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United Kingdom Statutory Residence Test

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Statutory Residence Test

On the 6th April 2013 the **Statutory Residence Test** was introduced by HMRC to determine the residence status of individuals with connections to the UK.

Ultimately, the purpose of the Statutory Residence Test is to determine whether an individual is a resident in the UK for tax purposes.



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Even if you were or were not considered a non-UK resident before the Statutory Residence Test was introduced in 2013, your status may have changed since its introduction.

The Statutory Residence Test, while complex, is extremely useful when it comes to understanding the residence status.



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There are four essential components to the Statutory Residence Test:

- How much time you have spent in the UK in a tax year
- Automatic Overseas Test
- Automatic Residence Test
- Sufficient Ties Test



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In the simplest terms, you will be considered a non-UK resident for tax purposes if you meet the Automatic Overseas Test and you do not meet the Automatic Residence Test or Sufficient Ties Test.

You will, however, be considered a UK resident if you do not meet the Automatic Overseas Test and you meet one of the Automatic Residence Test or the Sufficient Ties Test.



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Calculating the number of days spent in the UK in a tax year

Under the simplest terms, if you spent more than 183 days in the UK in a given tax year, you would normally be considered a UK resident. However, calculating the number of days spent in the UK is not straight forward.

The HMRC set out a number of criteria for determining whether you spent a day in the UK. Normally you are considered to have spent a day in the UK if you are in the UK at midnight on any given day.



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However, this is also subject to three other factors:

The deeming rule;

Transit days;

Time spent in the UK due to exceptional circumstances.



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Firstly, the deeming rule which takes into consideration if you have:

- been UK resident in one or more previous tax years
- three UK ties for the tax year or
- been present in the UK for 30+ days without being present at the end of each day.

The deeming rule will automatically change the number of days you spent in the UK, even if you were not present at the end of the day.



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Secondly, transit days. Transit days typically are not considered full days under the Statutory Residence Test. A transit day is a day where you entered the UK from another country en route to another country.

To be considered a transit day you must not have conducted any other business during your time in the UK and you should leave the day after you arrive. Any other business could include conducting a meeting, or meeting up with friends. However simply having breakfast or dinner would be considered as part of your transit.



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Finally, if you are in the UK due to exceptional circumstances, such as a bereavement, you may be granted special conditions with regards to the total number of days you have spent in the UK.

The number of days spent in the UK may also be affected by the amount of time and type of work you have conducted in the UK during your stay. Factors such as your location, type of work, and whether the work is voluntary.



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The Automatic Overseas Test

You would normally be considered a non-UK resident if you meet any one of the following elements of the Automatic Overseas Test:



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You were considered as a UK resident in one or more of the previous three tax years, but you spend fewer than 16 days in the UK in the current tax year.

You spend fewer than 46 days in the UK in the tax year AND you were non-UK resident in the preceding three tax years.

You work full time outside the UK and spend fewer than 91 days in the UK, and you work fewer than 31 days in the UK for three hours or less in any given day.



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In terms of calculating the amount of time working in/out of the UK, you should always seek advice.

There are a number of intricate calculations and considerations which will be taken into consideration which will affect the amount of time you have officially spent in the UK.



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The Automatic Residence Test

If the Automatic Overseas Test is inconclusive, or you fail each of the components, the next step is to consider the Automatic Residence Test. If you meet any of these requirements you will be considered a UK Resident.



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Firstly, if you spend more than 183 days in the UK in the tax year.

Secondly, if you have a home in the UK and you spend a period of 91 consecutive days there, including 30 inside the tax year. You will also be considered a UK resident if you have no home overseas or you spend no more than the permitted amount of time there.

Finally, if you work in the UK for 365 days with no significant break.



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The Sufficient Ties Test

If, after reviewing the previous tests, you are still unsure about your residence status, you need to consider the sufficient ties test.



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The Sufficient Ties Test essentially looks at whether you have ties which would deem you to be a resident in the UK. Ties would include:

- Family members in the UK (for example a spouse or children);
- Accommodation, that is a place to stay which is available to you for a continuous period of 91 days (thus excluding hotels);
- 40 working days of 3+ hours per day or more in the UK;
- More than 90 days spent in the UK in at least one of the previous two tax years;
- You have spent more days in the UK than in any other country during the tax year.



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Understanding how many ties which are required to determine your residence status will depend on the number of days you spent in the UK during the tax year.



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The following table simplifies this, however you should seek advice for an accurate assessment:

Days spent in the UK in the tax year under consideration	UK ties needed to be considered a UK resident
16-45	At least four
46-90	At least three
91-120	At least two
Over 120	At least one



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Request a free tax consultation

Correctly determining your tax residence status is essential. Too many expats make the assumption that they are a non-UK resident simply because they live outside of the UK. This is a dangerous assumption to make and can lead to incorrect tax returns and penalties.



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SOURCE:

<https://www.expertsforexpats.com/expat-tax/statutory-residence-test/>



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