

NEW UK TAX RESIDENCE DECISION SENDS SHOCK WAVES THROUGH TAX PROFESSION . . .

The UK Supreme Court ruled on October 19 that Seychelles based entrepreneur, Robert Gaines-Cooper *did* remain resident in the UK throughout the period 1992 to 2004 and hence was liable to full UK tax on his worldwide income and gains... he claimed he merely followed UK tax authority published practice as set out in Booklet IR20 and hence was *not* resident. It is now open to the UK tax authorities to target a large number of mobile executives as well as high net wealth individuals. It is clearer than ever that someone leaving the UK for long periods needs to make a “clean break” in order to cease being tax resident.

Even to the five Lords in the Supreme Court, the position was not wholly clear as in a 4 to 1 verdict Lord Mance dissented and agreed with the taxpayer’s stance. Other Lords commented on the “very poorly drafted . . . and garbled” Revenue guidance. There is even reference by the Lords to a 1936 Commission which said the law on tax residence was “intolerable and should not be allowed to continue. . .”

Gaines Cooper, like many entrepreneurs, was highly mobile and in a typical year might spend as much as 150 days on flights. The Lords heard how he lived “an international existence” from 1976 to 2004. His days in the UK were well within the 90 day average prescribed in the (much maligned) Revenue booklet IR20. The Court however agreed with the Revenue that Gaines-Cooper had never actually left the UK and cited continuing connections with the UK such as a substantial UK house, race horses, car collection and his son being at school, wife living here, etc. This meant that the UK continued to be the “centre of gravity of his life and interests”.

Thankfully, proposals have been published for a statutory definition of tax residence for individuals and it is likely these will take effect from 6 April 2012. For the time being however and for periods to April 2012, advising on tax residence has become a high risk area for advisers (and their clients!) with large amounts of tax often at stake..

International Tax Partner at Creaseys, Richard Holme, commented: “Tax law in this area has not kept up to date with modern technology, travel and working practices and has created a huge degree of uncertainty for international business. Wealthy individuals may be wary of visiting the UK frequently or having UK connections as this may trigger substantial tax bills. We are advising a number of clients in this area at present but sometimes with a large degree of caution.

“Take an example, Roger who left the UK in May 2010 to work in Dubai for 3 years. His wife Mary stays behind in the UK to look after their children. Roger visits for a weekend every month to see his family . . . and play golf! He also spends 4 weeks in the UK on holiday. He plans to encash a UK endowment policy at a large gain. Is he non UK resident? Could he still be liable to UK tax on his worldwide income?”

We welcome the new statutory definition of tax residence but it will not take effect for another six months or so. We very much hope that the legislation to be published on December 6 will be clear and unambiguous. Massive tax planning opportunities continue for those arriving in the UK and being able to claim not ordinarily resident or non dom status.”

Creaseys are members of IGAF Polaris, a substantial international association of accountants and tax advisers with 843 offices in 89 countries and have several hundred non dom and non resident clients.