



**TC07649**

*INCOME TAX – termination payment - foreign service relief - whether ordinarily resident in UK – s414 Income Tax (Earnings and Pensions) Act 2003*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2018/04256**

**BETWEEN**

**LUIS DA SILVA**

**Appellant**

**-and-**

**THE COMMISSIONERS FOR  
HER MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE ALEKSANDER  
IAN ABRAMS**

**Sitting in public at Taylor House, London EC1 on 14 and 15 August 2019**

**Ashvin Degnarain, of Ocean Tax Limited, for the Appellant**

**Sebastian Purnell, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents**

## DECISION

### INTRODUCTION

1. This is an appeal by Luis da Silva ("LdS") against a closure notice dated 11 June 2018 in respect of an enquiry into LdS's 2013/14 self-assessment tax return. The closure notice disallowed the deduction claimed by LdS under s414, Income Tax (Earnings and Pensions) Act 2003 ("ITEPA"). The tax in issue is £114,458.72.

2. On 1 January 2012, LdS entered into a contract of employment with Afferro Mining Inc ("Afferro"). LdS ceased to be employed by Afferro on 19 December 2013 pursuant to a compromise agreement following a change in its control. LdS received payments totalling £1,457,823, of which £578,400 was a termination payment for the purposes of s401 ITEPA. Of this termination payment, £30,000 was claimed as exempt under s403 ITEPA and £252,923 was claimed as exempt under s414 ITEPA resulting in a tax refund of £131,592. The claim for the s414 relief was made in the additional information box ("white space") of LdS's 2013/14 tax return.

3. The only point in issue in this appeal is whether LdS was ordinarily resident in the UK between 1 February 2007 and 5 April 2010 ("the Relevant Period") such that he was entitled to "foreign service relief" under s414 ITEPA in respect of the termination payment. LdS asserts that he was not ordinarily resident in the Relevant Period. HMRC's case is that he was ordinarily resident (and, so far as it may be relevant, HMRC also assert that he was also resident in that period).

4. LdS's claim for foreign service relief was set out in the "white space" in his 2013/14 tax return which was filed on 17 October 2014. In it, he declares:

Mr Da Silva's employments were concurrent and the employers are associated, therefore the period of employment for the purposes of the termination payment was 2,513 days (01/02/07 to 19/12/13).

Mr Da Silva was non-UK resident in 2006/07, resident but not ordinarily resident in 2007/08, 2008/09 and 2009/10, and ordinarily resident in 2010/11, 2011/12, 2012/13 and 2013/14. The period of foreign service was 1,159 days (01/02/07 to 05/04/10).

5. LdS was represented at the hearing by Mr Degnarain and HMRC were represented by Mr Purnell.

6. A statement of facts was agreed between the parties, and is set out in the Appendix to this decision. LdS, Mr Virgillo da Silva (the Appellant's father) and Dr Tom Elder (former President and CEO of Mano River Resources ("Mano")) provided witness statements. Mr Virgillo da Silva's and Dr Elder's evidence were not challenged, and they were not required by HMRC to attend the hearing. LdS gave oral evidence on oath. A bundle of documentary evidence was also submitted.

### THE LAW

#### Termination payments and foreign service relief

7. The effect of s402B ITEPA is to treat termination payments as taxable employment income, to the extent that the payment exceeds £30,000. Sections 413 and 414 ITEPA provide for an exception to this charge in the case of some termination payments that relate to foreign service.

8. Section 413(1) ITEPA exempts the whole amount of a termination payment otherwise chargeable to tax, providing the three tests set out in s413(1) are all satisfied. Section 414 provides for a reduction in other cases of foreign service, where the strict provisions of s413(1)

are not satisfied, an individual may claim a proportionate reduction in the amount otherwise chargeable to tax. LdS claimed relief under s414.

9. The three tests in s413(1) are that the foreign service comprised:

- (a) three-quarters or more of the whole period of service ending with the date of the termination, or
- (b) if the period of service ending with that date exceeded 10 years, the whole of the last 10 years, or
- (c) if the period of service ending with that date exceeded 20 years, one-half or more of that period, including any 10 of the last 20 years.

10. The definition of "foreign service" has been amended from time to time, and its meaning depends upon the tax years in which the service occurred.

11. In the case of foreign service in or after 2003/04 but before 2013/14, it is defined in s413(3). For this period, foreign service is defined to include service where the earnings from that service would not be "relevant earnings". Relevant earnings for this purpose are defined in s413(3A) as follows:

- (a) for service in or after the tax year 2008–09, earnings—
  - (i) which are for a tax year in which the employee is ordinarily UK resident,
  - (ii) to which section 15 applies, and
  - (iii) to which that section would apply, even if the employee made a claim under section 809B of ITA 2007 (claim for remittance basis) for that year, and
- (b) for service before the tax year 2008–09, general earnings to which section 15 or 21 as originally enacted applies.

12. The sole issue for determination in this appeal is whether LdS was disqualified from claiming relief because his earnings were for periods in which LdS was ordinarily resident in the UK. In other words, was LdS ordinarily resident in the UK between 1 February 2007 and 5 April 2010?

### **Ordinarily resident**

13. The leading authority on the question of ordinary residence is the speech of Lord Scarman in *R (ex parte Shah) v Barnet LBC* [1983] 2 AC 309. The relevant authorities were helpfully summarised by Newey LJ in the Court of Appeal in *Arthur v Commissioners for Her Majesty's Revenue and Customs* [2017] EWCA Civ 1756. Newey LJ (who delivered the sole decision of the Court) summarised the meaning of "ordinarily residence" as follows (at [16]):

Guidance on the meaning of "ordinarily resident" can be found in three decisions of the House of Lords: *Levene v Inland Revenue Commissioners* [1928] AC 217, *Inland Revenue Commissioners v Lysaght* [1928] AC 234 and *R (Shah) v Barnet LBC* [1983] 2 AC 309. Those cases provide authority for the following propositions:

- i) The expression "ordinary residence" "connotes residence in a place with some degree of continuity and apart from accidental or temporary absences" (*Levene*, at 225, per Viscount Cave LC);
- ii) "[T]he converse to 'ordinarily' is 'extraordinarily' and ... part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not 'extraordinary'" (*Lysaght*, at 243, per Viscount Sumner). Consistently with

this, "ordinarily resident" "refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration" (*Shah*, at 343, per Lord Scarman);

iii) "Ordinary residence" differs little from "residence" (*Levene*, at 222, per Viscount Cave LC). "Ordinarily resident" means "no more than that the residence is not casual and uncertain but that the person held to reside does so in the ordinary course of his life" (*Lysaght*, at 248, per Lord Buckmaster);

iv) A person can be resident in a place even though "from time to time he leaves it for the purpose of business or pleasure" and, conversely, "a person who has his home abroad and visits the United Kingdom from time to time for temporary purposes without setting up an establishment in this country is not considered to be resident here" (*Levene*, at 222-223, per Viscount Cave LC);

v) A person can also be resident in a place even though he would prefer to be elsewhere. In *Lysaght*, Lord Buckmaster said (at 248):

"A man might well be compelled to reside here completely against his will; the exigencies of business often forbid the choice of residence, and though a man may make his home elsewhere and stay in this country only because business compels him, yet none the less, if the periods for which and the conditions under which he stays are such that they may be regarded as constituting residence, as in my opinion they were in this case, it is open to the Commissioners to find that in fact he does so reside";

vi) A person may reside in more than one place (*Levene*, at 223, per Viscount Cave LC);

vii) "Ordinary residence" is not synonymous with "domicile" or "permanent home" (*Shah*, at 342-343 and 345, per Lord Scarman);

viii) "Immigration status" "may or may not be a guide to a person's intention in establishing a residence in this country" (*Shah*, 348, per Lord Scarman); and

ix) "There are two, and no more than two, respects in which the mind of the 'propositus' is important in determining ordinary residence": "[t]he residence must be voluntarily adopted" and "there must be a degree of settled purpose", which could potentially be "a specific limited purpose" (*Shah*, at 344 and 348, per Lord Scarman). Lord Scarman explained in *Shah* (at 344):

"The purpose may be one; or there may be several. It may be specific or general. All that the law requires is that there is a settled purpose. This is not to say that the 'propositus' intends to stay where he is indefinitely; indeed his purpose, while settled, may be for a limited period. Education, business or profession, employment, health, family, or merely love of the place spring to mind as common reasons for a choice of regular abode. and there may well be many others. All that is necessary is that the purpose of living where one does has a sufficient degree of continuity to be properly described as settled."

14. Newey LJ (at [31]) cautioned against drawing a contrast between "ordinary" and "occasional" residence, which he described as "not a sound" exercise. Newey LJ also stated (at [35]) that when assessing whether an individual was "ordinarily resident" somewhere on a particular date, the focus must be on the position then, not at any later time – however subsequent events "may cast light on what the position was on the key date".

15. *Arthur* was considered by the Upper Tribunal in its decision in *Mackay v Commissioners for Her Majesty's Revenue and Customs* [2018] UKUT 378 (TCC). The Upper Tribunal made the following further observations which are relevant to this appeal:

(1) the concept of ordinary residence does not require an intention to live in a place indefinitely (see *Tuczka* [2011] UKUT 113 (TCC) at [11]) (*Mackay* at [117])

(2) There is no prescribed minimum period by which a taxpayer will become ordinarily resident in the UK. In *Nessa v Chief Adjudication Officer* [1999] 1 WLR 1937 the House of Lords considered that a month could constitute an “appreciable period of time” for the purposes of establishing habitual residence (at [1943A] per Lord Slynn) (*Mackay* at [134]).

(3) When considering the question of whether an individual is ordinarily resident it is “essential to establish a taxpayer's purpose and to ascertain whether that purpose was settled” (*Mackay* at [138]).

(4) The taxpayer’s subjective intention, rather than his settled purpose, has a relatively limited role. It merely informs the question of whether the taxpayer’s purpose is settled: “ordinary residence...is ultimately a question of fact, depending more upon the evidence of matters susceptible of objective proof than upon evidence as to state of mind...nor will inquiry into such questions call for any deep examination of the mind of the ‘propositus’” (*Shah*, at [344E] and [344G] per Lord Scarman) (*Mackay* at [139]-[140]).

(5) In the context of the test for ordinary residence, "purpose" should be distinguished from “intention” (*Mackay* at [142])

(6) The FTT in *Mackay* was correct to examine the taxpayer’s ordinary residence status during the three tax years in question to determine “the regular order of his life for the time being”. When assessing whether an individual is ordinarily resident somewhere on a particular date, the focus must be on the position then, not at any earlier or later time. Earlier or subsequent events are of course capable of being relevant in so far as they cast light on what the position was on the key day (*Arthur*, at [35] per Newey LJ) (*Mackay* at [149]-[150]).

16. What constitutes an appreciable period will depend on the facts of the case and may be short, particularly in those

special cases where the person concerned is not coming here for the first time, but is resuming an habitual residence previously had: *Lewis v. Lewis* [1956] 1 W.L.R. 200; *Swaddling v. Adjudication Officer* (Case C-90/97), *The Times*, 4 March 1999. On such facts the adjudication officer may or of course may not be satisfied that the previous habitual residence has been resumed. This position is quite different from that of someone coming to the United Kingdom for the first time (*Nessa* at [1943B] per Lord Slynn).

17. When looking for a person’s residence for settled purposes as part of the regular order of his life, whether for short or long duration “one must take into account events that upset such regular order” (see *Turberville* (at 9)).

18. A person will be ordinarily resident in the UK for a tax year if he is ordinarily resident for any part of that tax year.

### **Burden of proof**

19. LdS bears the burden of proving that he was not ordinarily resident in the UK during the Relevant Period.

## **MR DA SILVA'S EVIDENCE**

### **Background**

20. LdS was born in Portugal in 1971. He has had a Portuguese passport since his birth, and retains Portuguese nationality to date. His father worked for an international oil "major", and LdS's primary schooling was in various countries - wherever his father was working at the time. LdS moved to the UK in 1982 in order to undertake his secondary school education in the UK boarding school system.

21. From 1989 to 1993 LdS studied mining engineering at Camborne School of Mines in Cornwall, where he met Anna Marie Seddon ("Anna Marie"), a British national from Cornwall, who would later become his wife and the mother of two of his children.

22. From 1993 to 1995, LdS was employed by Stevin Rock in the United Arab Emirates.

23. In January 1996 LdS returned to the UK from the UAE, and started working for Blue Circle Industries plc in Kent and Anna Marie started working as an intensive care nurse in Kent. They initially rented a property in Sevenoaks, Kent, which was equidistant to their respective workplaces. On 16 August 1996 they jointly purchased a cottage at 34 Church Road, Sevenoaks, Kent. LdS told us that they purchased the cottage because it was cheaper than renting.

24. On 5 April 1997 LdS and Anna Marie married, in Sundridge, Kent.

25. In 1999 LdS obtained British nationality based on his marriage to Anna Marie. LdS said that he wanted a British passport mainly for ease of business travel to Saudi Arabia and the USA. He has continued to maintain a British passport for continued ease of travel, as he has often had to change passports for visas, and having a British passport (in addition to his Portuguese passport) has provided him with flexibility.

26. On 20 February 2001 LdS and his wife had their first child, who was born in Tunbridge Wells, Kent.

27. In July 2001, Blue Circle Industries was taken over by Lafarge. Following the take-over, LdS entered into a 12-month fixed term contract with Lafarge and relocated to Paris in July 2001, where he rented a flat. Initially, LdS commuted on a weekly basis between Kent and Paris. But Anna Marie and their child joined him in Paris in September 2001. LdS said that once his family joined him in Paris, he had no intention at that time of returning to the UK, and other than the cottage in Kent (which was left unoccupied or rented to third parties, and then sold in November 2002) retained no ties with the UK.

28. We find that all material times from 1996 until July 2001, LdS was UK resident and ordinarily resident in the UK.

### **The Relevant Period (from 2001 to 2010)**

29. From September 2001 LdS lived together with Anna Marie and their child in a rented flat in Paris, although they retained ownership of the property at 34 Church Road until its sale in 2002.

30. LdS said that he had no intention of ever returning to the UK once his family had joined him in Paris – he retained no ties with the UK (once the property had been sold, it had been left unoccupied or rented to third parties, since his family moved to Paris), he sold his British car and purchased a French car, and he did not retain any UK investments. LdS deregistered with his Kent doctor, and registered with a doctor in Paris, and deregistered from the UK electoral roll (although in cross-examination, LdS acknowledged that he re-registered on the electoral roll when he returned to the UK in 2007).

31. In September 2001 LdS and Anna Marie purchased an off-plan 2-bedroom apartment in the Algarve (Urbanizacao Pine Park, Bloco 3, Apt 2E, Praia de Falesia, Albufeira, Algarve, 8200-593, Portugal) that was completed in 2003. It was funded by a gift from LdS's parents and a mortgage with a local bank. LdS's said that he purchased the property for his family's use and to be close to his parents, grandparents, and family in the Algarve. He also had hopes of returning to Portugal and educating his children there.

32. LdS's said that between 2001 and 2005, his role with Lafarge involved extensive international travel. From September 2002, following completion of his initial fixed-term contract, LdS was offered a position within Lafarge's corporate audit function. This involved working alternately for three weeks in Paris followed by three weeks travelling globally.

33. On 14 October 2004 LdS and Anna Marie had their second child, who was born in Paris.

34. In February 2005 LdS accepted a role with Lafarge based in Kuala Lumpur. LdS told us that the extent of his international travel was taking a toll on his family life, particularly after the birth of his second child. For this reason, he applied for a role with Lafarge in Malaysia, as he considered that this would involve less travelling, and give him more time with his family. However, the new role actually involved extensive travel to 14 ASEAN countries and 27 business units, and he spent considerable time in India, Sri Lanka, La Reunion, Thailand, Malaysia, Indonesia, Japan, Korea, China, Australia, Vietnam and Bangladesh, whilst reporting back to the Lafarge HQ in Paris on a regular basis, which added further strain to his family life.

35. LdS rented a 3-bedroom condominium in Kuala Lumpur where he lived with Anna Marie and their children.

36. LdS's evidence was that he was telephoned by Anna Marie in June 2006, whilst he was on an assignment in Australia, and she demanded that they return to the UK as her father was unwell and she wanted to be closer to him. She also wanted to place their eldest child into the English schooling system. LdS said this was against his wishes, as he wanted their children to be schooled in Portugal.

37. In June 2006 LdS established Airena Limited ("Airena"). Airena was formed together with a former colleague from Blue Circle and a Canadian entrepreneur. Airena sought a license to distribute protective structures for workers and equipment in harsh environments on behalf of a Canadian company, for business outside of North America.

38. In July 2006 Anna Marie moved back to the UK with the children. She stayed initially at her parents' home in Cornwall. She subsequently arranged schooling and accommodation with some consultation with LdS but predominantly driven by her, which, claims LdS aggravated their marital problems. In September 2006, Anna Marie rented 56 High Street, Otford, Kent, to live with the children, and their first child started as a pupil at a local primary school in September 2006. LdS stayed in Malaysia but returned monthly to see his children, which coincided with visits to Lafarge's HQ in Paris. Although a copy of the lease of 56 High Street was not produced in evidence, LdS confirmed that he must have either been a lessor named on the lease, or a guarantor, as Anna Marie had not worked for several years, and did not therefore have any credit record.

39. LdS was approached in 2006 by a headhunter – Meyer Hosking, who introduced him to Dr Tom Elder, the President and CEO of Mano, and to Guy Pas, the founder, Chairman, and largest shareholder. LdS said that he had become disillusioned with working for a large corporate business, and wanted to work for a smaller company, so the opportunity was appealing – and although the role would apparently involve considerable travel, LdS considered that it would be easier to travel to Mano's assets in West Africa from Europe than

from Asia. LdS's role would be to restructure the company's assets in gold, diamonds, and iron ore, and create as much value as possible to investors for an ultimate sale. LdS said that he expected this role to be a short-term project because Mano was in a state of flux, there was little cash for the business, and the mining industry had gone through an extended boom and the outlook was very uncertain. The core hours of work in the contract were from Monday to Thursday to provide him some flexibility of travel and to keep him from being 100% tied in. In particular it gave him some time to pursue his interest in Airen.

40. In January 2007, LdS resigned from Lafarge, and ceased renting the Malaysian condominium.

41. On 1 February 2007 LdS was appointed Chief Financial Officer of Mano, entering into a one-year fixed term employment contract. His contract of employment, which was governed by English law, provided (amongst other things) that:

- (1) his address was 56 High Street, Otford, Kent;
- (2) he would perform his employment duties at the company's offices in the UK or at such other place of business as the company required (clause 4.1);
- (3) for any period in which the company's office was located outside of London, he would be reimbursed for commuting expenses on a reasonable mileage basis (clause 6.8);
- (4) he was entitled, in addition to his annual leave entitlement, to the English public and bank holidays (clause 8.1)

42. LdS told us that the contract was governed by English law because Mano's CEO was in the UK, and many international companies prefer to stipulate English law for their agreements.

43. LdS's employment income was paid to his bank account at a UK branch of Lloyds Bank throughout the duration of his employment, and was subject to deduction of UK PAYE. LdS explained that the reason that his salary was paid to a UK bank account was because Sterling was a stronger and stable currency at the time, and because he had a UK bank account to receive the salary. LdS stated that he gave a UK address for the contract as this was a convenient fixed location where mail was sure to be received.

44. Mano provided LdS with a mobile phone and a Blackberry mobile email device, both of which were connected to a UK mobile network provider.

45. LdS's evidence was that in the period from 1 February 2007 to 5 April 2010 he did not join any UK members' clubs, religious/cultural groups, political organisations, social clubs, health clubs or gym memberships. His personal possessions (diaries, school reports, memorabilia, etc), motorbike and furniture were kept in Portugal. During this period, he did not have any UK investments such as ISAs/TESSAs, Premium Bonds, UK Government Gilts, or investment portfolios, and did not contribute towards a private pension. His UK cash balances were negligible, and he had no UK self-employments.

46. Mano's assets were situated in Liberia, Sierra Leone, and Guinea, and LdS said that he spent considerable time travelling there. He also travelled to Switzerland to meet the largest shareholder, Guy Pas, as well as attending many overseas investor roadshows. In addition, regular travel to British Columbia, Canada, where the company was incorporated and listed, was necessary.

47. LdS said that he spent most his time whilst working for Mano either living out of a suitcase or living at his apartment in Portugal. In the period from February to October 2007, LdS said that he spent three weeks out of four travelling outside the UK. LdS's oral evidence was that being in Portugal eased his international travel, as Royal Air Maroc (via Casablanca)



and TAP Portugal had regular flights from Lisbon to Liberia, Sierra Leone, and Guinea. The Portugal location was also closer to his parents. LdS's evidence was that he returned to the UK to see his family whenever the business allowed - but his marriage was breaking down at this point.

48. LdS's oral evidence was that Mano only had a small office in Didcot (near Oxford) that was 90 miles from Kent and approximately 2 to 3 hours' drive from LdS's home in Kent, so he rarely visited the office – notwithstanding that his contract provided that his place of work was Mano's UK office. Only the CEO, Dr Tom Elder, and an accountant were based at this office, which was located there purely for proximity to Dr Elder's home in Wantage. There were no other UK employees and the other employees were on the ground in Africa.

49. LdS said that he only visited the Didcot office on two or three occasions, that he worked remotely and that, when he started working for Mano as CFO, his duties were performed wholly outside the UK. When he was in the UK, he was generally organising or planning meetings. LdS said that he had no dedicated study or office at home, nor a desktop computer in the house (although in cross-examination he admitted that his house in Sevenoaks did have a room used as a study, in which he worked). He had a laptop computer that he used for work. When in the UK LdS said that he was either attending meetings, which took place in hotel lobbies in London, or was planning meetings (which he did in hotel lobbies or at his home, in both cases using his laptop).

50. When cross-examined about what he did when he was in London, LdS said that "I could have been bringing in Russian investors, meeting potential investors, meeting lawyers, or a combination of business and marketing meetings." LdS did not accept that this was "working" (in other words, performing the duties of his office or employment), he said that "I accept that this is preparing for work and to do with work, but it is not physically working." We find that LdS misunderstands the nature of "working" for UK tax purposes, and that "preparing for work" (such as meeting potential investors, meeting lawyers, or a combination of business and marketing meetings) forms part of the duties of the office or employment of a chief financial officer or of a chief executive officer, and is "working". We agree with the submission made by Mr Purnell, that the distinction drawn by LdS is without a difference.

51. On 1 October 2007 LdS was appointed President and CEO of Mano, but there was no new contract governing the new appointment. LdS told us that his role continued to be focussed on West African projects in Liberia, Sierra Leone, and Guinea, and he "spent roughly 70% of my time working outside the UK". LdS said that he visited the company's mines (in particular its principal asset, a gold mine in Liberia, and managing various joint ventures in Africa), the company's HQ in Vancouver, Canada, the founder in Switzerland, and investors in Asia.

52. On 10 October 2007 LdS purchased a new-build property jointly with Anna Marie at 190 Seal Road, Sevenoaks, Kent, where they lived as a family from the date of the property's completion until March 2009. LdS said that he obtained the mortgage because Anna Marie had not worked for 6 years, they had been abroad and therefore she did not have a credit score. LdS's oral evidence was that he purchased this property mainly as an investment for his children and (unsuccessfully) to provide some stability to their marriage. LdS's evidence was that Anna Marie was instrumental in the purchase, as she felt it was financially sensible to purchase a property than continue renting. LdS said that this was "much more of a British mentality than in continental Europe. There is no 'be-all end-all culture' for property ownership in Portugal and I have lived in dozens of properties in many countries throughout my life that I have never owned." Anna Marie chose the property because of its proximity to their child's school.

53. In 2008, Mano rented a serviced office in Bloomsbury Street in London (close to the British Museum). LdS described it as a small room with three hot desks. LdS had recruited an

accountant and a part-time paralegal, who occupied two of the desks. The third desk was for visiting executives.

54. LdS said that if he was passing through London, he would work from the serviced office.

55. In March 2009 LdS's marriage had deteriorated further and he separated from Anna Marie who remained at 190 Seal Road with their children to be close to their school. He moved to stay with a friend in Battersea, London. He came to an informal arrangement with Anna Marie and made a verbal promise that she could spend Christmas and birthdays with the children. LdS said that as his job required extensive travel, he only saw his children between travels.

56. In June 2009, LdS met Penny Harris ("Penny").

57. In October 2009 Mano acquired and amalgamated with African Aura Resources Ltd and changed its name to Africa Aura Mining Inc ("Africa Aura"). LdS oversaw the amalgamation, which involved obtaining shareholder approval, court clearance in Canada, dealing with regulators of exchanges listed in Canada and the UK, and governments for licences where the assets were held in Africa (mainly Cameroon).

58. In November 2009 LdS leased a one bedroom flat in Richmond, Surrey (St Kilda, The Hermitage, Richmond,) for a term starting in December 2009 and finishing in December 2010 with a two-month mutual break clause. LdS said that he negotiated the break clause because he was expecting to move out at short notice due to uncertainty of his work and wanted to retain some flexibility. We note that it was a term of the lease that the property should not be left unoccupied, and that LdS was entered onto the Council Tax register in respect of the property.

59. LdS said that he chose a flat in Richmond because it was convenient for London airport, and for access for the children – although he admitted that the children did not stay with him very often, and more often he travelled to Sevenoaks to visit them and to do things as a family – such as meals out and going to the park. LdS denied that he chose to live in Richmond because it was not far from Twickenham, where Penny lived.

60. LdS said that his employment with Mano was uncertain due to the restructuring, redundancy was realistic and a highly likely scenario when a change of control occurs, so he explored other opportunities. LdS told us that the business was in a state of constant flux, its cash position was unstable, and he had rows with the company's founder. There were times when it could not pay his salary (as was also the case under its previous incarnation as Mano). LdS therefore looked for other employment opportunities. In particular in December 2009 he was approached by the headhunting firm Egon Zehnder (who were aware of the Africa Aura transaction) and offered a role with La Mancha Resources, based in France. Following interviews with the CEO, chairman, HR director, and non-executive directors, he was offered the position of CEO of La Mancha Resources, which LdS decided to accept. However, because of the global financial crisis, La Mancha Resources changed their strategy and did not recruit, and the offer was withdrawn.

61. In December 2009, Airena was dissolved, because it had insufficient clients to be viable.

62. At the beginning of 2010, LdS managed a listing of Africa Aura's diamond mine through a reverse take-over. He managed two fund raising rounds for the company in April and October 2010, and the business now had cash in the bank.

63. In November 2010 LdS moved in with Penny, and lived together with her at her home in Twickenham, Surrey (Marsh Farm Road, Twickenham).

### **Period from 2011 onwards**

64. In April 2011 African Aura Mining Inc was divided into two separate companies – Afferro and Aureus Mining Inc.

65. On 15 June 2011, a decree nisi in respect of LdS's divorce from Anna Marie was granted by the Tunbridge Wells County Court.

66. On 29 July 2011 LdS jointly purchased a home with Penny in Kent (The Coach House, Cranbrook, Kent TN17 1JS).

67. In October 2011, LdS and Penny had a child, who was born in the UK.

68. On 1 January 2012 LdS entered into a contract of employment with Afferro. That contract of employment, which was governed by English law, provided amongst other things, that his address was The Coach House, Ballards Hill, Goudhurst, Kent TN17 1JS and that he would be based at the company's offices in the UK (clause 4.1). We find that the address in the contract is the same address as the house purchased with Penny on 29 July 2011, notwithstanding the differences in the stated addresses.

69. On 8 August 2012, a decree absolute finalising LdS's divorce from his Anna Marie was issued by the Tunbridge Wells County Court.

70. In December 2013 Afferro was acquired by IMIC plc. On 19 December 2013 LdS's employment with Afferro was terminated by way of compromise agreement, which was subject to English law, and under which the Appellant received a termination payment in the sum of £578,400.

### **DOCUMENTARY EVIDENCE**

71. The documentary evidence in this Appeal is noticeably "thin" compared with the evidence normally adduced by an appellant in a case where residence status is in dispute. No day count schedules were produced in support of LdS's oral evidence that he spent 70% of his time outside the UK during the Relevant Period.

72. There is very limited contemporaneous documentary evidence produced in support of LdS's contentions. In particular, LdS has not presented any business or personal diaries covering the Relevant Period, nor has he produced any travel itineraries, boarding passes or flight confirmations, nor any telephone or email records. The bundle does include copies of pages in LdS's passports, on which there are visas and stamps from immigration controls – but (a) some of the stamps are unclear, and (b) we are aware that many countries do not stamp passports – so this evidence is not particularly useful in giving a complete picture of LdS's travels.

73. We note that in February 2018, Oxonian Travel (a travel agent used by LdS) wrote to LdS to state that their electronic records only go back to 2007, and paper records relating to prior periods had all been destroyed. We infer that their electronic records relating to LdS's travels in the Relevant Period (1/02/2007 to 5/04/2010) would have been available, but that LdS chose not to obtain them.

74. The only other contemporaneous documentary evidence before us are a limited and incomplete set of bank and credit card statements. We note that many entries in the statements record the payee and the date of the payment, from which we can draw inferences about LdS's physical location and the nature of the goods or services that he was purchasing at that time.

75. Mr Purnell's cross-examination of LdS went through the bank and credit card statements line-by-line. We do not propose to set out in this decision the details of that cross-examination, but make the following observations in relation to transactions shown on LdS's Lloyds Bank current account statements from February 2007 onwards (this was a joint account with Anna

Marie opened in 1989) and Lloyds Bank credit card statements from July 2009 onwards (this was an account solely in LdS's name opened after his separation from Anna Marie in March 2009, we were told that there had been a joint credit card account with Goldfish, but that the statements for this account had not been retained):

(1) We note that there were regular annual payments to the Old Brutonian Golf Club. LdS said that this was a standing order for the alumni golf club of his former school, and that they held one golf day in the UK each year. Prior to 2001 (when he was living at 34 Church Road) he played golf regularly at Westerham Golf Club, but since 2001 he only played around 5 times per year.

(2) There was a down payment on a car, and monthly payments on loans taken out to buy the cars. LdS confirmed that he had purchased two cars, a BMW and a Renault, and that he was insured to drive both. LdS confirmed that, after his separation, on occasions one or other of the cars would be with him in Richmond, and that he would use the car to drive back to Sevenoaks to visit his family. We note various payments for fuel on his credit card statement which corroborates this evidence. We also note that LdS did not tell HMRC about the cars during their enquiry. He had stated that he had sold his UK cars on moving to France, and only maintained a motorcycle in Portugal.

(3) There were regular monthly payments of £72 to Nizels. This was a golf and country club in Kent. LdS said that these payments were for Anna Marie's gym membership, but that he did recall playing golf at the club – although he did not recall whether it was during the Relevant Period. We note that the payments stopped following his separation from Anna Marie. We note that in correspondence with HMRC, LdS's representatives stated that LdS had no golf club memberships. HMRC submit that this membership was primarily a golf club membership used by LdS, as Anna Marie was a "stay-at-home" mum looking after two children aged 2 and 6 at the time.

(4) There were payments from time to time to Sterling Hair in Sevenoaks for around £13. LdS confirmed that he remembered having his hair cut at Sterling Hair, and agreed with Mr Purnell that given the amount of the payments, they were unlikely to be for his wife's hairdressing. We note that there were also payments to Rush in London, which LdS accepted were also payments for his haircuts.

(5) There were monthly payments to MS Card Services. LdS explained that these were payments to a credit card account with Morgan Stanley (that was later acquired by Barclays). There were also several payments to MBNA Europe, which LdS confirmed was another credit card account that he had. LdS had not previously disclosed the existence of the MBNA account to HMRC. There is correspondence in the bundle from LdS to Barclaycard requesting copies of the Morgan Stanley credit card statements, and Barclaycard responded stating that the account is a personal account and LdS should contact them using the link [www.barclaycard.co.uk/personal](http://www.barclaycard.co.uk/personal). Copies of statements for these accounts were never provided to HMRC and were not produced in evidence before us.

(6) There were a great many cash withdrawals shown on the bank statements. LdS agreed that the withdrawals from ATM machines with a London location would have been made by him.

(7) There were annual payments to the National Trust, and LdS confirmed that this was for a family membership, and that after he had separated from Anna Marie, he would have used the National Trust membership for family visits to National Trust properties. In correspondence with HMRC, LdS's representative had stated that LdS had no memberships of any UK cultural groups.

(8) There was a payment to Dulwich and Sydenham Golf Club. LdS could not recall whether he had played golf there, but agreed with Mr Purnell that this was unlikely to have been a payment made by Anna Marie.

(9) On 3 October 2007 LdS paid for an annual rail card season ticket for travel from his home in Kent to London. We consider that if LdS had been regularly spending 70% of his time outside the UK, it would be unlikely that an annual season ticket would make financial sense.

(10) On 12 February there was a payment to a "Pro Shop". LdS said that this was probably a payment made whilst he was outside the UK either to play golf or to buy golf equipment.

(11) There were several payments in 2007 to Crown Worldwide. This is a relocation company. LdS confirmed that Crown shipped his belongings from Kuala Lumpur to the UK. The items were initially placed into storage, and then transferred to Seal Road. We note that in correspondence LdS told HMRC that all his personal possessions and furniture were kept in Portugal, and that this was repeated in his witness statement.

(12) On 14 April 2008 there was a payment to CEML. LdS said that this was in respect of an investment property he purchased about that time jointly with Anna Marie. It was a new build two bedroom flat in Greenwich. The property was sold before their divorce in 2012. LdS acknowledged that he had not mentioned the existence of this investment previously, and we note that any income derived from this property had not been declared on his income tax returns. The property was rented from time to time, which was why he could not move there when he separated. LdS stated that he had never lived there.

(13) In June and July 2008 there were payments to a party planning company for a surprise 40th birthday party for Anna Marie at Westerham Golf Club.

(14) There were two payments to Barclays Stockbrokers. LdS stated that he retained an account with Barclays Stockbrokers, which he used to trade equities.

(15) There were several payments to clubs, bars, and restaurants in both Sevenoaks and in London, and to visitor attractions. LdS said that he continued to spend time with his family in Sevenoaks after his separation, which included trips to the park, to the cinema and visitor attractions, and meals out. There were several payments to Mortons, a club in Piccadilly. LdS admitted that he made several visits to Mortons to decide whether to take out membership, which he did subsequently. We also note that in his evidence, LdS stated that he had not maintained membership of any clubs in the UK.

(16) There were two payments to a physiotherapy clinic in London in October and November 2009, where LdS said that he had treatment for a knee injury. We note LdS's statements in evidence that he had received no medical treatment in the UK during the Relevant Period.

(17) There were payments to a London art gallery, which LdS said were to purchase a present for Anna Marie, and which was financed by monthly payments. There is a cash withdrawal on the date of the first payment at an ATM not far from the gallery, which confirms that LdS was in central London on that date. LdS said that this was a painting of the Eiffel Tower, and that he wanted to maintain a cordial relationship with Anna Marie after their separation.

(18) From April 2010 there were regular payments to a gym in central London, which LdS confirmed that he intended to use when he was at Mano's office in London.

(19) Various payments to laundries in London, which LdS confirmed provided an ironing service for his shirts.

(20) We note that there are payments on the credit card made in Portugal from 10 to 28 August 2009, confirming that LdS was in Portugal at that time

(21) There were payments made in the UK for a very large number of dates in September, October, November, and December 2009, we infer from the dates on these payments (and find) that LdS must have been in the UK for the whole of September, October and December, and for most of November 2009. We infer from the substantial number of payments made in the UK for January, February, and March 2009, and find, that LdS must have been in the UK for the whole of January and March 2010 and for most of February 2010.

76. Mr Purnell produced a table showing passport stamps and credit card entries for the month of February 2010 as an example of LdS's typical movements:

6 Feb	Passport stamp	Exit and Entry stamps: Zimbabwe
6 Feb	Passport stamp	Zambia (not wholly legible)
7 Feb	Passport stamp	Transit: Cape Town, South Africa
9 Feb	Credit card	Cote Restaurant, Richmond
11 Feb	Credit card	Rush hairdressers, London W1
11 Feb	Credit card	Cote Restaurant, Richmond
13 Feb	Credit card	Giraffe Restaurant, Richmond
13 Feb	Credit card	Gatwick Motorway Services
14 Feb	Credit card	Arthurs Bistro, Twickenham
18 Feb	Credit card	Various transactions in Canada
19 Feb	Credit card	Cote Restaurant, Richmond
20 Feb	Credit card	Evans Cycles (UK)
21 Feb	Credit card	Indian Moment Restaurant, Battersea
21 Feb	Credit card	Shell Petrol, Sevenoaks
21 Feb	Credit card	Gatwick Airport Car Park
25 Feb	Credit card	London & Southeastern Railway (UK train fare)
25 Feb	Credit card	Pizza Express, Bow
27 Feb	Passport stamp	Liberia (not wholly legible)

77. Mr Purnell submits that these show that LdS's life involved short periods of long-distance travel (in this month to Zimbabwe, Zambia, Liberia, and Canada), but that he spent most of the month in the UK. When LdS travelled, he departed from the UK and returned to the UK – from which it can be inferred that the UK is his home.

#### **MR DA SILVA'S CASE**

78. LdS's case is that after leaving the UK in 2001, he retained no ties with the UK, he made a distinct break and ceased to be resident and ceased to be ordinarily resident in the UK. LdS submits that he only became UK resident on 1 October 2007 when he purchased The Coach House in Kent, and only became ordinarily resident on 6 April 2010 after achieving sufficient continuity to be described as settled in the UK during the 2010/11 tax year by virtue of his new role at Afferro and home life with Penny.

79. LdS submits that he has built a career in natural resources working in the extraction of minerals in West Africa, a particularly uncertain sector in a volatile region exacerbated by the global financial crisis. He has focused on short-term projects and restructuring, expecting his role to finish at short notice. LdS pursued independent interests such as Airena Limited, and

dithered about leaving employment, evidenced from his interviews with La Mancha Resources in France. LdS has lived a peripatetic existence, his work has meant that he was not in the UK regularly or had certainty of tenure. Various events upset the regular order of LdS's life, in particular his changing roles, separation from Anna Marie and stays at different properties. His frequent, regular extensive absence from the UK was not temporary or occasional.

80. HMRC assert that LdS was ordinarily resident throughout the Relevant Period.

81. Mr Degnarain accepts that LdS moved to the UK voluntarily in February 2007. However, he submits that the move did not have a "settled purpose" for the following reasons.

82. First, LdS's employment status was uncertain. Prior to joining Mano, LdS worked on a series of short-term projects for Lafarge. His employment contract with Mano was (at least initially) for a one year fixed-term, and Mr Degnarain submits that LdS expected the job to be short-lived because of the company's state of flux and the then prospects in the mining sector. Mr Degnarain notes that Mano did not have a bonus policy, a pension scheme or other benefits, that LdS was not paid a relocation allowance, and his core working hours were limited to four days per week, to allow him to devote time to developing Airena. Mr Degnarain noted that Mano (and subsequently Africa Aura)'s cash flow was uncertain, and there were times when salaries were not paid. LdS was therefore looking for other employment opportunities.

83. Mr Degnarain also submitted that after he was appointed CEO of Mano in October 2007, LdS spent roughly 70% of his working time outside the UK. When LdS came to the UK it was primarily to see his children and for occasional business meetings. Mr Degnarain submits that LdS's employment could not have been his settled purpose for residing in the UK because (a) the employment had no real connection with the UK, (b) the work was not carried out in the UK, (c) the employment itself was temporary and highly uncertain, and (d) LdS was looking for other employment.

84. Secondly, Mr Degnarain submitted that LdS's property arrangements did not show any settled intention to remain in the UK. The fact that LdS purchased 190 Seal Road does not demonstrate that LdS had a settled purpose in coming to the UK. He referred us to the decision of the First-tier Tribunal in *Tucza v HMRC* [2010] UKFTT 53 (TC) at [74] which said that:

“purchasing a London flat is not determinative of the question of having a settled purpose but it is an added factor demonstrating that his purpose of living in London for the time being was settled. The nature or quality of residence, rather than simply its duration, which will determine whether it has become ‘ordinary’”.

85. This approach was not criticised by the Upper Tribunal in the subsequent appeal ([2010] UKUT 113 (TCC)).

86. Mr Degnarain submitted that LdS frequently stayed at his apartment in Portugal, which was the main basis for his business trips, particularly for visiting Mano's assets in West Africa. To the extent that he worked in the UK, the work he performed was merely incidental to the duties of his employment, and that the principal reason for his visits to the UK was to see his children. The purchase of 190 Seal Road was primarily as an investment for his children and to provide some stability to his marriage. LdS did not move any of his personal possessions (diaries, school reports, memorabilia), motorbike or furniture from Portugal to this property. Following his separation from Anna Marie, he stayed on an informal basis at a friend's home, and subsequently rented a property in Richmond on a short-term basis (with a break clause in the lease) as he expected to have to move out at short notice given the uncertainties in his work and personal life.

87. Mr Degnarain submitted these facts demonstrate LdS could not be said to have a “settled purpose” of residing in the UK by reference to property ownership or the places he stayed. He did not purchase 190 Seal Road to live in it as his sole or main residence, and on moving out his continued residence in the UK was unsettled and highly uncertain.

88. Thirdly, Mr Degnarain submitted that LdS's marital problems commenced in 2004, when he was spending every three weeks abroad whilst his young family were based in Paris. The move to Malaysia, which involved considerably more travel than LdS had anticipated, did not make things better. By the time Anna Marie moved back to the UK in July 2006, it was clear to LdS that his marriage was failing, and he formally separated from Anna Marie in March 2009.

89. Finally, Mr Degnarain referred to other factors, such that LdS did not join any members' clubs, religious or cultural groups, social clubs, health clubs or have gym memberships in the UK. LdS did not visit a doctor or a dentist in the UK. LdS did not have any UK investments such as ISAs, Premium Bonds, Government Gilts, or investment portfolios. LdS did not contribute towards a private pension in the UK. LdS had no UK self-employments. LdS never exercised his voting right in the UK. Mr Degnarain submits that these factors support the stance that LdS was not in the UK for a settled purpose.

90. Mr Degnarain submitted that LdS was not “ordinarily resident” in the UK during the Relevant Period because there was no “settled purpose” for which his residence in the UK could be said to have been “adopted”. LdS lived a peripatetic existence, his work meant that he was not in the UK regularly or had certainty of tenure. Various events upset the regular order of LdS's life - in particular, his changing roles, separation from Anna Marie and stays at different properties. His frequent, regular extensive absence from the UK was not temporary or occasional. On an ordinary day (in an extraordinary life) Mr Degnarain submitted that you would not usually find LdS at home in the UK in the evenings and at weekends. This was his habit, pursued of his own choice and it did not alter over an appreciable period. LdS did not have a regular order of life anywhere, it was a time of transition.

91. Mr Degnarain submitted that LdS lived in Kent, Battersea, Richmond, and Portugal but never had a settled purpose of residing in the UK during the Relevant Period. LdS's family life was notably unstable. Having met Anna Marie at the age of 18, the couple grew apart as Anna Marie struggled to deal with the realities of LdS's career. They formally separated in March 2009, but they started experiencing difficulties as early as 2004. LdS only became ordinarily resident on 6 April 2010 after achieving sufficient continuity to be described as settled in the UK during the 2010/11 tax year by virtue of his new role at Afferro and home life with Penny.

#### **DISCUSSION**

92. We find that the entries in the bank and credit card statements place LdS in the UK on a regular basis, withdrawing cash from ATMs, and making purchases in the UK through his accounts. In the light of the documentary evidence, we reject LdS's assertions that from February 2007 he was rarely in the UK, that from February to October 2007 he spent three weeks out of four outside the UK, or that from October 2007 until April 2010 roughly 70% of his time was spent working outside the UK.

93. The evidence of the bank and credit card statements places LdS in the UK:

- (1) in eight out of twelve months in 2007 (March, April, May, June, July, August, September, and October),
- (2) in ten out of twelve months in 2008 (he was outside the UK in only February and March),
- (3) in all twelve months in 2009, and



(4) in January to April (inclusive) in 2010.

94. In the Relevant Period, we find he was present in the UK in 34 of the 40 months. And the fact that he was outside the UK in six of those months does not prevent him from being ordinarily resident in the UK in those months. Given the short duration of the trips and his return to the UK following those trips, we find that the absences were of a temporary nature, and LdS continued to be ordinarily resident in the UK notwithstanding his absences.

95. None of the stamps in LdS's passports (insofar as they are legible) contradicts the evidence of the bank and credit card statements.

96. The evidence just does not support Mr Degnarian's submissions. Indeed, the contrast between the evidence of the entries in LdS's bank and credit card statements, and his oral evidence that from February 2007 he based himself in Portugal and spent 70% of his time travelling outside the UK is stark. There has been no suggestion that the entries in the bank and credit card statements are in any way incorrect. The fact that he purchased an annual rail season ticket in October 2007 would imply that he was commuting regularly into central London from his home in Kent at that time. And there is no reliable evidence corroborating LdS's contention that he based himself in Portugal throughout the Relevant Period.

97. In the light of the discrepancies between LdS's oral evidence and the inferences that we draw from the entries in the bank and credit card statements, we find that LdS is an unreliable witness, and (save to the extent that it is corroborated by other documentary evidence) we place negligible weight upon LdS's evidence.

98. Contrary to Mr Degnarian's submissions, we find that on an ordinary day you would usually find LdS in the UK working in London or at home, or with his family in Kent, or at leisure in the UK. The contemporaneous documentary evidence places LdS regularly and habitually in each month in the Relevant Period in the UK, carrying on the regular order of his daily life (including, but not limited to, the duties of his employment, having haircuts, shopping, dining out, having his shirts ironed, and going out with his family), and we so find.

99. Mr Degnarian submitted that any work LdS undertook in the UK during the Relevant Period was merely incidental to the duties of his employment, and that this analysis is supported by the fact that he did not have an office in the UK. However, we have only LdS's oral evidence as to what he did in the UK, and we have found that LdS is an unreliable witness. And even if we believe LdS that the work he did in the UK was either attending meetings, or arranging meetings, we do not consider such work to be "merely incidental". Nor are we persuaded that the "hot desk" at Mano's serviced office was not in practice used by LdS on a regular basis – certainly the evidence of cash withdrawals from London ATMs places him in London on a regular basis, and LdS agreed that he used the serviced office when passing through London.

100. Contrary to Mr Degnarian's submissions, the evidence is (and we find) that LdS's personal belongings were not moved from Malaysia to Portugal, but to his new home in Kent. And contrary to Mr Degnarian's submissions, the evidence is (and we find that) LdS did join clubs and other organisations in the UK, did have medical treatment in the UK, did make investments through an account with a UK stockbroker.

101. LdS in his evidence said that property ownership was something of a British mentality, not shared by continental Europeans, and that he had lived in dozens of rental properties in many countries, which he had never owned. But LdS's own actions are inconsistent with this statement, as he purchased a property in Portugal, and purchased an investment property in Greenwich – and it was not submitted that these acquisitions had been made to provide stability for the family, or as an investment for his children.

102. We also note that after his separation from Anna Marie, LdS chose to move in with a friend in Battersea, and then to rent a flat in Richmond, rather than to use his property in Portugal. Mr Purnell submits, and we agree and find, that if LdS had no settled purpose to be in the UK, then (given that he had just separated from his wife), there was nothing to stop him going to live in Portugal. LdS's evidence was that he wanted to minimise the instability to his family following his separation, so that they could continue to do things together as a family – such as going to the park or to the cinema, and eating out. We agree with Mr Purnell's submissions and find that these are the ordinary habits of general living in the UK that LdS had enjoyed and continued to enjoy with his family. We agree with Mr Purnell and find that LdS preferred to stay with his friend and subsequently rent a flat in Richmond because he needed to be here for his work, for his family, and to continue to pursue the ordinary habits of his daily life.

103. LdS submits that he only became UK resident on 1 October 2007 when he purchased The Coach House in Kent. But we find that there was no material change in LdS's ordinary habits of his daily life before and after the purchase of the property which might indicate a change in his residence status.

104. LdS submits that he only became ordinarily resident in the UK on 6 April 2010 after achieving sufficient continuity to be described as settled in the UK during the 2010/11 tax year by virtue of his new role at Afferro and home life with Penny. But, again, we find that there was no material change in the regular order of LdS's daily life before and after 6 April 2010 which would indicate a change in his ordinarily residence status.

105. We find that on LdS's return to the UK from Malaysia in February 2007, he adopted the UK voluntarily as his abode for a settled purpose as part of the regular order of his life for the time being. It is not in dispute that he came to the UK voluntarily. We find that he came for a settled purpose, namely for his family life and to work. He had a settled purpose in coming to the UK, namely, to be with his children.

106. LdS was present in the UK in 34 of the 40 months of the Relevant Period. And the fact that he was outside the UK in six of those months does not prevent him from being ordinarily resident in the UK during those months. Given the short duration of the trips abroad and his return to the UK following those trips, we find that the absences were of a temporary nature, and LdS continued to be ordinarily resident in the UK notwithstanding his absences.

107. We do not accept the submissions made by Mr Degnarain that LdS's move to the UK was not settled, and we note that many of Mr Degnarain's submissions are not supported by the evidence. Whilst there may have been a degree of uncertainty or instability in both his employment and in his family life – those do not mean that his relocation to the UK did not have a settled purpose.

108. Of course, our focus must be on LdS's position during the Relevant Period, and not at any earlier or later time. But subsequent events are capable of being relevant in so far as they cast light on what the position was during the Relevant Period. The fact that LdS continued to live in the UK, and eventually to buy a house with Penny, notwithstanding the end of his marriage and the termination of his employment, is consistent with his move to the UK having had a settled purpose from the outset.

109. For these reasons we dismiss the appeal.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

110. 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.

**NICHOLAS ALEKSANDER  
TRIBUNAL JUDGE**

**RELEASE DATE: 24 MARCH 2020**

Amended pursuant to rule 37 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 on 17 March 2020 to correct the spelling of the Appellant's name.

**Cases referred to in skeletons but not mentioned in the decision:**

*Cooper v Cadwalader* [1904] 5 TC 101

*HMRC v Grace* [2009] STC 2707 (CA)

*R (Gaines-Cooper and another) v HMRC* [2011] STC 2250

*Daniel v HMRC* [2014] UKFTT 173 (TC)

*Kimathi and ors v Foreign and Commonwealth Office* [2018] EWHC 2066 (QB)

*Charman v HMRC* [2018] UKFTT 765 (TC)

*Glyn v HMRC* [2018] UKFTT 219 (TC)

**APPENDIX  
STATEMENT OF AGREED FACTS**

Date(s)	Agreed Fact
<b>LdS's early life</b>	
1971	Born in Portugal to Portuguese parents
1976 – 1982	Primary schooling in various countries where father worked
1982 – 1989	Boarding schools in the UK (Hampshire, Somerset and Berkshire)
1989 – 1993	Studied mining engineering at the Camborne School of Mines in Cornwall
1989	Met Miss Anna Marie Seddon (“Anna Marie”)
<b>Post-education</b>	
1993 – 1995	Worked for Stevin Rock, UAE
1996 – 2001	Worked for Blue Circle Industries plc, UK
16 August 1996	LdS and Anna Marie jointly purchase 34 Church Road, Sundridge, Sevenoaks, Kent
5 April 1997	LdS and Anna Marie marry in Sundridge, Kent
1999	LdS obtains a British passport
18 July 2001	LdS and Anna Marie jointly purchase apartment in Albufeira, Portugal
2001	Son born in Tunbridge Wells, Kent
2001 – 2005	Worked for Lafarge, France and rented apartments in Paris
13 November 2002	Sold 34 Church Road
14 October 2004	Daughter born in Paris
February 2005	Transferred to Lafarge, Malaysia and rented condominium
September 2006	A lease is taken out at 56 High Street, Otford, Kent
January 2007	Employment with Lafarge terminates
<b>Facts pertaining to the “Relevant Period” [1 February 2007 – 5 April 2010]</b>	
1 February 2007	Employed by Mano River Resources Inc (“Mano River”) as CFO
1 October 2007	Appointed President and CEO of Mano River
October 2007	LdS and Anna Marie jointly 190 Seal Road, Sevenoaks, Kent
March 2009	LdS and Anna Marie formally separate
March 2009	Permanently moved out of 190 Seal Road where children remained with Anna Marie
March 2009	Moved into a friend’s spare room in Battersea, London
June 2009	Met Miss Penny Harris (“Penny”)
October 2009	Mano River became African Aura Mining Inc
November 2009	Rented property in Richmond, London
<b>Subsequent events</b>	
November 2010	Moved into PH’s home in Twickenham
April 2011	African Aura Mining Inc became Afferro Mining Inc
29 July 2001	Jointly purchased with Penny The Coach House, Ballards Hill, Goudhurst, Cranbrook, Kent

<b>Date(s)</b>	<b>Agreed Fact</b>
October 2011	Daughter born
16 January 2012	Enters into an employment contract with Afferro Mining Inc with a commencement date of 01/01/12 which supersedes the employment contract with Mano River of 01/02/07
8 August 2012	Divorce from Anna Marie finalised
December 2013	Afferro Mining Inc sold to IMIC plc and employment terminated