



FIELD COURT TAX CHAMBERS

UK RESIDENCE – EXCEPTIONAL DAYS¹

There has been widespread concern about the meaning of ‘exceptional circumstances’ for the purpose of the statutory residence test and whether HMRC would relax the day count rules because of the coronavirus.

There is not much help from the legislation. Under the statutory residence test, when counting the number of days spent in the UK, Sch 45 para 22(5) says you can exclude those days on which you would not be in the UK but for exceptional circumstances beyond your control that prevent you from leaving the UK, and you intend to leave the UK as soon as circumstances permit.

Examples of circumstances that may be ‘exceptional’ are:

- a national or local emergency such as war, civil unrest or natural disaster;
- a sudden or life-threatening illness or injury.

That is all, Sch 45 para 22(5) says. But as these are just examples, there is clearly a wider set of circumstances which would be exceptional, although para 22(6) provides a statutory limit of 60 days – whatever the circumstances.

The guidance given by HMRC in its manuals is pretty strict too: the exceptional circumstances have to arise while you are in the UK and do not apply if you come here voluntarily (for example, if you come for medical treatment and are then stuck here).

Whether that is a fair interpretation is a matter of debate. This will no doubt be tested before too long in the context of the coronavirus when people have come to the UK (as advised by the Foreign Office) and are then unable to leave or are in quarantine.

HMRC take the view that birth, death, marriage and divorce are not exceptional circumstances. (Seriously? I would have thought that under any circumstances birth, death, marriage and divorce are clearly exceptional. How often do you get born or die and although there is a lot of divorces going on, I think that most people only get married once).

On a strict interpretation of the legislation, it would be very difficult to satisfy the requirements at all. Unless you are in prison or in a coma, it is very unlikely that you will be prevented from leaving the UK. Even if there are no flights, you could always get on the Eurostar to France or Belgium, or a ferry to lots of places. The rule is not that you cannot get home or where you want to go; the rule is that you are prevented from leaving the UK.

Relating all this to the coronavirus, the only relevant circumstance would seem to be if somebody has tested positive and is in quarantine. You would think that somebody arriving here and being quarantined would clearly be prevented from leaving, and should satisfy the test. Unfortunately not, according to the manuals. Nor would someone satisfy the test if they

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are here but cannot go home because their home country is not allowing anybody in or is an unacceptably high-risk area.

However, the cavalry in the shape of HMRC has come to the rescue here, just as they did in 2010 when it said that the flight chaos caused by the volcanic ash from Iceland would be treated as an exceptional circumstance for anybody who planned to leave the country but was unable to do so. That was of course under the previous regime which was purely concessionary anyway and not subject to the constraints of specific legislation.

On 9 March, HMRC issued a statement saying that if you:

- ‘(a) are quarantined or advised by a health professional or public health guidance to self-isolate in the UK as a result of the virus;
 - (b) find yourself advised by official government advice not to travel from the UK as a result of the virus;
 - (c) are unable to leave the UK as a result of the closure of international borders; or
 - d) are asked by your employer to return to the UK temporarily as a result of the virus,
- these circumstances will be treated as exceptional.’

Although this statement does not cover all circumstances (and in particular those returning to the UK otherwise than at the request of their employer), it will be an enormous relief for many people whose careful day count planning would be completely wrecked by the consequences of the virus.

It is to be hoped that if somebody is trapped here but does not quite fit the terms of this statement, HMRC will be adopting its famous light touch. The financial consequences are likely to be quite serious enough without adding to their problems by getting a great big tax bill from being forced to be UK resident.

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