

Are you a UK Tax Resident?.. ..and why you need to care

The basics

This report takes you through the tests that HMRC apply when deciding whether you are a UK resident for UK tax purposes. Tax treatment in the UK can be significantly different for UK residents compared to UK non-residents.

Understanding the parameters of these tests is therefore vitally important to understand the correct tax treatment for you, and it also allows you to potentially plan your travel behaviour in the future to amend your residency status in a way that may be beneficial for you.

Differences in tax treatment for residents and non-residents

The key differences in UK tax treatment is that UK residents are taxed in the UK on worldwide income, whereas most non-residents are only taxed here on UK derived income, such as rental income from a UK investment property.

The other major difference is that non-residents until now have generally not been charged capital gains tax on the sale of their UK assets. However, this has now changed, and non-residents will now be charged tax on all gains arising after 5 April 2015 from UK property sales.

The Residency Test

The new statutory residence test applies for income tax and capital gains tax from 6 April 2013.

The new test has 3 separate parts. The first can make you conclusively a non-resident, and the second can make you conclusively resident. If neither of these are conclusive the third test is used, where the number of days you are allowed in the UK depends on several connecting factors.

Test 1 – You are NON-RESIDENT if any of the following apply:

- 1) You were resident in none of the previous 3 years and you spend fewer than 46 days in the UK in this tax year.
- 2) You were resident in any of the last 3 years but you spend fewer than 16 days in the UK in this tax year.
- 3) You leave the UK to carry out full time work abroad and spend fewer than 91 days in the UK, of which you spent no more than 30 working days in the UK in this tax year.

If you satisfy any of these tests you will be conclusively non-resident whatever else may happen.

If however you breach any of these limits you cannot satisfy this test so you would not be conclusively non-resident. But that would not necessarily mean you are resident, it just means you need to apply the second test...

Test 2 – You are RESIDENT if any of the following apply:

- 1) You spend more than 182 days in the UK.
- 2) You have only one home and this home is in the UK, and you are present there for at least 30 days in the tax year.
- 3) You also have a home overseas, but throughout any period of 91 consecutive days (of which at least 30 days fall in this tax year), you either have no home overseas or if you do you spend fewer than 30 days there in the tax year.
- 4) You carry out full time work in the UK.

If you satisfy any of these tests you will be conclusively resident whatever else may happen, unless you satisfy both test 1 and test 2. In this situation, the first test takes priority and you will be conclusively non-resident.

Where neither test conclusively determines your residence, you have to move on to the third test.

Test 3 – Final deciding test based on your UK ties:

This test is based on 5 UK ties:

- 1) Spouse or minor children being resident in the UK.
- 2) The existence and use of a place to live in the UK.
- 3) Work in the UK for at least 40 days.
- 4) More than 90 days in the UK in either of the previous 2 years.
- 5) More days in the UK than any other single country.

The importance of these UK ties depends on whether you are an 'arriver' (someone who was not resident for the last 3 years) or 'leaver' (someone who was resident in the UK in any of the last 3 years).

An arriver will be resident by reference to a combination of day count and the UK ties according to the following:

Days in the UK:	Ties satisfied:
0 – 45	Always a non-resident (per test 1)
46 – 90	4 factors = resident
91 – 120	3 factors = resident
121 – 182	2 factors = resident
182 – 365	Always resident (per test 2)

A leaver will be resident by reference to a combination of day count and the UK ties according to the following:

Days in the UK:	Ties satisfied:
0 – 15	Always a non-resident (per test 1)
16 – 45	4 factors = resident
46 – 90	3 factors = resident
91 – 120	2 factors = resident
121 – 182	1 factor = resident
182 – 365	Always resident (per test 2)

There are several other points to notes in the application of the third test, so please seek advice if you are unsure of your UK Tax Residency status

