

COUNTING THE DAYS - UK RESIDENCE, EXCEPTIONAL CIRCUMSTANCES AND COVID-19



There are more important concerns than personal tax at the moment but as we move towards 5 April, and the end of the UK tax year, some individuals will be worried that an extended stay in the UK due to coronavirus could prejudice their tax position.

UK tax residence, which governs liability to UK tax, is based on the Statutory Residence Test (SRT) and many of the “rules” which determine residence contain a day count. For example, an individual will be automatically resident in the UK if they spend at least 183 days in the UK in a tax year.

As a consequence, there are a lot of “day counters”, either because they are near their limit of “permissible days” in the UK or because they are seeking to leave the UK to become non-resident from 6 April 2020. Such individuals will have been concerned that their enforced presence in the UK could prejudice their tax position.

Exceptional Circumstances

The SRT provides that a day does not count if an individual’s presence in the UK at the end of that day is due to “exceptional circumstances” beyond the person’s control which prevent him or her from leaving the UK.

On 19 March 2020 HMRC recognised that coronavirus can constitute “exceptional circumstances”. However, HMRC also stressed that each taxpayer’s case must depend on his/her particular facts and circumstances. HMRC have not therefore gone so far as to say that all days in the UK at the moment are exceptional. Rather, for an individual to benefit from the “exceptional circumstances” he or she would have to fall within one of the following categories:

- they are quarantined or advised by a health professional or public health guidance to self-isolate in the UK as a result of the virus;
- they find themselves advised by official Government advice not to travel from the UK as a result of the virus;
- they are unable to leave the UK as a result of the closure of international borders; or
- they are asked by their employer to return to the UK temporarily as a result of the virus.

PRIVATE CLIENT
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March 2020

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If an individual's continued presence in the UK does not fall within the above categories, then there can be no assurance that a day in the UK will not count for residence purposes. HMRC have said they will look sympathetically at individual cases but individuals should seek to collect strong factual evidence, of factors beyond their control, to support their case. HMRC also state that "events resulting from the impact of the virus are changing rapidly" and that as a consequence "their guidance may change at short notice as situations change".

The Small Print

It is important to remember too that HMRC have previously published detailed guidance on the consequence of a day being exceptional. This guidance is to be found in Appendix B to HMRC's Guidance Note (RDR3) on the SRT. This Guidance sets out where "exceptional circumstances" can and cannot be taken into account for the purpose of the various counts of presence in the UK under the SRT.

For example, while an "exceptional" day will not count towards the 183 day test referred to earlier, it may (in HMRC's view) count towards some of the SRT tests based on the number of days in which an individual can work in the UK.

Moreover, the SRT provides that the maximum number of days an individual can claim as "exceptional" in a tax year is 60.

HMRC's relaxation for coronavirus does not remove either of the above restrictions, at least at present, and so individuals will still need to look at their positions closely.

Conclusion

HMRC's statement that coronavirus is "exceptional" is welcome but individuals must note the limitations on its scope and not just assume that their day counting concerns are automatically ended by the HMRC statement. Each case must be looked at individually.

Please contact your usual Rawlinson & Hunter contact should you require further information or any assistance with the above.