

## COVID-19: HMRC Guidance on Exceptional Days Spent in UK

**As a result of the UK's travel restrictions and other self-isolation measures that have been imposed in an effort to contain the spread of COVID-19, individuals who are unable to leave the UK may be concerned about how the increased number of days they spend in the UK will impact upon their UK residence status.**

An individual is resident in the UK for a tax year if they meet any one of three tests set out in the UK Statutory Residence Test (SRT). In order for an individual to be regarded as non-UK resident during the tax year, the number of days an individual can spend in the UK is restricted. Their UK day count, together with other factors, such as where they have a home or homes, and the number of 'ties' they have to the UK, will determine their UK residence status for the tax year.

Individuals who do not wish to become UK resident will normally calculate the number of days they can spend in the UK during the tax year (which will vary depending on the individual's specific circumstances) and ensure they do not exceed that limit.

As we are nearing the end of the tax year, there are likely to be cases where individuals are close to the limit for this tax year and staying extra days in the UK whilst the country is in 'lockdown' could push their day count over the limit by the end of this tax year.

Depending on how long the travel restrictions remain in place, those who find themselves unexpectedly unable to leave the UK will also need to consider the impact on their UK residence status for 2020/21, and possibly subsequent years. For example, if the individual is in the UK for more than 90 days in a tax year, they will have a '90-day tie' in the UK for the following two tax years. Having an additional UK tie could affect their UK residence position in those two subsequent tax years.

### Exceptional Circumstances

The Statutory Residence Test provides that days spent in the UK under 'exceptional circumstances' can be disregarded for the purposes of determining the number of days an individual is present in the UK, up to a maximum of 60 days in the tax year.

The legislation defines 'exceptional circumstances' as 'national or local emergencies such as war, civil unrest or natural disasters' and 'serious life threatening illness or injury'. The exceptional circumstances that prevent an individual from leaving the UK must be beyond the individual's control, and they must intend to leave the UK as soon as those circumstances permit.

### HMRC's Guidance on COVID-19

HMRC has published new guidance on the circumstances in which days spent in the UK as a result of COVID-19 can be considered exceptional, and therefore disregarded. These circumstances include

where an individual:

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

Whilst the guidance is welcome and will be helpful to many individuals who find themselves trapped in the UK, it is subject to HMRC's caveat that 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. Therefore, an element of uncertainty remains and the position for many individuals may still be unclear.

## 60 Day Limit

The 60 day limit could also be an issue if restrictions continue for a prolonged period, or if restrictions are lifted in the UK but the individual is unable to return home if travel bans are still in place in their home country.

It is not clear whether the exceptional days would continue to apply in such circumstances because whilst the individual may be able to leave the UK, they may not be able to return home. The legislation only applies where the taxpayer 'intends to leave the UK as soon as those circumstances permit'. We would hope that HMRC would look sympathetically at such cases.

## Working in the UK

Individuals who are unable to leave the UK may still be required to work in the UK. When considering ties to the UK, an individual will have a 'work tie' where they work in the UK for more than three hours on at least 40 days in the tax year.

Even if the days the individual works in the UK are considered exceptional days for the purposes of counting days of presence in the UK (and therefore disregarded for those purposes), any day where an individual works in the UK for more than three hours qualifies as a 'work day'.

Unexpected UK workdays could therefore result in an individual having an unexpected 'work tie' to the UK. Having an additional tie to the UK is likely to reduce the number of days of presence an individual is able to spend in the UK without triggering residence, and could therefore affect the individual's residence position.

Even where additional workdays in the UK do not result in the individual becoming UK resident, those workdays will be taxable in the UK and may therefore increase the individual's UK tax liability for the year.



## Summary

If you are unable to leave the UK due to the recent travel restrictions imposed by the government, and if you believe that this may impact on your residence status or number of workdays in the UK, you should take professional advice. Verfides can assist in calculating your UK residence days, determining the number of days that may qualify as exceptional, and advise on the impact on your UK residence status. We can also assist with calculating UK workdays and the impact on UK tax liabilities.

The UK SRT is a complex piece of legislation and we would urge anyone affected to seek advice as soon as possible.

London, 25 March 2020

*This document has been prepared as a general guide and is based on the latest legislation and case law. Whilst every care has been taken in its preparation, Verfides cannot accept any responsibility for any person relying on this publication. Professional advice should be obtained before undertaking transactions and Verfides will be pleased to provide such advice where appropriate.*