

AF1: Residence & Domicile 2021/2022

Part 1: Establishing an individual's status

How an individual's residency and domicile status affects their UK tax liability will almost certainly be tested in AF1.

It is one of the most complex areas of the tax system but AF1 is not an accountancy exam and you will only be expected to know the principles. Specifically, how an individual's residence is established and how this affects their liability to income, capital gains and inheritance tax.

This first part will look at how an individual's residency and domicile status is established. The second part will consider how an individual's status affects their tax liability.

The milestones for this part are to understand:

- The basic concept of residence and domicile
- How an individual's residence and domicile is established

All individuals have their own residency and domicile status. It's a binary issue and individuals are either non-resident or resident, UK domicile or non-domicile. An individual will therefore be either:

- **UK resident and UK Domicile.** This is the status of most individuals living in the UK.
- **UK resident and non-UK Domicile.** This is usually the status of a non-UK national who lives in the UK.
- **Non-UK resident and UK Domicile.** This would typically be a UK national who works or lives outside the UK
- **Non-UK resident and non-UK Domicile** This status applies to almost everyone else in the world but is relevant if they have income arising in the UK

Residency status can change from one tax year to the next whereas Domicile status is long term and quite difficult to change.

It's possible to be resident in more than one country at a time but you can only have one domicile at any one time.

Residency status

Since 6 April 2013 there has been a **Statutory Residence Test (SRT)** that determines an individual's status for that tax year. Time spent in the UK is the key factor but other factors will also be taken into consideration. These include whether the individual:

- has a home in the UK .
- was previously resident in the UK in the last three tax years
- is working in the UK
- has other close ties to the UK

A tax year can be split so an individual is resident for one part and non-resident for the other.

HMRC follow a three stage process to determine an individual's residency status.

The first stage is to establish whether a person is **non-resident** by applying the **automatic overseas tests**. If one of these is met the individual has non-resident status and no further action is necessary.

If an individual doesn't meet these tests then a series of **automatic UK tests** is applied. If one of these is met the individual is **resident** and that is the end of the process.

Should neither of these tests are passed then residency status is determined by what are termed **sufficient ties** tests.

Automatic Overseas Tests

An individual will be non-resident if they meet **one** of these automatic overseas tests

- If they were resident in one of the three previous tax years and spend fewer than 16 days in the UK (First overseas test)
- If they were non-resident in the three previous tax years and spend fewer than 45 days in the UK. (Second overseas test)
- They work full time outside the UK with no significant breaks.

Graeme left the UK in February 2014 to work full time in the US. He would have been classed as non-resident from the date of departure in 2014/2015 as he was working full time outside the UK

As he has now been non-resident for the past three tax years he could come back to the UK and provided the total time spent here is less than 45 days in the UK he will retain his non-residence status.

Automatic UK Tests

An individual will be resident for that year if they meet one of these automatic residence tests

- They spend 183 days or more in the UK (First UK test)
- They have only one home and that home is in the UK or if you have two or more homes all those homes are in the UK (Second UK test)
- They work full time in the UK with no significant breaks. (Third UK test)

Henri is a French national who starts to work full time in the London office of a French bank. He will be UK resident from his first day in the UK.

Sam has been living in Spain for many years but in June 2020 he returns to the UK. He will be resident for 2020/2021 as he will spend more than 183 days in the UK

The automatic overseas tests in more detail

The basic definition of a day is that the individual is in the UK at midnight.

Jose arrives in the UK on Monday and returns to Spain on Wednesday. He has spent 2 days in the UK.

A day in transit doesn't count. This is defined as arriving in the UK on one day and leaving on the next day provided the only activities undertaken are related to the traveller's passage through the UK.

Days that are spent in the UK due to exceptional circumstances can also be excluded. An example would be someone who spends time in hospital because of an unforeseen accident or illness. The same rule would apply if someone had to be present in the UK because their spouse/civil partner or dependent had to be in the UK due to exceptional circumstances. However, in both cases the maximum number of days that can be excluded is 60. Once that is exceeded all subsequent days will go towards their "day count".

Krystan is non UK resident but on a visit to the UK suffers a serious car accident and is detained in hospital for 90 days. For the purposes of counting days, she will be present for 30 days.

The third overseas test is whether the individual works full time overseas. This is defined as:

An individual works full time without any significant breaks from that overseas work and

- You spend a maximum of 90 days in the UK in the tax year AND
- The number of days in the tax year on which you work more than three hours in the UK is no more than 30

The automatic UK tests in more detail

The first test is of being present for 183 days or more is self-explanatory.

The second automatic UK test is whether you have a home in the UK.

Note that it is a “home” rather than a “house”. It doesn’t matter whether individuals rent or own the property. If they live there it is their home. You meet this test if you spend at least 1 period of 91 consecutive days, at least 30 days of which fall in the tax year in the home.

There are a few circumstances where a UK property would not be considered a home. These are:

- If the property is let out commercially whilst you are absent and have no right to take the property back on your return
- The premises are in a state of disrepair and cannot be used as a home.
- If your UK property has been put up for sale and you do not occupy it whilst it is being sold.

The third UK test relates to working full time in the UK. To meet this test an individual has to work in the UK for 365 days (this will include holidays and weekends) and

- All or part of that work falls within the tax year
- More than 75% of the total number of days you work more than three hours are done in the UK

In general if someone comes to work in the UK on a permanent contract they will be considered UK resident from the day they enter the UK.

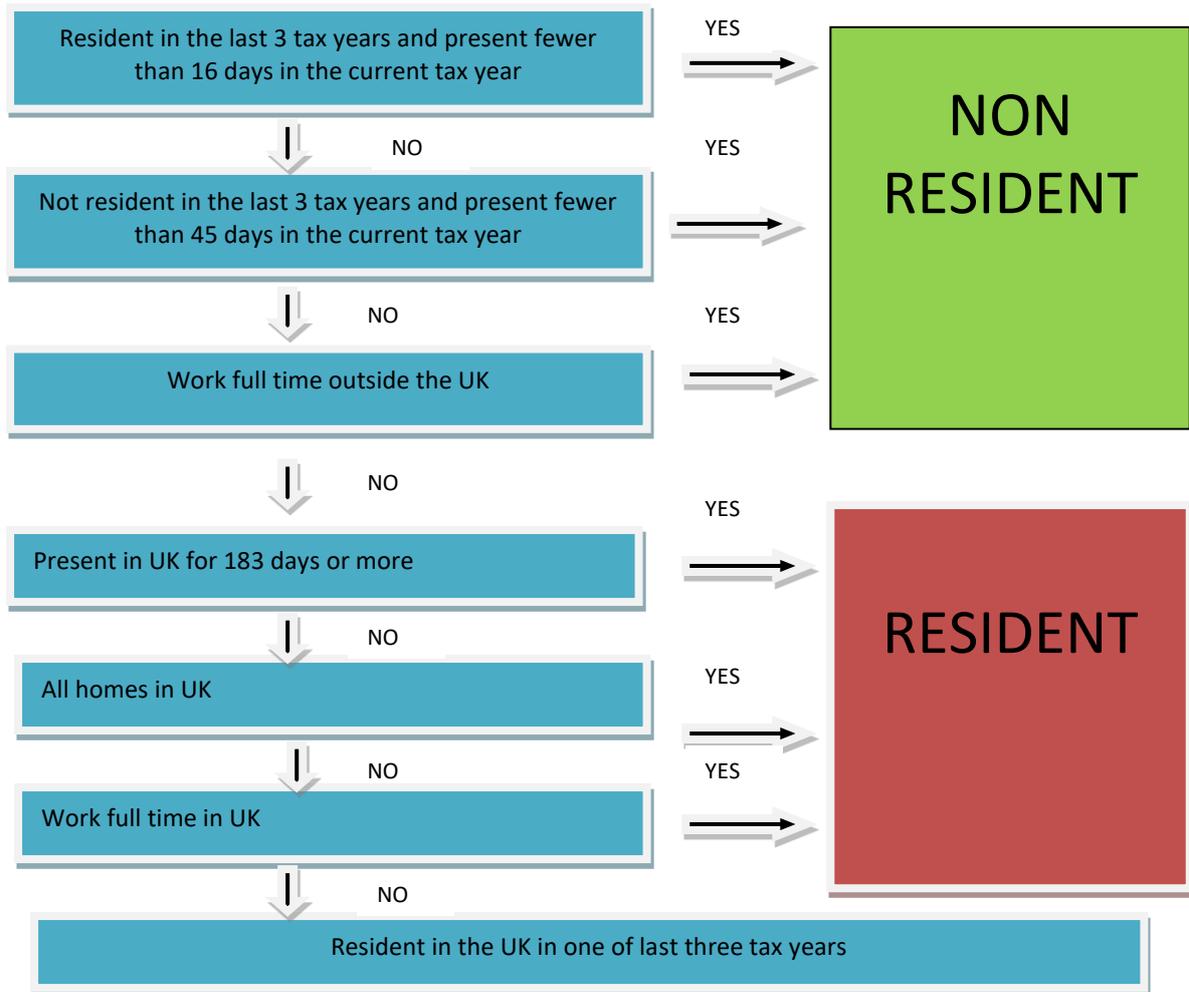
If an individual doesn’t meet any of the automatic tests HMRC will apply the **sufficient ties tests**.

These will ask if an individual has any of the following ties to the UK:

- A family tie
- An accommodation tie
- A work tie
- A 90 day tie

These are quite complex but the principle is that the number of ties an individual has is calculated and assessed against the days spent in the UK. The more ties an individual has the lower the number of days they can spend in the UK before they are classed as being resident.

A full flow chart is shown on the next page



ARRIVERS		LEAVERS	
Family Tie		Family Tie	
Accommodation Tie		Accommodation Tie	
Work Tie		Work Tie	
Present on more than 90 days		Present for more than 90 days	
		Country Tie	
Total		Total	

ARRIVER	DAYS	LEAVERS
Always non resident	<16	Always non resident
Always non resident	16-45	Resident if 4 connections
Resident if 4 connections	46-90	Resident if 3 connections
Resident if 3 connections	91-120	Resident if 2 connections
Resident if 2 connections	121-182	Resident if 1 connection
Always resident	>183	Always resident

Domicile

Domicile is generally construed as the place an individual regards as their permanent home and with which they have their closest ties. It has nothing to do with someone's nationality. You can be a UK citizen and be non-domicile and a German citizen could have UK domicile.

There are three types ways of acquiring UK domicile. These are:

- Domicile of origin
- Domicile of dependence
- Domicile of choice.

In addition an individual can be **deemed domicile**. This is when an individual remains non-domicile but is treated for tax purposes as if they were domicile.

Domicile of origin

This is acquired at birth. Children born to a married couple will acquire the domicile of the father. The place of birth or the child's citizenship is irrelevant.

Noel is married to Zoe. Noel has UK domicile but Zoe is American and non- domicile. Their son David was born 20 years ago and will be UK domiciled by domicile of origin even if he acquires American citizenship through his mother.

If the situation was reversed with Noel being non-domicile and Zoe was UK domicile, David would be non-domicile.

If a child is born to an unmarried couple, it takes the domicile of its mother.

Domicile of dependence

Strictly speaking when a child is born to a UK domiciled parent they have domicile of dependence. This is retained until the child is 16 when the child can change their domicile through domicile of choice. To change their domicile they must:

- already be living in a country other than their domicile of origin.
- Intend to remain there **permanently or indefinitely**.

This doesn't need to be a formal decision, it is enough for their actions to confirm this.

Moses was born in the UK. His father was non-UK domiciled working in the UK. Whilst he was a child his domicile was the same as his father. When Moses was 21 his father returned to live permanently in Jamaica where he was born. Moses stayed in the UK, bought a house, married and made the UK his permanent home. He won't be joining his father for anything other than for occasional visits.

By deciding to stay in the UK permanently Moses has established a domicile of choice in the UK

Deemed Domicile

An individual who is deemed domicile is treated being UK domicile even though they are still non-domicile.

The criteria for deemed domicile will depend on whether the individual:

- Was UK born and had UK domicile of origin before getting another domicile of choice.
- Or was born outside the UK and has never had UK domicile.

Before considering how this works it's useful to understand the position prior to 6 April 2017.

- Deemed domicile only affected an individual's liability to IHT. You became deemed domicile if you were UK resident for 17 out of 20 tax years.
- As long as they did not make the UK their permanent home, non-domicile status for all other taxes could be retained indefinitely.
- The Finance Act (number 2) 2017 radically changed the situation by putting a time limit that individuals can be treated as being non-domiciled.

Non-domiciles who were born outside the UK and did not have domicile of origin.

From 6 April 2017, any non-domiciled individual in this class who has been resident in the UK for 15 out of the last 20 years will be deemed UK domicile. This is known as the **15/20 rule**. Put another way, individuals will become UK deemed domicile in the 16th year of continuous residence

Sergei has been UK resident since 2007/2008. He was non-domicile but assuming he stays UK resident he will be deemed domicile from 2021/22.

Roman has been UK resident since 2003/04. He would have been deemed domicile from 2018/19.

The 15 years do not need to be consecutive

Yasmin was UK resident from 2006/07 to 2012/13 (7 years). In 2013/14 and 2014/15 she was non-resident. She became resident again in 2015/16. Assuming she remains UK resident she will become deemed domicile in 2023/24.

Deemed domicile status continues for six consecutive years after becoming non-resident. To reset the clock to start a new 15/20 calculation period you must be non-resident for six consecutive tax years.

Vladimir became deemed domicile in 2017/18. If he became non-resident in 2018/19 and maintained this status until 2023/24, he could return to the UK in 2024/25 and start a new 15/20 period.

If he was resident in 2020/21 he would remain deemed domicile

UK born individuals who had UK domicile of origin who have become non-domicile.

A UK born individual with domicile of origin can become non-domicile but to achieve this HMRC would insist that all the applicant's ties with the UK (e.g. investments, bank account, property) ceased. This is difficult but clearly not impossible as according to HMRC in 2014/15 there were some 83,200 individuals who had a foreign domicile and did not view the UK as their long-term home.

If they did return permanently to the UK, perhaps on retirement, they would again become UK resident. Many though would never expect to return to the UK apart from short visits but if they did they would still retain their non-domicile status. This is no longer the case

They are described as **Former Domiciled Residents (FDR)**. If they return to the UK and become resident, they will be deemed domiciled for all taxes from the year of return.

Hannah had UK domicile of origin. She spent most of her career in Singapore working as a senior partner in a legal firm. She has a property there and regards Singapore as her long-term home. HMRC accept she is non-domicile.

In May 2020 she is asked to return to the London office to handle a major case. She becomes UK resident for that year Although her plans are to return to Singapore as soon as this project is complete, she will be classed as deemed domicile for 2020/21 and for every year she is UK resident.

She will lose her deemed domicile status once she becomes non-resident.

That concludes this part so you should now understand:

- The basic concept of residence and domicile
- How an individual's residence and domicile is established

Further reading

<https://www.litrg.org.uk/tax-guides/migrants/residence-and-domicile>