Charlton House
WEALTH MANAGEMENT

Understanding UK Residency and the Statutory Residence Test

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Your official residency status in the UK will have significant implications for how – and where – you pay tax.

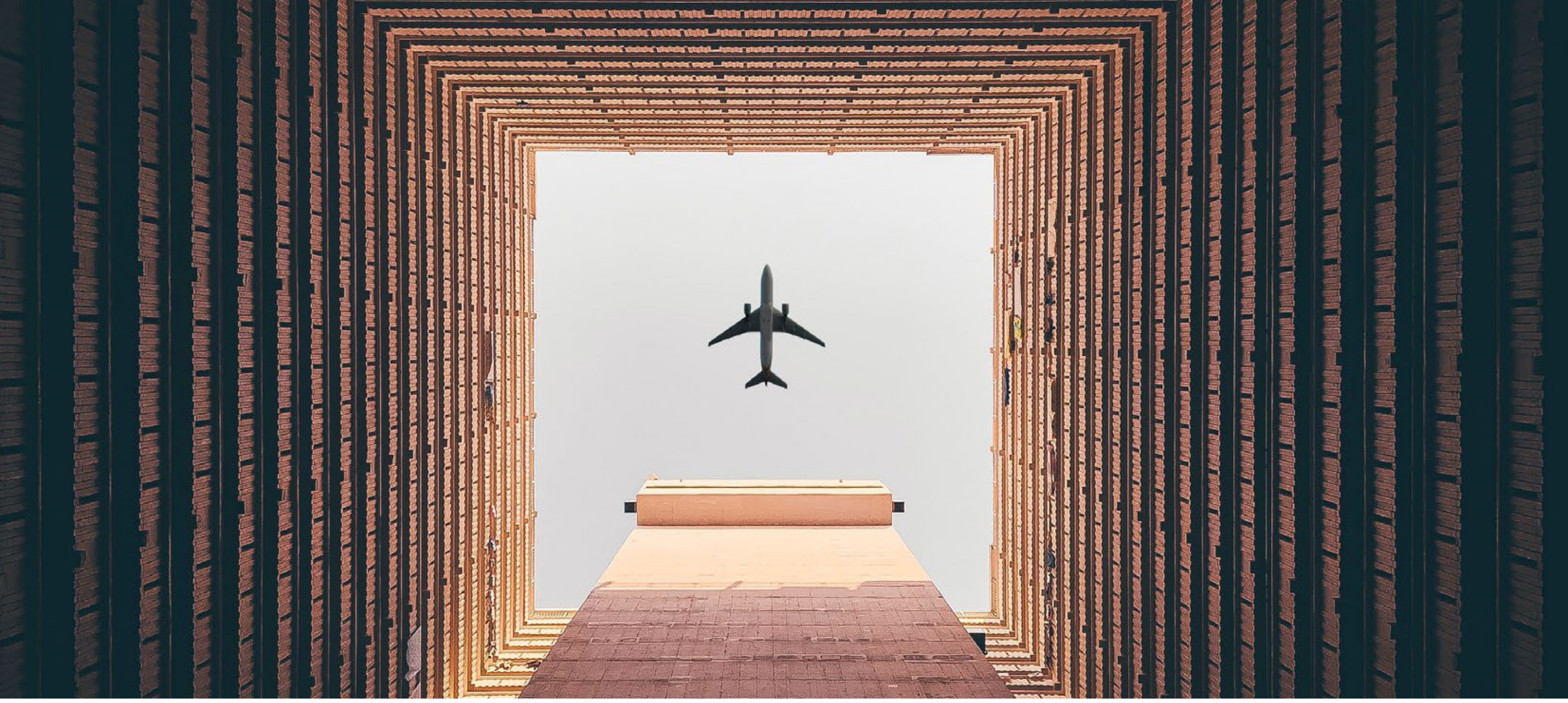
Several official tests exist to determine exactly what your residency status is, based on factors such as the number of days you spend in the UK and your 'ties' to the country.

As understanding this issue is important, here's a comprehensive guide to understanding UK residency.

The Statutory Residence Test

The Statutory Residence Test enables an individual, as well as HMRC, to ascertain whether they are UK resident for tax purposes. It is, therefore, very important to understand UK residency if you feel this may be of relevance.

Although complex, with the help of a professional you can understand whether you meet any of the criteria of the Statutory Residence Test.



Who does the Statutory Residence Test apply to?

Although the Statutory Residence Test technically applies to every person who lives in or visits the UK, the following people should pay particular attention to its remit:

- British Overseas residents – commonly referred to as expats, who regularly visit the UK for work or family reasons
- International citizens who are resident overseas – particularly those who may undertake work in the UK for their employer, even if the majority of their work is outside the UK
- Other international citizens who spend at least part of the year in the UK through living or frequent visits
- Anyone else who visits the UK for an extended stay, such as to visit family.

How does the Statutory Residence Test (SRT) work?

The SRT considers:

- The amount of time you spend and, where relevant, work in the UK
- The connections you have with the UK.

The SRT is split into three main components:

1. Automatic overseas tests
2. Automatic UK tests
3. Sufficient ties test

- The simplest test to consider is whether you have been in the UK for 183 days or more (over half a year) in the tax year. If so, you will be automatically UK tax resident and you do not need to consider any other tests.
- If you meet any of the automatic overseas tests you will not be UK tax resident for the tax year in question.
- You will be UK tax resident in that tax year if:
    - You do not meet any of the automatic overseas tests
    - You meet one of the automatic UK tests or the sufficient ties test.
- If you do not meet any of the tests, you will not be UK tax resident for the tax year in question.

Let's take a look at each of the tests in turn.

Automatic overseas tests

First automatic overseas test

If you were resident in the UK for one or more of the previous three tax years, you'll be non-UK resident for the tax year if you spend fewer than 16 days in the UK during the tax year.

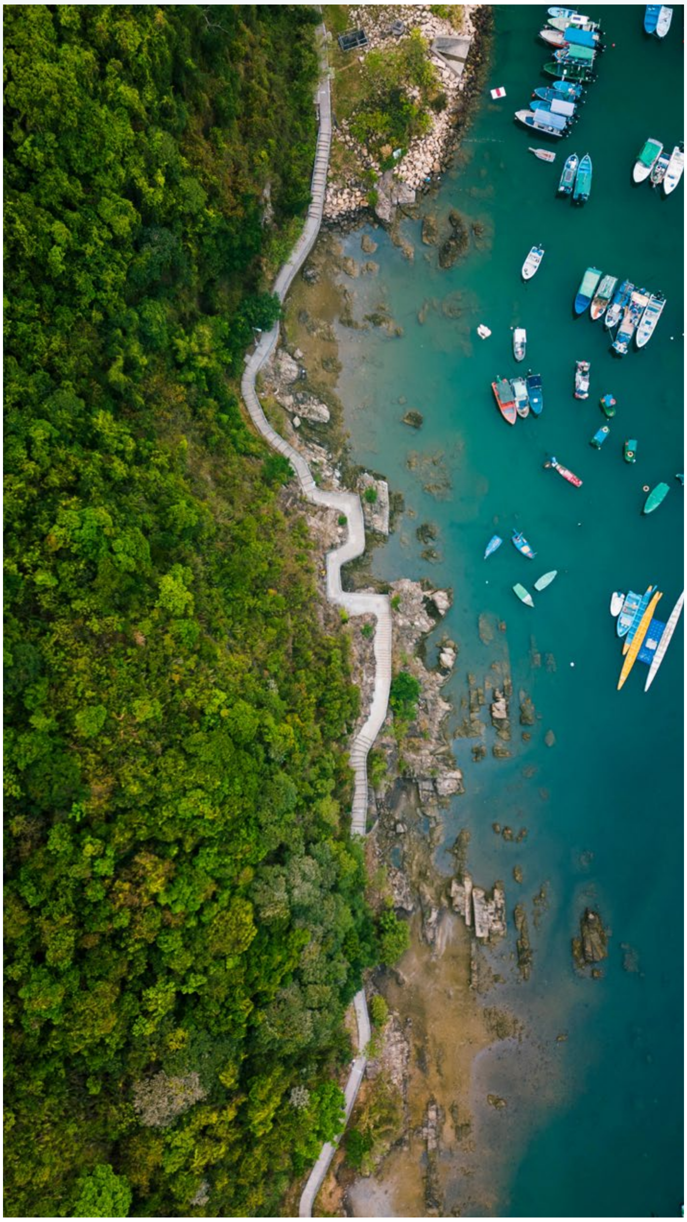
Second automatic overseas test

If you were not resident in the UK for any of the previous three tax years, you'll be non-UK resident for the tax year if you spend fewer than 46 days in the UK during the tax year.

Third automatic overseas test

You will be non-UK resident for the tax year if you work full-time overseas over the tax year and:

- You spend fewer than 91 days in the UK in the tax year
- The number of days on which you work for more than three hours in the UK ('UK workdays') is less than 31
- You work sufficient hours, which is broadly 35 hours per week
- There are no significant breaks from your overseas work
  - A significant break is when at least 31 days go by and none of those days are days where you:
    - Work for more than three hours overseas
    - Would have worked for more than three hours overseas, but you did not do so because you were on annual leave, sick leave, or parenting leave.



Note that the test:

- Can apply to both employees and the self-employed
- Does not apply to voluntary workers or workers with a job on board a vehicle, aircraft, or ship.

Automatic UK tests

First automatic UK test

You will be UK resident for the tax year if you spend 183 days or more in the UK in the tax year.

Second automatic UK test

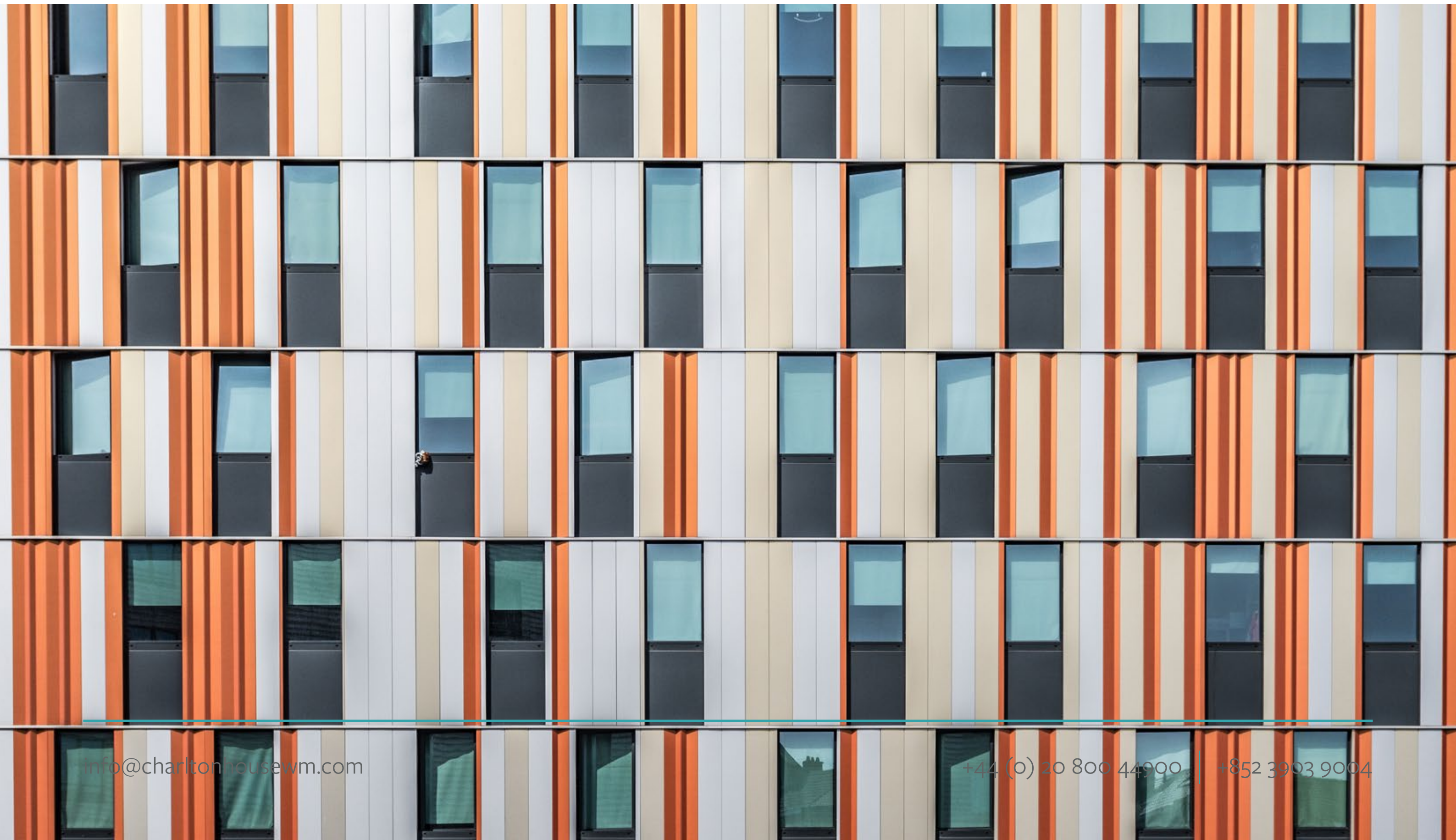
You will be UK resident for the tax year if you have a home in the UK for all or part of the year and all the following apply:

- There is at least one period of 91 consecutive days when you have a home in the UK
  - At least 30 of these 91 days fall in the tax year and you have been present in that home for at least 30 days at any time during the tax year
  - During this time you have no overseas home or, if you do have an overseas home, you are present in it for fewer than 30 days in the tax year.

Third automatic UK test

- You will be UK resident for the tax year if all the following apply:
  - You work full-time in the UK for any period of 365 days which falls in the tax year
  - More than 75% of your total number of working days (days in which you work for more than three hours) in the 365-day period are UK working day (days in which you work over three hours whilst in the UK)
  - At least one day, which has to be both in the 365-day period and the tax year, is a day on which you do more than three hours work in the UK.

Note: If you have more than one home in the UK you should consider each of those homes separately to see if you meet the test. You need only meet this test in relation to one of your UK homes.



Sufficient ties test

If you do not meet any of the automatic overseas tests or the automatic UK tests, you next need to assess the sufficient ties test to establish your UK tax residence status for the tax year.

You'll need to consider your connections to the UK, known as 'ties', to work out if your ties, taken together with the number of days you spend in the UK, will make you resident in the UK for that particular tax year. The ties are as follows:

A family tie:

- This exists when you have a UK resident spouse or civil partner (unless you are separated)
- It also includes UK resident children under the age of 18. This tie does not count if you do not see the child on more than 60 days. The child is not considered UK resident if in full-time education and no more than 20 days are spent in the UK outside of term time.

An accommodation tie:

- This tie applies if a place in the UK that is available to live in for a continuous period of at least 91 days and at least one night is spent there. This is extended to 16 nights for accommodation provided by a close relative
- The definition of the term accommodation is deliberately much broader than the term home, which is used for the second automatic UK test.

A work tie:

- This applies if you work in the UK at least three hours a day over 40 days throughout a tax year, irrespective of whether this is intermittent or continuous work. This includes self-employment. Special rules apply for relevant jobs such as airline pilots or cabin crew.

A 90-day tie

- This applies if you have spent more than 90 days in the UK in either or both of the previous two tax years before the tax year being considered.

A country tie (only relevant for 'leavers' – see table below)

- This exists if you have spent more days in the UK than any other country in the year being assessed.

The number of ties you have to the UK is relevant to the number of days you can spend in the UK before being deemed to be UK tax resident in the tax year being considered. This is calculated as follows:

Leavers

You are classed as a 'leaver' if you were UK resident in one or more of the three tax years before the tax year under consideration.

UK ties needed to be considered UK tax resident

Days spent in the UKin tax year	Number of UK ties needed
Fewer than 16 days	Always non-resident
16 - 45 days	At least 4
46 - 90 days	At least 3
91 - 120 days	At least 2
120 and over	At least 1

Arrivers

You are classed as an 'arriver' if you were not UK resident in any of the three tax years before the tax year under consideration.

UK ties needed to be considered UK tax resident

Days spent in the UK in tax year	Number of UK ties needed
Fewer than 46 days	Always non-resident
46 – 90 days	4*
91 – 120 days	At least 3
120 and over	At least 2

***The country tie does not apply in this scenario.**

How do you count the number of days you are in the UK each year?

When counting the number of days you are in the UK each tax year we usually refer to this as 'day counting'. Day counting can be extremely important for some people and maintaining good records helps with UK residency planning as well as evidencing that you have complied with the rules.

The key points to consider when day counting are, as follows:

- You must be in the UK at midnight for the day to count as a day spent in the UK. This means you can theoretically fly into and then out of the UK during the same day. As long as you were not in the UK at midnight, the day won't count as a day spent in the UK
- You should keep a thorough audit trail to be able to prove how many days you spent inside and outside of the UK (this should be based on midnight UK time)
- Being in transit in the UK does not usually count even if you are in the UK at midnight, as long as you leave the next day. However, you cannot do anything which is not typical for a transit. For example, you cannot go to meet family or friends, but you can have your breakfast in your hotel or at the airport
- You may be able to claim 'exceptional circumstances' to reduce your number of UK-based days for the Statutory Residence Test (more details below).

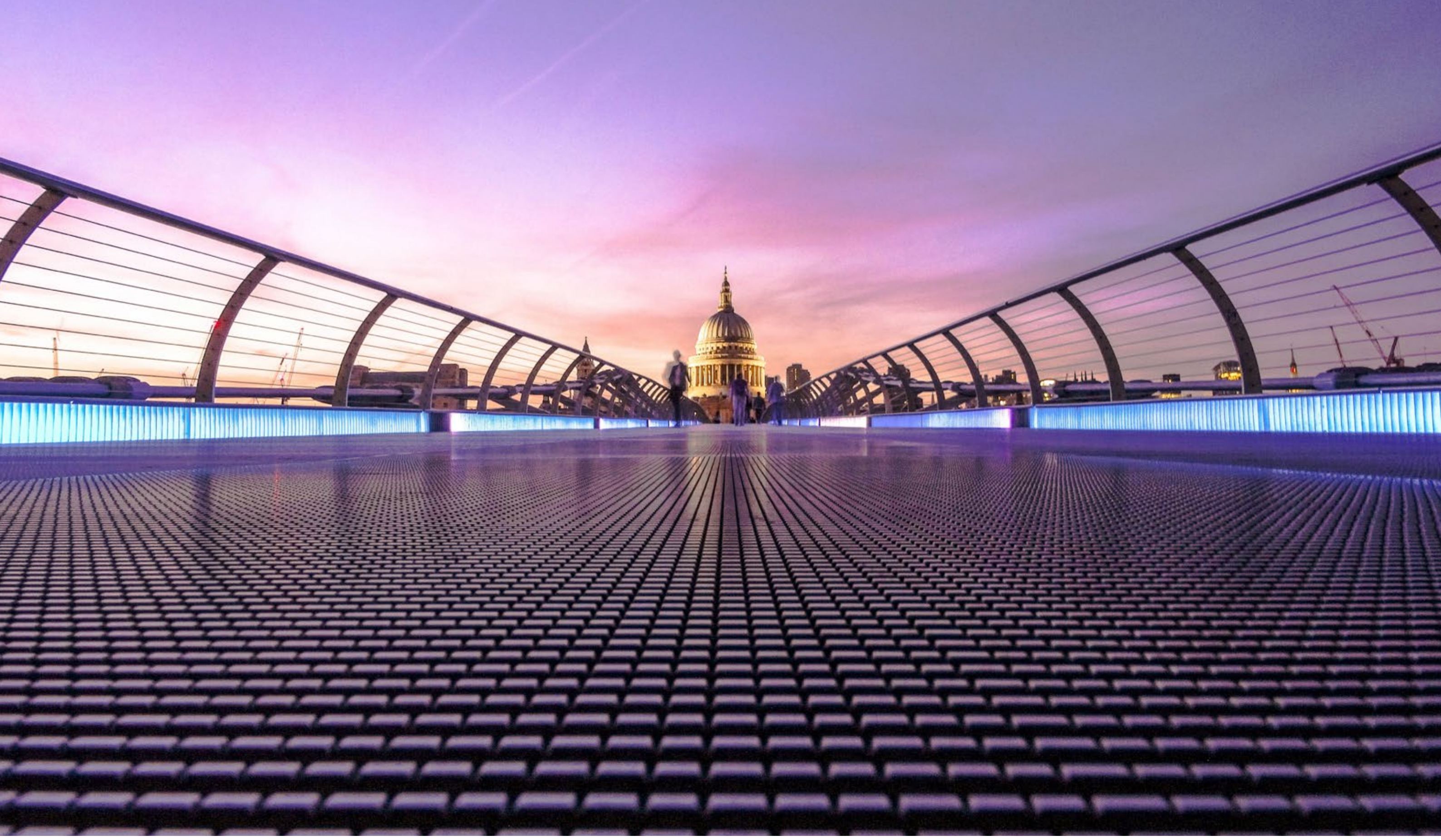
Exceptional circumstances – what are they and when do they apply?

If a situation arises which is completely out of your control and prevents you from leaving the UK, you may be able to claim 'exceptional circumstances' to reduce the number of days you were inside the UK for the Statutory Residence Test.

For example, a completely unexpected and sudden illness or injury causing a necessary stay in a UK hospital is likely to be deemed as 'exceptional'.

Several key points to consider regarding exceptional circumstances are, as follows:

- You will only be able to apply for exceptional circumstances if they meet certain strict criteria
- The exceptional circumstance will need to be completely outside of your control and out of the ordinary. These types of events are, by their very nature, hard to define and can apply to various possible events
- You will need to keep a good record of the days you are claiming as days spent in the UK due to exceptional circumstances and be able to provide evidence as to why you believe these days met the exceptional circumstances criteria
- HMRC will decide on your claim on a case-by-case basis
- Annually, you can only claim up to 60 days to be disregarded as exceptional circumstances.



What could the main implications of UK tax residency be for you?

If you are deemed to be UK resident for tax purposes, the following will apply to you:

- You will be taxed on your UK and overseas income, although special rules apply to individuals classed as non-UK domiciled. For further information on the concept of domicile, you can read our article **here**
- You will have to pay tax on any capital gains (such as gains made upon the sale of shares and property) made in the UK and overseas
- You need to declare and pay taxes when they're due, otherwise, HMRC may impose penalties and interest. Avoiding paying taxes which are due is a criminal offence
    - If you have found out that your tax residency status changed in previous tax years, you will need to declare this and pay any tax and potential fines and interest due as soon as possible
    - HMRC may take a more in-depth look at your other tax affairs if you have made a mistake with your tax position or underpaid any tax due
- Double taxation treaties may apply to your overseas income and gains which will help to ensure the income does not get taxed twice
- You can work and visit the UK freely without having to consider how many days you have spent in the UK
- For non-domiciled individuals with previous UK residency, becoming UK resident may shorten the period under which the remittance basis can be claimed without having to pay the remittance basis charge of £30,000 per annum
- Also, for non-domiciled individuals, inadvertently becoming UK resident in a particular year may bring forward the point at which they become 'deemed domiciled' for UK Inheritance Tax purposes.

Note: Prior to becoming UK tax resident, planning is imperative to make use of any options available and to save on any costly mistakes. You can read our article on pre-UK residency tax planning considerations **here**.

If you are not deemed to be UK resident for tax purposes, the following will apply to you:

- You will only have to pay tax on income made within the UK
  - This may potentially save significant amounts of your non-UK income and capital gains from the likely higher tax rates applicable to UK tax residents
- You will only have to pay tax on gains made on UK property or land (houses, shares, business assets and any other chargeable asset)
- If you were to return (become UK resident again) to the UK within five years, and you were a UK resident for four out of the seven tax years before you moved abroad, some gains may become retrospectively chargeable
- You may also have to pay tax on your UK income and gains in the country in which you're tax resident, however, a double taxation treaty may apply which will ensure you will not be taxed twice
- You will have to ensure you successfully 'day count' on an annual tax year basis to ensure you remain a non-UK resident. This will limit your ability to work and visit the UK.

Reference

UK government guidance notes for Statutory Residence Test

UK government guidance – Residence, Domicile and Remittance Basis manual

Disclaimer

The information provided in this guide is for information purposes only and to understand your individual situation and the implications of this you should always speak to a professional financial adviser.

For more information regarding the Statutory Residence Test, UK taxation, domicile, the remittance basis or any other connected matter, please contact us by email or, if you would prefer to speak to us, you can reach us in the UK on **+44 (0) 208 0044900** or in Hong Kong on **+852 39039004.**