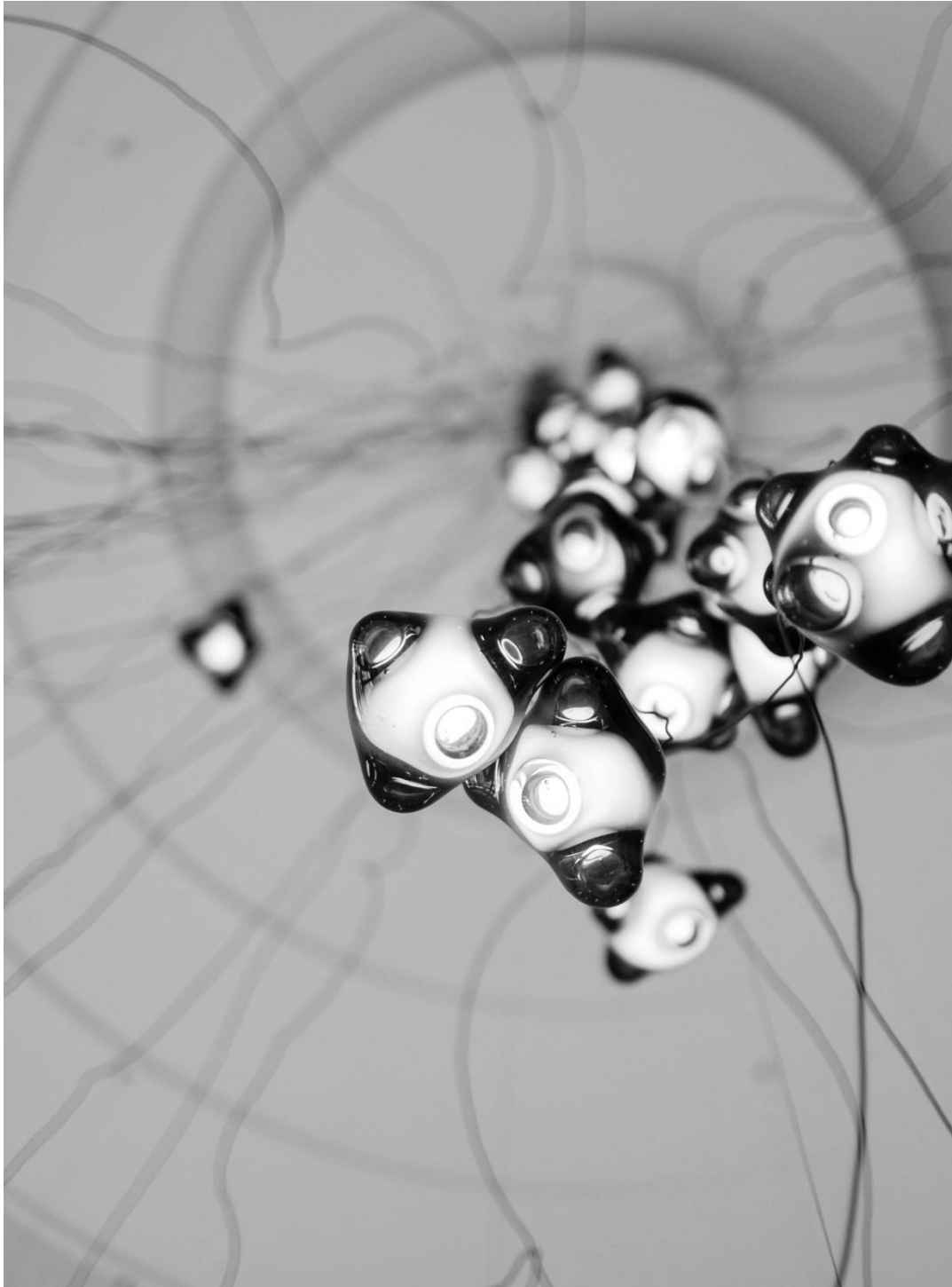


A Guide to Statutory Residence Test



Mishcon de Reya

It's business. But it's personal.

The Statutory Residence Test has applied since April 2013. Before then, the rules determining an individual's tax residence in the UK were very vague. They were not generally written in statute. Instead they were mainly based on an imprecise mix of historic case law and HMRC guidance.

The old rules looked at the individual's subjective intention as well as their physical presence in the UK. The absence of a detailed set of rules written in statute made it difficult to assess residence status with full confidence. The aim of the Statutory Residence Test is to increase certainty and make the system more transparent after decades of expensive court-room battles and confused taxpayers.



Mishcon de Reya
It's business. But it's personal.

Mishcon de Reya
It's business. But it's personal.

What is the Statutory Residence Test and why is it important?

The Statutory Residence Test is made up of a complete set of rules which determine, with certainty, whether someone is resident in the UK. It applies to individuals for the purposes of income tax, capital gains tax and inheritance tax.

It consists of three elements;

- Automatic overseas tests.
- Automatic UK tests.
- Sufficient ties test

If an individual meets any of the automatic overseas tests they cannot be resident in the UK during a given tax year (“year X”) under any circumstances.

If an individual meets any of the automatic UK tests or the sufficient ties test, they will be UK resident during year X. However, if the individual meets neither of these elements they will not be tax resident during year X (in the same way as those who meet the automatic overseas test).

Automatic Overseas Tests

There are three main automatic overseas tests. If the individual meets any one of the tests below then they will automatically not be resident in the UK for year X.

1. 16 Day test

This test is only relevant if the individual was resident in the UK for one or more of the previous 3 tax years.

If this is the case, the individual will automatically not be UK resident if they spend fewer than 16 days in the UK in year X.

2. 46 Day test

This test is only relevant if the individual was not resident in the UK for any of the previous 3 tax years.

If this is the case, the individual will automatically not be UK resident if they spend fewer than 46 days in the UK in year X.

3. Working sufficient time overseas test

The individual will automatically not be resident in the UK if they leave the UK to work overseas and they work the equivalent of a 35-hour week overseas during a period of at least 365 days without a significant break. There are complicated conditions attached to this test.

What is a day?

A day spent in the UK is a day when the individual is in the UK at midnight, unless they are in transit. HMRC regard being “in transit” very narrowly and care needs to be taken to ensure that a day in transit does not add to the relevant day count.

Automatic UK Tests

If the individual does not meet any of the tests which make them automatically non-resident in the UK, they will need to consider whether the Statutory Residence Test makes them automatically UK resident.

There are three main automatic UK residence tests. If the individual meets any one of the tests below then they will automatically be resident in the UK for year X.

1. 183 Day test

The individual will automatically be UK resident if they spend 183 days or more in the UK during year X. As above, a day spent in the UK is a day when the individual is in the UK at midnight, unless they are in transit.

2. UK Home test

The individual will automatically be UK resident if they have a home in the UK for at least 3 months consecutively (not necessarily all in year X) and the individual is at that UK home for 30 separate days or more in year X, for no matter how short a time on each day, and during the 3 month period they also either:

- a. have no home overseas; or
- b. spend less than 30 separate days during year X in each individual overseas home they have. It is not necessary to be in the UK home at midnight for the day to count towards the 30 days.

3. Working sufficient hours in the UK test

The individual will automatically be UK resident if they work the equivalent of a 35-hour week in the UK over a period of at least 365 days without a significant break and:

- a. part or all of the 365-day period falls within year X; and
- b. more than 75% of the days in the 365-day period in which the individual
- c. does more than 3 hours' work in the UK; and
- d. at least one day in year X is a day on which the individual does more than

3 hours' work in the UK;

* A working day is defined as a day on which the person does more than 3 hours work.

Sufficient Ties Test

If none of the automatic overseas tests or automatic UK tests above are met then the individual will need to consider whether the sufficient ties test is met. The individual will be resident in the UK during year X if they have a certain number of ties with the UK and they spend a certain number of days in the UK during year X. The more ties they have, the less time they can spend in the UK without becoming UK resident.

The number of ties required to become UK resident is lower if the individual has been resident in the UK in any of the last 3 tax years. This makes it harder for an individual to lose their UK resident status when leaving the UK than it is for an individual to become UK resident when they first arrive.

UK Ties

Family Tie

An individual will generally have a family tie if their spouse, civil partner, cohabiting partner or minor child is resident in the UK during year X.

Accommodation Tie

An individual will generally have an accommodation tie if they have a place to live in the UK during year X. This can include spending time with family or even, in rare circumstances, a hotel.

Work Tie

An individual will have a work tie if they work in the UK for 40 or more separate or continuous days during year X. If the individual does more than 3 hours' work in the UK it will count as a working day. "Work" is widely defined and will include time spent on work-related phone calls and travel, and dealing with work-related emails.

91-day Tie

An individual will have the 91-day tie if they have spent 91 days or more in the UK in either or both of the previous 2 tax years. You will spend a "day" in the UK if you are here at midnight.

Country Tie

An individual will satisfy the country tie if they spend more time in the UK than any other country. This test is only relevant for individuals who have recently been resident in the UK. in any of the previous 3 tax years.

Number of UK ties required for an individual to satisfy the “sufficient ties test” and become UK resident

The table below sets out the number of UK ties required before the individual becomes UK resident corresponding to the number of days they have spent in the UK.

1. The individual should first calculate the number of midnights they have been in the UK during year X. This is the individual’s original day count for the table below.
2. Then the individual should work out the number of ties they have with the UK (under “UK ties” above).
3. If:
 - a. the number of UK ties is 3 or more; and
 - b. the individual was UK resident in any of the past 3 tax years, they must consider whether they have been present in the UK, but not at midnight, for more than 30 days in year X. Any excess of these days above a 30 day limit must be added to the original day count. This is the individual’s adjusted day count for the table below and the individual’s original day count should be disregarded in these circumstances.
4. The individual should then look for the relevant number of days in the appropriate table below, depending on whether they were resident in the UK in any of the previous 3 tax years. The relevant number of days will either be the original day count or the adjusted day count. If they have the number of UK ties indicated in the table then they will be UK resident under the sufficient ties test.



Based on the original or adjusted day count, if the individual has this number of ties, they will be UK resident

Original day count or adjusted day count in year X	Individuals who have not been resident in the UK in any of the 3 previous tax years	Individuals who have been resident in the UK in any of the 3 previous tax years
16 - 45 days	—	4 or more
46 - 90 days	All 4	3 or more
91 -120 days	3 or more	2 or more
121 - 182 days	2 or more	1 or more

There are special rules that apply if the individual dies part way through a tax year or if exceptional circumstances detain the individual in the UK.

When does UK tax residence start?

The default position is to deem your UK tax resident from the start of the relevant tax year (6 April). However, there are also special rules for splitting a tax year into a period of non-residence and a period of UK residence where, part way through a tax year:

1. an individual or their partner starts to work the equivalent of a 35-hour week overseas;
2. an individual emigrates;
3. an individual comes to the UK to work the equivalent of a 35-hour week; or
4. an individual, or in some cases their partner, otherwise sets up home in the UK.

Conclusion

The Statutory Residence Test will give a definitive answer on tax residence in most cases. However, the rules are complex and correct interpretation of the test can be difficult in all but the most straightforward of cases. Individuals wishing to determine their residence status will need bespoke advice.

For further information, or to make an appointment,
please contact:



Charlie Sosna
Partner, Head of Tax and Wealth Planning
T: +44 20 3321 6108
E: charlie.sosna@mishcon.com



Kassim Meghjee
Partner
T: +44 20 3321 6295
E: kassim.meghjee@mishcon.com



Stuart Adams
Partner
T: +44 20 3321 6022
E: stuart.adams@mishcon.com



Filippo Nosedà
Partner
T: +44 20 3321 7980
E: filippo.nosedà@mishcon.com



Andrew Goldstone
Partner
T: +44 20 3321 7205
E: andrew.goldstone@mishcon.com



David Whittaker
Partner
T: +44 20 3321 7344
E: david.whittaker@mishcon.com



Patrick Harney
Partner
T: +44 20 3321 7489
E: patrick.harney@mishcon.com

Disclaimer:
This is a very basic summary of a complex area of law and taxation. It is not to be taken as legal advice. Before acting or omitting to act in relation to your UK tax position, you should always take specialist tax advice.
© Mishcon de Reya LLP 2023

Mishcon de Reya LLP

Africa House
70 Kingsway
London WC2B 6AH

T +44 20 3321 7000
F +44 20 7404 5982
E contactus@mishcon.com

mishcon.com

