

**PAPER ON THE APPLICATION OF THE
STATUTORY RESIDENCE TEST**

18 June 2020

THE STATUTORY RESIDENCE TEST

- 1.1.1 The Statutory Residence Test (the 'SRT') determines whether an individual is resident in the UK or not for the purposes of Income Tax, CGT and (where relevant), IHT and Corporation Tax.¹ Where an individual is resident² in the UK at any time in the fiscal year he is resident for the whole of the fiscal year.³
- 1.1.2 An individual is resident in the UK for a given fiscal year if he: -
- (a) satisfies the Automatic Residence Test; or
 - (b) satisfies the Sufficient Ties Test.⁴
- 1.1.3 If neither of these tests are met, then the individual is not resident in the UK.⁵
- 1.1.4 All the tests have a common element on which they depend namely days spent in the UK. Below we set out the rules which apply in determining when a day is spent in the UK.

¹ FA 2013 Sch 45 Para. 1. All references are to FA 2013 Sch 45 unless otherwise stated

² Para. 2(3)

³ Subject to the application of the Split Year rules

⁴ Para. 3

⁵ Para. 4

DAYS SPENT IN THE UK

1.2.1 A day counts as a day spent in the UK by an individual if at the end of a day⁶ he is present in the UK.⁷ There are two exceptions⁸ 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.

1.2.2 Where the Exceptional Circumstances Exception applies to a day that day does not count as a day spent in the UK. The legislation gives examples of circumstances that may be exceptional.⁹ HMRC has also issued guidance on its interpretation of the legislation governing the Exception.

1.2.3 There can be difficulties in determining what are exceptional circumstances and against what that is to be judged. Clearly the worldwide Coronavirus pandemic is an exceptional circumstance but so too is the closure of the borders between countries.

⁶ One assumes that to be midnight but it is not expressly stated

⁷ Para. 22(1)

⁸ The other exception is not relevant in this situation

⁹ Para. 22(5)

1.2.4 HMRC has published¹⁰ specific guidance¹¹ in relation to the Coronavirus which states 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.*¹²

1.2.5 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. It may be that in a sequence of events different events or groups of events may all be exceptional. For example, if a coup in a foreign country leads to travel restrictions to the country being imposed the coup, the imposition of restrictions and the resulting cancellation of flights might be individual exceptional circumstances and the coup and the imposition of restrictions, the imposition of restrictions and the cancellation of flights and the coup, the

¹⁰ 19th March 2020

¹¹ It should be noted that guidance is only HMRC’s opinion as to the law. Its guidance on the law is often inaccurate

¹² 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*’.

imposition of restrictions and the cancellation of flights together might all be said to be composite exceptional circumstances.

1.2.6 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').¹³ 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.¹⁴

1.2.7 It should be emphasised that 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 will not count as 'a day spent in the UK' because of the Exceptional Circumstances Exception.

Application to Chris

The relevant facts

1.2.8 Chris had lived, worked and was resident¹⁵ for fiscal purposes in the UK all his life until he left the UK on 11th March 2019¹⁶ to work in Houston. It is assumed

¹³ Para. 22(6)

¹⁴ Para. 22(6)(b)

¹⁵ It is assumed that Chris was resident in the UK for every fiscal year up to and including 2018/19 and that he spent at least 90 days in the UK in each such fiscal year

¹⁶ Chris was resident in the UK in 2018/19 although the split year treatment may have applied to him in that year

that immediately before Chris left the UK he was living together with his fiancé, Sophie as husband and wife in their joint home¹⁷ in Newcastle. It is also assumed that Chris has a home in Houston to which he will return.¹⁸ Sophie has remained in the UK living at their joint home and has been resident here for fiscal purposes in all relevant years. It is assumed that Chris and Sophie's relationship has remained essentially unchanged while he has been living in the US and that they are only in different countries because of the exigencies of his work. Chris was not resident in the UK in the fiscal year 2019/20.

1.2.9 Chris and Sophie were due to marry in Portugal in May 2020. Chris 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 before flying to Houston a few days later; we shall assume for the purposes of this Paper that he would have flown back to the US on 14th June 2020. Because of the imminent lockdown Chris flew to the UK from Houston on 14 March 2020 with the intention of returning to Houston on 7th April. He was unable to return to Houston on 7th April and has been in the UK living with Sophie at their home in Newcastle since 14th March 2020. It is assumed that, on every day from the 7th April 2020 onwards, Chris maintained an intention, if it were possible, to leave the UK and return to Houston. It is assumed that Chris will not spend 183 or more days in the UK in 2020/21 and will spend the greater number of days in the fiscal year in a country outside the UK.

¹⁷ It is assumed that their joint home is 'available' to him. See paras. 1.6.6-1.6.7 below

¹⁸ It is assumed that Chris will spend at least 30 days in his Houston home

1.2.10 It is assumed that because he had planned to come to the UK in March to complete the arrangements for his wedding Chris 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. It is assumed that he has performed work on every working day¹⁹ in that period except on those days which were Texan bank holidays²⁰ and that he has done more than 3 hours work on each of those days.

1.2.11 Chris contacted the British Embassy on 31st May 2020 about his possible return to Houston. He was informed by the Embassy that due to the pandemic the US Government had imposed restrictions on persons entering the US from the UK on 16th March 2020 and, under those restrictions, he would not be able to enter the US. It is expected that on 22nd June 2020 the Embassy will update him as to when he will be able to return to Houston. It is assumed that in the next fiscal year, 2021/22 Chris will not perform any work in the UK.

Does the Exceptional Circumstances Exception apply?

1.2.12 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. In doing so, we shall assume that the putative exceptional circumstances are the imposition of entry restrictions by the US Government.

¹⁹ That is every Monday to Friday

²⁰ The Texan bank holidays were Good Friday (10th April), San Jacinto Day (21st April) and Jefferson Davis' birthday (25th May)

The first element

- (i) Would Chris have been present in the UK if the exceptional circumstances had not occurred? Had the entry restrictions not been introduced Chris 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 returned to the UK on 9th June and left again on 14th June,²¹ so in the period of the current fiscal year up to 18th June inclusive which is a period of 74 days there are 8 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 event.

The third element

- (iii) Were the exceptional circumstances beyond Chris' control? The imposition of entry restrictions by the US Government was clearly beyond Chris' control. HMRC publishes guidance on the application of the tax system which is intended to summarise the effect of the law. It often does so inaccurately. In summarising the third element of the exception it adds a requirement that not only must the exceptional circumstances be beyond the

²¹ See para. 1.2.9 above

individual's control but they must also have been unforeseeable by the individual.²² As this requirement is not found in the relevant legislation we do not consider it further.

The fourth element

- (iv) Do the exceptional circumstances prevent him from leaving the UK? Strictly, Chris 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 flown to another country. 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 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. We shall assume that the requirements of the fourth element are satisfied in relation to Chris.

The fifth element

- (v) Does Chris intend to leave the UK as soon as the exceptional circumstances permit? The question is 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. Chris satisfied this element for every day from the 6th

²² Guidance para. B13

April to the present time except for the days on which he had planned to be in the UK.²³

Conclusion

1.2.13 The days spent by Chris in the UK up to and including 18th June 2020 amount to 74 days. Of those days, 8 days²⁴ do not satisfy the first element of the Exceptional Circumstances Exception so there are 66²⁵ 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 Chris has spent in the UK are not to count as days in the UK under the Exception. Up to, and including, the 18th June, therefore, there have been fourteen days (6th April, 18th & 19th May and the 8th²⁶ to 18th June) 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 ²⁷	1
May	31	29 ²⁸	2
June	18	7 ²⁹	11
Total	74	60	14

²³ See para. 1.2.9 above

²⁴ See para. 1.2.12 above

²⁵ 74 days – 8 days = 66 days

²⁶ The 8th June because at the 7th June he reached the Sixty Day Limit

²⁷ 25 days – 6th April = 24 days

²⁸ 31 days – 18th and 19th May = 29 days

²⁹ 18 days – 9 - 13 June are days on which the first element is not satisfied. The 8th & 14th – 18th June are days exceeding the Sixty Day Limit)

1.2.14 All further days now spent in the UK will not be excluded by the Exceptional Circumstances Exception from counting as days spent in the UK.

THE AUTOMATIC RESIDENCE TEST

1.3.1 The Automatic Residence Test will be met if:-

- (a) one of the Automatic UK Tests³⁰ is met; and
- (b) none of the Automatic Overseas Tests³¹ are met.³²

AUTOMATIC OVERSEAS TESTS

1.4.1 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

1.4.2 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.

³⁰ See paras. 1.5.3-1.5.13 below

³¹ See paras. 1.4.2-1.4.8 below

³² Para. 5

1.4.3 Chris was UK resident in the UK in 2018/19³³ and so this test will be satisfied if he spends less than 16 days in the UK in the fiscal year 2020/21 which is unlikely in view of the fact that at the date of this Paper Chris had already spent 14 days which count as days which he has spent in the UK in this fiscal year.

The Second Automatic Overseas Test: Prior Non- Residence & *de Minimis* Presence

1.4.4 The Second Automatic Overseas Test will not apply to Chris because this test only applies to those individuals who were not resident in the UK for any of the three fiscal years preceding the fiscal year concerned.³⁴

The Third Automatic Overseas Test: Working Sufficient Hours Overseas

1.4.5 The Third Automatic Overseas Test³⁵ 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 91.³⁶

³³ See para. 1.2.8 above

³⁴ Para. 13

³⁵ This is the test that would in normal circumstances have ensured that Chris was not resident in the UK

³⁶ Para. 14

1.4.6 Work includes the performance of duties of an employment held by the individual.³⁷

1.4.7 Chris has been working from his UK home undertaking work under his employment contract.³⁸ He has done more than 3 hours of work on all weekdays in the fiscal year to date, except days which are Texan bank holidays;³⁹ so he has done more than 3 hours of work in the UK in 2020/21 on 51 days. Chris will not satisfy this test as 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

1.4.8 These tests are not considered as they relate to the death of the taxpayer in the fiscal year concerned.

THE AUTOMATIC UK TESTS

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

1.5.2 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.⁴⁰

³⁷ Para. 26

³⁸ See para. 1.2.10 above

³⁹ 54 work days – 3 bank holidays = 51 days. See para. 1.2.10 above

⁴⁰ Paras. 3 & 5

The First Automatic UK Test: 183 Days Spent

1.5.3 The First Automatic UK Test is met if the individual spends at least 183 days in the UK in the fiscal year concerned.⁴¹ As Chris wishes to return to Houston as soon as he is able it has been assumed that he will not spend 183 days or more in the UK and so this test will not be satisfied.⁴²

The Second Automatic UK Test: UK Home

1.5.4 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. Chris has a home⁴³ in Newcastle with Sophie so this condition is satisfied;
- (b) that home is one where he spends a sufficient amount of time in the year. In relation to a home of the 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. Clearly Chris will satisfy this condition because he will have spent at least 30 days at his home in Newcastle since his coming to the UK in March;⁴⁴
- (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,

⁴¹ Para. 7

⁴² See para. 1.2.9 above

⁴³ See para. 1.2.8 above

⁴⁴ See para. 1.2.9 above

- (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.⁴⁵

1.5.5 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.

1.5.6 Condition A is that the individual has no home overseas. Chris has, and will continue to have, a home in Houston⁴⁶ so this condition is not satisfied.

1.5.7 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 thirty 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 provided that Chris will spend 30 days or more at his Houston home in this fiscal year.⁴⁷

1.5.8 Chris will not satisfy the Second Automatic UK Test.

⁴⁵ Para. 8

⁴⁶ See para. 1.2.8 above

⁴⁷ See para. 1.2.8 above

The Third Automatic UK Test: Working Sufficient Hours in the UK

1.5.9 The Third Automatic UK Test is met if the individual works sufficient hours⁴⁸ 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.⁴⁹

1.5.10 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.

1.5.11 For this test to apply there must be no ‘significant breaks from UK work’ in the period considered. 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 [Chris] 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 or sick’*.⁵⁰

1.5.12 Provided that Chris does not work in the UK for more than 3 hours a day for a continuous period of 31 days or more in the fiscal year 2020/21 there will be a significant break from UK work in respect of any 365-day period which will be

⁴⁸ This calculation is complex and is not discussed further in this Paper

⁴⁹ Para. 9

⁵⁰ Para. 29

relevant to the application of this test to him in 2020/21.⁵¹ On this basis Chris will not satisfy the Third Automatic UK Test.

The Fourth Automatic UK Test: Death in the Year

1.5.13 The Fourth Automatic UK Test is not considered because it relates to the death of the individual concerned during the year.

Conclusion

1.5.14 It can be seen that Chris 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

1.6.1 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.⁵²

The Number of UK ties which are Sufficient

1.6.2 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

⁵¹ This is on the basis of the assumptions made in paras 1.2.10 & 1.2.11 that Chris did not work in the UK at all in 2019/20 and will not do so in 2021/22. If these assumptions are incorrect please let us know

⁵² Paras. 3 & 5

UK in any of the previous three fiscal years⁵³ and the number of days the individual spent in the UK in the relevant year. Chris was UK resident in 2017/18 and 2018/19 before moving to Houston in March 2019.⁵⁴

The UK ties

1.6.3 Where the individual was resident in the UK for at least one of the three fiscal years preceding the relevant year there are five ties⁵⁵ 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.

The Family Tie

1.6.4 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);

⁵³ The fiscal years, 2017/18, 2018/19, 2019/20

⁵⁴ See para. 1.2.8 above

⁵⁵ Para. 31

- (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 18.⁵⁶

1.6.5 It is not clear what 'living together as husband and wife' means as the legislation provides no definition. 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. Chris and Sophie are about to get married which one presumes, represents a significant development in their relationship. The key question is what was the nature of their relationship up to March 2019 when Chris moved to the US? Would it have been characterised as living together as husband and wife? If that were the case and there has been no fundamental changes to the nature of their relationship since then in spite of the fact that Chris has been living in the US due to the exigencies of his work⁵⁷ and Sophie has remained resident in the UK,⁵⁸ then it is likely that they are still living together as husband and wife. If they were not living together as husband and wife before March 2019 then it is unlikely that they are living together as husband and wife now. In this Paper we have made the assumption⁵⁹ that they are living together as husband and wife. This is an important assumption as, if it were incorrect, our advice might be affected. On the basis of our assumption that Chris and Sophie, are

⁵⁶ Para. 32

⁵⁷ See para. 1.2.8 above

⁵⁸ See para. 1.2.8 above

⁵⁹ See para. 1.2.8 above

living together as husband and wife⁶⁰ because Sophie is resident in the UK,⁶¹
Chris has a Family Tie.

The Accommodation Tie

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

- (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 year⁶² or if it is the home of a close relative, he spends at least 16 nights there during that year.⁶³

1.6.7 Chris has a house with Sophie in Newcastle which is available to him and in which he has stayed since his return to the UK in March 2020.⁶⁴ Chris, therefore, has an Accommodation Tie.

The Work Tie

1.6.8 An individual has a Work Tie if he works in the UK for at least 40 days in the relevant fiscal year.⁶⁵ He is treated as working for a day if he does more than three hours work in the UK on that day.

⁶⁰ See para. 1.6.4 above.

⁶¹ See para. 1.2.8 above

⁶² Para. 34(1)

⁶³ Para. 34(5)

⁶⁴ See para. 1.2.8 above

⁶⁵ Para. 35

1.6.9 Chris has been working in the UK whilst he has been unable to return to Houston. He has already worked in the UK for more than 3 hours on 51 days in this fiscal year⁶⁶ so he will have a Work Tie.

The 90-Day Tie

1.6.10 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.⁶⁷

1.6.11 Chris was resident in the UK in 2018/19. It is assumed⁶⁸ that he will have spent more than 90 days in the UK in 2018/19. He will therefore have a 90-Day Tie.

The Country Tie

1.6.12 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.⁶⁹

1.6.13 Provided that in the current fiscal year Chris spends a greater number of days in a country outside the UK than he does in the UK, he will not have a Country Tie in this year. We have assumed that that will be the case.⁷⁰

⁶⁶ See para. 1.4.7 above

⁶⁷ Para. 37

⁶⁸ See para. 1.2.8 above

⁶⁹ Para. 38

⁷⁰ See para. 1.2.9 above

Conclusion

1.6.14 It can be seen from the above that Chris has 4 UK ties in this fiscal year.

1.6.15 The table below shows the number of days required to be spent in the UK by an individual⁷¹ to meet the Sufficient Ties Test according to the number of ties he has.⁷²

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

1.6.16 As Chris has 4 ties then if he spends more than 15 days in the UK in 2020/21 he will be UK resident. We have seen that, as of the date of this Paper, there are already 14 days which count as days spent in the UK by him and that all further days on which he is actually present in the UK at midnight will count as days spent in the UK. It seems almost inevitable that he will be resident in the UK for the current fiscal year by virtue of meeting the Sufficient Ties Test.⁷³

⁷¹ An individual who has been UK resident in at least one of the 3 years preceding the relevant fiscal year

⁷² Para. 18

⁷³ This conclusion is obviously dependent upon the assumption that Chris and Sophie are living together as husband and wife and that Chris has worked for more than three hours on every week day falling within the fiscal year to date (excluding Texan bank holidays). See paras. 1.2.8, 1.2.10, 1.4.7 & 1.6.5 above

SPLIT YEAR TREATMENT

1.7.1 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'.⁷⁴ The eight Split Year Cases cover particular situations where the individual 'leaves'⁷⁵ the UK part way through a fiscal year or where he 'comes'⁷⁶ to the UK part way through the fiscal year. None of these cases apply to Chris' situation.

CONCLUSION

1.8.1 As we have explained above Chris does not satisfy any of the automatic tests but it seems inevitable that he will satisfy the Sufficient Ties Test because he will have spent more than 15 days in the UK and he will, therefore, be resident in the UK in 2020/21. This conclusion is dependent on the accuracy of the assumptions we have made including, most importantly, the assumption that he and Sophie live together as husband and wife and that he has worked more than three hours in the UK on every working day of the fiscal year to date (excluding on Texan bank holidays).⁷⁷

⁷⁴ Paras. 44 – 51

⁷⁵ This is a loose description not used in the legislation

⁷⁶ This is a loose description not used in the legislation

⁷⁷ See paras. 1.2.10 & 1.4.7 above

FURTHER MATTERS

Keeping relevant information

1.9.1 In case our assumptions are inaccurate in some particular that has the result that it is possible that Chris will not be resident in the UK in the current fiscal year Chris should keep records of his working hours and the work he does, his flights and his conversations with the Embassy.

Double Tax Relief

1.9.2 It is likely that Chris' employment income will be taxable both in the UK and the US under the fiscal laws of each country. There is a Double Tax Treaty between the US and UK the effect of which is, loosely, to ensure that an individual is taxed only in one country or, alternatively, that he is taxed in both countries but one of the countries has to allow credit for the tax charged by the other. The result of this is that the individual is not charged to tax twice on the same income but rather that he pays tax which, at the worst, is equal to the higher of the charges applied by the two countries concerned. How the treaty will apply to Chris' income is a complex matter on which he will require advice in due course after his return to the US later this year.⁷⁸

Notifying chargeability

1.9.3 As Chris is resident in the UK he will have a statutory duty to notify HMRC of his chargeability to tax.⁷⁹ He must do that within six months of the end of the year of assessment concerned; that is by the 6th October 2021.

⁷⁸ See para. 1.2.8 above

⁷⁹ TMA 1970 s.7

Possible changes to the Exceptional Circumstances Exception

1.9.4 It is possible that the Government will decide at some point to temporarily suspend the Sixty Day Limit in which case Chris may turn out not to be resident in the UK after all although most commentators think such a relaxation of the rules unlikely. In order to take advantage of any such relaxation Chris should keep detailed notes, as we have advised above, to support the application of the Exceptional Circumstances Exception.