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Saving Grace

In recent times there has been much emphasis on day counting when considering whether an individual is UK resident for tax purposes. Individuals who spend 183 days or more in the UK per annum are deemed, by statute, to be UK tax resident. In addition, HM Revenue and Customs (HMRC) guidance advises that individuals who spend 91 days or more on average over a four year period are also deemed to be UK resident.

The recent tax case of *Grace v CIR* demonstrates that there are other important issues to take into account when considering residence. The case involved Mr Grace, a South African airline pilot who worked for British Airways. Although he had spent time working in the UK he claimed to have ceased to be UK resident in 1997. The case was to decide whether he was UK resident and ordinarily resident for the six years commencing 1997/98.

HMRC argued that Grace was not a temporary resident in the UK. He had the intention of establishing residence there and he was in the UK repeatedly for the settled purpose of earning a living.

Grace left the UK in 1997 for predominantly family reasons. Having divorced his UK born wife, he wished to spend more time with his family living in Johannesburg. Grace bought a three bedroom house in South Africa but continued to work for BA as a long haul pilot and effectively commuted from South Africa to the UK to work there. He also bought a property near Gatwick for his use when resting between long haul flights. The property, he claimed, was merely a substitute to staying in hotels whilst working.

Despite claiming to have left the UK, Grace remained on the electoral roll and was registered with a dentist in the UK. Importantly, in the three years post 1997 Grace spent more days in the UK than in South Africa.

An initial review of these facts may suggest that Grace, as an employee of a UK company, with a house and car in the UK and spending more time in the UK than South Africa, was in fact UK resident.

However, the facts that supported Grace's case that he was not resident were equally convincing. His home in South Africa was more substantial, he held a private pilots licence there, was a life member of a local flying club,

owned a Cessna aircraft which was kept in South Africa and founded a five member syndicate to import to South Africa a 1960 RAF jet in which he still owns a share today. He had a well structured social network in South Africa and was not a member of any UK clubs. The car he kept in the UK only did 33,600 miles in six years and he had only visited the UK dentist once since 1997.

Grace also ensured that, after discounting travel days, (prevailing practice up to 5 April 2008) he had spent less than 91 days per annum in the UK. In addition, when reviewing the duration of visits in the six years following 1997, on only three occasions had he spent seven consecutive days or more in the UK.

Grace's only UK relatives were his former wife, whom he had only seen twice since 1997, and his two children whom he had not seen at all in the same period. Grace also confirmed that, once retired, he had no plans to visit the UK.

The decision of the Special Commissioners after taking into account his habits of life, the temporary nature of his visits to the UK and the permanent nature of his ties with South Africa, was that he had successfully ceased to be UK resident and ordinarily resident from the date of his departure in 1997.

In our opinion, although it is important to remain within the Revenue's day count, it is also essential to look at the whole lifestyle and the nature of visits to the UK in the same period.

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