

How is HMRC looking at unexpected time spent in the UK during Covid-19?

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Declaring days that are physically spent in the UK under the Statutory Residence Test (SRT) rules on a UK tax return is quite a daunting task. Very complex rules mean arriving at a final number is not straightforward at the best of times.

Add to that trying to determine which days, if any, could be considered exceptional in nature is trickier still, as the interpretation of the word 'exceptional' is so subjective. A global pandemic where travel was, in certain scenarios, impossible, did not make this any easier for taxpayers nor agents alike.

UK taxpayers are generally aware that UK days of presence that are able to be attributed to exceptional circumstances can be disregarded for [certain tests under the SRT](#). The ultimate impact being that it can result in a UK taxpayer being considered a non-resident of the UK, in a tax year when they may have otherwise been considered UK tax resident if you were to look at the numbers alone. That is to say, if some days of UK presence were considered exceptional in nature, they could be disregarded and, although clearly not the case in all scenarios, the taxpayer may as a consequence be non-UK tax resident for that tax year.

Difficulties have quite understandably arisen during parts of, if not all of, the 2019/20 to 2021/22 UK tax years inclusive when recalling and trying to make sense of the ability to travel during the pandemic, quite simply because it was a very uncertain time, with very fluid and regular alterations to both the rules themselves and to their interpretation, coupled with lengthy stopovers and unexpected stays in unintended places. Tax rules the world over were not written with a pandemic in mind and the position was therefore quite reactive as it played itself out in front of us in real time.

A significant number of people remained stuck in the UK with nowhere to go as the international travel network shut down and, as a result, HMRC extended their guidance quite early on in an attempt to provide some clarity around when certain days may or may not be considered 'exceptional' in nature.

It is important to recall that the UK did not bring in any special rules in respect of individuals who were stranded here and, as a consequence, many had to resort to the 60-day 'exceptional circumstances' rule to determine their true position at the end of the year.

On reviewing those 2020/21 UK tax returns, HMRC has now advised that they are seeing common errors included on the self-assessment tax returns, specifically on the SA109 (UK residence pages), in both boxes 11, relating to the number of days spent in the UK attributable to exceptional circumstances and 11.1, relating to the number of days spent in the UK in order to carry out specified coronavirus related work.

During the course of the next month, HMRC has advised that they will be issuing approximately 5,000 educational letters to taxpayers and their agents who have included days attributed to exceptional circumstances on their 2020/21 UK tax return. The letter will include a single help sheet, and taxpayers will be asked to check their 2020/21 filings, which should include any supporting documentation of exceptional circumstances, consult the help sheet and amend their return where any of those errors may indeed apply.

The fact that HMRC has issued this communication means that they see it as an area needing additional focus, and it is expected that there will be more on this over time. The sooner positions are clarified the better, as declarations made in 2019/20 and beyond could impact future filings, and could even have an impact on the way individuals will want to work, and where, going forward.

It is important that taxpayers remain comfortable with the declaration(s) made on their UK tax returns. HMRC appear to be concentrating on the uncertain nature of the pandemic, and the fact that it has perhaps given rise to some misinterpretations and / or misunderstanding of the legislation, and remedial action may consequently be required in some cases. If you require an opinion, or a review of your circumstances, please do not hesitate to contact [David Field](#) or [Joanne Webber](#).