

Dual residents

Contacts

Please phone:

- the number printed on page TR 1 of your tax return
- the SA Helpline on **0845 9000 444**
- the SA Orderline on **0845 9000 404** for helpsheets

or go to

www.hmrc.gov.uk

This helpsheet gives information to enable you to decide whether you are a resident of the United Kingdom (UK) or another country, for the purposes of applying the provisions of the Double Taxation Agreement between the UK and that other country.

It includes a form on which you can claim relief from UK tax available under such provisions, if you are a resident of the other country for the purposes of the Double Taxation Agreement.

Include any relief you are claiming in box 20 of the *Residence, remittance basis etc.* pages of your tax return.

Who needs this helpsheet?

You only need to read and, where appropriate, fill in this helpsheet if you have not put an 'x' in box 1 but you have completed box 18 of the *Residence, remittance basis etc.* pages indicating that you are 'dual-resident'. That is to say:

- resident in the UK for all or part of the year ended 5 April 2011, and
- during the whole or part of the same period, resident for tax purposes in a country with which the UK has a Double Taxation Agreement (DTA), and the terms of the DTA enable you to claim either full or partial relief from UK tax on income arising in the UK.

A list of the countries with which the UK has a DTA is available through the DT Digest. This can be found by going to www.hmrc.gov.uk and looking for *DT Digest* within the *Search* facility. The second page of the DT Digest contains a hyperlink to a summary of the relevant information.

Relief is not available if:

- you are dual-resident in the UK and in a country with which the UK does not have a DTA, or
- you are dual-resident in the UK and in one of the Agreement countries listed on page 4 of this helpsheet.

In those circumstances you will only be entitled to claim relief from UK tax by way of credit for foreign tax paid on overseas income or gains (see the *Foreign* pages and *notes*), and should not complete the claim form attached to this helpsheet.

Purpose of this helpsheet

This helpsheet explains how most DTAs resolve the question of dual-residence and how liability to UK tax can be affected by the outcome.

However, since not all DTAs are the same, it is essential when considering whether any relief from UK tax may be due, to look at the text of the particular agreement concerned. It is not possible to give full details of the relevant provisions in this helpsheet as they vary from agreement to agreement.

We or your tax adviser will help you resolve questions about particular provisions in a DTA.

Residence for the purposes of a Double Taxation Agreement – consequences for tax liability

Different countries use different criteria to decide whether someone is a resident for tax purposes. It is therefore quite possible for an individual to be regarded as resident for tax purposes under the laws of more than one country ('dual-resident').

The residence article in most modern DTAs provides 'tie-breaker' rules for determining in which of the two States an individual who is dual-resident under the respective domestic laws should be treated as resident for the purposes of the Agreement. The most commonly found tie-breaker tests are set out on page 3 of this helpsheet. The provisions do not always appear in the same order in all DTAs, nor do they appear at all in some Agreements. It is therefore vital that the terms of the particular Agreement with which you are concerned are consulted.

If the tie-breaker rules award residence for the purposes of the DTA to the other country, UK tax liability is usually affected. People who are resident for DTA purposes in the other country are entitled to make claims to relief from UK tax on the basis that they are a resident of the other State. As a result, income or gains of a type which is dealt with in the Agreement and which arises in the other State is exempt from UK tax.

Income arising in third countries will also be exempt if the particular DTA contains an article dealing with 'Other income'. UK-source income will remain taxable in the UK but only to the extent permitted by the DTA with the country of which an individual is a resident. Depending upon the terms of the particular DTA, UK income might remain fully taxable in the UK or be taxable in the UK at a lower rate than that provided for in UK domestic law, or be exempt from UK tax altogether. However, special rules apply where any income (including foreign income) is connected with a business or profession which an individual carries on in the UK. Again it is important to look closely at the provisions of the DTA in question, since no two DTAs are identical.

If, in accordance with the rules referred to above, you decide that you are resident for tax purposes in a country other than the UK, please contact your HMRC office for further advice. They can also supply forms to allow you to make an application to allow future payments of interest, royalties, pensions and annuities to be paid together with the appropriate amount of Double Taxation Relief. The form can also be downloaded from our website. Go to www.hmrc.gov.uk and look for *Claims under double taxation treaties* within the *Search* facility.

If the tie-breaker rules award residence for the purpose of the DTA to the UK, you will remain liable to UK tax on the whole of your worldwide income and gains. You may, however, be entitled to relief from tax in the other country as a resident of the UK for the purposes of the DTA. The precise terms of the particular Agreement must be consulted since no two Agreements are exactly the same.

Although a DTA overrides some of the normal consequences of being a UK resident, it does not override the fact of UK residence itself for purely domestic law purposes. Therefore, even if by virtue of the tie-breaker provisions in a DTA, you are resident in another country for the purposes of the DTA between the UK and that State, you will still have to complete UK tax returns and fulfil any similar obligations imposed by the UK Taxes Acts.

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You may also be UK resident for the purpose of claiming relief from foreign tax under DTAs between the UK and other countries. And you will remain entitled to any personal allowances due on account of your status as a UK resident under domestic law.

The OECD Model Tax Convention residence tie-breaker rules

The residence tie-breaker rules in most recent UK DTAs closely follow those in the Model Tax Convention of the Organisation for Economic Co-operation and Development (OECD). They comprise a series of tests to be applied successively until residence for the purposes of the Agreement is allocated to one State or the other. In other words, once a test is conclusive it is unnecessary to apply subsequent tests. The tests usually appear in the order of:

- permanent home
- centre of vital interests
- habitual abode
- nationality.

Permanent home

You will be a resident only of the State in which you have a ‘permanent home’ available to you for the period of dual-residence. A permanent home is any form of accommodation which is continuously available to you for your personal use. It does not necessarily have to be owned by you.

The test will be inconclusive if you have a permanent home in both countries. In those circumstances you should move on to the next test (‘centre of vital interests’). If you do not have a permanent home in either country, move on to the next but one test (‘habitual abode’).

Centre of vital interests

You will be a resident of the State with which your ‘personal and economic relations’ are closer. This is known as your ‘centre of vital interests’. ‘Personal and economic relations’ is a wide expression intended to cover the full range of social, domestic, financial, political and cultural links. The whole range of these factors must be taken into account, but considerations based upon your personal acts are given special weight.

For example, if you have a home in the UK and set up another in the other State while retaining the first, the fact that you have retained your home in the UK where you have lived, worked and where your family and possessions are, can, together with other factors, go to demonstrate that your centre of vital interests remains in the UK.

If it is not possible to determine with which of the two States your personal and economic relations are closer, perhaps because the range of factors is broadly balanced between the two, then the test will be inconclusive and you should move on to the next one.

Habitual abode

You will be a resident of the State in which you have a ‘habitual abode’. This broadly means the State in which you stay more frequently over a reasonable period. The comparison must be made over a sufficient length of time for it to be possible to determine whether residence in either of the two countries has become ‘habitual’.

If you cannot be said to have a habitual abode in either of the two countries, you should move on to the next test.

Nationality

You will be a resident of the State of which you are a national. Ultimately, since in theory all these tests may prove inconclusive (even the last, since it is possible to have dual nationality or to be a national of neither State), DTAs normally provide for the tax authorities of the two countries to settle the matter by negotiation. In practice, very few claims reach this stage.

Other forms of residence article in Double Taxation Agreements

Some of the UK's older DTAs, mainly with former colonies in the Caribbean, but also including the Agreements with Guernsey, Jersey, and the Isle of Man, define a resident of one country as a person who is resident there for the purposes of that country's tax and not resident for tax purposes in the other country. If, therefore, you are dual-resident in the UK and one of the countries listed below, you will only be able to obtain relief by way of credit for one country's tax against the other's, and do not need to complete the claim form attached to this helpsheet.

Antigua	Guernsey	Montserrat
Belize	Isle of Man	St Kitts
Brunei	Jersey	Sierra-Leone
Burma	Kiribati	Soloman Islands
Greece	Lesotho	Tuvalu
Grenada	Malawi	

Certificate of overseas residence

If you:

- are resident in the UK under domestic law, and
- are also resident in another country under that country's rules, and
- want to claim that you are a resident of the other country for the purposes of the DTA between the UK and that other country

then you need to obtain a certificate from the overseas tax authority confirming that it regards you as resident there under its domestic law for the period in question, which must be stated on the certificate.

The certificate should be attached to your completed claim on pages 8 to 11 of this helpsheet and sent with your tax return.

Special case – the United States of America

Special rules apply where the other country is the United States of America (US), if you are claiming to be a resident of the US for the purposes of the UK/US Double Taxation Convention (DTC). Statements concerning residence should not normally be sought from the US Internal Revenue Service. This is because the US operates a special system whereby it taxes its 'citizens' on their worldwide income, wherever they may be resident. US citizens are not, however, necessarily 'residents' of the US for the purposes of the DTC.

Article 4(2) of the DTC provides that a citizen or green card holder will be treated as a resident of the US for the purposes of the DTC, and thereby entitled to treaty benefits, only if two conditions are met:

- first, you must have a substantial presence (see below), permanent home or habitual abode in the US
- second, you must not be treated as a resident of a State other than the UK under any treaty between the UK and a third State.

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Substantial presence test

You will have a substantial presence if:

- you were present in the US on at least 31 days in the calendar year under test, and
- the sum total of days on which you were present in the US in the year under test, and in the two preceding years, adds up to at least 183 days. For the purposes of this calculation a day spent in the US in the year preceding the year under test counts as $\frac{1}{3}$, and a day in the year before that counts as $\frac{1}{6}$. Part days of presence in the US should be treated as if they were whole days for this purpose.

Example 1

If you spent 48 days in the US in 2011, 250 days in 2010 and 365 days in 2009, the calculation would be as follows:

Year of test - 2011 (more than 31 days spent in the US)

2011 48 days $\times \frac{1}{1} = 48$

2010 250 days $\times \frac{1}{3} = 84$

2009 365 days $\times \frac{1}{6} = 61$

193

Both conditions of the substantial presence test are passed and you will be regarded as resident in the US under that country's domestic law.

Residence tie-breaker provisions

If you are UK resident and also, by virtue of the above tests, resident in the US, you will need to determine your residence status for the purposes of the UK/US DTC by applying the tie-breaker provisions described on page 3 of this helpsheet.

Completing the claim form and declaration

First read this helpsheet and consult the relevant Double Taxation Agreement. If you then conclude that you are a resident of the Agreement partner country for the purposes of the Agreement and are therefore entitled to exemption from UK tax in respect of an item or items of income or capital gains, you should complete the claim form attached to this helpsheet. Remember to copy any figure of relief to box 20 of the *Residence, remittance basis etc.* pages of your tax return.

The first part of the claim form enables you to demonstrate that you were resident both in the UK and in the Agreement country, under those countries' respective domestic laws, for the period of your claim.

Complete either 1(a)(i) or 1(a)(ii), and (b).

Section 1(c) requires evidence of residence in the other country to be attached to the claim form. Complete 1(c)(i) if the other country in which you were resident was not the US or 1(c)(ii) if it was the US. Remember to attach the documentation indicated when sending your claim.

The second part helps you to determine which of the two countries you are regarded as resident of for the purposes of the DTA. Work through the sections 2(a) to 2(d) as indicated.

Refer to the residence article of the relevant DTA in order to see which of the tests appear and in which order. Interpretation of residence articles are often not straightforward. If you are in any doubt, consult your tax adviser or ask us for help.

If you consider that you fall to be treated as a resident of the Agreement partner country for the purposes of the DTA, and are therefore entitled to either full or partial relief from UK tax in respect of items of income or gains, complete the Declaration in the third part of claim form accordingly.

Complete either 3(a) or 3(b), depending on whether you completed 1(c)(i) or 1(c)(ii) on page 8.

Claims for full relief

Fill in 3(c) to claim full relief from UK tax where the DTA provides this for a person who is a resident of the other country for the purposes of the DTA. Where full relief is claimed and shown in the helpsheet, exclude such income or gains and any tax deducted at source from other parts of your UK tax return. Where tax has been deducted at source, enter the amount of the tax deducted in box 20 of the *Residence, remittance basis etc.* pages unless:

- the tax has already been repaid, or
- you have already made a separate claim to us for repayment of that tax.

But see the next paragraph if you also claim partial relief.

Claims for partial relief

Fill in 3(d) to claim partial relief from UK tax where the DTA provides that the rate of UK tax attributable to income received by a person who is a resident of the other country for the purposes of the DTA, is lower than the normal domestic UK rate.

For example, the interest article of a DTA might reduce the rate of UK tax applicable to interest received by such a person to 10%, whereas the UK domestic rate on interest is 20%. To claim relief for the difference between the Agreement rate and the UK domestic rate you should:

- exclude the full gross amount of the income from other parts of your UK tax return
- complete 3(d) of the claim form attached to this helpsheet and
- add the partial relief claimed to any relief claimed in 3(c) for UK tax deducted at source. Enter the total of the two amounts in box 20 of the *Residence, remittance basis etc.* pages.

This note is for claimants who receive UK dividends and who are resident in a country with which the UK has a DTA that provides for payment of tax credit on UK dividends.

Since 6 April 1999 the amount of tax credit on UK dividends has been reduced. The rate of tax credit is one ninth of the dividend paid. This means, for example, that a UK dividend of £900 carries a tax credit of £100.

Those DTAs that provide for payment of tax credit on UK dividends still give the right to claim payment of tax credit. However, if you claim payment of tax credit on a UK dividend paid after 5 April 1999, we will have nothing to pay to you. This is because from that date UK dividends no longer carry enough tax credit to cover the amount of tax which the UK retains under the terms of the DTA. (The amount retained is usually 15% of the total of the dividend plus the tax credit.)

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Example 2

UK dividend	£900
Tax credit	£100
Total	£1,000
Less 15% retained	£150

The amount retained is more than the tax credit so there will be no tax credit left to pay you.

If you were born before 6 April 1946

If you were born before 6 April 1946 enter in the 'Any other information' box, box 19 on page TR 6 of your tax return, the total gross amount of income you have entered in 3(d), column A on page 11 of this helpsheet. For example, if the total gross income is £100 enter:

'I have claimed partial relief for DTA purposes on gross income of £100 which is not included in this tax return.'

This will allow us to make adjustments required for age-related personal allowances taking into account your DTA income. If you are calculating your tax you will need the *Tax calculation summary notes*, available from the SA Orderline and at www.hmrc.gov.uk. Add the partially relieved income to the amounts entered in boxes A104 and B1 on the Working Sheet in the *Tax calculation summary notes* when calculating your income for age-related personal allowances.

Finally, please sign and date the claim form.

These notes are for guidance only and reflect the position at the time of writing. They do not affect any rights of appeal. Any subsequent amendments to these notes can be found at www.hmrc.gov.uk

If you were dual-resident in the UK and in a country other than those listed on page 4 of this helpsheet, you should complete this section to determine your residence status for the purposes of the Double Taxation Agreement. Remember that not all Double Taxation Agreements contain all the following tests and some which do, apply them in a different order. You must therefore refer to the actual text of the particular Agreement in question before completing the Declaration and claiming relief or exemption from UK tax under the terms of that Agreement.

No ☐ Yes ☐

Details of permanent home including address, whether owned or rented etc.

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No	Yes
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If 'Yes', give details of permanent home below.

Details of permanent home including address, whether owned or rented etc.

2(b) My personal and economic relations were closer:

- No ☐ Yes ☐

- _____

No ☐ Yes ☐

Include details of links with both countries, such as family and social relations, occupations, place(s) of business, political, social or cultural activities etc. in the box below. *Continue on a separate sheet if necessary.*

2(c) I had a 'habitual abode' in the UK

No

☐

Yes

☐

If 'Yes', give details of periods of time spent in the UK over the past four years in the box below

or,

I had a habitual abode in

Enter name of country

Give details of periods of time spent in the other country over the past four years in the box below

2(d) I am a UK national

No

☐

Yes

☐

I am a national of

Enter name of country

3. Declaration

Fill in 3(a) or 3(b) below, then go on to 3(c) and 3(d)

3(a) I declare that I was resident for tax purposes in the UK

and also in

for the period

to

and attach a statement from the tax authorities of

confirming that they regard me as resident there for tax purposes for that period (see 1(c)(i) on page 8).

3(b) I declare that I was resident for tax purposes in the UK and also in the US for the period

to

and attach evidence on which residence in the US is based (see 1(c)(ii) on page 8).

3(c) Having considered the provisions of the Double Taxation Agreement between the UK and

particularly with regard to residence, I claim to be a resident of

for the purposes of that Agreement.

Therefore I am:

- deducting any earnings and tax stated overleaf in arriving at the amounts entered in boxes 1 and 2 of the *Employment* pages
- excluding any other income or gains stated below from my UK tax return

on the grounds that they are exempt from UK tax under the terms of the Double Taxation Agreement above.

Type of income/gains	Period or date income/gains arose*	Amount of income/gains	UK tax deducted at source (if any)**	Article number of DTA under which exemption claimed
	/ / to / /	£	£	
	/ / to / /	£	£	
	/ / to / /	£	£	
	/ / to / /	£	£	
	/ / to / /	£	£	
	/ / to / /	£	£	

Total UK tax deducted at source

£

Include this figure in box 20 on the *Residence, remittance basis etc.* pages

* If a period is not relevant, enter the date only on the left hand side.

** Exclude any UK tax already repaid to you or included on a separate claim already made to us.

3(d) I also claim partial relief from UK tax in respect of the following items of income under the provisions of the Double Taxation Agreement between the UK and indicated below.
Therefore I am excluding this income from my UK tax return.

Nature of income (If UK dividends - see note under 'Claims for partial relief' on page 6)	Date income arose	Gross amount of income	Maximum rate of UK tax under DTA	Amount of UK tax chargeable	UK tax paid at source (tax or tax credit)	Partial relief claimed	Article number of DTA under which partial relief claimed
		A	B	A x B = C	D	D minus C	
	/ /	£	%	£	£	£	
	/ /	£	%	£	£	£	
	/ /	£	%	£	£	£	
	/ /	£	%	£	£	£	
	/ /	£	%	£	£	£	
	/ /	£	%	£	£	£	
	/ /	£	%	£	£	£	
	/ /	£	%	£	£	£	

Total partial relief claimed

£

Include this figure in box 20 on the *Residence, remittance basis etc.* pages

Please note that tax on stock dividends is not relievable under Double Taxation Agreements because it is notional tax which is not repayable.

4. Were you born before 6 April 1946?

No ☐ Yes ☐

If 'Yes', please read the note 'If you were born before 6 April 1946' on page 7.

Signature

Date DD MM YYYY