



RUDGE REVENUE REVIEW

ISSUE XIII

THE PROPOSED STATUTORY RESIDENCE TEST

24th October 2012

STATUTORY RESIDENCE TEST

The Government intends to introduce a statutory definition of individual tax residence for the purposes of Income Tax, Capital Gains Tax and, so far as the residence status of an individual is relevant to them, Inheritance Tax and Corporation Tax which will have effect from 6th April 2013 onwards. Draft legislation was published in a consultation document in June 2012 (the “June Condoc”). Revised draft legislation will be published in the Autumn and will be subject to a further consultation period of 12 weeks.¹ Although the rules will change in some areas, it is unlikely that they will change significantly. This Review illustrates how the rules, as set out in the June draft legislation, will apply to determine whether an individual coming to live in the UK in 2013/2014 will be tax resident in that year. It does so by taking the example of Herr Flick and applying the proposed rules to his situation.

EXAMPLE

Herr Flick is a wealthy German who has not previously spent more than a few weeks in the UK in any fiscal year and has never been UK resident in any fiscal year before 2013/2014. Until his move on 4th January 2014 (see below) Herr Flick is based for most of the time in Brussels and resides in a large Belgian house (the “Belgian Residence”).

Herr Flick is a widower and has a son, Franz, who is 13 years old. Franz has always lived in Belgium and has been in Belgium continuously from before the 6th April 2013 until going to Eton College on the 4th September 2013.

Herr Flick also owns a residential property in Spain (the “Spanish Residence”) at which he stays for two months in May and June 2013.

He decides that he will live in the UK for a few years to be closer to Franz whilst he is at school.

He therefore makes three visits to London, staying on each occasion at the same hotel, whilst he searches for a new house. During these visits he spends midnight in the UK on the listed days except on the day of departure:-

- (i) 1st July 2013 – 5th July 2013;
- (ii) 20th July 2013 – 26th July 2013;
- (iii) 8th August 2013 – 11th August 2013;

On the 1st December 2013, Herr Flick purchases a residential property in Kensington (the “London Residence”), with vacant possession. After minor refurbishment and redecoration he moves into the London Residence on the 4th January 2014 and remains in the UK for the rest of the tax year.

¹ June Condoc para 6.6

The Belgian Residence is let on a one year lease to an unconnected third party on 1st April 2014.

Franz's time (in 2013/2014) is spent as follows:-

- (a) 179 days in Belgium.
- (b) 9 days with his maternal Aunt at her residence in the UK in periods in which boys are allowed to be away from Eton in the Michaelmas term.
- (c) 13 days with his father at his London Residence during periods in which boys are allowed to be away from Eton in the Lent term.
- (d) 9 days with his father at his London Residence during the Lent and Michaelmas vacations.
- (e) 155 days at Eton.

Herr Flick is substantially retired but he has a number of self-employed consultancies on which he spends about ten hours per week on average working from wherever he happens to be based at the time.

THE TEST FOR RESIDENCE IN THE UK

Under the draft legislation an individual will be resident in the UK for a tax year if:-

- (a) the Automatic Residence Test is met for that year; or
- (b) the Sufficient Ties Test is met for that year.²

THE AUTOMATIC RESIDENCE TEST

The Automatic Residence Test is met for a year if an individual meets:-

- (a) at least one of the Automatic UK Tests; and
- (b) none of the Automatic Overseas Tests.³

THE AUTOMATIC OVERSEAS TESTS

We shall look first at whether Herr Flick meets any of the three Automatic Overseas Tests.

² Para 3. All references in this Review are to the Schedule published in the June Condoc entitled "Statutory Residence Test" unless otherwise stated

³ Para 5

The First and Second Automatic Overseas Tests

These tests ask whether the individual has spent less than a certain number of days in the UK in the fiscal year concerned.⁴ That number varies according to whether the individual has been resident in the UK in any of the three preceding tax years (the First Automatic Overseas Test)⁵ or not (the Second Automatic Overseas Test).⁶

Where an individual was resident in the UK for one or more of the three tax years preceding the relevant year and has spent less than 16 days in the UK in the relevant year (this has been increased from 11 days despite representations from the professional bodies who considered that the threshold should be increased to 31 days) he will not be UK resident.

Where an individual was not resident in the UK for one or more of the three tax years preceding the relevant year and has spent less than 46 days in the UK in the relevant year he will not be UK resident.

Herr Flick has not been resident in the UK in any of the three years preceding 2013/14 and so he does not meet the First Automatic Overseas Test. He will meet the Second Automatic Overseas Test if he spends less than 46 days in the UK in the fiscal year 2013/14.⁷

A day counts as a day spent by an individual in the UK if that individual is present in the UK at the end of that day with two exceptions.⁸ The June Condoc says that “an individual will continue to be treated as being in the UK on any day when they are in the UK at midnight at the end of that day”⁹ which rather implies that there can be days the end of which is not midnight but it is likely that the Courts will construe the end of a day to be midnight on that day.

The first of the two exceptions is where the individual arrives in the UK as a passenger on one day and leaves the UK the following day and between arrival and departure he does not engage in any activities that are to a substantial extent unrelated to his passage through the UK. The second case is where the individual would not be in the UK at the end of that day but for exceptional circumstances beyond the individual’s control that prevent him from leaving the UK and he intends to leave the UK as soon as those circumstances permit. Para 12(5) then provides that:-

“Examples of circumstances that may be ‘exceptional’ are national or local emergencies such as war, civil unrest or natural disasters and a sudden or life-threatening illness or injury.”

It is not clear what effect this provision has. It makes clear that war, civil unrest etc may constitute exceptional circumstances but that surely did not need saying. Will

⁴ Para 6(1) – (3)

⁵ Para 6(2)

⁶ Para 6(3)

⁷ Para 6(3)(b)

⁸ Para 12(1)

⁹ June Condoc para 3.150

the Courts construe exceptional circumstances as only being those circumstances which are analogous to the specific circumstances listed? One cannot say with certainty.

The legislation also introduces a statutory limit of 60 days that can be regarded as not spent in the UK as a result of such exceptional circumstances. It is irrelevant whether the same or different exceptional circumstances exist.¹⁰ This limit is particularly harsh because if someone is in the UK for more than 60 days because of exceptional circumstances beyond their control it will be because something is seriously wrong, for example a serious medical condition.

The Government have said that they are concerned at the possibility of the manipulation of the midnight rule by some people who might depart from the UK before midnight on a regular basis. They are considering introducing a rule which will only apply to people who are present in the UK on a large number of days without being in the UK at midnight. Such a provision is not likely to be necessary as it seems unlikely that very many people will be travelling in and out of the UK for most days of the year simply in order to manipulate their residence status.

Herr Flick is present at midnight in the United Kingdom on 105 days so he plainly does not meet the Second Automatic Overseas Test.

The Third Automatic Overseas Test

The Third Automatic Overseas Test will be satisfied where an individual leaves the UK to carry out full-time work abroad for at least one year, is present in the UK for less than 91 days in the relevant year and has spent less than 21 days working in the UK in that year. A working day is defined as any day on which 3 hours or more of work is carried on. In response to representations the Government is consulting on whether the 21 days should be increased to 26 or the number of hours required to constitute a working day be increased to 5 hours.¹¹ Without looking at that definition in detail it is clear that this Herr Flick does not satisfy this test.

So Herr Flick meets none of the Automatic Overseas Tests. He will meet the Automatic Residence Test, therefore, if he meets at least one of the Automatic UK Tests.

THE AUTOMATIC UK TESTS

The 183 Day Test

This test is satisfied if an individual spends at least 183 days in the UK in the fiscal year concerned.¹² Herr Flick does not meet that condition.

The Only Home Test

This test is satisfied where an individual's:-

¹⁰ Para 12(6)

¹¹ Para 6(4)

¹² Para 5(3)

“... only home is in the UK (or, if [he] has more than one home, all of them are in the UK) and that remains the case for -

- (a) a period of at least 91 days, all or part of which falls within [the] year ... or
- (b) two or more separate periods within [the] year ... that together add up to at least 91 days.”¹³

One of the great causes of uncertainty in the application of the proposed legislation, which has been strongly criticised by the professional bodies, is the decision to use the concept of a ‘home’ as a key ingredient of this test.¹⁴ It is a word which can bear a wide range of meanings with small areas of overlap between them. The Shorter Oxford English Dictionary gives nine major areas of meaning for ‘home’ used as a noun. They make clear that a home is not necessarily a building.¹⁵ In their Consultation Document, HMRC say:-

“The Government has carefully considered whether to further define in legislation what is meant by a home. It has concluded that it will be extremely difficult to provide a precise definition given the wide variety of living patterns adopted by individuals and their families. Any detailed definition would run the risk of inadvertently including or excluding certain individuals from the test because of the way in which they chose to live their lives. The Government is confident however, that the vast majority of people will know where their home is and whether that home is in the UK or overseas.”¹⁶

How one is to identify a concept which Government, with all of its resources, is unable to define is unclear.

The only help that the legislation gives in defining a ‘home’ is provided by para 14:-

- “ (1) A ‘home’ may be any place (including a vehicle or vessel).
- (2) A place may be [a person’s] home whether or not ... [he]... holds any estate or interest in it (and references to “having” a home are to be read accordingly).
- (3) A place that was [a person’s] home does not continue to count as such merely because ... [he] ... continues to hold an estate or interest in it after ... [he] ... has moved out.”

This section only adds to the confusion. It does not provide, for example, that a home must be a place and in ordinary English usage we often speak of our home as a large area, such as a county, region or country and sometimes as one which is not precisely delineated for which the description a ‘place’ is inapt. How can a vehicle or vessel be a place?

¹³ Para 5(4)

¹⁴ It reappears in the Sufficient Ties Test as we shall see

¹⁵ They include “a collection of dwellings, a village, a town”; “the country of one’s origin”; “a place or region to which one naturally belongs or where one feels at home”

¹⁶ June Condoc para 3.87

One can probably be confident that the Belgian Residence was Herr Flick's home until 4th January 2014. Similarly, one can be confident that the London Residence was his home from 4th January 2014 until after the end of the fiscal year. Did the Belgian Residence remain his home until it was let on 1st April 2014? Was the London Residence Herr Flick's home in the period from its purchase with vacant possession on 1st December 2013 until he moved into it on 4th January 2014?

Is the Spanish Residence a home? Can a property in which one lives only for two months of the year be a home?

For the purposes of reaching a conclusion on Herr Flick's situation we shall assume that the Belgian Residence ceases to be his home on the 1st April 2014, that the London Residence begins to be his home on 4th January 2014 and that the Spanish Residence is his home throughout.

On that basis, the Second Automatic Residence Test is not met. That is because there is no period during which the London Residence is Herr Flick's only home because throughout the period when it is his home the Spa Residence is so also and that home is not in the UK. We have seen, however, that it is very uncertain whether or not the Spanish Residence would actually be Herr Flick's home. If it were not, then he would meet the Second Automatic Residence Test because although the London residence would be his sole residence only for the final five days of the fiscal year (when the Belgian Residence ceased to be his home) those five days would form part of a period (part of which falls within 2013/2014) of at least ninety one days when it was his sole residence.

The Full-time Working in the UK Test

This test concerns full-time work in the UK (the "FTWUK Test").¹⁷ The FTWUK Test is satisfied if:-

- (a) an individual works full-time in the UK for a period of 276 days (9 months although the Government is consulting on extending this to 12 months);
- (b) during which he has no significant breaks from work;
- (c) all or part of that period falls within the relevant tax year; and
- (d) more than 75% of the total number of days in the relevant year when he does more than 3 hours work per day are days when he does that work in the UK.¹⁸

Following representations from the professional bodies, 'work' and 'working' includes both employed and self-employed work. The legislation provides that a significant break from work is a period of 31 days or more where there is no day on which the individual does more than 3 hours work in the UK and the reason for his absence is not because he was on annual leave or sick leave.¹⁹

¹⁷ Para 5(5)

¹⁸ Para 5(5)

¹⁹ Para 5(6)

Full-time work is defined in para 17 as 35 hours per week or more on average over the period. The length of the period may be reduced to take account of reasonable amounts of leave taken during the period and periods of sick leave when an individual cannot be reasonably expected to work as a result of injury or illness. A number of respondents had objected that there are professions where the normal working week is less than 35 hours but the limit has not been changed.²⁰

Paragraph 15 provides that an individual:-

“is considered to be ‘working’ (or doing ‘work’) at any time when [he] is doing something –

- (a) in the performance of duties of an employment held by [him]; or
- (b) in the course of a trade carried on by [him] (alone or in partnership).”²¹

Time spent travelling will count as time spent working if the cost can be deducted from earnings or profits or the individual does something else during the journey which would itself count as work; for example making telephone calls or emailing people.²² Unhelpfully, the legislation provides that “Work is done where it is actually done” except where work is done in the course of travelling.²³ Work done in the course of travel by sea, air or the Channel Tunnel from overseas to the UK or from the UK to overseas is assumed to be done overseas.²⁴ Travel starts at the ‘embarkation point.’ It is not clear whether that is when an individual reaches the airport, he passes through customs or he boards his plane.

An individual works ‘full-time’ in the UK for a period if the number of hours per week that he works there, on average across the period, is thirty five or more.²⁵ Herr Flick’s only work is his work on a self-employed basis in respect of his consultancy appointments and on those he spends an average of only ten hours per week. He will not, therefore, meet the Third Automatic UK Test.

The Death in the Year Test

This test is satisfied if:-

- (a) an individual dies in the relevant year;
- (b) he had, for each of the previous three tax years, been resident in the UK because he had satisfied the Automatic Residence Test; and
- (c) when he died his normal home was in the UK and the preceding tax year would not be a split year for the individual even on the assumption that he was not resident in the UK in the relevant tax year. This does seem a rather cruel test.

²⁰ June 2012 Condoc, para 3.46

²¹ Para 15(1)

²² Para 15(4)

²³ Para 16(1)

²⁴ Para 16(2)

²⁵ Para 17

Conclusion on the Automatic Residence Test

Herr Flick does not meet the Automatic Residence Test.

THE SUFFICIENT TIES TEST

The Sufficient Ties Test is met for a year if:-

- (a) the individual concerned meets none of the Automatic UK Tests and none of the Automatic Overseas Tests; but
- (b) he has sufficient UK ties for that year.²⁶

The number of UK ties which are 'sufficient' for this purpose vary according to whether or not the individual concerned was resident in the UK for any of the previous three tax years and according to the number of days that he spends in the UK in the tax year concerned.²⁷

Days spent in the UK in the relevant tax year	Number of ties that are sufficient where an individual has been UK resident in the 3 years preceding the relevant year	Number of ties that are sufficient where an individual has not been UK resident in the 3 years preceding the relevant year
More than 15 but fewer than 46	At least 4	
More than 45 but fewer than 91	At least 3	All 4
More than 90 but fewer than 121	At least 2	At least 3
More than 120	At least 1	At least 2

Special rules apply if an individual dies during the relevant year.

We have seen that Herr Flick spends 105 days in the UK in 2013/2014 and that he has not previously been resident in the UK. Because of this, the number of ties which would be sufficient is three.²⁸

The legislation differentiates between what is a UK Tie on the basis of whether or not an individual was resident in the UK in one or more of the three tax years preceding the relevant year. If so, the following are UK Ties:-

²⁶ Para 7(1)
²⁷ Paras 8 & 9
²⁸ Para 9

- (a) a family tie;
- (b) an accommodation tie;
- (c) a work tie;
- (d) a 90-day tie; and
- (e) a country tie.

If that is not the case the Country Tie is omitted and so only the following count as UK ties:-

- (a) a family tie;
- (b) an accommodation tie;
- (c) a work tie; and
- (d) a 90-day tie.

Because Herr Flick was not resident in the UK in any of the three tax years preceding 2013/2014, there are four (rather than five) possible ties which might apply.²⁹

The Family Tie

An individual has a family tie for a year if in that year a 'relevant relationship' exists at any time between that individual and another person and that other person is someone who is resident in the UK for that year.³⁰

There is a relevant relationship at any time between an individual and another person if at that time:-

- (a) the individual has a husband or wife or civil partner and they are not separated at the time;
- (b) the individual and another person are living together as husband and wife, or if they are the same sex, as civil partners; or
- (c) the individual is a parent of a child under the age of 18. In response to representations, this rule will not apply where the individual sees the child in the UK on fewer than 61 days in total in the relevant year. A day counts when the individual sees the child in person for all or part of that day (para 20(4)).³¹

It will be noticed that read literally each of these conditions can be satisfied by reference to a person other than the person with whom one needs to decide whether

²⁹ Para 19(3)

³⁰ Para 20(1)

³¹ Para 20(2)

a relevant relationship exists. So, for example, on a literal reading if an individual has a spouse he will have a relevant relationship with every other person in existence. This drafting error has been pointed out to HMRC and is expected to be corrected before the legislation is enacted. For our purposes we shall assume that a relevant relationship will only exist with a person if that person falls within para 20(2).

In 2013/2014 a relevant relationship existed between Herr Flick and Franz. In order to decide whether a Family Tie exists, therefore, the residence of Franz needs to be considered. For this purpose only, in determining the residence of the persons with whom Herr Flick has a relevant relationship one ignores a family tie based on the fact that the family member has a relevant relationship with Herr Flick.³²

Franz satisfies the First Automatic Residence Test because he spends 186 days in the UK in the year. For the purpose of deciding whether a person with whom a taxpayer has a relevant relationship is resident in the UK, however, a special rule applies. A family member who satisfies certain conditions is to be treated as being not resident in the UK for the year if the number of days he spends in the UK in the part of year outside term time is less than twenty one.³³ The conditions are that the family member is:-

- (a) a child of the person whose residence is to be decided by reference to the Family Tie Test who is under the age of 18;
- (b) in full-time education in the UK at any time in the year concerned;
- (c) is resident in the UK for that year but would not be so resident if the time spent in full-time education in the UK in that year were disregarded.³⁴

For this purpose reference to the time spent in full-time education in the UK is to the time spent there during term time. That would appear to suggest that all time during term time is time spent in full-time education for this purpose but what is 'term time'? Are half terms and leave week-ends part of term time? The Shorter Oxford English Dictionary includes amongst the meanings given for the noun 'term':-

"each of the periods (usu. three or four in the year) appointed for the sitting of Courts of Law, or for instruction and study in a University or School."

A school term, therefore, appears to include periods of half term holidays and weekends but not to include the long Christmas, Easter and Summer Holiday periods.

The June Condoc says that:-

"... weekends or other occasional days during term-time spent away from the educational establishment will not be taken into consideration."³⁵

³² Para 21(2)

³³ Para 21(3)

³⁴ Para 21(4)

³⁵ June Condoc para 3.130

In informal conversations with HMRC spokesmen, however, they seemed to indicate that they do not consider half term holidays to be part of term time. Whatever is HMRC's view, in the author's opinion term time includes half terms and weekends. On this basis, disregarding the time which Franz spends in the UK during term time, he spends only 9 days in the UK in 2013/14 and would thus have satisfied the Automatic Overseas Test on this hypothesis and been not resident in the United Kingdom.

He will then be treated as not being resident in the United Kingdom for 2013/2014 for the purpose of deciding whether Herr Flick has a Family Tie if the number of days he spends in the UK in 2013/2014 outside term time is less than 21. He satisfies that condition.

Herr Flick, therefore, does not have a Family Tie.

The Accommodation Tie

An individual will have an Accommodation Tie in a relevant year if:-

- (a) he has a place to live in the UK;
- (b) that place is available to him during 2013/2014 for a continuous period of at least 91 days; and
- (c) he spends at least one night at that place in that year.³⁶

If there is a gap of fewer than 16 days between the periods in which a particular place is available to a taxpayer it is treated as continuing to be available to him during that period.³⁷

If the accommodation belongs to a close relative of the individual then the requirement to spend one night there is increased to a total of at least 16 nights at that place in that year.³⁸ A close relative is defined as a parent, grandparent, brother, sister, and a child or grandchild aged 18 or over. It would have been more sensible for the 16 night increase to apply when no consideration is given for the accommodation. As it stands, if a good friend will always be willing to put up an individual the Accommodation Tie will be satisfied in respect of that individual if he spends one night at his friend's house.

The taxpayer:-

“is considered to have a ‘place to live’ in the UK if –

- (a) he has a home in the UK;
- (b) he has a holiday home, a week-end home, a temporary retreat or similar in the UK; or
- (c) other accommodation where he can live when he is in the UK.”³⁹

³⁶ Para 22(1)

³⁷ Para 22(2)

³⁸ Para 22(5)

³⁹ Para 22(3)

Accommodation may be available to a person even if he holds no estate or interest in it and has no legal right to occupy it.

It appears from the reference to 'that place' that the 91 day period has to be satisfied in respect of each 'place to live' and not merely in respect of all the places to live which a taxpayer has in the tax year. So, for example, if a person has accommodation available to him in one house for 60 days and in another house for 35 days the accommodation tie will not be satisfied even though, in total, he has had accommodation available to him for 95 days.

It can be seen that the Accommodation Tie uses a number of concepts which, unfortunately, it does not define. So one has to know what is a home, a holiday home, a weekend home, a temporary retreat and what it means to be able to live at a place and yet none of these terms and phrases are defined.

If one can say that one 'lives' at a hotel it appears that when Herr Flick stayed at an hotel in July and August he had accommodation available to him. If that is the case, because the two gaps between his visits were each less than 16 days it appears that he will be treated as having had accommodation available to him at the hotel from 1st July 2013 to 11th August 2013. Because that is a continuous period of less than 91 days it will not result in his having an Accommodation Tie.⁴⁰

Was the London Residence available to Herr Flick in the period between the completion of his purchase and his actually entering it on 4th January 2014? That must depend on the degree to which it was habitable during its refurbishment. At what stage did it become Herr Flick's home? If it wasn't his home, what state does the accommodation have to be in to be available to a person for him to live in? Is a property which lacks any bed, for example, one which is available to be lived in? We shall assume that the London Residence was available to Herr Flick for him to live in from the completion of his acquisition of the property on 1st December 2013. Again, there is no rule, equivalent to the Midnight Rule in quantifying the time when a place is available for this purpose, so in determining the continuing period that a place is available to one, one must take account of the exact moment at which it either became or ceased to be available. On the assumption that the London Residence was available to Herr Flick on the completion of his purchase, it was available to him for at least 125 days. He therefore had an Accommodation Tie.

The Work Tie

Herr Flick will have a Work Tie if he works in the UK for at least 40 days (whether continuously or intermittently) in 2013/14.⁴¹ Working in the UK for a day, for these purposes, is doing more than three hours of work⁴² in the UK on that day.⁴³ Doing work is any time when a person is doing something:-

⁴⁰ But what if he stayed in different rooms in the Hotel during his three visits? Does it make a difference if the rooms are or are not directly above one another?

⁴¹ Para 23(1)

⁴² The Government is consulting on whether to increase the three-hour limit to five hours

⁴³ Para 23(2)

- (a) in the performance of duties of an employment held by him; or
- (b) in the course of a trade⁴⁴ carried on by him (whether alone or in partnership).⁴⁵

In deciding whether something done by a person is being done in the course of a trade, regard must be had to whether, if expenses are incurred by that person in doing the thing, the expenses could be deducted in calculating the profits of the trade for Income Tax purposes (assuming the person were chargeable to Income Tax).⁴⁶

One must consider the work which he performs in respect of his consultancies. Whether the Work Tie is satisfied will depend on whether what he does is evenly spread over the week or bunched on particular days so as to exceed the three-hour limit. We shall assume that Herr Flick exceeds the three-hour limit on two days per week. On that basis he will do only 26 days work in 2013/14 and he will not satisfy the Work Tie.

The 90-Day Tie

Herr Flick will have a 90-Day Tie if he has spent more than 90 days in the UK in:-

- (a) the preceding tax year;
- (b) the tax year preceding that tax year; or
- (c) each of those tax years.⁴⁷

(c) appears to be redundant.

Herr Flick has not spent 90 days in the UK in either 2012/13 or 2011/12 and therefore does not satisfy the 90-Day Tie.

Country Tie

An individual has a Country Tie for a relevant year if the country in which he spends the greatest number of days in that year is in the UK. In the event that he spends the same number of days in two or more countries in a year and that number is the greatest number of days spent by him in any country he will have a Country Tie if one of those countries is the UK. This test has remained despite criticism from the professional bodies.

This Tie is not met by Herr Flick.

⁴⁴ The definition of which extends its meaning to include a profession or vocation or anything that is treated as a trade for Income Tax purposes (para 103)

⁴⁵ Para 15(1)

⁴⁶ Para 15(2)

⁴⁷ Para 24

Conclusion on the Sufficient Ties Test

Herr Flick has only one UK Tie in 2013/14 and therefore does not meet the Sufficient Ties Test.

CONCLUSION ON HERR FLICK'S RESIDENCE STATUS IN 2013/2014

He is, therefore, not resident in the United Kingdom in that year.⁴⁸ Assuming that he spends more than 183 days in the United Kingdom in succeeding years he will be resident from 2014/15 onwards.⁴⁹

IS THE STATUTORY RESIDENCE TEST AN IMPROVEMENT?

Mr Gauke, Exchequer Secretary to the Treasury, says in his Foreword to the June Consultation Document that the Government's 'desire' was "that the rules for determining whether an individual is tax resident in the UK should be clear, objective and unambiguous" and that the Government's aim for its draft legislation is that it should be 'transparent, objective and simple to use'. We have managed to come to a conclusion on Herr Flick's residence only by making a number of simplifying assumptions, both about the factual background and about the correct construction of the legislation. The legislation is clearly not simple to use and requires in several areas an exercise of highly subjective judgment. In respect of many of the concepts on which it is based, it is clearly not unambiguous or clear. Nonetheless, if it is enacted it will be easier to determine Herr Flick's residence status in 2013/2014 than would be the case if the status quo is preserved. For that, at least, it deserves a feeble cheer.

⁴⁸ Paras 1 & 3
⁴⁹ Para 5(3)