TAX RESIDENCE AND TAX TREATIES;

DO YOU KNOW WHAT CONCEPTS ARE RELEVANT?

On the face of it, "where are you tax resident?" seems to be a rather simplistic question, because a natural person may believe that if he or she pays most of their taxes in Country XX, that's the country of tax residence. Well, if only life were that simple you may say, because as we all know when tax authorities get involved, the discussions and the questions quickly become complex; the rules and regulations ever more testing, and the implementation and execution increasingly aggressive.

The learning objective of this thought piece is to shed light on some of the principal determinants that tax authorities use in various jurisdictions around the world. When you get to the end of this discussion, you will detect common threads underpinning decisions, along with country-specific details which may well be unique to a single jurisdiction.

Common Tests and Tax Residency Indicia

Firstly, let's focus on the elements which may be indicative of a natural person's country of tax residence, starting with an important and almost universally employed test:

1. Physical Presence (Days)

One of the most important determinants in establishing tax residence, is the number of days a person is physically present in a country during that country's tax year. For many countries, this is **typically 183+ days but some countries use a lower day count**.

Usually, but not always, included in this calculation are the days you arrive into or depart from that country, and if you are there at midnight, that day may count too. While there are usually exceptions to every rule, the tax case following at the end of this article potentially gives rise to a different interpretation.

The individual countries tax residence rules are complex but by way of a very broad indication of what may be relevant when it comes to the "days count" the following examples will set the scene:

Country/Region	Headline day count tests (in reality it is much more complicated)
USA	**183 days** (weighted 3-year) OR green card holder
UK	**183+** days = automatic; fewer days depending on which of the automatic or sufficient ties tests apply
Canada	Significant ties (home, spouse, dependents) OR **183+** days
Australia	Qualitative "resides" OR **183+** days with intent
Germany	habitual abode without strict continuity OR permanent dwelling
France	One of multiple factors OR **183+** days
UAE	**183+** days OR other qualifying criteria
Singapore	**183+** days OR employed with specific conditions
Spain	**183+** days OR economic/vital interests
Portugal	**183+** days OR habitual dwelling on Dec 31
Malta	**183+** days OR regular, recurring presence with intent
Saudi Arabia	**183+ days** in a taxable year OR Permanent residence **+ ≥30 days** in year
Qatar	**183+ days** (consecutive or intermittent)
Kuwait	None
Bahrain	None
Lebanon	**183+ days in any 12-month period**

2. Permanent Home

The location of a person's primary dwelling has a significant influence on determining the country of tax residence. If a property that is owned or tenanted is **available all year round for the person's continuous use**, a tax authority will likely use this indicator in its assessment of a connection to that country.

3. Habitual Abode and Domicile

While this concept is more likely relevant when attempting to break a tie when two or more countries deemed the one person to be tax resident in their respective countries, it is relevant to determining tax residence on a solo basis.

Linked closely with the location of the person's home, is the question of where **the person** regularly and frequently lives. 'Habitual Abode' refers to the place where the person regularly lives. For some Commonwealth countries, 'Domicile' is relevant and broadly is defined to mean a permanent legal connection with intent to remain indefinitely. Domicile used to be relevant for the UK. **Intent** and **physical presence** are factors as well.

In the UK, the Statutory Residence Test takes account of any **pattern** of habitation over a period of time especially if the person's residence is being tested against the substantial ties and days criteria. In the USA, a non-citizen will find that a weighted 3-year formula is used to calculate **substantial presence**, looking at the current year and the previous 2 years. A valid Green Card can be considered a typical threshold determiner for the USA.

4. Center of Vital Interests.

This focuses on the location at which the natural person's personal and economic ties are the closest. Where is the person's regular **employment** located and where is the salary or income paid? These are typical questions when considering where the center of vital interests lies.

Another vital interest is the location of the tested person's **family**. The location of the spouse or civil partner is a factor here. Where are they based? Where do they habitually reside, and where do the kids go to school?

No examination of a person's vital interests is complete without looking at the person's **assets**; what are the assets and where are they held? What and where are the person's economic ties? Items such as bank accounts, investments and business interests are factors here.

Tax authorities employ a qualitative assessment of all these vital interests as part of their Residency Determination process.

5. Civil and Legal Ties

In completing a picture of a natural person's connection to one place or another, civil and legal factors may contribute substance. Is the person registered to legally vote and if so in which country? Does the person have a driver's License issued by the country in question? Is a valid Identification card or passport issued by that country? In which country are the natural person's advisers, and medical practitioners located.

6. Social/Personal Ties

There are several 'soft' factors which provide an indication of whether the natural person is embedded into the social fabric of a place or location. Membership of sports or hobby clubs can demonstrate this, as can memberships of professional associations or societies. Cultural affiliations such as regular attendance at the same church, temple or mosque is another indicator as are many other activities which could be best described as being part of a social network.

7. Intention

A subjective factor at best but one which nonetheless can contribute to a natural person's connection to a location. If the person's stated intent is to reside in country XX and the actions are consistent with that intent, then this must be part of the residency calculation. While intention alone is rarely decisive, in several jurisdictions (notably common-law systems), intention supported by conduct can establish tax residence even with limited physical presence.

8. Summary

Adding into the table now the specific country tests, a more rounded picture begins to emerge even if the table is only showing the high-level requirements. There are significant traps for the unwary and detailed checking is always recommended!

Country/Region	Primary Test(s)	Key Thresholds
USA	Substantial Presence Test OR Green Card Test	**183 days** (weighted 3-year) OR green card holder
UK	Statutory Residence Test (automatic UK/overseas residence + ties)	**183+** days = automatic; fewer days depending on which of the automatic or sufficient ties tests apply
Canada	Residential ties	Significant ties (home, spouse, dependents) OR **183+** days
Australia	Resides test OR domicile test OR 183-day test	Qualitative "resides" OR **183+** days with intent
Germany	Habitual abode OR dwelling	habitual abode without strict continuity OR permanent dwelling
France	Home, professional activity, or centre of economic interests	One of multiple factors OR **183+** days
UAE	Physical presence	**183+** days OR other qualifying criteria
Singapore	Physical presence OR employment	**183+** days OR employed with specific conditions
Spain	Physical presence OR centre of vital interests	**183+** days OR economic/vital interests

Portugal	Habitual residence	**183+** days OR habitual dwelling on Dec 31
Malta	Physical presence OR permanent place of residence	**183+** days OR regular, recurring presence with intent
Saudi Arabia	Physical presence & Permanent home test (Availability of a permanent place of residence)	**183+ days** in a taxable year OR Permanent residence **+ ≥30 days** in year
Qatar	Physical presence & Habitual/Permanent home in Qatar OR Qatari Nationality	**183+ days** (consecutive or intermittent)
Kuwait	**No statutory residency defined**	None
Bahrain	**No residency defined for PIT purposes**	None
Lebanon	Physical presence & Permanent home available for taxpayer or family Business presence in Lebanon	**183+ days in any 12-month period**

Summary of the main factors and their relevance

Here is a summary of the Key Factors involved when making a decision about where someone is tax resident, together with their weight and importance.

Factor Category	Specific Indicators	Weight/Importance
Physical Location	• Days present • Frequency of visits • Duration of stays	High often determinative
Home and Family	• Location of spouse/partner • Dependent children's location • Permanent home ownership/rental	High especially for tie-breakers
Economic Ties	• Employment location • Business interests • Investment/asset location • Bank accounts	Medium-High

Social/Personal Ties	• Club memberships • Professional associations • Cultural/religious affiliations • Social network	Medium
Civil/Legal Ties	• Voter registration • Driver's license • ID documents • Immigration status	Medium
Intention	• Stated intent to reside • Actions consistent with intent	Medium, but subjective

OECD Tiebreaker rules (When Resident in two or more Countries)

If a natural person satisfies the residence test in two or more countries, then there may be a means of determining in which country the person is tax resident. This is not normally a domestic rule option but one found in a double tax agreement entered into by the two or more countries arguing the person to be tax resident.

The usual tie breaker hierarchy in a tax treaty is:

Order	Tie-Breaker Test	Application
1st	Permanent home available	Country where the person has his permanent home
2nd	Center of vital interests	Where then personal and economic relations are closer
3rd	Habitual abode	Where the person habitually resides
4th	Nationality	The person’s citizenship / Passport
5th	Mutual Agreement	Both jurisdictions concur

Two recent residence tax cases

The following recent tax cases demonstrate not only the increasingly aggressive approach of Tax Authorities worldwide, but how the Residency indicators we have discussed previously, are employed and interpreted in legal proceedings including in a double tax treaty instance.

Michael Parker v HMRC, a 2026 UK tax case

Mr Parker was told by HMRC that the days he believed he was "in transit" in the UK during international travel, were considered by them to be days he was not in transit leading to him being deemed a tax resident in the UK under the statutory residence test. The Tax Tribunal was asked to consider arguments regarding the concept of a 'passenger' in transit at the airport, as opposed to that of a 'resident' carrying out day-to-day work and leisure activities within the country.

The Tribunal adopted a purposive approach to the concept of a 'passenger', confirming that individuals can be treated as being "in transit", even where their journey involves separate tickets, meeting family members for onwards travel or an overnight stay near the airport.

The Tribunal also clarified the scope of "exceptional circumstances" because days which are exceptional may not count as days in the person's calculation. Mr. Parker remained in the UK overnight due to a last-minute cancelled flight because of severe weather. This day was held to be exceptional because the bad weather prevented his departure from the UK in a real and practical sense. The Tribunal focussed on what alternative courses of action were realistically possible at the time, and how Mr Parker had no means to mitigate this.

The Tribunal held that the four disputed UK days (ie one was within the 'exceptional circumstances' exception, whilst a further three fell within the 'transit' exception) were outside the definition used for counting days in the statutory residence test. Consequently, Michael Parker's UK day count therefore fell below the threshold, which allowed him to meet the third automatic overseas test. He was subsequently treated as a non-UK resident for the 2019–20 tax year.

N° 24PA02106 CAA de Paris 05/11/2025, a 2025 French tax case

Two French taxpayers Mr and Mrs. CA believed they were Dubai tax residents in 2016 and 2017 until they were subject to a French tax audit following which, the Direction Générale des Finances Publiques concluded they were both French tax residents. The Administrative Court of Appeal found Mr and Mrs CA had their domicile in France; the relevant facts were:

1. Lease receipts signed by a company were issued solely in the name of Mr. CA.
2. A contract had been signed with a French energy supplier for an active meter to be inserted into the dwelling, and the bills were issued in the names of family members.
3. Mr CA was registered with the French social security system and received reimbursements from that system for medical expenses, deposited into a French bank account, during the years in question.
4. the taxpayers were married in France in 2016
5. Mr CA stated on social media that he lived in Paris

The Court acknowledged that Mr and Mrs CA were tax residents of both Dubai and France because Mr CA had been a co-owner of an apartment in Dubai since January 2016 and had been a tenant since September 2017, but the Court held the couple had closer personal and economic ties to France which made them French tax resident because**:**

1. They married in France.
2. Mr CA's company headquarters and the source of its' revenue was located in France.
3. Mr CA actively managed the French company.
4. The Court could find no similarly strong evidence of an attachment in Dubai

The Court also held that having a **foreign tax residency certificate (e.g. Dubai)** is not enough to ceded treaty tax residence to the UAE because tax residence depends on **factual ties** (centre of personal and economic interests).

The judges therefore ruled that Mr and Mrs CA could not be considered UAE tax resident under the terms of the UAE-France Double tax agreement. The French Tax Authority had identified three factors which the French citizens have fallen foul of when believing they were resident in Dubai:

1. **The family remained in France:** If the spouse and children remained in France, it is highly likely the gentleman's tax residence will be considered France.

2. **Economic Interest:** They maintained in France significant investments, bank accounts, or companies in France.

3. **Active Working Days:** They conducted a professional activity in France, **<u>even if not physically present for 183 days.</u>**

   (This case gives rise to implications for Digital Nomads and other people who work online, but that's for another article – keep an eye on our Learning Centre!**)**

Tribunal Supremo, Spain. Appeal No. 4023/2023, 15 July 2025.

The core issue in this case was that a taxpayer claimed tax residence abroad (supported by a foreign tax residence certificate), while the Spanish tax authorities argued that the individual was tax resident in Spain.

The Spanish Supreme Court rulings were that:

1. A foreign tax residence certificate must be respected: Spanish authorities cannot simply ignore it.

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2. It does NOT automatically win the case if the person also meets Spanish domestic residence criteria, in which case a conflict of residence exists.

3. The conflict must then be resolved using tax treaty tie-breaker rules such as permanent home, centre of vital interests, habitual abode and Nationality.

4. A tax residency certificate alone is NOT sufficient but equally, Spain cannot ignore it arbitrarily because the final answer depends on where the person's real life is centred.

For more information regarding real practical international tax issues, please get in touch.

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