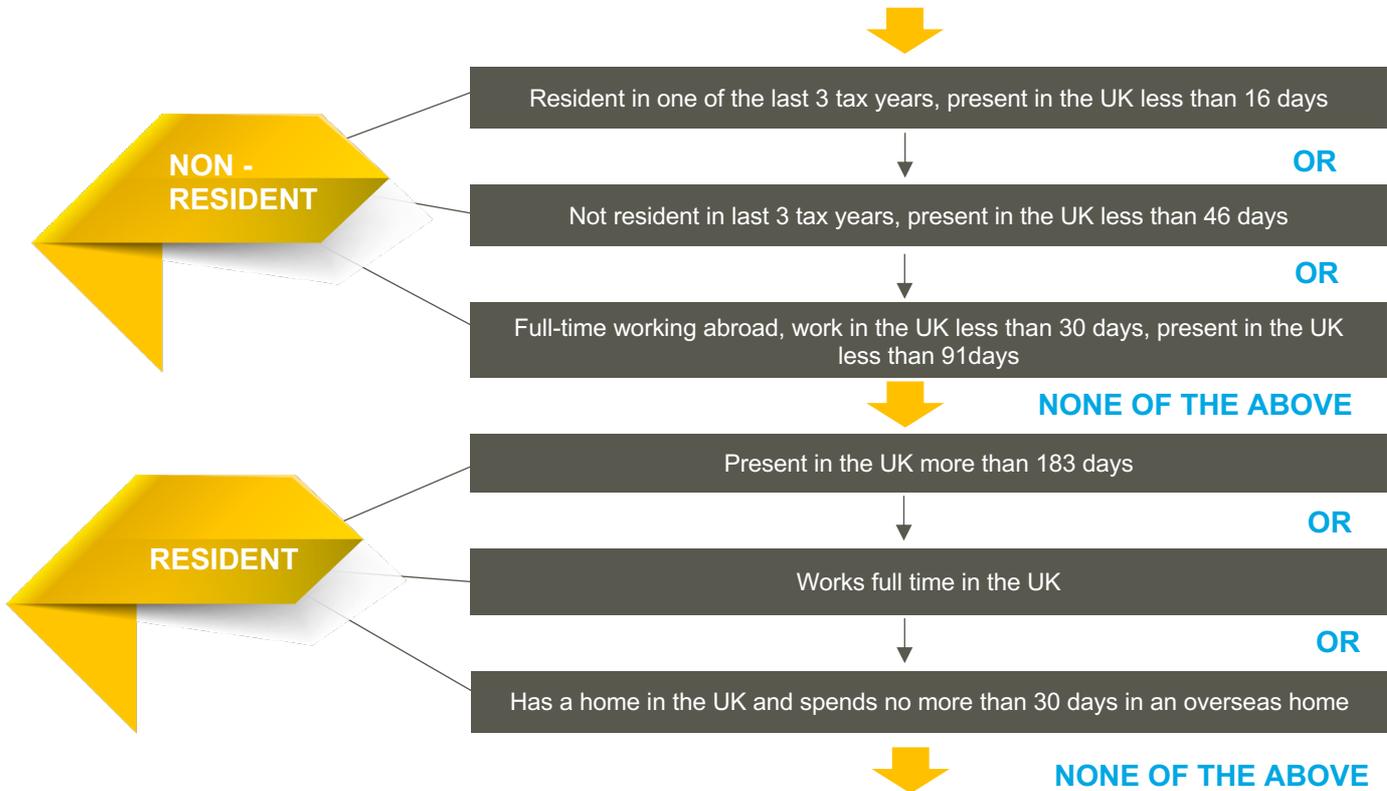
1. The individual was resident in the UK for four out of the seven years prior to going abroad
2. The period of non-residence is less than 5 years
3. If you return to the UK within 5 years, the full amount of income received during this period is taxable on their return
4. Certain types of income are received during the period of temporary non-residence, including pension payments, dividends from owner-managed companies, and capital gains

There were already temporary non-residence rules affecting capital gains which meant that if you became non-UK resident for less than 5 complete tax years and incurred capital gains during that period, then the gains became taxable in the year of return. Going forward, for those now leaving the UK, the new rules will apply to capital gains i.e. the period of non-residence will be 5 years not 5 tax years, but for taxpayers who are already non-resident, the old rules for capital gains will continue to apply. In reality, due to the complex nature of these rules you will almost certainly need to be non-UK resident for 5 complete tax years in order to meet the conditions.

If you require any further information on any of the issues raised above, please contact your tax representative or email [taxconnect@menzies.co.uk](mailto:taxconnect@menzies.co.uk)

## APPENDIX I

Please use the flowchart to assist you in working out your residency status. Please note that this does not cover the year of death.



CONNECTION		<input checked="" type="checkbox"/>
UK resident family		<input type="checkbox"/>
Accessible accommodation in the U K		<input type="checkbox"/>
Work in the UK more than 40 days		<input type="checkbox"/>
Present in the UK more than 90 days in either of the previous two tax years		<input type="checkbox"/>
Spent more time in the UK than any other country (do not tick if non-resident for last 3 years)		<input type="checkbox"/>
<b>TOTAL CONNECTIONS</b>		<input type="checkbox"/>

The table below shows the number of days you can spend in the UK and still be treated as non-resident:

Connection factors	Been resident in the UK in any of the past 3 tax years	Not been resident in the UK in any of the past 3 tax years
1	Up to 120 days	Up to 182 days
2	Up to 90 days	Up to 120 days
3	Up to 45 days	Up to 90 days
4	Up to 15 days	Up to 45 days
5	Up to 15 days	N/A

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