



THE FRY  
GROUP  
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# Your guide to understanding the Statutory Residence Test



# 01 Understanding the Statutory Residence Test

For British expatriates, or those spending a significant period of time overseas, the issue of residence is an important topic.

Simply moving abroad to avoid UK tax is an outdated concept, and in recent years careful attention has been focused on those wanting to adopt or maintain non-resident status.

The Statutory Residence Test (SRT) was established by the UK's tax body – HM Revenue and Customs – to provide a framework of who qualified for non-UK resident status. Those awarded this status are only potentially liable to UK tax on sources of UK income and may also qualify for exemption from Capital Gains Tax.

The test uses a framework of questions and tools which have to be considered by those seeking non-resident status every year. Essentially, the test divides taxpayers into three separate possible categories, each with their own rules.

## 01 **THOSE CONSIDERED AUTOMATICALLY NON-RESIDENT**

## 02 **THOSE CONSIDERED AUTOMATICALLY RESIDENT**

## 03 **THOSE WHO NEED TO REVIEW TIES WITH THE UK AND THE AMOUNT OF TIME SPENT HERE**



## 02 The three part test

The test works as a series of steps. Each ‘step’ needs to be reviewed in turn and if a conclusion is not reached the next ‘step’ is tackled.

As soon as your circumstances meet one of the steps your residence status is decided and you do not need to continue working through the test. A person will be automatically non-resident if any of the following conditions are met:

### 01 PART A - AUTOMATIC OVERSEAS TEST

- Was resident in one or more of the previous three tax years and visits the UK in the year for fewer than 16 days\*, or;
- Was non-resident for all of the previous three tax years and visits the UK in the year for fewer than 46 days, or;
- Works ‘sufficient hours’ overseas with no significant breaks and visits the UK for fewer than 91 days and spends less than 31 days working in the UK

The first two conditions are simply numerical tests based on a low level of visits to the UK in the year. The third test is more complicated as the definition of ‘sufficient hours worked overseas’ is taken as an average of 35 hours a week over the course of the tax year. This is determined via a specific and detailed calculation reviewing hours worked overseas, less hours worked in the UK against a reference period which deducts periods of annual/sick parental leave. Aircrew performing more than six duty flights into or out of UK airports cannot qualify as non-resident by working “sufficient hours” overseas.

*\*A day is spent in the UK if the person is present at midnight.*



## 02 The three part test (*Cont*)

### 02 PART B - AUTOMATIC UK TEST

A person will be resident if Part A does not apply and any of the following conditions are met:

- Was present in the UK for more than 183 days, or
- Has a home in the UK which is available for at least one period of 91 consecutive days, of which at least 30 days fall in the tax year and is present there on at least 30 days in the year. Throughout that 91 day period either there is no home overseas or there is a home overseas but less than 30 days are spent there in the tax year, or
- Works ‘sufficient hours’ with no significant breaks in the UK for 365 days and one day of that period falls into the tax year and more than 75% of work days in that period are UK work days

The definition of ‘home’ is specified in the guidelines but it is far from detailed and remains vague. The second condition seeks to pinpoint where a person’s home or ‘normal residence’ is. Note that even if there is a UK home, provided there is an equivalent ‘home’ overseas and at least 30 days are spent there during the year, residence does not automatically apply.

The final condition regarding work in the UK again uses a specific calculation meaning that it is necessary to review actual time worked in the UK rather than simply assuming that this section does not apply.



## 02 The three part test (*Cont*)

### 03 PART C - AUTOMATIC UK TEST

If neither Part A nor Part B applies, then the sufficient ties test is applied to determine the status of:

- an Arriver – someone who has been non-resident in all of the three tax years immediately preceding the tax year under consideration, or
- a Leaver – someone who has been resident in one or more of the three tax years immediately preceding the tax year under consideration

#### **THE NUMBER OF CONNECTING TIES WITH THE UK THAT APPLY FOR THE YEAR ARE THEN REVIEWED:**

- Family Tie – whether a spouse/partner/common law equivalent or minor children are UK resident
- Accommodation Tie – whether accessible accommodation which is available for at least 91 days and at least one night is spent there in the tax year, or if the accommodation is owned by a close relative, at least 16 nights there in the tax year
- Work Tie - whether more than 40 days' work in the UK is undertaken (any day where more than three hours' work is performed in the UK)
- 90 Day Tie – whether more than 90 days has been spent in the UK in either of the previous two tax years
- Country Tie (applies to leavers only) – whether more days were spent in the UK than any other single country in the tax year



## 02 The three part test *(Cont)*

**THE NUMBERS OF TIES RELEVANT ARE THEN COMBINED WITH THE DAYS SPENT IN THE UK FOR THAT YEAR AND STATUS IS DETERMINED AS FOLLOWS:**

### **ARRIVER**

Always non-resident	Fewer than 45 days under step 1
Resident if individual has 4+ ties	46 days or more
Resident if individual has 3 ties	91 days or more
Resident if individual has 2 ties	121 days or more
Always Resident	183 days or more under step 2

### **LEAVER**

Always non-resident	Fewer than 16 days under step 1
Resident if individual has 4 or 5 ties	16 days or more
Resident if individual has 3 ties	46 days or more
Resident if individual has 2 ties	91 days or more
Resident if individual has 1 tie	121 days or more
Always Resident	183 days or more under step 2



## 02 The three part test *(Cont)*

For those who have recently left the UK ('leavers') the more ties the lower the limit on days that can be spent in the UK.

It is the intention to 'set the bar' higher for those who have more recently left in order to demonstrate a break from the UK.

When considering ties, the **Family Tie** applies to civil or common law partners; a definition which is unusual in the tax environment as normally 'common-law' status is not formally recognised.

The majority of people spending time in the UK may struggle to avoid having an **Accommodation Tie**.

The **Work Tie** includes self-employment. For aircrew, irrespective of the length of time they actually perform duties in the UK, a UK work day is counted if an international journey starts in the UK. International journeys starting from outside the UK but ending in the UK are not counted.

Having established the number of ties that apply, residence status is then determined by whether the limits above are exceeded. For example, an 'Arriver' with three ties can visit the UK for up to 90 days in that tax year and be considered non-resident. However if visits in that tax year have exceeded 90 days, then they will be treated as resident.



## 03 Exceptional circumstances

Exceptional circumstances do sometimes apply, and may be accepted by HMRC.

For example, as noted on page four, days spent in the UK are calculated by reference to the number of midnights a person is present in the country. There is an exception to this where an individual finds themselves present at midnight in the UK whilst travelling between two separate destinations outside the UK (eg to transfer to a connecting flight) provided between arrival and departure the individual does nothing of substance other than pass through the UK, that midnight will not count as a day spent in the UK.

There may also be times when an individual finds themselves in the UK unexpectedly. As before, 'exceptional circumstances' contributing to time spent in the UK can be discounted. There has been an attempt to provide more clarity to this subject although one or two areas of doubt do remain.

- The maximum number of days that can be treated as exceptional is 60 days per tax year.
- Exceptional circumstances will only apply if there was no choice concerning the additional time spent in the UK or in coming back to the UK. It must be a situation beyond one's control/out of the ordinary and stops them from leaving when intended.
- Examples of exceptional circumstances provided within HMRC guidance include – local or national emergencies, natural disasters, civil war or unrest, sudden serious or life threatening illness or injury.



## 03 Exceptional circumstances *(Cont)*

In limited circumstances there may be occasions where the individual has to stay in the UK to deal with a sudden life threatening illness to a spouse/ partner/dependent child.

Exceptional circumstances would tend not to apply to events that bring a person back to the UK. One exception to this is where Foreign and Commonwealth Office (FCO) advice recommends for individuals to leave the region they are staying in, subject to the 60 day limit.

### **WHAT AREN'T USUALLY EXCEPTIONAL CIRCUMSTANCES?**

- Life events such as birth, marriage, divorce or death
- Choosing to come to the UK for medical treatment
- Travel problems (cancelled train or car breaking down resulting in a missed flight)





## 04 Split year treatment

One of the most complex areas of the legislation relates to the ability for an individual to ‘split’ a tax year when either leaving or returning to the UK.

This means that the relevant tax year will be split into two separate parts – one when the individual was UK resident and one when non-resident. The statutory rules provide for the tax year to be split in eight different situations or ‘cases’, each with their own specific criteria.

### **THE THREE CASES WHEN A TAX YEAR CAN BE SPLIT WHEN LEAVING THE UK ARE:**

- When starting ‘full-time’ work overseas
- When accompanying a partner who has started work ‘full time’ overseas
- When leaving the UK to live abroad and ceasing to have any home in the UK

The criteria when leaving the UK is particularly harsh. This is to ensure that an individual who is resident takes sufficient steps to make a distinct break from the UK as established under previous case law. Providing general advice on these areas is extremely difficult given the very specific nature of the legislation. It may be natural, for example, to think leaving the UK for employment would entitle a split of the tax year for the year of departure. However it is vital too that you were UK resident in the previous year, work overseas is considered ‘full time’ and that any visits made to the UK after departure remain within pro-rata limitations. Therefore matters are not straightforward, and personal detailed advice in this area is vital.



## 04 Split year treatment *(Cont)*

### **THE CASES WHEN A TAX YEAR CAN BE SPLIT WHEN ARRIVING IN THE UK ARE:**

- When coming to live in the UK and establishing their only home there
- When starting to work ‘full time’ in the UK
- When ceasing ‘full-time’ work overseas and coming to live in the UK
- When accompanying a partner who has returned to the UK following a period of full-time work overseas
- When starting to have a home in the UK

Again, a full review of the legislation is advisable. The timing of the split in the tax year is not necessarily linked with physical arrival in the UK. For example, an individual can find themselves as resident without setting foot in the UK, if the intention is to relocate here and their only overseas property is sold, leaving their only home in the UK. The accurate determination of a person’s residence status is vital when considering tax planning in advance of returning to the UK.





## 05 Record keeping

HMRC has provided an indication of the types of paperwork that it would expect should evidence be needed to support a non-residence claim.

The onus is always on the taxpayer to prove their status and previous cases heard in the event of a dispute with HMRC have highlighted the importance of record keeping. For the different parts of the test, different records are considered.

### HOME

Evidence of a home either in the UK or overseas includes:

- Utility bills – telephone bills, energy bills showing usage of the property
- TV/satellite bills
- Parking permits
- Mobile phone usage
- Lifestyle purchases – again demonstrating location at particular times
- Home security arrangements
- Insurance documents
- SORN declaration made via DVLA for any UK car
- Mail re-direction instructions
- Where personal post is sent to
- Registration at the address of any local medical practitioners
- Credit card/bank statements which include details of the location of any spend



## 05 Record keeping *(Cont)*

### HOME (CONT)

If attempting to show a change from a holiday home to a home for the SRT, the evidence of such a change would be demonstrated by:

- Utility bills showing an increase to usage
- Relevant notifications made to:
  - Local authority, or
  - Provider of Buildings/Contents insurance

### WORKING HOURS

Evidence showing work overseas includes:

- Split between the UK and overseas, noting work days spent in the UK and the length of time spent in the UK
- Nature of work activities: work diary or calendar is likely to show this
- Details of any job breaks and the reasons for these
- Periods of annual, sick and parental leave
- Time spent in the UK visiting children under the age of 18
- Details of any exceptional circumstances and evidence of trying to mitigate such periods
- Copies of contracts of employment
- Sufficient Ties Test
- Evidence showing connections with the UK include:
  - Presence in particular countries eg travel details, booking information or tickets and boarding cards
  - For those working overseas the date of leaving the UK, visa or permit applications and contracts of employment
  - For those coming to live or work in the UK the date of arrival, visa or work permit applications and documentation related to the start of or ceasing of employment



## 06 What next?

If you live overseas, but spend time in the UK, understanding the SRT is essential.

It is important to seek advice from a professional to give you peace of mind in this complex area of tax planning. Our team of experts can help you understand your exposure to UK tax.

Find and contact your nearest office to book your appointment today.

Alternatively please call one of our team or email [info@thefrygroup.co.uk](mailto:info@thefrygroup.co.uk)

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