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Residence and domicile

A guide to the differences between residence and domicile for tax purposes



Business UPDATE

Domicile and residence can each have a significant impact on how much UK tax you must pay, or indeed if you must pay UK tax at all. Both terms are used for tax purposes and have little to do with citizenship or nationality.

Residence

Residence is determined by a number of factors including how many days you spend in the UK, where you work and where you have homes. A person may be resident for tax purposes in more than one country, in which case their status may be determined by tax treaties between the two countries.

Residence is particularly relevant for income tax. The general rule is that a UK resident is liable to pay UK tax on all income and gains from anywhere in the world. A non-resident is only liable to pay UK tax on UK sources of investment income and gains, but only on UK earnings to the extent that the work was carried out in the UK. This general rule is subject to many exceptions and detailed provisions.

Residence can also be relevant in determining whether an employee is entitled to claim tax relief for certain travelling expenses.

Statutory residence test

A new statutory residence test was introduced from 6 April 2013. Under this test, you first consider whether you are automatically non-resident by following these tests in this order:

- the **first automatic overseas test** - a person is non-resident if they have spent fewer than 16 days in the UK during the tax year (6 April to following 5 April)
- the **second automatic overseas test** - a person is non-resident if they were non-resident for the three previous years and spent fewer than 46 days in the UK during the tax year
- the **third automatic overseas test** - a person is non-resident if they work full-time overseas and spend fewer than 91 days in the UK during the tax year, of which fewer than 31 were

days when they were working (there are rules to determine if someone is working full time overseas and to define a working day).

If none of the three tests is passed, you then consider whether the person is automatically resident by following these tests in this order:

- the **first automatic UK test** - a person is automatically UK resident if they have spent 183 days or more in the UK during the tax year
- the **second automatic UK test** - a person is automatically UK resident if they have a home in the UK and spent 91 consecutive days in the UK, of which at least 30 fall within the tax year (detailed guidelines define 'home' and other aspects of this test)
- the **third automatic UK test** - a person is UK resident if they work full-time in the UK (subject to specific definitions and other provisions).



Residence and domicile

If none of these six tests determine residence, you use the sufficient ties test.

There are four 'ties':

- family tie
- accommodation tie
- work tie
- 90-day tie

There is also a fifth tie for individuals who have been UK resident in any of the three previous tax years:

- country tie.

UK-residence is then determined by:

- how many ties a taxpayer has met for each tax year; and
- how many days the taxpayer has spent in the UK.

Generally, the more days a taxpayer spends in the UK, the fewer ties must be met to be non-resident. This is also affected by whether the taxpayer arrived or left the UK during the tax year, and whether they were UK resident in any of the three previous years.

Residence example

A taxpayer who has not been UK resident for the last three tax years wants to calculate if they will be UK resident in the current tax year. If they spend:

- fewer than 46 days in the UK, they are automatically non-resident
- between 46 and 90 days in the UK, they are UK resident only if they meet all four sufficient ties
- between 91 and 120 days in the UK, they are UK resident if they meet three of the four ties
- between 121 and 182 days in the UK, they are UK resident if they meet two of the four ties
- 183 days or more, they are automatically UK resident.

A day spent in the UK usually means a day when the taxpayer was within the UK or its

territorial waters at midnight at the end of that day. There are some exceptions to this, such as if a person's departure from the UK is delayed because of illness or an unexpected political development.

A taxpayer is usually UK resident or non-resident for a whole tax year. There is an exception known as the split year treatment where a taxpayer may be regarded as UK resident for part of a tax year and non-resident for the rest. In order to qualify the taxpayer must satisfy one of the split year rule cases.

The date of change of residence status may be:

- the date of acquiring or ceasing to have a home; or
- the first or the last day of full time work.

It is not the date of arrival or departure so it is important to check the exact rules in each situation.

Domicile

Domicile is the country you regard as your natural home. You can only have one domicile at any time. Your domicile can be of origin, choice or dependency. The most common type is domicile of origin. This is the country that was your father's domicile and where you either live or intend to return to at some point in the future.

Domicile is particularly relevant for inheritance tax. A British domiciled person is liable to pay inheritance tax on their entire estate wherever it is in the world. A 'non-dom' - somebody who is not domiciled in Britain - is liable to pay inheritance tax only on their UK property. There is also a £325,000 limit on the amount a non-dom spouse can inherit free of inheritance tax.

Domicile is also relevant for calculating income tax and capital gains tax on

a UK resident non-dom's overseas income and gains. Unless they choose to pay tax on all overseas income and gains as they arise, they must elect for the remittance basis and usually pay an annual charge of either £30,000 or £50,000 depending on how long they have been resident in the UK. This may be mitigated if they remit income to the UK for commercial investment in a UK business.

Domicile example

If you decide to move to Spain to live there permanently, factors that will help establish whether you now have a Spanish domicile could include:

- whether you can speak Spanish
- if you associate with Spanish nationals rather than just British expatriates
- if you wish to be buried in Spain
- if you are no longer a member of British organisations and no longer own property in Britain.

Contact us

This is a very broad summary of detailed and complex regulations, which are supported by detailed guidance. Contact us so that we can advise you on your specific situation.

Get in touch for further information on residence or domicile.

