

EXCEPTIONALLY RESTRICTED

28 July 2020

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STRANGE TIMES

- 1.1 We are living in strange times, in circumstances which are truly exceptional and which we hope will never become normal. Covid-19 has had effects in every area of life and, in that, tax is no different to other areas. The virus has brought into the limelight, from relative obscurity, a little relief which in various forms has been with us for decades, the Exceptional Circumstances Exception and has given it a suddenly increased importance.
- 1.2 We should imagine that many readers know somebody who, in the current crisis, has been prevented by travel restrictions either from leaving, or from returning to, the UK and many of us will know those who have suffered from the virus in its most severe form and, sadly, some who have died. Amongst many other difficulties caused by this unpredictable scourge is its effect on an individual's fiscal residence.
- 1.3 The Statutory Residence Test (the 'SRT') has a relief for exceptional circumstances which is found in FA 2013 Sch 45 para. 22(4) – (6). It is a very limited, inadequate and, in parts, highly irrational relief.¹
- 1.4 In this article we examine the application of the SRT to a taxpayer who, on a short visit to the UK, found himself unable to leave it due to the imposition of US entry restrictions. It is based on an actual case on which we have advised but it is an example of a type of situation which must have become common in the last few months.

THE RELEVANT FACTS

- 2.1 Henry had lived, worked and been resident for fiscal purposes in the UK all his life until he left the UK on 11th March 2019 to work in Houston. In every relevant fiscal year for which he was UK resident up to and including 2018/19 he spent at least 320 days in the UK. Henry was not resident in the UK for the UK fiscal year 2019/20. 2018/19 was not a split year in respect of Henry.
- 2.2 Immediately before Henry left the UK he was living together with his fiancé, Charlotte, in their home in Newcastle which they own as joint tenants in a manner equivalent to that of a husband and wife. On moving to work in Houston Henry acquired an additional home there to which he will return when he returns to Houston. He will spend at least 190 nights at his Houston house in 2020/21. Whilst Henry has been in Houston, Charlotte has remained in the UK living at their joint home in Newcastle and has been resident here for fiscal purposes in all relevant years. Henry and Charlotte's relationship has remained essentially unchanged while he has been working in the US. They have lived in different countries only because of the exigencies of their careers.

¹ See *McKie on Statutory Residence: The Residence of Individuals and Trustees* by S L & S P McKie (2014 – Pub CCH) at pp. 77 - 93

- 2.3 Henry and Charlotte were due to marry in Portugal in May 2020. Henry had intended to fly to the UK on 25th March 2020 to complete the arrangements for his planned wedding and to return to Houston on 7th April. He planned to return to the UK again on 18th May 2020 and to fly to Portugal on 20th May 2020 for his wedding, returning to the UK on 9th June 2020 and flying to Houston on 14th June 2020.
- 2.4 Because of the imminent lockdown Henry accelerated his trip to the UK to complete his wedding arrangements, flying to the UK from Houston on 14th March 2020 and intending to return to Houston on 7th April and, from then on, to conform to his original timetable. Due to the Covid-19 pandemic, however, the US Government imposed restrictions on persons entering the US from the UK on 16th March 2020 and, under those restrictions, Henry was not able to enter the US. Because of these travel restrictions he was unable to return to Houston on 7th April. Since 14th March 2020, therefore, he has been in the UK living with Charlotte at their home in Newcastle and will continue to do so until he returns to Houston. On every day from the 7th April 2020 onwards, Henry has maintained an intention that, if it were possible to do so, he would leave the UK and return to Houston immediately. It is hoped that he will return to Houston on or before 31st August. In this article we assume that he will fly to Houston on 31st August and will not leave Texas at least until 6th April 2020.
- 2.5 Henry did not perform any work in the UK in 2019/20. Whilst in the UK in 2020/21 he has carried out work under his employment contract on every day² in that period other than weekends and those days which were Texan bank holidays³ and has done more than 3 hours work on each of those days. He will continue to do so until he returns to Houston. After his return to Houston he will do no further work in the UK in 2020/21 and 2021/22.
- 2.6 It is assumed that in the next fiscal year, 2021/22 Henry will not perform any work in the UK.

THE EXCEPTIONAL CIRCUMSTANCES EXCEPTION

The Basic Day Count Rule

- 3.1 For the purposes of the SRT a day counts as a day spent in the UK by an individual if at the end of a day he is present in the UK.⁴ This is usually referred to as the Basic Day Count Rule.

² That is every Monday to Friday

³ The Texan bank holidays were Good Friday (10th April), San Jacinto Day (21st April) and Jefferson Davis' birthday (25th May)

⁴ FA 2013 Sch 45 para. 22(1)

The exceptions

- 3.2 There are two exceptions⁵ to this including what is often called the ‘Exceptional Circumstances Exception’. For a day to fall within that exception in respect of an individual five elements must exist:
- (i) the individual would not be present in the UK at the end of that day but for;
 - (ii) exceptional circumstances;
 - (iii) beyond his control;
 - (iv) which prevent him from leaving the UK; and
 - (v) he intends to leave the UK as soon as those circumstances permit.

The effect of the exception

- 3.3 Where the Exceptional Circumstances Exception applies to a day that day does not count as a day spent in the UK.

HMRC’s Covid-19 guidance

- 3.4 On 8th March 2020 HMRC published specific guidance⁶ in relation to the Coronavirus which stated that:
- ‘... if you:*
- are quarantined or advised by a health professional or public health guidance to self-isolate in the UK as a result of the virus*
 - find yourself advised by official Government advice not to travel from the UK as a result of the virus*
 - are unable to leave the UK as a result of the closure of international borders, or*
 - are asked by your employer to return to the UK temporarily as a result of the virus*
- the circumstances are considered as exceptional.’⁷*
- 3.5 It can be seen that this guidance relates to various circumstances which HMRC considers to be exceptional as that term is used in the Exception.

What circumstances does one consider?

- 3.6 It may be that in a sequence of events different events or groups of events may all be exceptional. In Henry’s case one might say that the occurrence of a worldwide pandemic is an exceptional circumstance as is the imposition by the US of travel restrictions. Strictly one should take the application of the Exception on three alternative bases; that the pandemic alone, the imposition

⁵ FA 2013 Sch 45 para. 22(1) & (2). The other exception is not relevant to Henry’s situation. A third exception will be added if the Finance Bill (as amended at the time of writing) is passed without further amendment (see para. 3.8 below)

⁶ It is now found in HMRC’s *Residence, Domicile and Remittance Basis Manual* at para. RDRM11005

⁷ Although it should be noted that HMRC gives the following *warning* ‘whether days spent in the UK can be disregarded due to exceptional circumstances will always depend on the facts and circumstances of each individual case’

of travel restrictions alone and the pandemic and the imposition of travel restrictions taken together each constitute the relevant exceptional circumstances. For the sake of brevity, however, in this article we only consider the Exception on the basis that the imposition of travel restrictions is the relevant exceptional circumstance.

- 3.7 The legislation provides that there is a limit to the number of days in a fiscal year which may be discounted under the Exceptional Circumstances Exception. That limit is 60 days (the 'Sixty Day Limit').⁸ Once that maximum has been reached, any subsequent days in the fiscal year to which the Exception would otherwise apply, whether involving the same or different exceptional circumstances, will count as days spent in the UK.⁹
- 3.8 The Exceptional Circumstances Exception only applies to treat 'a day spent in the UK' as not counting as such a day. It does not apply for other purposes. For example it does not apply to treat a day on which an individual performed work in the UK for more than 3 hours as being a day on which work was not performed. The result is that an individual can perform work in the UK for more than 3 hours on a particular day but that day may not count as 'a day spent in the UK' because of the Exceptional Circumstances Exception.¹⁰

DOES THE EXCEPTIONAL CIRCUMSTANCES EXCEPTION APPLY TO HENRY?

- 4.1 We shall examine whether the above facts fall within the Exceptional Circumstances Exception by considering each of the five elements of the exception in turn. As we have said, in doing so, we shall assume that the putative exceptional circumstances are the imposition of entry restrictions by the US Government.

The first element

- (i) Would Henry have been present in the UK if the exceptional circumstances had not occurred?
Had the entry restrictions not been introduced Henry would have been in the UK from 14th March (as he actually was) but he would have left on 7th April. He would then have returned to the UK on 18th May and left again on 20th May. Finally he would have

⁸ FA 2013 Sch 45 para. 22(6)

⁹ FA 2013 Sch 45 para. 22(6)(b)

¹⁰ The FA 2020 s.109 provides another exception to the Basic Day Count Rule where an individual, who is resident in an overseas country in the fiscal year in question, was present in the UK for an applicable reason related to Coronavirus disease on a day between 1st March 2020 and 1st June 2020 (or such other date as the Treasury by regulation provides). Applicable reasons are:-

'(a) that P is present in the UK as a medical or healthcare professional for purposes connected with the detection, treatment or prevention of coronavirus disease;

(b) that P is present in the UK for purposes connected with the development or production of medicinal products (including vaccines), devices, equipment or facilities related to the detection, treatment or prevention of coronavirus disease.'

When these conditions are satisfied comprehensive modifications are made not just to the application of the Basic Day Count Rule but to many other provisions of the SRT. For some inexplicable reason, however, the Exceptional Circumstances Exception will continue to be restricted to modifying the Basic Day Count Rule and the Sixty Day Limit will remain

returned to the UK on 9th June and left again on 14th June,¹¹ so in the current fiscal year there will have been eight days (6th April, 18th & 19th May and 9th to 13th June inclusive) when he did not satisfy the first element because he would have been in the UK even if the entry restrictions had not been imposed.

The second element

- (ii) Are there exceptional circumstances?

It seems clear that the imposition of entry restrictions by the US in response to a worldwide pandemic is an exceptional circumstance.

The third element

- (iii) Were the exceptional circumstances beyond Henry's control?

The imposition of entry restrictions by the US Government was clearly beyond Henry's control. In summarising the third element of the exception HMRC in its guidance adds a requirement that not only must the exceptional circumstances be beyond the individual's control but they must also have been unforeseeable by the individual.¹² As this requirement is not found in the relevant legislation we do not consider it further.¹³

The fourth element

- (iv) Do the exceptional circumstances prevent Henry from leaving the UK?

Strictly, Henry is not prevented from leaving the UK by the imposition of entry restrictions into the US. Rather he is prevented from returning to Houston. He could, for example, have travelled to another country which had not imposed entry restrictions. Although the fourth element is clearly not satisfied if an individual could leave the UK even if he could not enter the country to which he wishes to go,¹⁴ it seems from HMRC's guidance that HMRC applies this element as if it required only that the individual be prevented from reaching his intended destination in another country rather than that the individual be prevented from leaving the UK.¹⁵ We shall assume that the requirements of the fourth element are satisfied in relation to Henry.

The fifth element

- (v) Does Henry intend to leave the UK as soon as the exceptional circumstances permit?

¹¹ See para. 2.3 above

¹² HMRC's *Residence, Domicile and Remittance Basis Manual* at para. RDRM13240 Example 2(b)

¹³ See *M^cKie on Statutory Residence: The Residence of Individuals and Trustees* by S L & S P M^cKie (2014 – Pub CCH) at pp. 83

¹⁴ FA 2013 Sch 45 para. 22(4)(a)

¹⁵ HMRC's *Residence, Domicile and Remittance Basis Manual* para. RDRM13250. See the example in that paragraph concerning a structural engineer named 'Philip' and the discussion in *M^cKie on Statutory Residence: The Residence of Individuals and Trustees* by S L & S P M^cKie (2014 – Pub CCH) at p. 89

This raises the question as to at what time must this intention exist? It would appear that the relevant intention is the intention existing on each day in relation to which it is to be determined whether the Exceptional Circumstances Exception applies.¹⁶ Henry satisfied this element for every day from the 6th April to the present time except for the days on which he had planned to be in the UK.¹⁷

Conclusion on whether the Exceptional Circumstances Exception applies

4.2 The days spent by Henry in the UK in the UK fiscal year amount to 147 days in total. Of those days, 8 days¹⁸ do not satisfy the first element of the Exceptional Circumstances Exception so there are 139¹⁹ days which, were it not for the Sixty Day Limit, would not count as days spent in the UK for the purposes of the SRT. Because of the Sixty Day Limit only 60 days of the days that Henry has spent in the UK are not to count as days in the UK under the Exception. In 2020/21, therefore, there will have been 87 days²⁰ which have counted as days he has spent in the UK.

Month	Number of Days actually spent in the UK	Number of Days covered by Exceptional Circumstances	Days counted as spent in the UK
April	25	24 ²¹	1
May	31	29 ²²	2
June	30	7 ²³	23
July	31	0 ²⁴	31
August	30	0 ²⁵	30
Total	147	60	87

THE AUTOMATIC RESIDENCE TEST

5.1 The Automatic Residence Test will be met if:-
 (a) one of the Automatic UK Tests²⁶ is met; and
 (b) none of the Automatic Overseas Tests²⁷ are met.²⁸

¹⁶ See *McKie on Statutory Residence: The Residence of Individuals and Trustees* by S L & S P McKie (2014 – Pub CCH) at pp. 89-91

¹⁷ See paras. 2.3 & 2.4 above

¹⁸ See paras. 2.3 & 2.4 above

¹⁹ 147 days – 8 days = 139 days

²⁰ 6th April, 18th and 19th May, 8th – 30th June, the whole of July and 1st to 30th August. See para. 2.4 above

²¹ 25 days – 6th April = 24 days. See paras. 2.3 & 2.4 above

²² 31 days – 18th and 19th May = 29 days. See paras. 2.3 & 2.4 above

²³ 30 days – 9th to 13th June (days on which the first element is not satisfied), 21st to 30th June (days exceeding the Sixty Day Limit). See paras 2.3 & 2.4 above

²⁴ All the days in July exceed the Sixty Day Limit. See para. 2.4 above

²⁵ The 30 days in August in which Henry is in the UK at midnight are days which exceed the Sixty Day Limit. See para. 2.4 above

²⁶ See paras. 6.2 – 6.8 below

²⁷ See paras. 7.1 – 7.13 below

²⁸ FA 2013 Sch 45 para. 5

THE AUTOMATIC OVERSEAS TESTS

- 6.1 An individual will be automatically non-resident if he meets any of the five Automatic Overseas Tests.

The First Automatic Overseas Test: prior residence & *de minimis* presence

- 6.2 The First Automatic Overseas Test is met if the individual was resident in the UK for one or more of the three fiscal years preceding the fiscal year concerned and the number of days spent in the UK, in the year concerned, is fewer than 16.²⁹
- 6.3 Although Henry was resident in the UK in 2018/19³⁰ and so satisfies the first condition of this test. He will have spent, however, 87 days in the UK in the fiscal year 2020/21 so the second condition, and, therefore, the test, will not be satisfied.

The Second Automatic Overseas Test: prior non-residence & *de minimis* presence

- 6.4 The Second Automatic Overseas Test will not apply to Henry because that test only applies to individuals who were not resident in the UK for any of the three fiscal years preceding the fiscal year concerned.³¹ Henry was resident in the UK for 2017/18 and 2018/19.

The Third Automatic Overseas Test: working sufficient hours overseas

- 6.5 The Third Automatic Overseas Test is met if the individual works sufficient hours overseas assessed over the fiscal year concerned without any significant breaks from that overseas work and:-
- (a) the number of days in that year on which the individual does more than three hours work in the UK is fewer than 31; and
 - (b) the number of days spent in the UK in the relevant year is fewer than 91.³²
- 6.6 Work includes the performance of duties of an employment held by the individual.³³
- 6.7 Henry has worked in the UK under his employment contract in 2020/21.³⁴ He has done more than 3 hours of work on all weekdays in the fiscal year to date, except days which were Texan bank holidays³⁵ and he will continue to do so until he returns to Houston so he will have done more than 3 hours of work in the UK in 2020/21 on 102 days. Henry will, therefore, not satisfy this test as

²⁹ FA 2013 Sch 45 para. 12

³⁰ See para. 2.1 above

³¹ FA 2013 Sch 45 para. 13

³² FA 2013 Sch 45 para. 14

³³ FA 2013 Sch 45 para. 26

³⁴ See para. 2.5 above

³⁵ See para. 2.5 above. 105 work days – 3 bank holidays = 102 days

he has worked in the UK for more than 3 hours per day on more than 30 days in the fiscal year, 2020/21.

The Fourth & Fifth Automatic Overseas Tests

6.8 The Fourth and Fifth Automatic Overseas Tests will not be met because they can only be met in respect of an individual who dies in the fiscal year concerned.³⁶

Conclusion

6.9 Henry does not meet any of the Automatic Overseas Tests.

THE AUTOMATIC UK TESTS

7.1 If none of the Automatic Overseas Tests are satisfied then the Automatic UK Tests need to be considered.³⁷

7.2 Where an individual satisfies one of the Automatic UK Tests and none of the Automatic Overseas Tests, he will be resident in the UK for that fiscal year.³⁸

The First Automatic UK Test: 183 days spent

7.3 The First Automatic UK Test is met if the individual spends at least 183 days in the UK in the fiscal year concerned.³⁹ Only 87 days in 2020/21 will count as days spent by Henry in the UK so this test will not be satisfied.⁴⁰

The Second Automatic UK Test: UK home

7.4 The Second Automatic UK Test is met if:-

(a) the individual has a home in the UK during all or part of the fiscal year concerned.

Henry has a home⁴¹ in Newcastle with Charlotte so this condition is satisfied;

(b) that home is one where he spends a sufficient amount of time in the fiscal year concerned.

In relation to a home of an individual in the UK he spends a 'sufficient amount of time' there in the year if there are at least thirty days in the year when he is present there on that day for at least some of the time.⁴² Clearly Henry will satisfy this condition because he will have spent considerably more than 30 days at his home in Newcastle in 2020/21.⁴³

³⁶ FA 2013 Sch 45 paras. 15 & 16

³⁷ See para. 5.1 above

³⁸ FA 2013 Sch 45 paras. 3 & 5

³⁹ FA 2013 Sch 45 para. 7

⁴⁰ See para. 4.2 above

⁴¹ See para. 2.2 above

⁴² FA 2013 Sch 45 para. 8(4)

⁴³ See para. 2.4 above

- (c) there is at least one period of 91 (consecutive) days in respect of which the following conditions are met-
 - (i) the 91-day period in question occurs while the individual has that home,
 - (ii) at least 30 days of that 91-day period fall within the fiscal year concerned, and
 - (iii) throughout that 91-day period, condition A or condition B is met or a combination of those conditions is met.⁴⁴

7.5 So one has to consider whether this test is satisfied in respect of any 91-day period falling in the period 5th February 2020 to 5th June 2021 inclusive.

7.6 Condition A is that the individual has no home overseas. Henry has, and will continue to have, a home in Houston⁴⁵ so this condition is not satisfied.

7.7 Condition B is that-

- (a) the individual has one or more homes overseas, but
- (b) each of those homes is a home where he spends no more than a permitted amount of time in the fiscal year concerned. In relation to a home of the individual overseas *he 'spends no more than a permitted amount of time'* there in the year if there are fewer than 30 days in the year when he is present there on that day for at least some of the time. Condition B will not be met because Henry will spend 30 days or more at his Houston home in this fiscal year.⁴⁶

7.8 Henry will not satisfy the Second Automatic UK Test.

The Third Automatic UK Test: Working sufficient hours in the UK

7.9 The Third Automatic UK Test is met if the individual works sufficient hours⁴⁷ in the UK assessed over a 365-day period falling, wholly or partly, in the fiscal year concerned and over that period:-

- (a) there are no significant breaks from UK work; and
- (b) more than 75% of the total number of days in the fiscal year when the individual does more than three hours work are days when he does more than three hours work in the UK.⁴⁸

7.10 So one needs to consider whether this test is satisfied in respect of any 365-day period falling wholly in the period 7th April 2019 to 4th April 2021.

⁴⁴ FA 2013 Sch 45 para. 8

⁴⁵ See para. 2.2 above

⁴⁶ See para. 2.2 above

⁴⁷ This calculation is complex and is not discussed further in this article. The method of making it is set out in FA 2013 Sch 45 para. 9(2) and paras. 26-29

⁴⁸ FA 2013 Sch 45 para. 9

- 7.11 For this test to apply there must be no ‘significant breaks from UK work’ in the period considered.⁴⁹ The legislation provides that there is such a break *‘if at least 31 days go by and not one of those days is a day on which [Henry] does more than 3 hours work in the UK or a day on which he would have done so but for being on annual leave, sick leave or parenting leave’*.⁵⁰
- 7.12 Because Henry will not work in the UK for more than 3 hours on any day in the fiscal year 2021/22,⁵¹ did not do so in 2019/20⁵² and will have had a significant break from UK work in 2020/21, there will be a significant break from UK work in respect of any 365-day period which will be relevant to the application of this test to him in 2020/21.⁵³ On this basis Henry will not satisfy the Third Automatic UK Test.

The Fourth Automatic UK Test: death in the year

- 7.13 The Fourth Automatic UK Test will not be met because it can only be met in respect of an individual who dies in the fiscal year concerned.⁵⁴

Conclusion

- 7.14 It can be seen that Henry does not satisfy the Automatic Residence Test because he does not satisfy any of the Automatic Overseas Tests nor any of the Automatic UK Tests.

THE SUFFICIENT TIES TEST

- 8.1 Where none of the Automatic Overseas Tests nor any of the Automatic UK Tests are met, the Sufficient Ties Test must be considered. An individual will meet this test and therefore be resident in the UK for a year, if he has sufficient UK ties for that year.⁵⁵

The number of UK ties which are sufficient

- 8.2 What is a UK tie and whether or not an individual has sufficient UK ties in a relevant fiscal year depends upon whether the individual was resident in the UK in any of the previous three fiscal years⁵⁶ and the number of days the individual spent in the UK in the relevant year. Henry was UK resident in 2017/18 and 2018/19.⁵⁷

⁴⁹ FA 2013 Sch 45 para. 9(1)(b)

⁵⁰ FA 2013 Sch 45 para. 29

⁵¹ See para. 2.5 above

⁵² See para. 2.5 above

⁵³ This is because Henry did not work in the UK at all in 2019/20 and will not do so in 2021/22 (see paras. 2.5 & 2.6 above)

⁵⁴ FA 2013 Sch 45 para. 10

⁵⁵ FA 2013 Sch 45 para. 3

⁵⁶ The relevant fiscal years in respect of determining Henry’s residence status for 2020/21 are the fiscal years, 2017/18, 2018/19 and 2019/20

⁵⁷ See para. 2.1 above

The UK ties

- 8.3 Where the individual was resident in the UK for at least one of the three fiscal years preceding the relevant year there are five ties⁵⁸ which the individual may have. They are:-
- (a) the Family Tie;
 - (b) the Accommodation Tie;
 - (c) the Work Tie;
 - (d) the 90-Day Tie; and
 - (e) the Country Tie.⁵⁹

The Family Tie

- 8.4 An individual has a Family Tie in a year if, in that year, there is a relevant relationship between that individual and another person and that other person is resident in the UK for that year. An individual has a relevant relationship with:-
- (a) their husband, wife or civil partner (unless they are separated);
 - (b) their partner if they are living together as husband and wife or if they are living together as if they were civil partners;
 - (c) their children under the age of 18.⁶⁰
- 8.5 It is not clear what '*living together as husband and wife*' means as the legislation provides no definition of that phrase. It is probable that a couple who are present in different countries for a substantial period for work reasons without that separation affecting the fundamental nature of their relationship can be living together as husband and wife in spite of the long period spent physically apart.⁶¹
- 8.6 Although Henry and Charlotte are about to get married, which, one presumes, represents a significant development in their relationship, Henry and Charlotte were living together in a manner equivalent to a husband and wife when Henry began to work in the US and it seems that there has been no fundamental changes to the nature of their relationship since then. This is in spite of the fact that they have been physically present for long periods of time in different countries due to the exigencies of their careers.⁶² It is likely, therefore, that they are still living together as husband and wife and so it is probable that Henry has a Family Tie. We shall assume that he does.

The Accommodation Tie

- 8.7 An individual has an Accommodation Tie if he has a place to live in the UK and:-

⁵⁸ FA 2013 Sch 45 para. 31

⁵⁹ FA 2013 Sch 45 para. 31

⁶⁰ FA 2013 Sch 45 para. 32

⁶¹ See *McKie on Statutory Residence: The Residence of Individuals and Trustees* by S L & S P McKie (2014 – Pub CCH) at pp. 455 - 471

⁶² See para. 2.2 above

- (a) it is available to him for a continuous period of at least 91 days during the relevant fiscal year, and
- (b) he spends at least one night there during that fiscal year⁶³ or if it is the home of a close relative, he spends at least 16 nights there during that year.⁶⁴

8.8 Henry has a house with Charlotte in Newcastle which is available to him and in which he has stayed since his return to the UK in March 2020 and in which he will stay until 31st August.⁶⁵ Henry, therefore, has an Accommodation Tie.

The Work Tie

8.9 An individual has a Work Tie if he works in the UK for at least 40 days in the relevant fiscal year.⁶⁶ He is treated as working for a day if he does more than three hours work in the UK on that day.

8.10 Henry has been working, and will continue to work, in the UK whilst he has been unable to return to Houston. He will have worked in the UK for more than 3 hours on 102 days in this fiscal year⁶⁷ so he will have a Work Tie.

The 90-Day Tie

8.11 An individual has a 90-Day Tie for the relevant fiscal year (2020/21) if he has spent more than 90 days in the UK in either the fiscal year preceding the relevant year (2019/20), the fiscal year preceding that year (2018/19) or each of those years.⁶⁸

8.12 Henry was resident in the UK in 2018/19 and spent more than 90 days in the UK in that year.⁶⁹ He will therefore have a 90-Day Tie.

The Country Tie

8.13 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 the UK.⁷⁰

8.14 In 2020/21 the country in which Henry will spend the greatest number of days will be the United States of America.⁷¹ He will not, therefore, have a Country Tie.

⁶³ FA 2013 Sch 45 para. 34(1)

⁶⁴ FA 2013 Sch 45 para. 34(5)

⁶⁵ See paras. 2.2 & 2.4 above

⁶⁶ FA 2013 Sch 45 para. 35

⁶⁷ See para. 2.5 above

⁶⁸ FA 2013 Sch 45 para. 37

⁶⁹ See para. 2.1 above

⁷⁰ FA 2013 Sch 45 para. 38

⁷¹ There is some uncertainty if the relevant 'country' for this purpose is the United States of America or the state of Texas. In either case the condition of the Country Tie will not be satisfied. See the discussion in *M^cKie on Statutory Residence: The Residence of Individuals and Trustees* by S L & S P M^cKie (2014 – Pub CCH) at pp. 542 - 551

Conclusion on the Sufficient Ties Test

- 8.15 It can be seen that Henry has 4 UK ties in this fiscal year, a Family Tie, an Accommodation Tie, a Work Tie and a 90-Day Tie.⁷²
- 8.16 The table below shows the number of days required to be spent in the UK to meet the Sufficient Ties Test by an individual who has been UK resident in one of the last three years preceding the relevant fiscal year according to the number of ties he has.⁷³

No. of UK Ties	No. of days to be spent in a fiscal year in the UK where an individual will be UK resident in that fiscal year
1	121 or more
2	91 or more
3	46 or more
4	16 or more

- 8.17 As Henry will have 4 ties⁷⁴ he will meet the Sufficient Ties Test in 2020/21 because he has spent more than 15 days in the UK in that year.⁷⁵

CONCLUSION ON HENRY'S RESIDENCE STATUS IN 2020/21

- 9.1 Henry will, therefore, be resident in the UK for 2020/21 for UK fiscal purposes.

SPLIT YEAR TREATMENT

- 10.1 A special treatment applies to certain income and gains where the individual is resident in the UK for the year concerned but the year is a 'split year' because he falls within one of eight 'Cases'.⁷⁶ The eight Split Year Cases cover particular situations where the individual 'leaves'⁷⁷ the UK part way through a fiscal year or where he 'comes'⁷⁸ to the UK part way through the fiscal year. None of these cases apply to Henry's situation.

FURTHER MATTERS

Double tax relief

- 11.1 It is likely that Henry's employment income will be taxable both in the UK and the US under the fiscal laws of each country. How this double taxation might be relieved is a complex matter on which he will require advice in due course.

⁷² See paras. 8.6, 8.8, 8.10 & 8.12 above

⁷³ FA 2013 Sch 45 para. 18

⁷⁴ See para. 8.15 above

⁷⁵ See para. 4.2 above

⁷⁶ FA 2013 Sch 45 paras. 44 – 51

⁷⁷ This is a loose description not used in the legislation

⁷⁸ This is a loose description not used in the legislation

Notifying chargeability

- 11.2 To the extent that Henry is subject to UK Income Tax he will have a duty to notify HMRC of his chargeability to tax. He must do that within six months of the end of the year of assessment concerned; that is by the 6th October 2021.⁷⁹

⁷⁹ Taxes Management Act 1970 s.7