



GMS Flash Alert

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United Kingdom - HMRC Publishes Further Guidance on Statutory Residence and COVID-19

HM Revenue & Customs (HMRC) recognizes that the COVID-19 pandemic has impacted individuals' abilities to move to and from the U.K. easily and resulted in many people spending more time in the U.K. than originally anticipated. Accordingly, it has now published a 'Q&A' document¹ designed to provide further clarity on how the Statutory Residence Test ("SRT") will apply when employees are displaced due to COVID-19. Key points are summarized below.

Under the SRT, the number of days an individual spends in the U.K. during the U.K. tax year is taken into account in a number of the detailed rules that apply to determine his or her U.K. residency position.²

In some (but not all) cases, a day spent in the U.K. can be considered 'exceptional', and can therefore be disregarded, when counting the number of days an individual has spent in the U.K. for the purposes of the SRT.³

As covered in GMS [Flash Alert 2020-083](#) (20 March 2020), HMRC previously published high-level guidance on when an individual's presence in the U.K. by reason of the COVID-19 outbreak will be considered to be the result of 'exceptional circumstances'.⁴ This *Flash Alert* should be read in conjunction with our earlier *Flash Alert*.

WHY THIS MATTERS

As the COVID-19 travel restrictions to and from the U.K. continue to apply, many taxpayers and their employers are concerned about the impact the additional unplanned days spent in the U.K. will have on their U.K. tax residency status and ultimately whether and how they will be taxed in the United Kingdom. This additional HMRC guidance is therefore welcome in providing further clarity where individuals have unexpectedly been unable to leave the U.K. due to COVID-19-related restrictions, although it does not relax the strict statutory position.

Exceptional Circumstances

HMRC has reiterated that whether an individual's U.K. days will be considered 'exceptional' for SRT purposes will depend on an individual's 'facts and circumstances'. HMRC has provided some further examples of when days are likely to be considered exceptional, namely:

- Where an individual follows official government advice not to travel from the U.K. as a result of the virus;
- Where an individual is unable to leave the U.K. as a result of the closure of international borders;
- Where an individual is self-isolating in line with government advice;
- Where an individual is required to come to the U.K. to support a vulnerable family member who has been asked to 'shield' or 'self isolate', but the individual must be able to demonstrate why it is necessary for him or her to come and remain in the U.K. to provide support.

HMRC adds that for exceptional circumstances to apply, the individual must be able to demonstrate that his/her presence in the U.K. is beyond his/her control, he/she is prevented from leaving the U.K., and he/she has made every effort to leave once the relevant restrictions have been lifted.

Legislative Changes to the SRT and Related Matters

HMRC has confirmed that there will not be any legislative changes to the SRT, with the exception of specific legislation introduced for care workers and health professionals coming to the U.K. for purposes connected to COVID-19.⁵ This means that the limit for 'exceptional circumstances' remains at 60 days, and there will be no other relaxations, such as allowing an individual to treat his/her U.K. work-days as non-taxable if he/she would ordinarily have been working overseas.

Full-Time Work Overseas

Many individuals who leave the U.K. for work purposes aim to be considered nonresident in the U.K. under the automatic 'full-time working overseas' test. In order to meet this test, an individual must spend no more than 90 days in the U.K. during the U.K. tax year, of which no more than 30 days can be U.K. work-days. In addition, the individual must not have a 'significant break' from overseas work, that is, a period of more than 30 days where they did not have an overseas work-day.⁶

Although 'exceptional circumstances', if they apply, can be used to extend the 90-day limit, HMRC has confirmed that a day where an individual spends more than three hours working in the U.K. will still be considered a 'U.K. work-day', even if this same day is considered exceptional for 90-day purposes. There will be no relaxation on this point. Similarly, HMRC has confirmed that it will not relax the 'significant break' test.

KPMG NOTE

In practice, this means that many assignees who find themselves unable to leave the U.K. and who choose to work remotely in the U.K. will not meet the 'full-time working overseas' test, and so will need to consider if they meet any of the other automatic nonresident tests. If none of these automatic tests are met, they will need to consider whether they meet any of the automatic resident tests. And if none of these tests are met, they will need to consider whether they are resident in the U.K. under the 'ties' tests. This is likely to add further complexity when analyzing an individual's U.K. residency position.

Other Matters

There are also a number of other matters covered within HMRC's guidance. These include:

- (i) the effect on the SRT 'family ties' test where an individual's children are U.K. resident but not in full-time education due to COVID-19;
- (ii) the knock-on impact (if any) on an individual's domicile/deemed domicile position;
- (iii) confirmation that the rules for U.K. resident employees claiming 'overseas work-days relief' apply unchanged, notwithstanding any duties normally undertaken overseas being carried out in the U.K.; and
- (iv) employment income articles in the U.K.'s double taxation treaties remain unchanged and their application depends on each individual's circumstances.

KPMG NOTE

These Q&A provide some welcome clarity to employees (and their employers) where employees have been unable to leave the U.K. in the circumstances of COVID-19, particularly as regards whether unexpected days spent in the U.K. can be considered 'exceptional' for the purposes of determining their U.K. residency position.

However, some may be disappointed that no easements have been made to the 60-day limit for 'exceptional circumstances', or to what constitutes a taxable U.K. work-day where non-U.K. residents are displaced and find themselves unexpectedly working in the United Kingdom. This said, U.K. tax relief may be available on U.K. work-days under a double taxation treaty, where one exists and its conditions are satisfied.

FOOTNOTES:

- 1 For HMRC's new guidance on The SRT and COVID-19 – Q&A, click [here](#) .
- 2 For full details of the Statutory Residence Test, please click [here](#) .
- 3 For HMRC's previously-published guidance on 'exceptional circumstances', click [here](#).
- 4 For HMRC's previously-published guidance on The Statutory Residence Test and Coronavirus, click [here](#) .
- 5 Finance Act 2020, s109.
- 6 For HMRC's guidance on the Full-Time Working Overseas Test, click [here](#) .

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