[2017] UKFTT 770 (TC)

# TC06179

**Appeal number: TC/2014/06159**
**TC/2014/06172**

***INCOME TAX – residence –whether appellants were resident in the United Kingdom for the relevant tax years – whether a break in their residence in the UK had occurred –held taxpayers were resident in the United Kingdom***

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**ANTHONY PECK** **Appellants**
**SALLY PECK**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS** **Respondents**

**TRIBUNAL: JUDGE SARAH ALLATT**
**MR IAN ABRAMS**

**Sitting in public at Taylor House on 11, 12 and 13 September 2017**

**The Appellants represented themselves**

**Christopher Stone, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

1. These Appeals are by Mr Anthony Peck and Mrs Sally Peck against closure notices dated 15 July 2014 in respect of the years of assessment 2006/07, 2007/08, 2008/09, 2010/11 and 2011/12 ('the relevant years') which were prepared on the basis that they were tax resident in the UK. The year of assessment 2009/10 does not form part of the appeal.

2. The only issue for the Tribunal to decide is whether the Appellants were resident in the UK for any or all of the relevant tax years.

## Background

3. Extensive documentary evidence was provided, and the Tribunal heard evidence from Mr Peck and Mrs Peck, who were then cross-examined by Mr Stone.

4. We found both Mr and Mrs Peck to be honest witnesses. However due to the significant time that had elapsed between the events in question and the date of the hearing, sometimes they were unable to recall events, and sometimes their memory proved slightly unreliable.

5. The following facts are not disputed.

6. Mr and Mrs Peck are British and until 2006 had lived all their lives in the UK.

7. Until 1985 Mr and Mrs Peck lived in Hertfordshire and in 1986 they moved to East Sussex to be near Mrs Peck's mother.

8. They bought a bungalow with around half an acre of garden. First they lived in the bungalow, then they built a 4 bedroom house (Highdown) in the garden of the bungalow and moved into that, whilst retaining ownership of the bungalow, and then they demolished the bungalow and built a new 5 bedroom house called Faith Cottage.

9. Mr Peck was severely injured in road accident in 1980 and one of the reasons for moving from Highdown to Faith Cottage was that Faith Cottage had certain adaptations to meet his needs, as he was finding stairs increasingly difficult.

10. Mr and Mrs Peck moved into Faith Cottage in January 2005.

11. Mrs Peck's mother died in 2002.

12. Mr and Mrs Peck had never made close friends in the East Sussex area and after the death of Mrs Peck's mother had very little to tie them to the area.

13. The location of their properties was in an area that Mr Peck found difficult to walk extensively due to the steep inclines.

14. Accordingly, they decided to move somewhere warmer, sunnier, and more suited to them, and by 2005 had settled on looking between Nice and Menton.

15. In 2006 they rented a property in Monaco to give them a base whilst they looked for a property to buy in the surrounding area.

16. The property was rented from 1 March 2006, for an initial term of 15 months.

17. On or around 1 March 2006 Mr and Mrs Peck packed up a significant number of personal items from Faith Cottage, and drove to Monaco to take their belongings to their rented accommodation. They then returned to the UK.

18. They contacted a firm of solicitors in Monaco to assist with obtaining their Cartes de Sejours, and flew to Monaco on 18 March 2006. The interview needed as part of the Carte de Sejours process took place on 20 March 2006, and Mr and Mrs Peck flew back to the UK on 23 March 2006.

19. At some point after 23 March 2006 Mrs Peck received an invitation from a friend in Australia to a party to be held on 9 April 2006 in the UK.

20. Mr and Mrs Peck packed up a second car load of possessions, and after the party drove to Monaco on 9 April 2006.

21. Mr and Mrs Peck had read the document 'IR20' produced by the Inland Revenue (as it was at that time). They were aware that they were likely to be considered UK resident if their visits in any tax year exceeded 90 days.

22. The number of days spent in the UK in each year in question is not in dispute. We set out below the visits and total duration of their time in the UK:

| | |
|---|---|
| 2006/7 | 13 visits, 76 midnights in the UK |
| 2007/8 | 12 visits, 78 midnights in the UK |
| 2008/9 | 8 visits, 81 midnights in the UK |
| 2010/11 | 6 visits, 88 midnights in the UK |
| 2011/12 | 6 visits, 68 midnights in the UK |

23. Mr and Mrs Peck have since April 2006 regarded Faith Cottage as a holiday home. It contains bed linen, kitchen items and crockery sufficient for their needs when they visit the UK, but all individual personal items of importance are kept in Monaco, which they regard as their home.

24. Highdown was never lived in by the Appellants since they moved into Faith Cottage. It was at various times in 2009 and 2010 marketed for sale and also as a rental property. It was finally rented out in 2011.

25. Faith Cottage has never been let nor put on the market for sale.

26. In addition, Mr and Mrs Peck owned a long lease on a further property nearby (Ravens Court) inherited on the death of Mrs Peck's mother. They never lived in this property. It was not let out as the terms of its lease do not permit this. It was sold in 2016.

27. Mr and Mrs Peck bought a property in Monaco in 2008, and continue to live there.

28. Mr and Mrs Peck own a group of property companies ('the Hale Group') from which they derive the majority of their income. Mrs Peck is the majority shareholder as the group was inherited from her father. The companies hold properties, both residential and commercial, as investments.

29. Both Mr and Mrs Peck are directors of the companies in the Hale Group. Prior to 2000 Mr Peck instructed contractors on repairs, liaised with agents and solicitors on lease renewals, new leases and property transactions. Prior to 2000 Mrs Peck provided secretarial services and kept the books of the companies.

30. In 2000 both Mr and Mrs Peck reduced the role they each took in the companies. The majority of the residential properties were by that time let on assured shorthold tenancies and these were managed by managing agents. Surveyors were appointed to oversee all the repairs so that Mr Peck no longer needed to do this. Mr Peck then took on the bookkeeping and administration of the companies. Mrs Peck remained as company secretary as well as director, but for all practical purposes she had retired. Mr Peck continued to have minor involvement such as writing cheques, answering managing agent queries and signing legal documents. This paperwork is done in Monaco. Mr Peck (generally accompanied by Mrs Peck) would also occasionally drive to some of the properties to check that, so far as he could see from the outside, they were in good order.

31. In late 2005, in preparation for their move abroad, to simplify the administration and to reduce further the work done by Mr Peck, the Hale Group disposed of a significant number of the freehold reversions that they owned. This process started in October 2005 and continued until 2008.

32. In June 2006, therefore shortly after starting to live in Monaco, Mr and Mrs Peck filled in form P85 to tell the Inland Revenue of their departure from the UK. On this form they each stated their date of departure as 20 March 2006.

33. Following their move to Monaco, Mr and Mrs Peck returned their NHS medical cards, removed themselves from their GP practice in the UK, surrendered their UK driving licences and sold their PEPs and ISAs. They obtained Monaco driving licences and registered with a doctor, dentist and cardiologist in Monaco. The dates of these vary but were all between April 2006 and December 2007.

34. Mr and Mrs Peck continued to own cars kept in the UK until 2010, when, due to the difficulties of insuring the cars when they were not UK resident, the cars were taken off the road. They own a car in Monaco and have done since 2007.

35. Mr and Mrs Peck have Monaco bank accounts and credit cards. They also have UK bank accounts and UK credit cards.

**Evidence**

36. When giving evidence the following areas were considered more closely.

37. **Vehicles**. Mr and Mrs Peck have owned a car in Monaco since 2007. They continued to own cars registered and kept in the UK until in 2010 they were unable to insure these due to being resident in Monaco. It was put to Mr Peck that before 2010 he must have told his insurers that he was UK resident. Mr Peck denied this, saying he had told the insurance brokers about their situation, and that the brokers had said this was not a problem, until 2010 when they were unable to find a company that would insure them.

38. **Post.** Mr and Mrs Peck did not have their post redirected to Monaco. They explained that most important items (correspondence with solicitors, accountants, estate agents for example) were done online. Mr Peck described the post that did come to their UK property as 'junk mail', including a number of offers from people wanting to buy the properties owned by the Hale Group. From the evidence produced it was clear that all utilities (electricity, gas, water etc) addressed their bills to UK addresses. All council tax bills were addressed to Faith Cottage, and a second home discount claimed for Highdown and Ravens Court. The statements for all sterling bank accounts and credit cards sent were sent to Faith Cottage. However the address given to London Bridge Hospital for bills for medical procedures was the Monaco address.

39. **Bank accounts**. Both Mr and Mrs Peck stated in their witness statements that 'all our general personal banking needs are fulfilled by our bank in Monaco', before going on to clarify this statement by saying that in addition to Monaco bank accounts and credit cards they also had UK bank accounts and credit cards which they used while in the UK. They explained in oral evidence that they did not wish to change euros to sterling every time they came to the UK, so they kept sterling bank accounts for UK spending purposes, in addition to it offering ease of online access to some of the Hale Group bank accounts.

40. **Hospital visit.** Mr Peck had an operation performed in a private London hospital in November 2010. Mr Peck explained that he had seen a doctor in Monaco and undergone a diagnostic procedure at the Princess Grace hospital, which showed he had cancer of the bowel. A visit to the UK had been already been booked when the test results came through, and while in the UK Mr Peck found that London had a colorectal clinic and he booked to get a second opinion there. The surgeon at the London Colorectal Clinic confirmed the diagnosis and offered to perform the operation immediately, which Mr Peck agreed to. He has had subsequent check ups performed in London as well, by the same surgeon.

41. **Pattern of visits back to the UK**. Mr and Mrs Peck told us that they had read 'IR20', the guidance document issued by the Inland Revenue on residence, and had interpreted it to mean that they would be non-resident if they spent fewer than 90 days in the UK in any given tax year. They accordingly did keep their visits to the UK to fewer than 90 days (using whichever method of counting was applicable at the relevant time). At first, their visits back to the UK were generally one a month, for

around a week at a time. This has evolved over time to around once every 2 months, for around 10 – 14 days at a time. They explained they had no particular purpose for coming back to the UK, other than to come to check on the properties. The flight ticket bookings show that they booked flights around 2 - 6 weeks in advance, so sometimes they return to Monaco from the UK with their next trip already booked, sometimes they do not.

42. Extensive analysis was provided by HMRC of expenditure by Mr and Mrs Peck while in the UK. This showed regular trips to supermarkets, main high street retailers such as Boots and John Lewis, and occasional trips to restaurants and hotels for meals with friends.

43. **Quality of their residence in the UK**. As will be seen from the discussion of the law below, it is important to determine whether or not Mr and Mrs Peck made at any point a complete break to the pattern of their life in the UK. In this regard Mr and Mrs Peck gave evidence about how they spend their time and how, if at all, this has changed. Both Mr and Mrs Peck mainly spend their time on domestic activities, including minor DIY by Mr Peck, and needlework and gardening by Mrs Peck. They do not have friends in the Eastbourne area. On their visits back to the UK since 2006, there have been occasions where they have met up with friends, but these are not frequent or regular. Mr and Mrs Peck were clear that they regard their home in Monaco as their 'real' home, and Faith Cottage as a holiday home.

44. **Continued ownership of multiple residences in the UK**. Mr and Mrs Peck explained that on their reading of IR20, they expected to be treated as not resident in the UK for any tax year that they spent fewer than 90 days in the UK. They did not have any immediate need to sell the properties so they kept them as investments. When Highdown was marketed to be sold and did not sell, they saw no point in putting Faith Cottage on the market as if Highdown did not sell, Faith Cottage would not sell either. Initially Highdown was not let out, as Mr and Mrs Peck did not wish it to be obvious to any tenant of Highdown that Faith Cottage was empty for significant periods of time. When Highdown was put on the market, Mr Peck expressed a wish to place a covenant on the property forbidding the parking of certain vehicles (caravans etc) on the driveway.

45. **Work duties in the UK and the operation of the Hale Group of companies.** Mr Peck performed minor duties connected with the Hale Group of companies while he was in the UK. These included opening post, banking cheques, and, if passing close by to the area where the Hale Group owns property, driving past properties and checking that nothing untoward was visible. It was made clear by Mr Peck that none of these activities was essential. Most communication was done over email so the post was not likely to be critical. The cheques banked were so small as to be insignificant, and the properties had managing agents who would perform a much more thorough check as part of their duties.

46. Mr and Mrs Peck have continued to be taxable in the UK as they have various sources of UK income. We were shown Mr Peck's tax returns for the relevant tax years. The tax returns for 2006/2007 and 2008/09 showed a significant number of

workdays in the UK (50 and 76 respectively). Mr Peck explained that the work done on these days was minimal, including collecting company post from the PO Box on one of their residences and driving past the company properties occasionally. The workday figure had been arrived at simply by taking every weekday that arose during his visits to the UK and entering that as a work day. His explanation for that was two-fold. Firstly, he and Mrs Peck had been told by the accountants to the group of companies that they should perform duties in the UK to prevent the group of companies becoming non-UK resident, which may have resulted in a significant tax charge for the companies. Secondly, he considered that being a company director of the Hale companies was something he did continuously while in the UK, even though these duties were not particularly time consuming. We note that on the face of the 2006/07 return the wording is 'how many workdays have you spent in the UK performing the duties of your employment' and in 2008/09 the wording is 'how many workdays have you spent in the UK'. We were not provided with any guidance notes that may have existed about how to count a workday.

**The Law**

47. The appeals under question cover the time when no statutory residence test existed. We note in passing that had the current statutory residence test existed, neither Mr and Mrs Peck would be considered resident in the UK. However that clearly has no bearing on the appeal in question.

48. As no statutory definition exists, case law has built up over a period of time and established a number of important factors to consider.

49. As a starting point, the extract below is from the Court of Appeal decision in Grace v HMRC [2009] STC 2707, which quotes from the decision of Lewison J in the High Court which was being appealed:

> 'i) The word "reside" is a familiar English word which means "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place": *Levene v IRC* (1928) 13 TC 486 at 505, [1928] AC 217 at 222. This is the definition taken from the Oxford English Dictionary in 1928, and is still the definition in the current online edition;
> ii) Physical presence in a particular place does not necessarily amount to residence in that place where, for example, a person's physical presence there is no more than a stop-gap measure: *Goodwin v Curtis* (*Inspector of Taxes*) [1998] STC 475 at 480, 70 TC 478 at 510;
> iii) In considering whether a person's presence in a particular place amounts to residence there, one must consider the amount of time that he spends in that place, the nature of his presence there and his connection with that place: *IRC v Zorab* (1926) 11 TC 289 at 291;
> iv) Residence in a place connotes some degree of permanence, some degree of continuity or some expectation of continuity: *Fox v Stirk; Ricketts v Registration Officer for the City of Cambridge* [1970] 3 All ER 7 at 13, [1970]

2 QB 463 at 477; *Goodwin v Curtis* (*Inspector of Taxes*) [1998] STC 475 at 481, 70 TC 478 at 510;

v) However, short but regular periods of physical presence may amount to residence, especially if they stem from performance of a continuous obligation (such as business obligations) and the sequence of visits excludes the elements of chance and of occasion: *Lysaght v IRC* (1928) 13 TC 511 at 529, [1928] AC 234 at 245;

vi) Although a person can have only one domicile at a time, he may simultaneously reside in more than one place, or in more than one country: *Levene v IRC* (1928) 13 TC 486 at 505, [1928] AC 217 at 223;

50. Looking in more detail at the various cases to which we were referred, we will start with the case of Lysaght. This concerned an Irish businessman who was resident in the UK for a period of time, and then moved to a house in Ireland. Whilst resident in Ireland and without owning a property in the UK, he returned to the UK every month for business meetings, and stayed in a hotel.

Rowlatt J, in the High Court, made the following comments in his judgement:

> ‘ The circumstance that he had been an undoubted resident in Bristol or the neighbourhood does not show that he had continued to be so, nor does the circumstance that he had made a great change in his domestic habits necessarily help one in considering whether he had made a change in his residence also, for this purpose. I think one must simply consider him as a gentleman who, one now knows, (whatever his past) has his residence in Ireland, and just comes over here. Secondly one must remember and it is rather a hard thing to bear in mind, because it qualifies one's natural ideas in connection with the word "residence" - that one must not look for an establishment. ....If a man chooses to live at hotels instead of in his own house, or even to stay with friends, it really does not affect the question of residence. What I really have to decide in this case, and what the Commissioners had to decide - and I have to see whether they were wrong - is whether or not he was a mere visitor..... One has to realise what this gentleman's position really is. Here is the great business, as everybody knows very well, of Lysaght and Company. He is the advisory director of it, at £1,500 a year, and he comes over here every month for an average of a week. He sleeps here and he has to be here doing the business of the company for about a week a month. It is not to be looked at as if one could say: "He has come; I do not know whether he will come next month; I do not know whether he will come the month after". As things are, rebus sic stantibus, he came this month; he will have to come next month, if illness or something does not prevent him; and he will have to come the month after. He will have to come perfectly regularly and, unless he gives up his position, he could not alter it..... Under the circumstances - I do not decide more than this particular case - I cannot differ from the Commissioners when they say that he was resident and the ordinary course of his life made him resident in this country.

51. The judgement was appealed in the House of Lords but not overturned.

52. The case of Levene has fewer parallels with the appeals in question here. However it again reiterated the fact that it is possible to be resident in more than one place. Viscount Cave, the Lord Chancellor, made the following remarks in his judgement:

> 'But a man may reside in more than one place. Just as a man may have two homes - one in London and the other in the country - so he may have a home abroad and a home in the United Kingdom, and in that case he is held to reside in both places and to be chargeable with tax in this country.
> Thus, in Cooper v Cadwalader (1904, 5 Tax Cases 101) an American resident in New York who had taken a house in Scotland which was at any time available for his occupation, was held to be resident there, although in fact he had only occupied the house for two months during the year; and to the same effect is the case of Loewenstein v de Salis (1926,10 Tax Cases 424). The above cases are comparatively simple, but more difficult questions arise when the person sought to be charged has no home or establishment in any country but lives his life in hotels or at the houses of his friends. If such a man spends the whole of the year in hotels in the United Kingdom, then he is held to reside in this country; for it is not necessary for that purpose that he should continue to live in one place in this country but only that he should reside in the United Kingdom. But probably the most difficult case is that of a wanderer who, having no home in any country, spends a part only of his time in hotels in the United Kingdom and the remaining and greater part of his time in hotels abroad. In such cases the question is one of fact and of degree, and must be determined on all the circumstances of the case (Reid v The Commissioners, 1926 S.C. 589, 10 Tax Cases 673). If for instance such a man is a foreigner who has never resided in this country, there may be great difficulty in holding that he is resident here. But if he is a British subject the Commissioners are entitled to take into account all the facts of the case,...'

53. It is also useful in the context of this case to refer to the case of Gaines–Cooper (R (Gaines-Cooper) v HMRC [2011] 1 WLR 2625) because, as stated above, the appellants had read IR20 before departing the UK and believed that simply reducing days spent in the UK to below 90 days per tax year would be sufficient to make them not resident in the UK.

54. The Gaines-Cooper case discussed primarily whether the IR20 booklet accurately reflected the law, and in addition, whether, if it did not, there had been an unannounced change in practice by the revenue such that taxpayers would have a legitimate expectation to be treated in accordance with IR20 even if it did not accurately reflect the law.

55. We quote extensively here from the Supreme Court Judgement so the appellants are clear what points have been considered by the Supreme Court in relation to the IR20 booklet.

56. We also note in passing that IR20 was withdrawn in 2009, so two years of the appeals in question occur after the withdrawal of the document.

> [2] ....The revenue accepts that, if either the proper construction of the booklet or its settled practice was as they contend, a legitimate expectation arose which requires that their status for tax purposes should be determined in accordance with the allegedly more benevolent interpretation of the circumstances in which an individual becomes non-resident and not ordinarily resident in the UK.
>
> .....
>
> [13] In the absence to date of any statutory definition of residence taxpayers and their advisers have had to turn to the guidance given by the courts - and, importantly, also by the revenue - in relation to its meaning. But the courts have not - nor, as we shall see, has the revenue-found it easy to formulate the guidance. For more than 80 years the leading authority has been Levene v Inland Revenue Comrs [1928] AC 217. Until 1919 Mr Levene was resident and ordinarily resident in the UK. During the next five years he spent about five months (mainly in the summer) each year, staying in hotels in the UK and receiving medical attention or pursuing religious and social activities. He spent the remaining months staying in hotels abroad. The appellate committee declined to disturb the conclusion of the commissioners that Mr Levene had remained resident and ordinarily resident in the UK during those years. Viscount Cave LC adopted, at p 222, the definition of 'reside' given in the Oxford English Dictionary, namely 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place'; and, of these three descriptions, the Lord Chancellor chose, no doubt as being the most helpful, that of a 'settled or usual abode'.
>
> [14] Since 1928, if not before, it has therefore been clear that an individual who has been resident in the UK ceases in law to be so resident only if he ceases to have a settled or usual abode in the UK. Although... the phrase 'a distinct break' first entered the case law in a subtly different context, the phrase, now much deployed including in the present appeals, is not an inapt description of the degree of change in the pattern of an individual's life in the UK which will be necessary if a cessation of his settled or usual abode in the UK is to take place.
>
> ...
>
> [The judgement then discusses how the 'distinct break' phrase first came into the case law, referring to the cases of Reed v Clark, and Inland Revenue Comrs v Combe (1932) 17 TC 405.]
>
> ....

[20] It is therefore clear that, whether in order to become non-resident in the UK or whether at any rate to avoid being deemed by the statutory provision still to be resident in the UK, the ordinary law requires the UK resident to effect a distinct break in the pattern of his life in the UK. The requirement of a distinct break mandates a multifactorial inquiry. In my view however the controversial references in the judgment of Moses LJ in the decision under appeal to the need in law for 'severance of social and family ties' pitch the requirement, at any rate by implication, at too high a level. The distinct break relates to the pattern of the taxpayer's life in the UK and no doubt it encompasses a substantial loosening of social and family ties; but the allowance, to which I will refer, of limited visits to the UK on the part of the taxpayer who has become non-resident, clearly foreshadows their continued existence in a loosened form. 'Severance' of such ties is too strong a word in this context.

[After this discussion of the statutory position, the judgement moves on to consider the IR20 booklet]

.....

[31] The second appellant [Gaines-Cooper], by contrast, contends that, in the booklet, the revenue represented that a taxpayer would be accepted as not resident and not ordinarily resident in the UK if he went to live abroad for at least three years and satisfied the day-count proviso. His contention is that, in the interests of simplicity, the revenue thereby cut away its need –or entitlement - to afford any independent consideration to whether he had effected a distinct break in the pattern of his life in the UK.

Paragraphs 2.7 to 2.9, which lie at the centre of the appeals [of Gaines-Cooper], were headed 'Leaving the UK permanently or indefinitely' so their content was entirely governed by that rubric, in which the two adverbs provided important colour to the type of 'leaving' which the revenue was proposing to address. I also agree, however, with the observation of Moses LJ [2010] STC 860, para 44 that: 'It makes no sense to construe 'leave' when qualified by the adverbs permanently or indefnitely as referring to the process of going abroad. They clearly require consideration of the quality of the absence.

....

[38] The paragraphs stated:

2.7 If you go abroad permanently, you will be treated as remaining resident and ordinarily resident if your visits to the UK average 91 days or more a year . . . Any days spent in the UK because of exceptional circumstances beyond your control, for example the illness of yourself or your immediate family, are not normally counted for the purposes of averaging your visits.

2.8 If you claim that you are no longer resident and ordinarily

resident, we may ask you to give some evidence that you have left the UK permanently, or to live outside the UK for three years or more. This evidence might be, for example, that you have taken steps to acquire accommodation abroad to live in as a permanent home, and if you continue to have property in the UK for your use, the reason is consistent with your stated aim of living abroad permanently or for three years or more. If you have left the UK permanently or for at least three years, you will be treated as not resident and not ordinarily resident from the day after the date of your departure providing . . . [viz the day-count proviso].

2.9 If you do not have this evidence, but you have gone abroad for a settled purpose (this would include a fixed object or intention in which you are going to be engaged for an extended period of time), you will be treated as not resident and not ordinarily resident from the day after the date of your departure providing

- your absence from the UK has covered at least a whole tax year, and
- your visits to the UK since leaving [satisfy the day-count proviso].

If you have not gone abroad for a settled purpose, you will be treated as remaining resident and ordinarily resident in the UK, but your status can be reviewed if

- your absence actually covers three years from your departure, or
- evidence becomes available to show that you have left the UK permanently providing [viz the day-count proviso].

[39 ]On any view the three paragraphs were very poorly drafted. But does it follow that, when read in conjunction with the other parts of the booklet to which I have drawn attention, they amounted to a clear representation of the types for which the appellants respectively contend? Regrettable though it would be, a confusing presentation would be likely to have lacked the clarity required by the doctrine of legitimate expectation.

[45]... Unlike -so it seems- its successor, namely HMRC6, the exposition in the booklet of how to achieve non-resident status should have been much clearer. My view however, is that, when all the passages in it to which I have referred were considered together, it informed the ordinarily sophisticated taxpayer of matters which indeed were unlikely to come as a surprise to him,

namely that: (a) he was required to ‘leave’ the UK in a more profound sense than that of travel, namely permanently or indefnitely or for full-time employment; (b) he was required to do more than to take up residence abroad; (c) he was required to relinquish his ‘usual residence’ in the UK;(d) any subsequent returns on his part to the UK were required to be no more than ‘visits’; and (e) any ‘property’ retained by him in the UK for his use was required to be used for the purpose only of visits rather than as a place of residence. He will surely have concluded that these general requirements in principle demanded_and might well in practice

> generate_a multifactorial evaluation of his circumstances on the part of the revenue albeit subject to appeal. If invited to summarise what the booklet required, he might reasonably have done so in three words: a distinct break.
>
> [47] Were I wrong, however, to have concluded that the booklet succeeded in conveying to the taxpayer the information to which I have referred in para 45 above, it would in no way follow that, on this, the main basis upon which they are advanced, the appeals should succeed. Were I wrong, I would feel driven to conclude only that the treatment in the booklet of the means of becoming non-resident was so unclear as to communicate to its readers nothing to which legal effect might be given. Such a conclusion would leave the appeals far short of their necessary foundation, namely of clearly specifed criteria by reference to which they legitimately expected their claims to non-residence to be determined.

57. In the context of this case, therefore, the case law makes it clear that:

> (1) In order to be considered not UK resident, having previously been UK resident, a distinct break must be effected in the pattern of the taxpayer's life in the UK.
>
> (2) The taxpayer must not have a 'settled abode' in the UK if they are to be considered not UK resident.
>
> (3) Regularity of visits is likely to mean that a taxpayer is considered resident.
>
> (4) A multifactorial approach must be taken.
>
> (5) IR20 did not adopt a different position to the statutory approach, albeit the wording was not clear.

**Discussion**

**Date of Departure**

58. When considering whether the appellants made a distinct break from their life in the UK up to the early part of 2006, it first becomes necessary to decide at what date they might be said to have 'departed' the UK. A number of dates are possible for this departure. The first date is 1 March, at which point Mr and Mrs Peck started to rent the flat in Monaco and made the first trip to Monaco with some of their possessions. The second date is somewhere between 18 and 23 March, when the second trip to Monaco in this series of trips was made, and when the police interview as part of the process of obtaining the Cartes de Sejour was held on 20 March 2006. 20 March 2006 was the date entered by Mr and Mrs Peck on their forms P85. The third date is 9 April 2006 and was the date Mr and Mrs Peck again drove to Monaco with a car load of possessions. In their written witness statements both Mr and Mrs Peck, using identical wording, wrote 'it is clearly apparent that we had never intended to move in or start living in Monaco on 20 March 2006. This was the date we became entitled to live in Monaco which I had mistakenly used on my form P85 instead of the (required

date) of 9 April 2006 that was the date we physically crossed the UK border into Europe to start our new life in Monaco.'

59. Clearly these dates make a distinct difference in relation to the 06/07 tax year. A date of departure after 6 April 2006 would mean Mr and Mrs Peck were resident in the UK for the tax year 2006/07.

60. Upon being asked whether they were indeed conceding that they were UK resident for the tax year 06/07, Mr and Mrs Peck denied this. Mrs Peck, in her oral evidence, explained that she had forgotten, when preparing her witness statement in 2016, the earlier trip with possessions on 1 March 2006, and focussed on the second car trip on 9 April. She was very clear that in her mind the pivotal date was the date of the interview in Monaco on 20 March 2006.

61. It was pointed out by Mr Stone, acting for HMRC, that the Cartes de Sejour were sent to Mr and Mrs Peck sometime in April 2006, as an email was sent from their lawyers on 5 April 2006 saying 'we expect the cards should be released at the end of the month'.

62. We therefore have near contemporaneous evidence (the P85s) that Mr and Mrs Peck viewed their departure date as 20 March 2006, backed up by Mrs Peck's recollection in her oral evidence. We also have contradictory evidence in their written witness statement. In addition, we have evidence as to their actions in the period 23 March 2006 – 9 April 2006. They returned to the UK and continued their preparations for departure. On 3 April Mr Peck wrote a letter connected with the sale of Hale Group properties. This letter envisaged a return in the week commencing 2 May 2006 (as in fact tickets for that return trip were also booked on 3 April 2006). On 7 April Mr Peck visited properties in Chelmsford and Bicknacre owned by the Hale Group. On 9 April Mr and Mrs Peck went to a birthday party, and then drove to Monaco.

63. We accept Mrs Peck's evidence that in her mind, the trip on 20 March was pivotal. However set against that is the fact that that trip was only ever going to be of very short duration (the return trip by air being necessary to accomplish the second trip by car with the possessions). The fact that there needed to be a second car trip points to the fact that the 'departure date' was the later of these trips.

64. It was anticipated that the second trip would be made around 30 March 2006, but this was delayed in order that Mr and Mrs Peck could attend the birthday party.

65. The attendance of the birthday party, in and of itself, is not conclusive of continued residence in the UK. If the trip back to the UK had been made in order to go to the birthday party, that would have been in the nature of a 'visit' to the UK that might have been expected by someone living abroad.

66. However, without prejudice to the discussion of a distinct break set out below, it is necessary to identify whether there was a departure date in 05/06 or not until 06/07 (if at all). Of the three trips to Monaco we consider that the 1 March 2006 cannot be the departure date. At that point there was still a significant hurdle to accomplish in terms

of the Carte de Sejour application. The trip on 18 – 23 March gets over that hurdle, but was a short trip and a return to Monaco (with further possessions) was still anticipated. The second car trip was anticipated from the outset, and this would appear to be the date of departure. The fact that it was delayed from the anticipated date of around 30 March 2006 cannot operate to cause the 18 March trip to be the departure.

67. We therefore find that there was no departure from the UK during the tax year 2005/2006, and that Mr and Mrs Peck were resident in the UK in the tax year 2006/2007.

**Distinct Break**

68. We turn next to whether a distinct break has been made by Mr and Mrs Peck.

69. When considering this, we note that the wording (taken from Gaines-Cooper) of the requirement is 'a distinct break in the pattern of his life in the UK'. It is not possible to say that simply because before April 2006 Mr and Mrs Peck rarely left the UK, and after April 2006 they spent three-quarters of the year in Monaco, that that is a distinct break in the pattern of their life in the UK. That is also made clear by the facts of Lysaght, when a similar pattern and duration of return visits, albeit for a different reason, were held to amount to residence in the UK. We need to look at the nature of their life in the UK both before and after 2006.

70. Mr and Mrs Peck, in their witness statement, evidence, and representations to the court, took us through the ways in which they contend that their life has changed.

71. Firstly, their use of Faith Cottage. Both Mr and Mrs Peck were very clear that they viewed it in their mind as a 'holiday home'. It no longer contained items that made their 'home', it simply contained equipment that allowed them to live in it when they visited the UK. Against this, HMRC contend that it is not disputed that Mr and Mrs Peck have their main home in Monaco. HMRC contend however that Faith Cottage is a 'settled abode' for Mr and Mrs Peck in the UK, and when they return to it the nature of their lives there is the same as it had been before their departure, and that this therefore means there has been no 'distinct break to the pattern of their lives in the UK'.

72. Secondly, their banking arrangements. In their witness statements, both Mr and Mrs Peck each said 'I would point out that our general personal banking needs are fulfilled by our joint bank account in Monaco'. Although this may be strictly true, in that there is no need to have UK bank accounts, the fact remains that Mr and Mrs Peck do have UK bank accounts and credit cards, and that these are used to make all purchases while in the UK.

73. Thirdly, their duties with regard to the Hale group of companies. Mr and Mrs Peck explained that although their duties had significantly reduced already, the sale of the ground rents (started in October 2005 and completed by 2008) reduced this still further. Mr Peck was the only one who performed any significant duties, and after

2006 these were mainly performed in Monaco. There was no need for Mr Peck to come to the UK in order to perform any duties for the company. HMRC dispute this, pointing out that he did perform minor duties in the UK that could only have been performed in the UK, such as visiting the properties, and indeed that he claimed expenses such as mileage from the company in order to do this.

74. With regards to social lives, Mr and Mrs Peck said they had very few friends in the UK and their life in the UK and Monaco revolved around their domestic sphere. After 2005 they did not have friends to stay in Eastbourne. After 2006 they sometimes stayed in hotels whilst visiting friends in the UK. HMRC pointed out that there were several visits to have a meal with friends when they came to the UK, and this represented ties of friendship from which there had not been a sufficiently 'clean break'.

75. When considering the issue of 'a distinct break', Mr and Mrs Peck's task of showing such a break was hard because there was an absence of considerable ties to the UK in the first place from which to show a distinct break. By 2006 there were no UK family ties, there was minimal work to be performed in the UK, and Mr and Mrs Peck had few social ties to the UK. However, looking at the pattern of their lives in the UK both before and after their departure for Monaco, it is difficult to see a distinct change in the nature of their life in the UK. This was addressed specifically in cross examination when Mr Peck was asked 'A typical week in the UK in 2005 was similar to a typical week in the UK in 2007?' to which he answered 'yes'. A critical fact in this analysis is the continued use of Faith Cottage.

76. We consider that there was not a distinct break in the pattern of the life of Mr and Mrs Peck in the UK. Whilst this may be the most crucial point, we also consider as part of the multifactorial approach the other points raised in the case law outlined above.

**Other factors**

77. Turning to the six points quoted in paragraph 48 above, we outline how we apply each of them to these cases:

78. 'Reside' includes the meaning 'to have one's settled or usual abode'. The question in this case is 'Was Faith Cottage a settled abode for Mr and Mrs Peck?' We know that Faith Cottage was a settled abode for Mr and Mrs Peck before they left the UK in 2006. Although they removed a number of their most precious and personal belongings from it when they moved, very little else changed after there move to Monaco with regards to the use of the house when they were in the UK. Whenever they were in the UK they stayed in Faith Cottage. They continued to receive post there. Whilst there, they carried on their life much as they had done before they left. We therefore conclude that Faith Cottage was a settled abode for Mr and Mrs Peck.

79. Physical presence in a place need not lead to residence if the physical presence is no more than a stop-gap measure. This is clearly not the case here.

80. In considering whether a person's presence in a particular place amounts to residence there one must consider the amount of time spent in a place, the nature of the presence there and the connection with that place. The amount of time spent in the UK was in the region of 65 – 88 days in any particular tax year. It is clearly possibly for such an amount to be consistent with non-residence (in particular circumstances, IR20 stated that visits for fewer than 90 days would not lead to tax residence). It is also clearly possible for such visits to be consistent with residence (a visit of 2 months in the case of Cooper vs Cadwallader mentioned above was held to be sufficient for residence). The nature of the presence, and the connection with the place, are very relevant to this case. The nature of the presence was much more akin to 'living' than 'visiting'. Although Mr and Mrs Peck referred to Faith Cottage as a 'holiday home' it appears to us that they were, during their time in Faith Cottage, continuing their previous life in the UK, and spending their time in the UK not vastly differently to their life in Monaco.

81. Residence in a place connotes some degree of permanence, some degree of continuity or some expectation of continuity. We note that Faith Cottage has never been put on the market for sale. We also note that the fact that when Highdown was marketed for sale the proposal for restrictive covenants also shows that Mr and Mrs Peck intended to continue using Faith Cottage. The fact that post was not redirected also suggests a degree of continuity was expected. In addition we note that a number of times Mr and Mrs Peck left the UK with their next trip to the UK already booked. We find that there was both permanence and a degree of continuity in their presence in the UK.

82. Short but regular periods of physical presence may amount to residence, especially if they stem from performance of a continuous obligation (such as business obligations) and the sequence of visits excludes the elements of chance and occasion. In this case we find that there was no necessity of performance of a continuous obligation to the business. The business would not have suffered any harm had Mr or Mrs Peck not returned to the UK on a regular basis. We also consider that whilst Mr and Mrs Peck chose to come back to the UK regularly in part to check on their personal properties, this too did not constitute a necessity. The pattern of their visits, looked at with hindsight, was regular (as covered in the above paragraph) but there was no pre-determined regularity or set of dates on which they 'needed' to be back in the UK.

83. Although a person can have only one domicile at a time, he may simultaneously reside in more than one place. It is clear that Mr and Mrs Peck were resident in Monaco at the periods of time in question. It is also clear that this does not preclude their simultaneous residence in the UK.

84. For the reasons given above, we find that Mr and Mrs Peck did not make a distinct break from the UK. We find they had a settled abode in the UK and that their presence in the UK was of sufficient time and had sufficient degree of permanence and continuity as to constitute residence.

85. Accordingly, the appeals are dismissed.

This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**SARAH ALLATT**
**TRIBUNAL JUDGE**

**RELEASE DATE: 23 OCTOBER 2017**