

STRATEGIC TAX PLANNING

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NON-RESIDENCE – LATEST DEVELOPMENTS

There have been no specific new Court decisions on Residence in the UK over the Summer. However, on 16th August 2010 (via a Press Release on Robert Gaines-Cooper's own website) there was confirmation that he has been granted leave to Appeal to the Supreme Court in his Judicial Review Claim against HMRC.

Following on from my previous Article which dealt extensively with the Gaines-Cooper case, (see my March Article entitled Non-Residence – Latest Development – An Update) there has been a lot of excitement created in the National Press, following the release of this information suggesting that the granting of leave offers *new hope*, to those in a similar position to Gaines-Cooper.

From a tax law perspective, I do not believe that an Appeal to the Supreme Court will have any substantial difference on the outcome, in Mr Gaines-Cooper's case. As I outlined in my previous Article, the Findings of Fact in the Commissioners were against Gaines-Cooper. So, although the Court of Appeal made it clear that HMRC are bound by the guidance in the booklet IR20, Gaines-Cooper sadly did not fall within the terms of this Guidance. That is I think, unlikely to change.

What is interesting to is whether leave has also been granted to the co-appellants Mr Davies and Mr Wilkie. As I outlined (in my earlier Article) they have a far better chance (in my view), of succeeding on Appeal. My advice to them would still be that they should go for a separate Appeal.

Critically, it also remains to be seen whether HMRC will be swayed by the Gaines-Cooper Appeal in terms of ongoing cases and their willingness to negotiate financial settlements, instead of pursuing litigation.

The issue of UK Tax Residence also hit the headlines in August when Sir Philip Green was appointed as a Government Waste Advisor. The Liberals (in the Coalition Government) seem to be very concerned that Sir Philip was practising Tax Avoidance.

Bizarrely, Sir Philip's personal tax arrangements are well known to most tax advisors specialising in Residence issues. Sir Philip is a UK Tax Resident receiving a substantial salary from the group of Companies he runs. He spends his working week in the UK and only returns to Monaco at the weekends to see his family.

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The shares in his UK Companies are held in an Offshore Holding Company which is owned by his wife, who is a Resident in Monaco. The supposed outrage that these tax arrangements are some form of Tax Avoidance seems to be confused!

Sir Philip Green is merely carrying out good tax planning. There is no artifice or artificiality in the arrangements that he has undertaken. There is in fact a real risk that should he ever fall out with this wife or get divorced, there will be financial problems for him, in that she owns the couple's most valuable assets!

The hallmarks of tax avoidance are usually an artificial scheme where realities are side-stepped and there are no real financial consequences or effects for any of the actions or steps undertaken.

The real issue in this story is that the Liberals continue to take an extreme and, dare one say *naive* perspective on Tax Avoidance. This reaction to Sir Philip Green's appointment and the rather downbeat comment from Danny Alexander at the Treasury saying, there will be no tax cuts in the next five years, can only encourage those High Net Worth Individuals who remain UK Resident, to reconsider their tax position and consider the much lower tax rates on offer in other Countries and tip the balance in favour of ceasing UK Residence.

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