



Getting you there.



What a Difference a Day Makes!

Prior to the, now infamous, Pre Budget Report of October 2007 if you wanted to know the rules on UK residence you may have reached for the booklet published by HM Revenue and Customs (HMRC) known as IR20. This would have told you, amongst other things, that if you were present in the UK for 183 days or more in any one year, or for an average of 91 days or more over a four year period, then you were to be treated as UK resident for tax purposes. It would also have told you that when counting the days you were present in the UK you could discount the days you travelled to and from the UK, i.e your travel days.

IR20 was relied upon by many as the final word on UK residence and gave people comfort that as long as they kept within their days all would be well. However it was, and is not, statutory and still represents only guidance issued by HMRC.

The recent Gaines-Cooper case created a certain amount of confusion as Mr Gaines-Cooper had wanted to rely on the 91 day rule, however the Special Commissioners ruled that as he had never "left" the UK he could not utilise the 91 day rule nor could they wholly disregard his travel days as in this case it would have been misleading.

What followed was the announcement in the 2007 Pre Budget Report that the method of counting days would change and individuals would no longer be able to discount travel days, suggesting that any part of any day would count, even when transiting through the UK. This caused a great deal of furore and certain professional bodies and interested parties, including this firm, lobbied the Government to take a more sensible and less draconian approach.

A number of changes were subsequently announced and changed again before the budget day announcements on 12 March followed by the Finance Bill 2008. It is now hoped that we have a sensible compromise and no further changes will take place. The position is now that the 183

day and the 91 day rules are still in place, it is just the method of counting the days that has changed. Therefore from 6 April 2008, if you are present in the UK at midnight you are classed as being in the UK for one day for the purposes of the day counting rules.

With all the uncertainty about how the rules affecting UK residence were going to pan out, at last we have some certainty - or do we? HMRC have recently issued a new IR20. The new booklet is dated April 2008 and one would expect it to ratify the new practice of counting days that has effect from 6 April 2008. Unfortunately it does not, as it states that when counting your days present in the UK to determine whether you are resident or not you should continue to discount days of arrival or departure, as was the case for many years prior to 6 April 2008. It also has an appendix that confirms HMRC has not changed its position on the 91 day rule, in that it remains relevant if you have left the UK.

My view is that the "midnight" rule announced on budget day stands, that the issue of a "revised" IR20 is a case of bad timing by HMRC, and that another new IR20 will be published later in the year. However the message is please take advice from specialists if you are contemplating a move from the UK. It is also worth reviewing your affairs and tax status frequently as the rules change regularly.

Amongst other things, Fortis Reads Private Clients Limited specialises in this area and we would be pleased to assist you with your tax planning and compliance. We are registered with The UK Chartered Institute of Taxation as a Firm of Chartered Tax Advisers.

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