

9 Residence

A taxpayer's liability to income tax, CGT and IHT is based upon their residence and / or domicile. At TX-UK a UK resident will be liable to income tax on worldwide income and a non UK resident will be liable on only UK income. It is essential therefore to determine the residence of the taxpayer to be able to determine their UK tax liability

These rules are detailed and based on the number of days that the individual spends in the UK and the following table will therefore be given in the tax rates and allowances section of the examination paper.

Days in UK	Previously Resident (R)	Not Previously Resident (R)
<16	Automatically NOT R	Automatically NOT R
16 – 45	R if 4 UK ties	Automatically NOT R
46 – 90	R if 3 UK ties	R if 4 UK ties
91 – 120	R if 2 UK ties	R if 3 UK ties
121 – 182	R if 1 UK tie	R if 2 UK ties
>183	Automatically R	Automatically R

In the above table a taxpayer is Previously Resident if they have been resident in any of the previous 3 tax years.

The above table shows that the following persons will automatically be treated as NOT resident in the UK:

- Anyone in the UK for less than 16 days in tax year.
- A person in the UK for less than 46 days in tax year and who was not resident in previous 3 tax years

In addition a person who works full time overseas and who has not been in the UK for more than 90 days in the tax year is automatically not resident.

The above table also shows that any person in the UK for at least 183 days in the tax year is automatically RESIDENT. The following persons are also treated as automatically resident, unless they meet one of the automatic non-resident tests:

- A person whose only home is in the UK
- A person who carries out full time work in the UK

Where none of the automatic tests apply then based on the above table a person's status will be based on both how many days they are in the UK and how many ties they have with the UK in a tax year.

There are 5 UK ties as follows:

- Spouse/civil partner or minor child in the UK
- House in UK which is used during tax year
- In UK for more than 90 days in either of 2 previous tax years
- More time in UK than in any other country in tax year
- Doing substantive work in UK

A UK day is where the person is in the UK at midnight.

The detailed rules are far more complex but only the above rules are examinable.

ILLUSTRATION 3

Sebastian was not previously resident in the UK but spent 35 days in the UK during 2021/22.

Sebastian is automatically not resident, as in UK for less than 46 days and not previously resident.

ILLUSTRATION 4

Fernando was not previously resident in UK but bought a holiday home in the UK on 1 May, 2021 and lived in it for 140 days in the 2021/22 tax year. The remainder of the year he lived in his home in Spain.

Fernando was in the UK too long (>45 days) to be automatically treated as not resident, but not long enough to be treated as automatically resident (<183 days) nor did he have his only home in the UK.

Using the table therefore as he has been in UK for between 121 days and 182 days and has only one tie with the UK (made use of UK house), so as he was not previously UK resident he is therefore not UK resident in 2021/22.

ILLUSTRATION 5

Lewis was in the UK for 80 days in 2021/22 when he lived in the only home that he owns.

Lewis has been in the UK too long to be treated as automatically not resident, irrespective of his previous residence. He will, however be treated as automatically UK resident as his only home is in the UK.

ILLUSTRATION 6

Jensen has always been UK resident spending about 10 months of the year in the UK, but on 1 May, 2021 he purchased an apartment overseas where he lived for most of the tax year returning to the UK for a further 50 days in 2021/22 when he stayed at the family home with his wife and children.

Jensen has spent more than 15 days in UK in 2021/22 so will not be automatically not resident. He will also not be automatically resident in the UK as he has not spent 183 days in the UK nor does he have his only home in the UK.

As he was in the UK for between 46 and 90 days he will remain resident for 2021/22 as he has 3 UK ties:

- Spouse/children in UK
- A house in the UK that he uses
- In the UK for more than 90 days in previous 2 years

You should now work through the following part of the ACCA Finance Act 2021 technical article written by the TX-UK examining team:

- Income Tax section working through to Example 10 and then the section on the transfer of the PA and work Example 13

You should then attempt Practice Questions 1-6 which you will find after the Answers to Examples Section at the end of these Study Notes