

The UK statutory residence test and “exceptional circumstances”

The Covid-19 pandemic is severely curtailing movement across the world. One consequence is that non-UK residents may be unable to leave the UK as they had planned.

The UK statutory residence test has a special rule for days spent in the UK as a result of exceptional circumstances. The term “*exceptional circumstances*” is defined in paragraph 22 of Schedule 45 of the Finance Act 2013 as including “*national or local emergencies such as war, civil unrest or natural disasters*” and “*a sudden or life-threatening illness or injury*”.

The rule applies where the individual would not be present in the UK at the end of the relevant day but for exceptional circumstances beyond the taxpayer’s control that prevent the taxpayer from leaving the UK. The taxpayer must leave the UK as soon as the circumstances permit. We refer to days spent in the UK due to exceptional circumstances as “exceptional days”.

The question is whether an individual who is unable to leave the UK as a result of Covid-19 would be able to claim exceptional circumstances.

It seems clear that if the individual was hospitalised from Covid-19 this would be exceptional circumstances. It was less clear for an individual flying to the UK now and then being caught by a full travel ban or being required to quarantine. The concern is whether the rules provide that under these circumstances an individual coming to the UK knows the risk of being required to spend more time in the UK and a reasonably predictable risk when arriving in the UK would not therefore be an exceptional circumstance.

HMRC has responded very quickly to this situation, publishing the following helpful guidance late on 19 March:



The UK is currently experiencing the effects of the coronavirus (COVID-19) pandemic. Events resulting from the impact of the virus are changing rapidly and this guidance may change at short notice as situations change.

The coronavirus (COVID-19) pandemic may impact your ability to move freely to and from the UK or, require you to remain unexpectedly in the UK.

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.

However, 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.

In issuing the guidance, HMRC has indicated that it will look sympathetically at any individual cases where the virus has caused specific issues or difficulties.

This new guidance needs to be read in conjunction with HMRC's current published guidance which sets out some simple scenarios relating to **what are considered exceptional circumstances** and **exceptional circumstances where Foreign and Commonwealth Office advice applies**.

HMRC has also set out **examples of circumstances that are not considered to be exceptional**.

The new guidance therefore broadens the scope of exceptional circumstances but with the caveat that each circumstance is individual. The Foreign and Commonwealth Office advised against non-essential travel on 17 March and the starting point should be that anyone in the country on that date who intended to leave but was unable to do so should be able to count days from the date they intended to leave as qualifying; an individual coming to the country shortly after 17 March with the same intention should also qualify.

We anticipate that those arriving much later are likely to be in a different position as they should only be coming to the UK for an essential purpose. If an individual now travels to the UK for a non-essential purpose and is unable to leave the UK that individual may well struggle to persuade HMRC that they benefit from the exceptional circumstances exemption.

If an individual travels for an essential purpose and can presumably still leave the UK then this similarly would not be within the exceptional circumstances exemption. However, if an individual arrives in the UK for an essential purpose but is unable to leave (for example, because of a full travel ban) then the exceptional circumstances exemption should apply to days from the point they would have left the UK onwards.

Despite these broad conclusions the position for many people may be quite nuanced. The other point to bear in mind is that it may be some time before engagement with HMRC brings clarity on any points of detail as that would typically only occur through an enquiry into a tax return.

It is important to note that the relief in exceptional circumstances does not apply to all elements of the UK statutory residence test. It applies only when counting days spent in the UK and in determining whether an individual has a 90 day tie. However, this relief does not apply to the work tie or the family tie. So even an individual in the UK as a result of exceptional circumstances could still be UK resident if, for example, the individual works on those exceptional days. This seems illogical, but the rules are clear.

By contrast, HMRC accept that if an individual spends 87 days in the UK and 15 exceptional days in the UK, the 15 exceptional days will be discounted for the purposes of not only the sufficient ties test in the current year, but also the 90 day tie test for the subsequent two UK tax years.

HMRC has confirmed that they do not plan to issue any further guidance on this issue at present and clients should also note that the wider rules such as the 60 day annual limit for exceptional days in any tax year are still in place and relevant.

More information on the UK statutory residence test can be found in our **introductory note** and our more **detailed note**.



Jennifer Smithson

Partner

DD +44 (0)20 7849 2891
jennifer.smithson@macfarlanes.com



Mark Hunter

Partner

DD +44 (0)20 7849 2463
mark.hunter@macfarlanes.com



Robin Vos

Solicitor

DD +44 (0)20 7849 2393
robin.vos@macfarlanes.com

Macfarlanes LLP

20 Cursitor Street London EC4A 1LT

T +44 (0)20 7831 9222 | F +44 (0)20 7831 9607 | DX 138 Chancery Lane | macfarlanes.com

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