TC03029

Appeal number: TC/2012/00708

Income Tax - Whether the Appellant was non-UK resident in the tax year 2005-2006 - retention of the Appellant's established home in the UK to which the Appellant returned on a number of occasions (often then having traditional Jewish "Friday night dinners" with his and his wife's son and daughter) - whether the Appellant had established a "definite break" at the point of his contended acquisition of non-UK residence – whether the Appellant's retained UK house remained a habitual abode for a settled purpose - Appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

JAMES GLYN **Appellant**

-and-

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

TRIBUNAL: JUDGE HOWARD M. NOWLAN
HARVEY ADAMS

Sitting in public at 45 Bedford Square in London on 24 June to 5 July 2013 and 8 and 9 August 2013

Patrick Way QC and Emma Chamberlain, counsel, on behalf of the Appellant

Akash Nawbatt and Sebastian Purnell, counsel, on behalf of the Respondents

DECISION

Introduction

1. This was a hard-fought appeal in which the question for us was whether the Appellant had established that he had become non-UK resident for the tax year 2005/2006. In that year the Appellant received a particularly large dividend in respect of the shares in his main UK company, and the tax at stake in relation to that dividend, were the Appellant still UK resident in 2005/2006, was approximately £5.5 million. Implicitly it was accepted that if the Appellant succeeded in establishing non-residence in the year 2005/2006, it was likely that the same would apply for the next four years. We were not strictly called on to decide the issue for those later years, but we agree that the conclusion in relation to the year 2005/2006 is almost bound to apply also to the later four years. Since the issue for 2005/2006 is heavily influenced by whether we conclude that the Appellant effected a complete break when claiming to become a non-resident in April 2005, if we decide in his favour on that point and the facts remain broadly similar in the later four years, it will almost inevitably follow that the conclusion for 2005/2006 will apply for the later four years as well.

2. The Appellant was a British citizen and a British passport holder who was born on 20 May 1949, so that at the beginning of 2005, he was 56 years old. He was happily married to Sarah Glyn ("Sarah"), and they had two children, Toby, aged 29 in early 2005 and Georgina, aged 24 at that time. Both children had left home by 2005, Toby in 2000 and Georgina in 2003, each living in a house or flat provided by the Appellant. There is some significance to the fact that the Appellant was Jewish, though he admitted that neither he, nor it seemed his family, were religious. He described himself to be a secular Jew, and indicated that this meant that he honoured most of the Jewish traditions and festivals though was not religious and very rarely attended the synagogue.

3. During their married life, the Appellant and Sarah had lived in Golders Green, in Hampstead Garden Suburb, and from 1993 onwards at a house called 50 Circus Road, in St. John's Wood ("50 Circus Road"). Their children had enjoyed the latter part of their upbringing at that house; they and their parents regarded it as the family home, and the Appellant and Sarah were obviously very attached to the house. We saw no pictures of the interior of the house but it was obviously quite sizeable, very well furnished, and contained and provided everything that they wanted. It was also located exactly where they wished to live, close to the Appellant's elderly mother, close to Toby and Georgina, and close also to the Appellant's and Sarah's considerable circle of close friends. They referred to St. John's Wood as "the village".

4. The Appellant's grandfather had built up considerable investments in real property, both residential and some commercial. In due course the investments (or the various companies owning them) passed to the founder's six children, one of whom was the Appellant's father. On the occasion of the Appellant's father's early death, when the Appellant was only 21, the Appellant had to abandon the legal career on which he had embarked, and he found himself having to run the family business, and effectively take over the responsibility of providing for numerous relatives. Some years later, when the Appellant had been joined in running the business by his

elder brother, Stuart Glyn ("Stuart"), the Appellant and Stuart decided to buy out the other members of the family which they did by raising substantial debt in a company called Milverton Group Limited ("MGL"). In 1989 MGL purchased all the various property companies and from then on, the group was referred to as the Milverton Group ("MGroup"), with MGL being owned in 50/50 shares by the Appellant and Stuart.

5. Their roles in running the group somewhat mirrored their personalities. The Appellant was meticulous, highly organised, thoughtful and not particularly extrovert. Stuart (and incidentally the Appellant's wife Sarah) was more extrovert with, it seemed, a good flair for business and negotiation but not for detail and administration. Accordingly they made a fine team, with the Appellant dealing with the complex administration of at least 300 tenants, with rent reviews, late payments, damage claims, surrenders and the grants of new leases etc., while Stuart pursued the perhaps more exciting role of buying and selling investments and wider strategy. They worked side by side in their offices and each discussed with the other all the important decisions.

6. By 2005 the MGroup must have been worth £60 million, with the Appellant and Stuart holding at least one significant joint investment outside the group, aside from any other non-joint investments such as their respective houses and contents. Unfortunately, however, the Appellant described his hard-working daily life as drudgery, a job that he had never much wanted to undertake, and so he wished to retire since he believed that he could afford not to work any longer. The Appellant and Stuart also appeared to agree that it would be preferable for their two families no longer to be provided for out of jointly held investments, and that if possible they should split their assets and invest separately.

7. At some point (probably around late 2003) the Appellant and Stuart learnt from their accountants, BDO Stoy Hayward ("BDO"), that if they superimposed a new holding company on top of MGroup, that new holding company having already realised substantial unutilised capital losses for Corporation Tax purposes, it ought to be possible to pool the gains realised on selling the totality of the MGroup investment properties with the capital losses in the holding company, so avoiding all the Corporation Tax on the capital gains in respect of the properties. The brothers therefore embarked on this planning. In some way, without triggering a capital gain in respect of their own shares in MGL, a new holding company with capital losses, Hillpride Solutions Limited ("Hillpride"), became the parent of the group, and the Appellant and Stuart embarked on the programme of realising all the properties.

8. The Appellant had also decided that for the tax year 2005/2006 (and for the indefinite future, meaning at least for five years) he would emigrate and thereby cease to be UK resident. He obviously reached this decision to some degree because it would tie in neatly with the plan that his half of the realisation proceeds of the property sales could be paid to him as a dividend that would be tax free if he was non-resident when he received the dividend. The plan was accordingly to modify the share rights in Hillpride so that once the Appellant had received that dividend, the remaining rights attaching to his shares would be near valueless, and Stuart would be left holding Hillpride, MGL and the MGroup, with Stuart's half of the realisation proceeds left in the group.

9. The Appellant did not dispute that avoiding tax on the dividend was a significant influence on his going non-resident. He claimed, however, that additional reasons for going non-resident were that he would find himself drawn back into the property business if he did not make a total break, and that he wanted a totally different lifestyle from the one that for many years he had found to be drudgery. Sarah was more hesitant about the decision to emigrate. She, as the more extrovert of the two, and a great cook and hostess, was keener than the Appellant to retain at least the option of visiting the UK more frequently than the Appellant intended to do. She accordingly decided that while the Appellant would pursue the unfortunate practice of religiously adhering to the so-called guidance in HMRC's infamous publication IR20, keeping his day count of return visits to the UK well below the suggested average figure of 90 days a year, she would not seek to sustain non-resident status, and would return to the UK more regularly than the Appellant if she wished. She did, however, and very significantly, surrender roles that were very important to her, as the Chairman or President of one or two major Jewish charities, with a view to going with the Appellant and in the event spending the majority of her time with him out of the UK.

10. The Appellant and Sarah, and indeed many of their St. John's Wood friends, had holiday apartments in Cannes in the South of France. The Appellant claimed that at an early point he considered living there. He and Sarah liked the climate, but considered Cannes to be somewhat dead out of the season. They therefore acquired a quite substantial apartment in Monaco, taking up Monegasque residence. They did not dispute that the choice of Monaco was also partially inspired by the tax advantages of living in Monaco rather than France, but this seems to have little UK tax relevance.

11. On 5 April 2005 the Appellant departed for Monaco, and lived in the acquired apartment. Sarah followed shortly after. Two years later they in fact found a more attractive apartment, with swimming pool and gym for all the residents. Both apartments were furnished and decorated to a very high standard, and both had three double bedrooms, all with ensuite bathrooms and balconies.

12. During the whole of the 5-year period in which the Appellant lived in Monaco, he spent at least 200 days a year there. Sarah was with him for the great majority of that time. They also enjoyed numerous foreign holidays. In the first year of claimed non-residence, the Appellant calculated that if he followed another element of the guidance of IR20 and ignored days of arrival into and departure from the UK, he spent only 44 days in the UK in 2005/2006, and roughly the same number in the four later years. On the basis that we conclude is the fairest method of calculating the time spent in the UK (albeit a basis that we still observe below continues to exaggerate the significance of the time spent in the UK) he spent no more than 65 days in the UK, and again roughly that number in the later four years.

13. Save for one occasion when he arrived and departed in 2005 without leaving Heathrow airport, whenever the Appellant came back to the UK, he stayed at 50 Circus Road. He made 22 visits to the UK in the year 2005/2006. The visits were made for various purposes. Some might have been to celebrate his own birthday, and the birthdays of Toby and Georgina at 50 Circus Road. Three or four were to

celebrate the key Jewish festivals of Yom Kippur, Rosh Hashanah and the first night of Passover, again with the family. On 15 Fridays during the relevant year, the Appellant and Sarah did enjoy the traditional Friday night dinners with their children, almost always at 50 Circus Road, that in earlier years had been virtually a fixture on every Friday unless they were on holiday or the children were away. They also saw something, though substantially less than formerly, of their wide circle of close friends.

14. The battle lines between the parties (a not inapt description of the preparation for the Appeal) were therefore as follows. HMRC contended that whether or not the Appellant fell to be regarded, on UK principles, as a resident of Monaco, he nevertheless remained dual resident. 50 Circus Road remained a home and a habitual abode. He sought to preserve family and social ties by returning to 50 Circus Road on 22 occasions. He also continued in ways that we will describe, and incidentally wholly reject, to participate in his old business. He had accordingly not shown a distinct break; he had not shown a substantial loosening of family and social ties, and as a dual resident, he remained UK resident.

15. The Appellant claimed to have embarked on a completely new way of life. Lulled into the belief by the guidance of IR20 that he could make a limited number of return visits to the UK and that use of 50 Circus Road would not prejudice his claim to be non-resident, he admittedly made 22 visits to 50 Circus Road in 2005/2006, but they were for varied, always non-essential purposes, and on average the visits lasted only roughly two full days. He said that he never felt "at home" on those short visits. He then particularly stressed that not only had there been a complete break from his former business life but that his emigration had been designed in part to ensure that this was so, and also to give him and Sarah the opportunity to have a relaxed lifestyle in Monaco, pursuing entirely different objectives than formerly and before they were too old to enjoy such a lifestyle. Furthermore, since their children had left home, they now had the opportunity to embark on such an adventure, and to some extent considered it to be important in encouraging their children to further their own independent careers and lives. As we have already indicated, and as we will amplify below, he continued to see Toby and Georgina fairly often, and his and Sarah's friends occasionally, and much less frequently, than when they had lived permanently at 50 Circus Road.

16. We will deal below with the particular significance that HMRC attached to the retention and use of 50 Circus Road. We consider, however, that it was certainly not retained principally for the purpose of its use by the Appellant when he was making a visit to the UK. When each visit was on average for only two days, we conclude that 50 Circus Road was not the Appellant's "habitual abode", or one of such "abodes", and we certainly decide that the visits to it were not made for a settled purpose. The visits were made for a number of purposes, generally two or more being combined.

17. Our decision is that the Appellant did effect a distinct break; he did significantly loosen his family and social ties; he severed and abandoned his former business life almost completely, and he had no "habitual abode", or "abode for a settled purpose" in the UK. Accordingly he was non-UK resident in the tax year 2005/2006 and this Appeal is allowed.

The evidence

18. Evidence was given for many days. By far the most significant evidence was given by the Appellant. After him, the next most significant evidence was given by Sarah and Stuart. Evidence was also given by Toby and Georgina and by numerous of the Appellant's and Sarah's friends. The Appellant was cross-examined extensively. So too were Sarah and Stuart, and to a lesser extent Toby. Georgina and most of the friends were not cross-examined, and nothing of much relevance emerged from the minor cross-examination of the few friends who were cross-examined.

19. We will not record the evidence given by each witness, but will simply reflect it in the fuller summary of the facts below.

20. We will comment, however, on the criticism made by the Respondents' counsel to the effect that it was commonplace in residence appeals for appellants and witnesses to underestimate visits and the significance of visits to the UK, and commonplace to over-emphasise the significance of life abroad. In this Appeal, the Respondents' counsel said that the same pattern had been exhibited in this case, and we need to address that.

21. The Appellant's first witness statement was 41 pages long, and it was packed with factual information. An enormous amount of work had gone into its preparation, and naturally airline boarding cards, bank statements, credit card statements and diaries had had to be scrutinised in order to prepare the statement. We consider that its accuracy somewhat reflected our comment on the personality of the Appellant, namely that he was meticulous and straightforward. We accept that there were two short passages in the witness statement that were misleading (one of them fairly irrelevant), but the significant point that we mean to make is that those two points apart the Appellant's witness statement, and his answers to all the questions in cross-examination, were all impeccable. We had no hesitation in accepting that he was a truthful and open witness, and that the provision of the vast bulk of the information and his answers to all the questions in cross-examination were a credit to him. Indeed he was meticulous and organised.

22. The Respondents' counsel was right that there were occasions in the witness statements of Sarah and Stuart where the detail materially under-stated the reality. And in Toby's witness statements there were two fairly material errors, one stating that the Friday night dinners simply ceased. We will iron out these discrepancies in recording the facts, however, and they have not distorted our true understanding of the reality. Nothing of significance emerged from the cross-examination of the few friends who the Respondents' counsel chose to cross-examine.

The facts in more detail

The close family ties and the Friday dinners

23. A central thread to this Appeal revolves around the very close family relations between the Appellant, Sarah and their two children, and the fundamental Jewish tradition that Friday night dinners are family occasions where it is the tradition that

the family eat together. Another significant feature is the relatively common Jewish characteristic of close friendships between different families who often entertain each other and form close bonds.

24. Notwithstanding therefore that Toby and Georgina were respectively 29 and 24 in early 2005, and that they were no longer living at 50 Circus Road, it was entirely consistent with tradition and Jewish family life that they would almost always have shared Friday dinners with their parents before their parents emigrated, and perfectly natural that this tradition would continue, albeit inevitably to a lesser degree on account of their absence, once the Appellant and Sarah were in Monaco. We understand that there were 35 such Friday dinners together in the previous tax year, 2004/2005. The Appellant told us that the tradition continued whilst he and Sarah were in Monaco in that he always paid for Toby and Georgina to eat together on Friday nights at a restaurant. During the tax year 2005/2006, whenever the Appellant and Sarah were at 50 Circus Road on a Friday night, they entertained Toby and Georgina to dinner at 50 Circus Road. This happened on 15 occasions, and whilst a few of the following figures may be included already in the 15, it is also the case that all the immediate family were together at some point for the three main Jewish festivals and for the Appellant's, Toby's and Georgina's (but not Sarah's) birthday celebrations.

25. It would be wrong to say that the Appellant visited 50 Circus Road specifically for those family dinners and those celebrations. Most of his visits were for two or more reasons. The Appellant attended a number of meetings at BDO. He and Sarah invariably used British Airways and Heathrow, when making a long-haul flight to a holiday destination and they often stayed a couple of nights or more at 50 Circus Road on those occasions. Those "stop-overs" before or after such flights certainly included 5 of the 15 Fridays. The Appellant and Sarah may or may not have fixed his BDO meetings, and their long-haul flights to coincide with Fridays and the Jewish festivals. When almost all of the 22 visits were for two or more purposes, it is simply not possible to say which reason for any visit was the dominant one, and what dictated the particular timing. We do not doubt that if no other consideration dictated the timing of a visit, then the Appellant would have sought to be at 50 Circus Road, and to enjoy the traditional family dinner on a Friday, but we stop short of saying that he made 15 visits specifically for the dinners.

26. We should perhaps comment that it was in relation to the Friday night dinners and the birthday celebrations that the Appellant's witness statement had been misleading. It was fair to say that the former were significantly fewer in number than in earlier years, but the suggestion had been slightly stronger than that, and he had said (seemingly wrongly) that the birthdays were not celebrated in they UK. In fact three of the four were.

The relationship with friends

27. The bonds between friends may not be as strong as those family bonds referred to in the three preceding paragraphs, but we consider it to be widely appreciated that traditions in the Jewish community often involve the creation of firm friendships between different Jewish families, very common contribution to Jewish charities, and

the feature of mutual support to the charities of friends, and attendance at charity dinners and functions, in the expectation that friends will support one's own charities.

28. Whatever the norm, it is quite clear that in this case there were such strong bonds between various friends who had known the Appellant and Sarah, and often each other, for a very long time. They did generally meet for Sunday dinners, virtually weekly, taking it in turn to host such events. In this case, several of the family friends who gave evidence spoke of having enjoyed holidays with children with the Appellant and Sarah and their children, and significantly several of the close friends also owned holiday apartments close to the Appellant's holiday apartment in Cannes. We understand that this was far from coincidence, and that the same groups of friends might not only meet regularly when in London, but also in the holiday season in Cannes.

29. Contrasting the position before and after April 2005, it is clear that the Appellant and Sarah had before 2005 been key members of this circle of friends. Following their departure, the evidence of the Appellant, Sarah and virtually all the friends was that the circle of friends inevitably saw very little of the Appellant (and even Sarah) in London. The Appellant accepted that if he went for a stroll for a coffee at a café amongst the St. John's Wood shops when making a visit, the likelihood is that he might meet two or three people who he knew quite well. He might also make some effort to meet up with one of the friends or both the husband and wife when he was in London. 50 Circus Road appears, however, to have dropped off the Sunday dinner circuit almost totally, and whilst the Appellant and Sarah might occasionally have joined their friends at one of these events, the pattern of visits before and after April 2005 was totally different.

30. The Appellant and Sarah invited most of the friends to visit them in Monte Carlo which most did, generally on several occasions during the five-year period when they lived in Monaco.

Sarah's charity work

31. Sarah was not only the more extrovert character and, as we have mentioned, a keen cook and hostess. She had also supported two Jewish charities for many years, and progressively increased her efforts as a voluntary worker for one of those charities, namely Womens' International Zionist Organisation or WIZO ("WIZO"). She was dedicated to her work. She worked for four days a week in the WIZO offices, spoke at events all over the country, attended conferences in Israel and progressively moved up the ranks and ended up as Chairman. She was thoroughly enjoying this work and was reluctant to break her links with WIZO, which she realised she would substantially have to do if she were to join the Appellant in Monaco. She had met some of her close friends while working for WIZO, and this was a further reason why she had mixed feelings about moving to Monaco. It is not therefore surprising that she was the one who had the greater mixed feelings about emigrating. We see no conflict in the reluctance to abandon charitable work that she had enjoyed, and leaving her many office friends, while at the same time saying that in some respects life in Monaco sounded exciting and that she was "up for it". The Respondents seemed to consider that one or other assertion had to be untrue.

32. In the event, Sarah did what she considered she had to do once she had decided with the Appellant that they would emigrate, which was to resign as Chairman of WIZO and take no further part in the daily matters of running the charity and working in the office. As all retired Chairmen, she inevitably became a President of WIZO and she retained the one responsibility of arranging the annual fund-raising lunch. She said that she considered that she could prepare the invitations for this whilst in Monaco and bring them to London when she visited, and this is what she did.

The houses

50 Circus Road

33. As we indicated in the introduction, the Appellant and Sarah had lived at 50 Circus Road since 1993 and were very fond of the house. We were shown pictures of the exterior, and would describe it as a reasonably sizeable town house. The number of bedrooms depended on whether any were used as small offices or box-rooms. At the maximum configuration it had six bedrooms, but as arranged in 2005, it appeared to have either three or four bedrooms. We were not shown internal pictures, but would describe the room sizes of the reception rooms as comfortable and large enough to entertain on a moderate scale. When the two children had been living at home (as they had done for much of the period of ownership) it would have been fair to describe the house as perfectly adequate in size for the family and for a man of the Appellant's means, but certainly not excessive. Once the children had left home, we imagine that it remained a house that the Appellant and Sarah found perfectly manageable, and certainly one that they wished to retain.

34. In the period before April 2005, the Appellant had employed a live-in housekeeper, and that housekeeper was retained during the period that the Appellant and Sarah were in Monaco.

35. We need not enlarge on the points, already mentioned, that the house was ideally located, with the Appellant's mother, Toby and Georgina all living close by and with many of their friends also living in the locality.

36. We were shown the insurance valuation of furniture and effects, works of art, and jewellery. The jewellery accompanied Sarah to Monaco so that we will ignore that. All the furniture and effects and the pictures remained at 50 Circus Road. The combined valuation of the furniture and effects was roughly £0.5 million and the works of art £0.25 million. The impression that we gained was that most of the furniture was antique, in other words furniture that was eminently suitable for a substantial house in St. John's Wood, but furniture that would have looked out of place in a clean, modern apartment in Monte Carlo. The valuation of the works of art indicates that the pictures would obviously have been attractive originals, again suitable presumably for the style of house, but not the sort of pictures that might fetch telephone number prices at a Sotheby's auction.

37. The short summary appears to be that 50 Circus Road was a house that fitted the Appellant's and Sarah's requirements perfectly.

38. In April 2005 the Appellant and Sarah each owned a Mercedes car. The Appellant's was a three-year old S-class with the V8 engine. Sarah's was a new CLK purchased as recently as September 2004. The Respondents claimed that the feature that that car was purchased as recently as September 2004, at a point when the Appellant and Sarah claimed that the decision to emigrate had been made, suggested that the couple considered it realistic that 50 Circus Road would remain a habitual abode or a place where they continued to be resident. The Appellant responded by saying that Sarah's previous Mercedes had been troublesome and that the CLK had anyway been ordered about six months before it was delivered. Both cars were parked on the drive at 50 Circus Road and not on the road. The Appellant admitted, and the Respondents pointed out, that the Appellant had applied for a residents' parking permit, in the application for which he had confirmed that he was resident in the relevant borough. We were told that the parking permit was required because of the likelihood that in their absence someone else would drive the S-class in order to take the Appellant's mother, who was nearly blind, out whenever required. In any event, we cannot accept that we should be influenced in our decision in relation to the Appellant's tax residence by what he may or may not have asserted when applying for a parking permit.

The Cannes apartment

39. We were told relatively little about the Cannes apartment. It was obvious that it was a holiday home. In the period before April 2005, the Appellant and Sarah had visited it for longish periods during the summer months, and quite regularly at weekends. Their use of the apartment, and indeed their pattern of foreign holidays in the period before April 2005 was the other respect (albeit a fairly irrelevant one) in which the Appellant had been slightly misleading in that he had claimed that before retirement he had found it difficult to be away from London for any extended periods. In the event, the time spent at the Cannes apartment and the pattern of foreign holidays taken in the years preceding 2005 had been quite extensive and certainly conflicted with the Appellant's claim that it was only following his retirement that he could be away from London for longer periods than, say, one week.

40. The Appellant owned a VW Golf, which was always left at the Cannes apartment in the period before April 2005.

41. Nobody claimed that the Appellant and Sarah had been resident in France, applying UK tests, by reference to their ownership or use of the Cannes apartment. Had such a claim been made it would have been unrealistic. The Cannes apartment was simply a holiday home and is of relatively little significance to this Appeal.

Villa Rose and Rocabella

42. In late 2004, the Appellant and Sarah made several visits to Monaco in order to seek advice about acquiring a residency permit in Monaco and in order to view available accommodation in Monaco. The residency permits were successfully obtained after they had attended medical examinations, and having viewed numerous apartments, they took a lease of an apartment in a block to the south side of Rue d'Italie, called Villa Rose. The apartment at Villa Rose occasioned some contention during the hearing. The Appellant asserted that it was not quite what they had hoped

for. They preferred a block called Rocabella, because that block contained larger and more attractive apartments, and also offered more community spirit because there was a swimming pool and a gym for the use of residents so that they were more likely to make friends with other residents. No apartment was available at Rocabella, however, in March 2005, and so the Appellant signed up for a 3-year lease of the Villa Rose apartment, but insisted on monthly break options so that he and Sarah could move to Rocabella if an apartment became available. In the event it did, and they moved. The Respondents claimed that the break clause was inserted so that they could return to the UK on a full-time basis if they did not enjoy life in Monaco. We do not accept that claim and since, in any event, we consider intention to be of little relevance in determining tax residence (a proposition strongly advanced by the Respondents themselves) and the break clause was triggered for precisely the purpose claimed by the Appellant (namely to facilitate a move to Rocabella), we ignore the dispute about the break clause.

43. We were shown few pictures of the Villa Rose apartment. We understood that it had a living room and sizeable kitchen, and three double bedrooms with ensuite bathrooms. All the rooms, including the kitchen and not just the bedrooms, had balconies. The annual rental cost of Villa Rose was 120,000 Euro. It seemed that the most unsatisfactory feature of Villa Rose was that, although it included the right to use two basement parking spaces, the apartment itself took up the entire area of one of the floors, so that if you left the apartment and went by lift, either to walk into the street or to go to the basement to use the car, you were very unlikely ever to meet any of the other residents of the block.

44. Great play was also made by the Respondents of the fact that the Villa Rose apartment was considerably smaller than 50 Circus Road. While the later Rocabella apartment was larger and considerably more expensive, it was again smaller than 50 Circus Road. This appears to us to be irrelevant. 50 Circus Road had initially been purchased when the Appellant knew that his two children would be living there, and that they would employ a live-in housekeeper. They also knew that they would wish to entertain on quite a scale. In the two Monaco apartments they had two spare rooms so that their two children could each have a bedroom. Those bedrooms were also said to be fully stocked so that their children would have dressing gowns and required toiletries so that they would be comfortable and feel welcome. The Appellant and Sarah were also unlikely to be having two couples, or indeed more than two couples to stay at any time so that the apartments were also adequate in that sense. Furthermore, the Appellant asserted that he and Sarah were quite keen to down-size their requirements. Had they wanted more spacious accommodation, they would have very likely found it almost unobtainable in Monaco. There are of course no, or virtually no, houses in Monaco, only apartments.

45. We were shown a few pictures of the Rocabella apartment. As the Appellant had indicated, he and Sarah had made the deliberate and fairly obvious choice of furnishing both apartments in a clean modern style, so that they looked nothing like our assumption of the interior of 50 Circus Road. It was difficult to tell from fairly poor photographs whether the apartments were as striking as the Appellant and Sarah said they were. They did, however, make it very clear that the furniture and the art, whilst modern, was all of the best quality. Pictures were purchased, for instance, from galleries and were always originals or photographs by famous photographers.

46. The Appellant did not initially purchase a new car in Monaco but used the Golf. He admitted that in 2007 they saw a rather striking open Mercedes in a showroom and bought it as an impulse buy instead of the Golf. The Appellant said that he later regretted that purchase because he had preferred to drive the Golf and sold the Mercedes at a very substantial loss when he returned to the UK in 2010.

The business transactions and the tax schemes

47. In summarising the facts in relation to the sales of the investment properties of the MGroup and related transactions we will not only be recording the material facts, but giving enough information in order later to address the important question of whether the Appellant achieved a total break from his earlier business activities when leaving for Monaco, and we will deal with the Appellant's overall tax planning and the failure of one aspect of it.

48. Little attention was given during the hearing in relation to our supposition that the sales of the properties and the tax planning were all very much inter-linked. It was mentioned that in 2004, the property market was said to be a seller's market, albeit that the market did not peak for two further years. However since there were clearly very large capital gains in respect of the properties (illustrated by the amount by which the dividend to the Appellant "had to be reduced" when the tax loss scheme failed) it seems reasonable to suppose that the brothers were influenced in deciding to sell the entire portfolio by the hope and expectation that the BDO capital loss scheme would enable them to avoid the Corporation Tax on the numerous disposals. Furthermore, since the other objective of the sales, namely to sever the investment objectives and assets of the two brothers, effectively required the Appellant's half of the proceeds to be withdrawn from MGL and Hillpride, it seems reasonable to suppose that the plan to emigrate and thereby avoid tax on a dividend, representing the Appellant's half of the value within the MGroup, was reasonably central to the planning from an early stage. None of this is particularly significant to the residence questions that we must consider.

49. Whether the interlinking that we have tentatively suggested in the preceding paragraph was as material as we have supposed, it is nevertheless the case that the plan was to insert Hillpride on top of the group (avoiding capital gains realisations by the two brothers in relation to their shares in MGL in some way), and then effect all the property disposals during 2004, and hopefully by the end of March 2005. They decided to sell most of the properties individually, rather than as a portfolio, and they virtually achieved this objective. We will refer to two respects in which properties removed from the MGroup were not actually sold to third parties, but that apart, the only property that they failed to sell, as intended, to third parties was a minor property worth only £20,000. Whether it was under offer or not by the end of March we are not clear but it was sold shortly after March, and reference was made to there being some delay on the part of the purchaser in closing the minor transaction. To all intents and purposes, therefore, they realised everything by the end of March 2005.

Glyn Cousins LLP

50. There were a number of properties that the brothers considered could not be sold in 2004 or early 2005 for anything like their ultimate realisable value because they were subject to fairly long leases at low rents. The properties would be worth much more when the leases terminated or tenants vacated. The plan in relation to these properties was therefore to put them into an LLP structure in which the Appellant's two children would together have a 48% interest, Stuart's four children would together have a 48% interest, and the Appellant and Stuart would each have 2% interests. The LLP in question was called Glyn Cousins, having regard to the ownership of 96% of the interests in it. One further detail was that in order to preclude tenants having rights to acquire the freehold on the occasion of property sales from the MGroup, some of the leased properties were transferred into an MGroup company called Cavendish Coombe (intra group transfers apparently not triggering tenant's rights to acquire), and it was Cavendish Coombe that was then transferred to Glyn Cousins. The sale of the company naturally occasioned no tenants' rights to purchase.

51. There was some obscurity as to how the purchase by Glyn Cousins LLP was actually funded. Initially most of the price (of roughly £7 million) was left outstanding. It seems to have been the intention that, as the Appellant would have very substantial cash in hand, following the payment of the major dividend from Hillpride, the Appellant would provide a loan on market rate terms to fund the acquisitions. It was not clear that he had actually advanced much more than about £800,000, but it seemed entirely possible that he had effectively funded more of the acquisition by agreeing that part of his major dividend would take the form of the assignment to him of much of the outstanding indebtedness owing by Glyn Cousins LLP to the MGroup.

52. Another factor that was never clarified during the hearing was the point that, although the strategy had been to dispose of the relevant properties passed directly or indirectly into Glyn Cousins LLP, once the leases fell in, and Stuart said that the disposals that had occurred by the date of the hearing had all realised good profits, Glyn Cousins LLP appeared to be recognising losses in each year. Our supposition, and little hinges on whether it was right or not, was that a market interest rate on £7 million of debt funding would have considerably exceeded the actual income on the properties (their common attribute being that they were all let at low rentals), and that that might have been why there were losses.

53. We needed to give the above detail to put matters in the proper context, though none of it is particularly relevant. The only points of real relevance are as follows.

54. It was obvious that the purpose of the Glyn Cousins structure was to enable properties to be sold in due course at more opportune times and prices. And it was attractive to put the growth in values into the hands of the various children. It was then said that the reason why Stuart and the Appellant each had 2% interests in the LLP was that they would thereby be able to exercise joint control over the sales in the best interests of the children, rather than confer control on the children.

55. The Respondents seized on the feature that the Appellant technically had a say in the control of the sale of the properties in Glyn Cousins as a feature of continued active involvement in the property business that undermined the claim that he had

wholly severed his active involvement in the business. Stuart and the Appellant both said that the strategy for Glyn Cousins was anyway clearcut. When leases fell in, the properties would then be sold on a vacant possession basis. Stuart, who had always dealt with sales and negotiations would in practice deal with the sales, and the Appellant merely held his 2% to achieve theoretical equality, and as an ultimate method of securing the best interests of his two children if he thought that Stuart was not achieving that end. It was unlikely that he would ever form that view, and he said that he played absolutely no part in the periodic sales of properties, as they became vacant.

56. The Respondents appeared to consider it odd or suspicious that the children had never received any distributions from Glyn Cousins by the date of the hearing. This may have been incorrect because if the point had been reached that the taxable gains on realisations had exceeded the interest cost, it was suggested that, with a tax transparent structure, the children might have received sufficient distributions just to pay the net tax owing. Regardless of whether there were such minor distributions or not, we were told that realisation proceeds were intended first to reduce the debt, with the intention that at the end of the day 96% of the net gains would be owned by the children, following full debt repayment. This seemed to make entire sense.

57. The only point of any relevance, therefore, was the Respondents' contention that the theoretical right of continuing control possessed by the Appellant was a factor to be taken into account in determining whether he had severed all active responsibility for property transactions.

Milverton Ventures Ltd

58. The second group of property interests that were transferred out of MGroup but not to third parties were some interests in various shopping centre investments managed by a Mr. Lyall who was well know to Stuart and the Appellant. The investments were promoted under the Chester name, and without addressing the irrelevant detail, Stuart's and the Appellant's interests in various shopping centres, acquired and offered to numerous participants under the Chester brand, were held by an MGroup company called Milverton Ventures Ltd. In the process of realising all the investments of the MGroup, the Appellant's interest in Milverton Ventures Ltd was transferred to him. We understand that whilst the Appellant was in Monaco he made further investments in new shopping centres that had not been owned in April 2005, though possibly on a more modest scale than formerly.

59. The respective contentions in relation to the Chester investments were that according to the Respondents they represented an ongoing property investment by the Appellant, again undermining his claim that he severed his former business connections and interests. The Appellant pointed out that he had no executive role whatsoever in relation to the investments. Mr.Lyall structured the investments so that investors with different tax and other characteristics could participate jointly in the investments, and none of the investors had any active role to play in relation to the investments.

The big dividend

60. In or before May 2005, the share rights in Hillpride were adjusted in the manner obviously implicit from the start in the planning, so that when the Appellant had received a very substantial dividend, the remaining rights attaching to his shares would be heavily deferred and basically valueless.

62. In May 2005 Hillpride paid a dividend of approximately £29 million to the Appellant. Whether part of it took the form of any assignment of the debt owing to the MGroup by Glyn Cousins LLP is unclear. The Appellant then made arrangements with a Mr. Riley in Barclays Bank in Monaco to receive the dividend and we will deal below with the strategy for reinvestment pursued by the Appellant.

The failure of the Hillpride capital loss scheme

63. The amount of the dividend just mentioned had been based on the assumption that the capital loss scheme would succeed in avoiding the Corporation Tax on all the property realisations. From about September 2005, BDO must have heard that HMRC were challenging the efficacy of similar capital loss schemes to the Hillpride scheme, and it began to emerge that the assumption that the scheme would succeed might be wrong. It was not until October 2006 that the First-tier Tribunal decided that the scheme actually challenged by HMRC did not achieve its object, and in due course appeals against that decision were dismissed. Whilst that decision was not made until the following tax year, information amongst tax practitioners obviously enabled BDO to monitor the challenges being mounted, and the issue of whether the Hillpride scheme could be distinguished.

64. The outcome of the various challenges is not now particularly material but the outcome in fact was that the scheme failed; Stuart and BDO, somewhat to the disappointment of the Appellant, agreed to settle with HMRC; Hillpride paid the tax and the result of the settlement was that the Appellant paid back about £8 million to Hillpride, with HMRC treating that repayment as having retrospectively reduced the dividend from £29 million to roughly £22 million.

65. The point of present relevance is that from September 2005 onwards, as rumblings of the HMRC challenge in relation to the capital loss schemes became clear, the Appellant attended various meetings at BDO. It was said by the Respondents that there were three subject matters discussed at these meetings. These meetings and the matters discussed were therefore claimed by HMRC to be further examples of the way in which the Appellant failed to sever his business links with the UK on his claimed emigration.

The BDO meetings attended by the Appellant in the tax year 2005/2006

66. To be accurate, there were almost four matters dealt with in the BDO meetings attended by the Appellant.

67. The most vital matter was of course to update Stuart and the Appellant in relation to the chances that the capital loss scheme would succeed. It seems obvious that this topic can only have taken the form of information being passed on to Stuart and the Appellant, with everyone presumably endeavouring to identify material differences between the challenged schemes and the Hillpride scheme so as to

distinguish the Hillpride scheme should the challenges succeed. Since Stuart claimed that he understood little of the detail, and the Appellant accepted that he was also slightly out of his depth, it seems obvious that discussions on this topic would have consisted simply in BDO trying to estimate chances of success. There was certainly nothing that Hillpride or Stuart or the Appellant could do in order to improve the arguments, or modify the events, since all of the transactions had already occurred.

68. The second topic discussed related to the capital gains calculations in relation to all the properties. Many had been acquired prior to 6th April 1965, so that valuations at that date, and 1982 valuations, would all have been material. Stuart knew little of this detail, but the Appellant did. It seemed however that since the calculation of gains would have been relevant whether the capital loss scheme had succeeded or not (obviously rather more material if it failed) much of this information had already been collated and provided to the accountants by the Appellant during the programme of sales in 2004. We were left unclear to what extent the BDO meetings in late 2005 amplified the information given.

69. The third topic that the Respondents alleged was dealt with at the BDO meetings was planning in relation to later transactions. Since the Glyn Cousins planning and the planning in relation to extracting the Milverton Ventures Limited and Chester interests from the MGroup had obviously preceded April 2005, and any further planning in relation to Hillpride (then effectively wholly owned by Stuart) was of no concern to the Appellant, we fail to understand what on-going planning can have been involved.

70. The fourth matter, which we add to the Respondents' list of three, is that during the hearing, the Respondents produced numerous resolutions, notices and filings that were signed by the Appellant in late 2005 and some in 2006 that were also signed by the Appellant. The Appellant had initially claimed that he had resigned as a director of Hillpride and the various MGroup companies on 1 April 2005, and that in any event he had performed no active or executive role as a director in those companies since that date, even if he were wrong in his belief that he had actually resigned. He had also said that he had resigned, and that if Stuart had failed to ensure that his resignation had been notified to the Companies Registry, this was not surprising as Stuart would not have been too concerned about such a minor matter. The Respondents produced documents prepared by the accountants for filing at the Companies Registry, many of them signed by the Appellant as a director at the relevant later dates. Without at this stage elaborating on why we consider this matter to be virtually wholly irrelevant, we should mention that many of the filings related to Annual Returns, changes of address of officers, resignation of officers and other similar matters. The Respondents claimed that all duties of directors are serious matters, and that the signature of these various filings, and perhaps some resolutions was further support for the continued involvement by the Appellant in property matters after April 2005.

Parkside

71. We have mentioned that Stuart and the Appellant owned personally one significant investment that had always been held outside the MGroup. This was

either a bomb site or at least just derelict land in Islington. At the time the Appellant emigrated the land was leased to a car park operator but it was known that the lease would shortly expire and that Stuart and the Appellant would then have to decide what to do with the land.

72. Since by the time the lease terminated, the Appellant had been in Monaco for some time, and since the business of dealing with property advisers, architects and planners was in any event more Stuart's domain, it was Stuart who researched the various options and eventually sought three or four planning consents from Islington Council. The earlier applications had been for mixed use with the construction of some student hostels, but the early applications were all refused. When permission was eventually obtained, it was for a moderate-sized hotel.

73. Since the value of the site would be enhanced if it could be sold on the basis of there being an "oven-ready" project, i.e. one where architects and builders had already agreed to construct a particular hotel for which there was also an available tenant, there was a difference of opinion between the brothers. Neither had previously been involved with a serious development project, and the Appellant favoured selling the site and letting the purchaser have the problems of delays and cost overruns in the development. Stuart wanted to develop the site himself. In the end the Appellant agreed that Stuart could progress his plan, provided that he dealt with everything. In the end, Premier Inns were lined up as the tenant; they naturally required their architects to be involved and they dictated much of the design, but nevertheless the owners of the freehold remained, and still remain, Stuart and Sarah. At some time, after the development had commenced, the Appellant had transferred his half interest to Sarah. The building was eventually completed successfully. There was one major problem in that the fire brigade required the original plan of the upper stories being built with a timber frame to be changed to a more costly steel frame. But the project has been successfully completed, and Stuart and Sarah now derived very substantial rental income from a first-class tenant.

74. It was accepted that although the Appellant's half of the freehold had been transferred to Sarah, if there were any issues on which Stuart felt that he needed to consult the co-owner, he spoke to the Appellant rather than Sarah. The Respondents contended that this significant joint investment represented another project in which the Appellant was actively involved in the UK, and naturally the Appellant contended that he left everything in Stuart's capable hands. In a sense he was often consulted out of courtesy or so that he was kept informed of developments. He apparently visited the site only twice during the years when he was in Monaco.

Life in Monaco

75. The Respondents' counsel marginally criticised the Appellant for the fact that his first Witness Statement concentrated so heavily on his life in Monaco. Conversely, a re-reading of the transcripts of the hearing gives the impression that the Appellant was cross-examined in relation to every visit to the UK, and one begins to feel that as soon as each visit ended, the Appellant was arriving back in the UK.

76. We consider that the way of life in Monaco is relevant for two reasons. The more in which the life-style in Monaco represented the core of the Appellants's

overall way of life in the period 2005-2010, the more this supports the proposition that he made a distinct break from his former life. Secondly, since the then statutory provision of section 334 Taxes Act 1988 would have rendered the Appellant UK resident, had he gone abroad only "for occasional presence abroad", even if he had sustained non-resident status on the case law tests, the life in Monaco is relevant for that reason.

77. Both apartments in Monaco, Villa Rose and Rocabella, were furnished and equipped as homes as distinct from merely being holiday homes. The furnishings were all new, and invariably of good quality. The Appellant had an appropriate selection of his books, many of his papers, and hard disk versions of any historic information that he would need if anyone wanted to ask him any questions about the base cost of properties. He had all the clothes and incidental possessions that he could possibly want. Sarah may have had a smaller kitchen in which to exercise her love of cooking but she said that the kitchen was fully equipped and perfectly adequate.

78. In terms of the appearance and comforts within the apartments, there was no serious dispute that the friends in their witness statements confirmed that the two apartments were attractive, comfortable and suitable as homes, and homes where they could visualise their friends, the Appellant and Sarah, living happily. They might have acknowledged that Villa Rose was slightly less imposing than they might have expected, and that they noted that the Appellant and Sarah might also have admitted this themselves, but then there is no dispute that they were still looking for a superior apartment and when it became available they moved to it.

79. Whilst we have no doubt that the decision to emigrate, and certainly its timing, were influenced by tax considerations, we also accept that the Appellant very much wanted a different lifestyle. He was described by his friends, and he accepted himself, that he was more solitary than Sarah. He was happy to read books, happy, slightly curiously, to devour reference books, keen to read the international edition of The Times daily and keen to play Scrabble. So, within the apartment, he was keen to enjoy a relaxed lifestyle, and even admitted that others might comment that it was not particularly adventurous or, to the standards of some others, particularly fulfilling.

80. More relevantly, he enjoyed to the full much of what Monte Carlo had to offer. He had been a fairly keen walker in the UK, but that had been confined to some very adventurous holiday treks with friends, and ambles "round the village". In Monte Carlo he began the almost daily habit of an early morning walk from the apartments to the east, along Rue d'Italie, then dropping down the zig-zag road to the beach area by the Old Beach Hotel, and back along the coast road to the port. He then walked up the road, following the Monaco grand-prix circuit, from the port to the bends between the Hotel de Paris and the Casino, and then enjoyed a coffee at the Café de Paris opposite the Hotel.

81. A further part of what became a fairly keen exercise regime was that he and Sarah hired a cabana at the famous beach. He said that he had always been a poor swimmer, but by constant effort, he ended up swimming 500 metres a day. He and Sarah spent much of their days at the beach area. It was commonplace for people to spend all day at the beach, since the restaurant to the side of the magnificent pool was

excellent, and everything they might need could be kept in their own cabana. Apparently they became such regular visitors to the restaurant that the waiters knew what to bring them without being asked.

82. They also enjoyed many trips around Monaco. The surrounding French villages are extremely attractive, and not only close-by but of course at least half of Monte Carlo (including the tennis club and the beach area) are in France and not Monaco. The border to Italy is just beyond Menton, and the Appellant and Sarah regularly visited Ventimiglia and San Remo. To the west, they occasionally visited friends in Cannes or their apartment to collect some required item. They only stayed the night there on a couple of occasions in 2005/2006. They regularly visited Nice, which they said was about a 40 minute drive by car, and regularly visited the somewhat closer Beaulieu-sur-Mer. They ate out regularly in the countless fine restaurants. When they were visited by friends, Sarah said that she would generally cook for them in the apartment on their first evening, and then they would eat out at restaurants. They mentioned two occasions when they took friends to la Réserve in Beaulieu and to the top floor restaurant at the Hotel de Paris, both of which occasions would have been memorable by anyone's standards.

83. They also enjoyed many of the events staged in Monte Carlo. They watched the tennis, and referred to having sat at a restaurant close to Andy Murray. They attended the summer open-air cinema behind the casino; they viewed the car displays around the time of the rally, and watched (and heard!) the Formula 1 cars in the Grand Prix. They attended the ballet and concerts, and took friends to some memorable concerts, and to watch the Grand Prix.

84. Two of the results of the different lifestyle were that the Appellant became very much fitter, and (without ever having been overweight) nevertheless he lost two stone in weight, and secondly, having been a lifelong migraine sufferer, he never had a migraine from the day he set foot in Monaco. That may have little to do with the tests of tax residence but it could well have been associated with the removal of stress, and the present Tribunal judge can certainly attest to the fact that it would have been a welcome relief to cease to live with regular migraines.

85. We are not directly concerned with Sarah's way of life in Monaco, but she certainly said that she enjoyed searching the food markets for ingredients for her meals in both Monaco and Italy; she went on many walks with the Appellant; she enjoyed the life at the beach and said that she enjoyed life in Monaco. She admitted that, with her more extrovert character, she occasionally became slightly depressed in the winter months. The climate remained very mild of course, but there would be fewer occasions when friends visited them in Monaco, and while Monaco was not as dead as they said Cannes was in the off season, there was still less going on than in the season.

86. Both the Appellant and Sarah enjoyed visits from their children and their friends in Monaco. Virtually all the friends with whom they were close in London visited them in Monaco, most on several occasions during their 5-year residence, and we sense that this was important to both of them, but probably more important to Sarah. Each of their children made three or four short visits and stayed at the Monaco apartment in the critical year 2005/2006, but living their own independent

lives, they also tended to use the Cannes holiday apartment, and then met up for occasional meals.

87. All the Appellant's friends said that the Appellant gave a lot of thought to matters and once he decided on a particular course, or some subject that he needed to master, he pursued that course or subject in a single-minded manner. This was exhibited by the fact that once the large dividend had been received, he had a very substantial sum of money to invest, and he spent a considerable amount of time studying stocks and shares and other investment products. He did this on his own at the apartment and also on the advice of a Mr. Andrew Riley at Barclays Bank, Monaco, and he said that he thoroughly enjoyed his regular meetings with Mr. Riley. One of his London friend's sons was working at Goldman Sachs and Goldman Sachs also sought the mandate to manage part of the Appellant's portfolio. To this end, someone visited him in Monaco, he attended a spectacular lunch in Geneva, and on one occasion in London he was invited to a lunch and doubtless a presentation by Goldman Sachs.

88. The Appellant said that whilst he had contributed relatively modest sums of money to new investments managed by Mr. Lyall in the Chester brand after April 2005, all for the acquisition of participations in new shopping centre developments, the amount invested through Barclays Bank in Monaco and Goldman Sachs was a very substantially greater percentage of his total wealth. His move to Monaco thus coincided with a change of investment strategy, largely away from UK property and into quite different investment products, and this was a new challenge that he very much enjoyed. All consideration in relation to such investments was undertaken in Monaco, the majority with the aid of Mr. Riley.

89. In terms of time spent in Monaco, the Appellant was in Monaco for approximately 200 days a year, slightly more in later years. Counting the period in Monaco by midnights spent in Monaco, there were 214 midnights in 2005/2006, 222 in 2006/2007, 256 in 2007/2008, 242 in 2008/2009 and 233 in 2009/2010. The balance of the Appellant's time, beyond the 200-plus days spent in Monaco, and the days spent in London, was spent on a number of foreign holidays, to which we will now turn.

Foreign holidays

90. In all the years when the Appellant and Sarah lived in Monaco, they went on a number of foreign holidays. The destinations are not particularly relevant. In the tax year 2005/2006, we have used the Respondents' own charts, designed to show the days and the fractions of days (in "quarters" or in other words, 6 hour periods) during which the Appellant was in the UK, in Monaco or on major holidays. Having already given the Appellant's "midnight" day count for the days in Monaco, the relationship between the time spent by the Appellant in the UK and the time spent on foreign holidays was virtually identical at 67 and 65 days respectively. In counting days in that comparison we have aggregated parts or "quarters" of days, as illustrated by the Respondents, therefore assembling two half days to represent one full day, and four quarters again to represent one full day. Standing back and looking at the coloured chart prepared by the Respondents, days in Monaco are coloured blue, and anyone can see that the chart is very substantially blue. The days spent in the UK and

those on foreign holidays are, as just indicated, virtually identical in number, though the days in the UK appear slightly more prominent because they are in bright red.

91. The feature that the Respondents found significant about the holidays was that the long haul flights were invariably taken from UK airports, generally Heathrow, and generally the Appellant and Sarah flew on British Airways aircraft. As a result of this choice, if they were travelling together from Monaco, they would invariably fly from Nice airport to Heathrow, and then they would frequently stay for a night or two at 50 Circus Road. On some occasions, Sarah might have flown back to the UK a day or two earlier than the Appellant, so that then the Appellant would follow her later, again possibly stay for a night or two at 50 Circus Road, and then they would both fly out from Heathrow. On return journeys, the pattern was usually the same in reverse.

92. The Respondents asked why they could not fly from Nice to Paris, and then take the long haul flights from Paris. The Appellant said that he preferred Business Class seats on British Airways because he had trouble with his back, and found those seats more comfortable. He was also used to using British Airways. Nobody indicated whether there would have been long delays, when arriving at either Paris or Heathrow before the long haul flight departed, because had there been such delays, that might have made the use of Heathrow slightly more obvious, with a short stay at 50 Circus Road.

The visits to London and staying at 50 Circus Road

93. We were told that the Appellant made 22 visits to London in the tax year 2005/2006. We will consider first the purpose of the various visits, and then deal with the evidence in relation to the number of days spent in the UK.

94. Seven visits appear to have been made, first and foremost to attend a particular function. The Appellant clearly attended the separate weddings of the children of two of his and Sarah's friends, the Warrens and the Jaskells. He attended a funeral and he attended the 60th birthday party of a particular friend, Alan Goulden. He attended a major party at his friends the Zimmermans, and two charity events. He mentioned that in earlier years he had often attended as many as 14 or 15 charity events, and doubtless he had usually attended more parties that those mentioned for the year 2005/2006. On one visit, and whether the visit was made for this purpose or not was not clear, the Appellant assisted Stuart in preparing to move his (that is, by then, Stuart's) office from Harley Street to smaller premises. He said that much of his function was just to be helpful and move boxes of papers. It may be that he was better able to sort out which papers might remain significant and which were plainly historic and now redundant. He was certainly not performing executive functions, but simply being helpful to his brother.

95. Whilst he enjoyed family Friday night dinners with Sarah , Toby and Georgina on 15 of the 22 occasions, we have already said that it would be unrealistic to say that the Appellant came to 50 Circus Road specifically for that purpose. Some of the Friday dinners would very likely have taken place during visits for one of the seven events mentioned in the previous paragraph. Others might have been before or after a foreign trip on the type of "stop-overs" mentioned in paragraph 91 above. Others

will almost certainly have coincided with the Appellant wishing to attend a meeting at BDO, since we were told that between April 2005 and November 2006 he attended nine meetings in London with BDO. The Appellant may have visited the UK and 50 Circus Road quite deliberately on the occasions of his two children's birthdays and his own birthday and on the occasion of the three most significant Jewish festivals in 2005/2006 and indeed almost invariably in later years. Even as regards these, there may still have been a second purpose for a particular trip.

96. The Appellant said that when he made visits to 50 Circus Road he would spend some time in his study, filing bills that had been sent to 50 Circus Road. Rather naturally utility bills and some bank statements, notably those geared to the running of the house, and the credit card statements for a card on which he, Sarah, Toby and Georgina were all signatories, were all sent to Circus Road. Similarly accounts in relation to the Cannes holiday home were sent to the apartment in Cannes, and the major bank statements, particularly those involving the main investment activity were all dealt with in Monaco.

97. In addition to some filing and reading The Times (he said he preferred the domestic edition to the abridged international addition), the Appellant would often have a stroll to "the village" and have a coffee, and as we have said he confirmed that he was then likely to bump into one or more of his friends or acquaintances.

98. The Appellant made three slightly abstract remarks about his visits back to 50 Circus Road, and in giving our decision we will comment on each of them. He first said that on his return visits, 50 Circus Road did not feel like home. He said that he regarded Monaco as home during the 5-year period, and he felt somewhat strange at 50 Circus Road. He then commented on what we would call the short stopovers when he stayed at 50 Circus Road on the way to or from a distant holiday venue. He said that he regarded these stopovers as effectively "two centre holidays". Finally, and probably this involved adopting the expression used by his counsel and used in several of the tax residence cases, he regarded his stays at 50 Circus Road as being the equivalent of short stays at hotels.

99. In terms of time spent in the UK during the visits, we will deal with this more fully in giving our decision. The Respondents pointed out very fairly that whenever he left Nice airport for a flight to Heathrow, he tended to catch a very early morning flight, leaving at around 8.00 a.m. We were not told when he would have had to book his taxi to make the 40 minute drive to Nice airport and then to check in, but it would have obviously been very early indeed. With the hour change, and a two hour flight, it followed that if the flight was on time and he got through the formalities at Heathrow relatively quickly, he might be leaving Heathrow airport at between 9.30 and 10.00 a.m. and so he might arrive back at 50 Circus Road at around 11.00 a.m. On return trips from Heathrow, he confirmed that he generally left on a 5.00 p.m. or an 8.00 p.m. flight. Taking the hour difference into account again, this would usually mean that, even with the 8.00 p.m. flight, he would arrive at Nice airport at 11.00 p.m. French time, and just in time to get back to Monaco by midnight, and indeed in time to count that day as one spent in Monaco when he was counting days by reference to where he was at midnight.

100. The Respondents naturally contended that it was therefore realistic to recognise that in relation to days of arrival into the UK, and days of departure from the UK, much of these days were spent in the UK. Therefore calculating days spent in the UK by adhering to the guidance of IR20 was going to produce an unrealistic picture, which was particularly significant on account of the considerable number of short visits to the UK. In other words, if 22 visits, averaging 2 days a visit, were in fact sandwiched between travel days, most of which were spent in the UK, it might be more realistic to count a 2-day trip as a 4-day trip, and thereby increase the total number of days spent in the UK in 2005/2006 from 44 days to 88 days. The Respondents' day count figures indeed fluctuated for the 5 years around the level of, or still just below, 90 days on average a year.

101. It was never expressly suggested by the Respondents that the Appellant was manipulating the flight times so as to achieve the maximum time in the UK, whilst still exhibiting a very modest day count if he followed the guidance offered by IR20. By the same token, he was never actually asked whether there was any other reason, geared perhaps to suitable flights, as to why the particular flight times had been chosen. We were somewhat left with the implicit suggestion that the Appellant was deliberately squeezing the maximum time in the UK, whilst recording a low day count, but whether this was so or not we were not told.

102. We will of course give our rationalisation in relation to day count in giving and explaining our decision.

103. We have already indicated that Sarah spent longer in the UK than the Appellant. She would often travel back a day or two before him, and might leave a day or two after him. Since she was deliberately not claiming to have become non-UK resident, and she was not calculating the days spent in the UK, and since we are not concerned in this Appeal with whether she was resident or not in the UK, her separate journey times may be of relatively little significance.

104. We certainly record, however, that she did very much live in Monaco with the Appellant. Advanced trips to London were generally accounted for by her needing to prepare for some event, for instance a charity dinner, or a meal that she would be preparing or perhaps preparations for a party to which she and the Appellant had been invited. From her work with WIZO and bearing in mind her more extrovert character, it is also entirely likely that she was keener to see and visit some of her personal friends in London.

Tax Advice and intention to become non-UK resident

105. The Appellant sought some advice before 2005 from his personal accountants, Blick Rothenberg, in relation to satisfying the tests of becoming non-UK resident. From this, and from his whole attention to day count, and since he anyway conceded it, it is perfectly obvious that the Appellant did mean to become non-UK resident and to achieve that for tax purposes. He was certainly not emigrating simply to spend his retirement, and live indefinitely in some country that he wished to live in for personal reasons that had nothing to do with tax.

106. The tax advice that he had sought from Blick Rothenberg was general and little or no written advice appeared to have been given. Since the dividend and the avoidance of tax on the dividend was all part of the planning being dealt with by BDO, he may have spoken to them as well about his plans to become non-UK resident. He also said that he consulted a number of friends about the requirements for sustaining non-UK resident status. Whether those friends were professionally qualified and tax advisers we were not told.

107. The most significant guidance that he was given by Blick Rothenberg was unfortunately that he should read HMRC's publication IR20, and either Blick Rothenberg sent him a copy of that or told him how to obtain it. This Appeal is of course not a judicial review appeal, and equally obviously the Supreme Court has decided that the content of IR20 did not give the particular appellants in the *Gaynes-Cooper* and *Davies* cases [2011] UKSC 47 sufficient grounds for sustaining their legitimate expectation contentions. Without commenting further at this stage on the content of IR20, it is simply necessary to say that the Appellant did measure his time spent in the UK, and his visits back to London, and his continued use of 50 Circus Road all by reference to his understanding of the so-called guidance offered by HMRC in the IR20 publication. Not surprisingly he periodically remarked during the hearing that HMRC had "moved the goalposts". Beyond noting at this point that the Appellant did plainly intend to achieve the obvious tax result of ceasing to be UK resident in the year in which the big dividend was received, and indeed in later years, there is one marginal relevance of his reliance on IR20 to which we will refer when giving our decision.

The return to London

108. When the Appellant listed in his witness statement the various reasons why 50 Circus Road was retained when he and Sarah decided to move to Monaco, the very first point that he mentioned was that he did realise that they would not live in Monaco for ever, and that one day they would return to London, and would very clearly wish to resume living in 50 Circus Road as their habitual abode. In the meantime he was moving to Monaco "permanently or indefinitely", within the meaning of that phrase as it was clearly used in IR20, but at some point they would return to 50 Circus Road. We will refer to this in our decision because we consider that it is a very important point. We indeed thought that it was rather strange that in contentions, examination in chief and cross-examination, the reasons then dwelt on for the retention of 50 Circus Road included some fairly ridiculous reasons, such as enabling Toby to continue to watch Sky TV at 50 Circus Road, whereas the obviously dominant reason was geared to this clear acceptance by both the Appellant and Sarah that, on their eventual return, they would again live permanently at 50 Circus Road.

109. This Appeal relates strictly only to the issue of whether the Appellant was non-UK resident in the tax year 2005/2006. Even that question can be influenced, however, by the subsequent events, it being more likely that non-UK residence will be established if there is a continuous period of habitual residence abroad, with visits back to the UK being casual and sporadic throughout. It is therefore even relevant to look at the facts in relation to the Appellant's eventual return to the UK.

110. On 23 December 2009 Georgina gave birth to her first child. Sarah had been drawn back to longer periods in the UK during the pregnancy, and she was undoubtedly adamant that with a grandchild, she would wish to be in London almost permanently. In contrast, although the lease of Rocabella terminated in February 2010, and the landlord was allegedly not prepared to renew it because some famous Formula 1 driver wished to take the lease, the Appellant still did not return to the UK on any different basis than he had done throughout the entire period spent in Monaco until May 2010. Once he had to vacate the Monaco flat, he lived for what was only a relatively temporary period in the Cannes apartment. In May 2010 he then returned permanently to 50 Circus Road.

111. We were never told whether the effort to renew the lease of Rocabella was to renew it for only a very short period, in other words to tide the Appellant over until he had been (as he thought) non-UK resident for the full five-year period. Equally it was not clear whether he and Sarah might have stayed in Monaco for longer, had Georgina's child not been born. Once the child had been born, it is actually fairly obvious that the Appellant was going to return to the UK permanently at some point, not particularly to see the grandchild regularly, but rather to be with his wife. Sarah said that during the early part of 2010 she regularly visited Monaco to be with the Appellant. On looking at actual facts and dates, it became obvious that she did not visit Monaco regularly, but rather very infrequently. Accordingly if the Appellant wanted to live with his wife and indeed his expanded family, it became obvious that he would have to return to London. It therefore seems likely that the feature of just extending his period largely out of the UK until May 2010 was probably designed to enable him to complete the five-year period. We were told that relatively little tax actually hinged on whether he completed the five-year period or not. What we cannot say is whether he was effectively drawn back to the UK by the birth of the grandchild, the effect that that had on Sarah's plans, and the resultant inevitability that he had shortly to return to London, or whether he would have returned to London after the five-year period in any event, absent the birth of the grandchild. What does seem obvious is that at the very least he delayed his anyway inevitable return until a tactful short interval after the end of the five-year period.

The law

112. The law in force, governing residence in the UK by individuals in the year 2005/2006 is derived from both case law (that of itself initially being largely influenced by the definition of "residence" in the Oxford English Dictionary) and from two slightly obscure statutory provisions, namely sections 334 and 336 Taxes Act, 1988.

113. Having reviewed the authorities in the case of *Shepherd v. CIR* ,78 TC389, the Special Commissioner, Nuala Brice, gave a helpful list of the principles that she had derived from those authorities, a list that has been referred to with approval on a number of occasions. It can therefore constitute a very useful starting point to our understanding of the legal principles that we should apply, prior to considering any impact that the two statutory provisions may have. We will quote most of the presently relevant principles that Nuala Brice listed, giving one or two observations of our own after quoting her list. Her list included the following:

- "that the concept of residence and ordinary residence are not defined in the legislation; the words therefore should be given their natural and ordinary meanings (*Levene*);
- that the word "residence" and "to reside" mean "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*);
- that no duration is prescribed by statute and it is necessary to take into account all the facts of the case; the duration of an individual's presence in the UK and the regularity and frequency of visits are facts to be taken into account; also, birth, family and business ties, the nature of visits and the connections with this country, may all be relevant (*Zorab; Brown*);
- that the availability of living accommodation in the UK is a factor to be borne in mind in deciding if a person is resident here (*Cooper*) (although that is subject to s. 336);
- that the fact that an individual has a home elsewhere is of no consequence; a person may reside in two places but if one of those places is the UK he is chargeable to tax here (*Cooper* and *Levene*);
- that there is a difference between the case where a British subject has established a residence in the UK and then has absences from it (*Levene*) and the case where a person has never had a residence in the UK at all (*Zorab* and *Brown*);
- that if there is evidence that a move abroad is a distinct break that could be a relevant factor in treating an individual as non-resident (*Coombe*); and
- that a person could become non-resident even if his intention was to mitigate tax (*Reed v. Clark*)."

114. Some observations that we must make in relation to those principles are as follows.

115. The second bullet point is of central relevance, and we consider that it is marginally easier to treat someone as having a habitual home if he or she is present at the house for long periods, rather than on several visits that might in total represent the same number of days. This is not remotely to say that someone who stays habitually in the UK for multiple short periods is unlikely to be regarded as a resident. Particularly if those short periods are for a settled purpose, such as to be available for work, as in the case of the two pilots in the recent reported cases, the likelihood is that the person habitually in the UK in that manner will be resident. It is also clearly the case that a person who is present in the UK habitually and for some settled purpose, such as acting as a director of a UK company, can on appropriate facts be UK resident, even if merely staying at hotels. Obviously permanently available accommodation, as opposed to use of hotels, is more likely to result in the conclusion that someone is resident, but neither factor (permanently available accommodation or use of hotels) is conclusive in either direction.

116. We consider that the statement that "the fact that an individual has a home elsewhere is of no consequence" is misleading. It can be very relevant to consider whether a person has a home outside, and indeed relevant to consider whether any such home is the dominant home. The periodic direction to ignore the issue of which is the dominant home is cogent to the extent that establishing that a foreign home is the dominant home does not remotely preclude a UK house from

simultaneously being a habitual home, and therefore occasioning dual residence, i.e. for present purposes UK residence. But in weighing up the significance of all factors, we do consider it very important (in this case, for instance) to give consideration to whether the Appellant had a genuine home in Monaco, that much of his way of life revolved around life in Monaco, and whether the Appellant indeed had purposes broader and more genuine for being in Monaco than simply camping abroad to avoid tax. None of this means that 50 Circus Road could not be "a habitual home" but it is to be taken into account in weighing up all the factors. The conclusion that someone is resident abroad (on UK tests) is also of course significant in the context of the provision in section 334 Taxes Act that we will mention below.

117. Since the Supreme Court's decision in *Gaines-Cooper* [2011] UKSC 47, we consider that the penultimate bullet point above considerably understates the significance of a "distinct break". A summary that better reflects the law after the *Gaines-Cooper* case is that in order to demonstrate that a UK resident person has ceased to be UK resident, it is virtually critical to demonstrate a "complete break", and that this requires it to be shown that the person has not necessarily severed family, social and business ties with the UK, but that at least there has been a "substantial loosening" of such ties. Much of our consideration of the facts in this case will revolve around whether there has been such a "distinct break", and whether there has been the required "substantial loosening" of ties.

118. Ignoring at this stage the two statutory provisions, it therefore seems to us that we should concentrate predominantly on three tests, as follows:

- first, on and after 5 April 2005, did the Appellant make a distinct break from his former way of life, by which we consider it important to assess whether he commenced a quite different and intended way of life in Monaco, and whether he can demonstrate not only the required substantial loosening of ties with family, friends and former business life, but whether his whole way of life changed;
- secondly, having regard to the importance of 50 Circus Road to the Appellant, did 50 Circus Road remain a habitual abode, and more particularly a habitual abode in the UK for a settled purpose, when the Appellant was fundamentally living in Monaco? and
- thirdly for how long was he in the UK; can those periods of presence realistically be described as "visits", and were they or were not for a settled purpose.

119. Before turning to the two statutory provisions, it is worth making some general comments on the sort of purpose that can sensibly rank as a "settled purpose". This is of course vital in this case first because a house or other accommodation is more likely to rank as a settled abode if the appellant lives there for a settled purpose, rather than merely "drops in" or stays there on casual visits. Expanding on this point, it was significant that Mr. Gaines-Cooper came periodically to Old Place, not because it just happened to be convenient, but because his wife and son lived there, and he had his possessions, his Rolls-Royces and his guns there. Beyond the fact that the duration of his periods spent at Old Place were considerably greater than the present appellant's visits to 50 Circus Road, as a pure matter of terminology, we doubt whether a neighbour of Mr. Gaines-Cooper would have said that he was

"making a visit to Old Place." It was the place where he lived with his wife and son, and in a realistic sense if he was at Old Place, he was "at home". Similarly in the case of the two pilots in the recent cases of *Shepherd* and *Grace,* they were living at their respective houses, because that is where they had always lived, they had to be living in those houses for employment reasons (required proximity to their airports), and again neighbours would hardly have observed that either of them was just "visiting", when they were at their respective houses.

120. The second reason for expanding on the proper meaning of "settled purposes" is that the Respondents contended in this Appeal that the Appellant was returning to 50 Circus Road for the settled purpose of enjoying occasions with his son and daughter, and that visits for that purpose were "settled purposes". We of course accept that the Appellant must demonstrate a "distinct break", and that a loosening of ties is a feature of that, but it nevertheless seems unrealistic to contend that visits, quite possibly made for one or more of various reasons, which gave the Appellant and Sarah the opportunity to have a traditional Jewish Friday night dinner with their children, that might have lasted perhaps three hours, became "visits for a settled purpose".

121. Whilst we cannot rule out the possibility that we should perhaps conclude that a very great deal of the content of the publication IR20 was hopelessly misleading, it is worth noting that that publication not only failed to mention the non-day count requirements for showing that a person had "left" the UK, but it also plainly indicated that return visits could aggregate an average of 90 days a year, that days of arrival and departure should be ignored in calculating days of presence, and there was certainly no reference to the fact that visits should be shown to be for only very limited purposes. In this case, the attention that the Respondents gave to the 15 family dinners and the presence, with their family, at the three main Jewish festivals was said to rank as the Appellant's fatal "settled purpose". We find this both unrealistic and almost offensive. It comes close to a contention that the Appellant should bury the traditions of a lifetime, and virtually cease to remember the events that are doubtless as important to Jewish families, as Christmas is to everybody else. More significantly, however, it leaves one questioning what HMRC considered that a person who had left the UK might actually be visiting the UK for (indeed for up to 90 days a year on average) if the visits had to be for purposes that were essentially of no importance to the person in question. Surely it must follow as a matter of common sense that if a person has left the UK, and he then makes periodic visits back to the UK those visits are likely to be for some special event or some purpose that is of some significance to him. It cannot be envisaged that the person making the visits must make them for some purpose that he considers trivial and incidental. The suggestion for instance that a visit would be acceptable only if the visitor refrained from meeting family and friends but returned to the UK simply to go and see Stonehenge because he had never seen it whilst formerly living in the UK is ridiculous. Surely visits will inevitably only be made for some purpose that is of real significance to the visitor. It therefore seems strongly arguable to us that the sort of purposes that are fatal, as "settled purposes" are those that are the occasioning cause of all the visits. Thus playing the life of the Scottish laird, and setting up life at the hunting lodge, having to be in the UK for employment reasons, and reverting to the UK to be with one's wife and family are plainly settled purposes of real significance. But it must be distinctly questionable whether the Jewish tradition of inviting the close family to share the

traditional Friday night dinners can rank as a "settled purpose", when there may have been several quite distinct reasons for a visit to London in the first place.

122. We turn now to the two statutory provisions.

123. Section 334 addressed the case of a person leaving the UK; it assumed that they would have established that they had become non-UK resident by applying the case law test, and then provided that they remained, or were deemed to remain, UK resident if they were Commonwealth subjects and were only abroad for "occasional residence abroad". Very little attention was given to that test in this Appeal. It was also implicit that the statutory provision barely added to the current understanding of the case law test anyway. In other words if a person was purportedly leaving only for occasional residence abroad, that person's chance of sustaining non-residence on the case law test would have been very dubious, and it was therefore unlikely that HMRC would need to turn to section 334 to establish that such a person aiming to lose UK residence was deemed to remain resident under the specific statutory provision.

124. Section 336 dealt with the reverse situation. Addressing the potential "arriver" in the UK, it provided that a person was not to be treated as resident if he or she was not in the UK for 6 months in a tax year, and was in the UK "for some temporary purpose only and not with any view or intent of establishing his residence there".

125. As we understood the contention, the Appellant's counsel contended that section 336 could be of some relevance in this case, in that we should apply the case law test principally by reference to the "distinct break" test, and if that was satisfied then we should consider the Appellant to have left, whereafter the question was whether he had "come back". In other words, having left, was he then an "arriver", and could he rely on the saving provision for arrivers who were only in the UK "for some temporary purpose only and not with any view or intent of establishing his residence there"? We find this unrealistic and academic. The present Appellant only achieves non-resident status, if he satisfies the tests applicable to a leaver which are more stringent than those for the arriver. If he satisfies those tests on reviewing all the facts, then he is non-resident on the case law test and does not need to think about escaping resident status under section 336 because he is non-resident anyway. Applying the leaver tests without reference to days of presence, but solely by reference to showing a substantial loosening of ties, so as then to apply the days of presence test on the basis that the Appellant has lost residence without much regard to days of presence is unrealistic. Time spent in the UK is a fundamental part of the case law notion. We consider that in this case, the Appellant must satisfy the case law test as a leaver; that that requires restricted time in the UK, and we consider section 336 to be largely irrelevant.

The contentions of the parties

126. The contentions of the parties largely related to the application of case law principles to the facts in this case, and also to a fair understanding of those very facts. We will not therefore record contentions at this point, but will periodically refer to the

different claims by the parties in relation to particular points, when considering each relevant point in turn.

Our Decision - Applying the law to the facts

Residence in Monaco according to UK tests

127. We start with the proposition that it is our conclusion that the Appellant unquestionably acquired a habitual abode in Monaco, and a habitual abode for a settled purpose. That purpose was to live the life, accompanied by his wife, of a relatively rich man, enjoying the relaxation, the walking and swimming, and the countless attractions that Monte Carlo and the delightful surrounding countryside offered.

128. We are satisfied that the Appellant and Sarah set out to make both Villa Rose and Rocabella a home in every sense. Both apartments were luxurious and comfortable. Villa Rose may not have been ideal, but they considered it adequate when they could not initially lease an apartment in Rocabella, and of course when they were able to acquire what they really wanted they leased an apartment in Rocabella and lived there.

129. Anticipating our decision that realistically the Appellant spent approximately 65 days a year in the UK, his period of time spent in Monaco was approximately three times as long as that. He had the required books, the financial papers, and everything else that he needed to live in Monaco as a permanent resident. He enjoyed his investment meetings with Andrew Riley and he essentially considered and implemented his investment strategy from Monaco.

130. All the friends of the Appellant and Sarah gave evidence broadly to the same effect which was that both apartments were comfortable; both were of course different from 50 Circus Road, but so they obviously would be, and all could see the Appellant and Sarah living there happily.

131. We are not concerned in this Appeal with whether Sarah lost UK residence or not. What we are concerned with was that she did fundamentally live with the Appellant in Monaco. And in order to do that she sacrificed an activity in the UK that had been very important to her. Notwithstanding some initial reservations, and some regrets occasionally during the off-season, she said that she enjoyed the lifestyle. Sarah may often have returned to the UK a day or two earlier than the Appellant, but it is certainly not realistic to say, as for instance in the *Gaines-Cooper* case, that the Appellant visited the UK "to see his wife". He saw his wife continuously in Monaco, almost certainly on a far more regular basis than the two would ever have lived in the previous years of their marriage. When he went to the UK, it was for one or another purpose (and we will turn to that below), but it is unrealistic to say, as the Respondents' counsel occasionally asserted, that he went to the UK for the purpose of seeing her. He had seen her "yesterday".

132. While there may be little relevance to whether the Appellant was living abroad solely or principally to avoid UK tax on the big dividend, we will now address that issue. We have no doubt that tax was a major consideration. Nobody unravelled

the planning during the hearing, but it was reasonably obvious that the capital loss scheme, and the feature of realising the entire portfolio and turning it all into cash was directly related to splitting the investments of the Appellant and Stuart. That, in turn, was plainly to be achieved by changing the Hillpride share rights, and by extracting the Appellant's half of the net worth as a dividend, and achieving that on a tax-free basis by arranging for the Appellant to be non-UK resident when the dividend was received.

133. Having said all that, we are at the same time convinced that the tax planning happened to fit in very neatly with what the Appellant actually wanted to do. We gained the impression that, having worked hard for all his life in a job that had been remunerative but totally unfulfilling, he was determined to "have his time". As we indicated earlier, we consider that he regarded it as an oddly-timed "gap year" or sabbatical. He could afford it, and that is what he wanted to do. We also accept the claim that he thought that if he retired in the UK (we sense that that would have been at 50 Circus Road and not in the Lake District for instance), he would have been drawn back into property transactions with Stuart. That he wanted to invest in a very different manner was amply demonstrated by the enjoyment that he had with Andrew Riley of Barclays Bank, and to a lesser extent, with Goldman Sachs.

134. The Appellant conceded that his lifestyle in Monte Carlo might be regarded by some as not terribly fulfilling. However not only was it what he wanted, and what totally suited his more solitary personality, but it was in some ways more fulfilling than many other ways of spending one's early retirement. Taking the opportunity to walk and swim regularly, and acquiring an exercise machine indeed to further the fitness regime are all very understandable and sensible ways to start one's retirement. Furthermore nobody who knows Monte Carlo and its sensational surroundings well could possibly dispute that the town and the whole area both have a very great deal to offer.

135. The only conclusion that we draw at this point is that the Appellant and Sarah were clearly resident, applying UK tests, in Monaco; that was for lifestyle and taxation reasons; and their periods of presence in Monaco and their lifestyle make this conclusion a very clear one.

Whether the Appellant made a distinct break

136. The Supreme Court decision requires us to consider whether there was a substantial loosening of the Appellant's ties in relation to both family and social life. The Appellant's counsel suggested that had a loosening of business ties been relevant on the facts that the Supreme Court had had to address, a substantial loosening of business ties would have been a similar factor that the Supreme Court would have required us to address. Accordingly it was suggested that we should consider that issue as well.

137. Before looking at those various issues, it is first worth observing that in a very distinct and general manner there was a complete break in the Appellant's, and indeed in Sarah's, way of life. Prior to 5 April 2005, while they had had a number of foreign holidays, the Appellant had been working from 9.00 a.m. to 5.00 p.m. or for longer at the office with his brother. Almost invariably the Appellant and Sarah saw Toby

and Georgina for the traditional Jewish Friday night dinners on every Friday when they were all in London, and on most Sundays the Appellant and Sarah had either entertained, or been entertained by, their wide circle of very close friends on a virtual rolling basis. They attended at least 15 formal charity dinners a year.

138. At some time in late 2004, the Appellant and Sarah had told their children and their friends that they would be leaving for Monaco. Georgina plainly thought that something of a break was going to be involved because apparently informing Georgina of the plans was a quite emotional experience. In turn the various friends were informed. We will shortly address the loosening of both family and social ties, but the general point to make first is that from and after 5 April 2005, the Appellant's life changed very dramatically. He no longer went to work. He was living in Monaco where he had not lived before.

The severance of the business ties

139. We will now address the first issue of whether there was a substantial loosening of business ties. The Respondents' counsel plainly considered that this issue might be relevant because a considerable amount of the cross-examination (of both the Appellant and Stuart) addressed the claim by the Respondents' counsel that the Appellant retained significant business and property business ties to the UK.

140. While, as we have just said, the Respondents' counsel did give consideration to this issue, we considered ourselves whether there was little significance to changes and breaks resulting from the Appellant's retirement because those would have arisen had he retired to the Lake District rather than Monaco.

141. We conclude that for several reasons it is right to pay regard to the element of the break that results from the Appellant's retirement. Firstly, in the case of the employee who was working in London and is then transferred to Paris, but might alternatively have been transferred to Birmingham, nobody ignores the feature of then living in Paris because there would still have been major changes had the employee been transferred to Birmingham. Furthermore there were several connections between the Appellant's retirement and his move to Monaco. He felt that if he was to achieve the break from his former working life in the property business, he would only achieve this if he moved abroad, rather than just retiring and continuing to live at 50 Circus Road. He was also retiring of course, quite voluntarily and at a relatively early age in large part to have the opportunity to pursue the lifestyle that he very much wanted to pursue. He indeed wanted to effect a complete change in his lifestyle. So we conclude that the severance of business ties is a factor that we should, and that we can legitimately, take into account.

142. The Respondents contended that there were many continuing business links, so that the Appellant failed even in the most obvious of his contentions, namely that there was a very substantial loosening of business ties. They referred to:

- the fact that one property was not sold by 5 April 2005;
- that the Appellant attended a considerable number of meetings during the tax year at BDO, in relation to the capital loss scheme, the capital gains and base cost calculations, other family planning, such as the Glyn Cousins

planning, and the signature of various minutes, as a director of one or another company, and in submitting filings to Companies' House;

- that the Appellant had a shared right of control, with Stuart, over the Glyn Cousins investments;
- that the Appellant retained and added to his Chester investments;
- that the Appellant had a valuable investment in the Parkside site; and
- that the Appellant helped his brother with his brother's office move.

143. We will deal with each of those points, but our general observation is that the Respondents totally failed to substantiate any continuance of any business role that we can regard as remotely significant. This is fairly obvious when one remembers that prior to April 2005 and for about 30 years before that time, the Appellant had been dealing with the administration of nearly 200 let properties with 300 different tenants. Since all but one of those properties had actually been sold, save for one worth merely £20,000, which sounds as if it was also under offer, it instantly becomes obvious that the Appellant's former role would have completely disappeared because all the properties had been disposed of. We ignore the one unsold property that was sold very shortly after April.

144. We consider it to be of very little significance that the Appellant attended various meetings at BDO to deal with the subjects mentioned in the second bullet point above. There was absolutely nothing that the Appellant or Stuart could do, save hear their fate, in relation to the HMRC challenges of similar capital loss schemes to the Hillpride one. It is obvious that knowledge of the challenge would be widespread amongst tax advisers many months before the September 2006 First-tier Decision in favour of HMRC. Hearing about degrees of optimism and pessimism from the accountants, that Stuart would not have understood and that the Appellant would not have understood fully, and about which they could do nothing was completely different from the work that the Appellant had previously undertaken, and it involved no executive action by anyone. We understand that almost all the base cost information had been given to the accountants in 2004, which sounds entirely credible. The planning in relation to Glyn Cousins must almost certainly have been largely completed before April 2005 since before that date the properties and the company Cavendish Coombe had been transferred to Glyn Cousins in the course of the realisation of all the MGroup properties. As to the various company filing documents and the odd resolution that the Appellant signed, the Appellant could barely remember these documents, and we consider it again entirely credible that the accountants would have presented the Appellant, and probably Stuart as well, with a pile of notices, and a few resolutions that needed signing. The claim that everything that directors are required to do is incredibly serious may be theoretically correct, but the suggestion that significant business links are being retained because a few trivial notices that the accountants are attending to have to be signed is just unrealistic.

145. We entirely accept Stuart's evidence that in relation to the properties in Glyn Cousins, the planning was simple, and he alone dealt with sales negotiations and completions. The plan was to wait until tenancies fell in, so that the properties could be sold on a vacant possession basis, and when that occurred to sell them. It was always Stuart who attended to such sales matters, and we accept that the Appellant had in reality nothing to do with realisations by Glyn Cousins.

146. The Chester investments, whether the continuance of existing ones or new ones, were all participations in large shopping centre developments, entirely managed by Mr. Lyall, and we are satisfied that the Appellant had no executive role whatsoever in relation to them.

147. The Appellant had an involvement in the Parkside development only in two respects. By phone from Monaco, it sounds as if he opposed Stuart's plan to seek planning consents, and gradually work up a development proposal. He wanted to sell the site, but eventually accepted Stuart's preferred course. When that extended to the complete development, it appears that he reluctantly accepted that course but very specifically on the basis that Stuart attended to everything. As it turned out, it sounds as if the course adopted by Stuart has been extremely successful, but nobody is asserting that the Appellant was any way involved in achieving that very good result.

148. The assistance that the Appellant gave to his brother when his brother moved office consisted, the Appellant said, largely in moving papers into boxes and carrying boxes. To the extent that the Appellant may have been of additional assistance in knowing more readily which papers could be thrown away and which should be retained, we find it difficult to take seriously the contention that that activity constituted a significant continuance of property business in the UK.

149. In short, we consider that none of the Respondents' contentions in relation to business activity continuing after the Appellant's departure were remotely sustained. There was, to all intents and purposes, a complete severance of the Appellant's former business role, which is hardly surprising when all the properties that he had been managing for over 30 years had been sold.

The severance of the social ties

150. We conclude that, following the Appellant's departure to Monaco, there was a very significant loosening of his and Sarah's social ties in what we might call the London Sunday dinner circle. At this point we are ignoring close members of the family, and considering their wide circle of friends. The consistent evidence from the Appellant and several of their friends was that the attendance by the Appellant and, to broadly the same extent Sarah, at the Sunday dinners and other similar occasions that had been so regular and common before April, virtually ceased. The Appellant said, seemingly to some extent with relief, that he and Sarah ended up attending only two or three of the major charity lunches or dinners in each year of absence, whereas in earlier years they had attended roughly 15 or 16.

Family ties

151. The Respondents raised their most telling contentions in relation to the claim that the Appellant and Sarah hosted, we believe, 15 Friday night dinners, all of them attended by Toby and Georgina, and most if not all of them at 50 Circus Road with Sarah therefore cooking the dinner. They also attended the three major Jewish traditional celebrations, not only in 2005/2006, but in virtually every year of their absence. While Sarah's birthday was not celebrated in London in 2005/2006, the birthdays of the other three family members were celebrated in London, and much the same pattern was followed in the later years.

152. While we will consider the Respondents' claim that there was not the required "substantial loosening of family ties" on account of the various dinners just mentioned, we first make the point that it is clear that we are meant, in considering the Appellant's claim to have become non-resident, to look at matters in a common sense manner, and by looking at the overall reality. Accordingly some considerable continuance of contacts with the Appellant's and Sarah's two children are of less significance than might otherwise be the case, once we have decided that there was a near total severance of business ties, a very substantial loosening of general social ties, and a departure for Monaco for the purpose of commencing a quite different way of life.

153. Reverting to the degree of loosening of the close family ties, there is the undeniable fact that prior to departure, the Appellant had acted as the main carer for his elderly mother, a role that he was happy to undertake, but one that was nevertheless quite demanding. Prior to his departure, Stuart may well have periodically visited their mother but he had certainly had little responsibility for looking after her. It was then quite clear from both their evidence that on the departure of the Appellant for Monaco, Stuart had to assume responsibility for looking after their mother, and he did so. He may not have said that he resented the fact that the Appellant was departing for the sun, leaving him to deal with the business on his own and leaving him to attend to their mother's various demands, but he certainly indicated that the role he inherited was quite a significant one.

154. It is still fair to say that whenever the Appellant was in London, he would try to see his mother at least once if not twice. There is, however, no doubt that there was a substantial loosening of the responsibility that he had previously undertaken.

155. The Appellant and Sarah both made some general remarks about the significance that their departure to Monaco would have on their close ties with their two children. They obviously made the point that for some years both children had not been living at 50 Circus Road, but had been living in their own accommodation, albeit provided by the Appellant. They both also made the point that because the children were living away from 50 Circus Road, they themselves had for the first time the opportunity to embark on a completely new way of life in Monaco, which they wished to do before they were too old to enjoy it. The Appellant's various trekking holidays in the past had been impressive, so that the proposition that he wished to embark on a physically active lifestyle in Monaco, regularly walking and swimming, was manifestly true.

156. The Appellant himself made the point that he considered that his and Sarah's departure to Monaco might well be a positive step in encouraging Toby and Georgina to further their own careers and lives somewhat more independently. We imagine that when the Appellant and Sarah had been living permanently at 50 Circus Road there would have been more occasions when they would have been together, than merely the Friday night dinners that had anyway been a regular weekly fixture, provided that they were all in London. We were told that there had been 35 such dinners in the year before departure, namely 2004/2005, so that even the dinners were more than halved in the following year, with much the same pattern being continued in the later years. The impression that we gained, however, was that in the

preceding years, regular contact had not just been confined to the Friday night dinners.

157. The points that lead us to conclude that there was at least a significant loosening of ties, following the departure to Monaco, even as regards these close family occasions were that:

- there was no evidence that the Appellant visited London principally or solely to attend the Friday night dinners. We accept that on many occasions, visits that were going to be undertaken for other reasons might very well be timed to enable the family to gather for the traditional Friday night dinners, but it was certainly the case that virtually all the visits were designed for several purposes;
- there was no suggestion, when the Appellant and Sarah visited 50 Circus Road and hosted one of the dinners that Toby and Georgina would have seen much of their parents other than at the traditional dinner. When that dinner was an ingrained feature of Jewish family life, it seems odd to suppose that sustaining the Appellant's claim to have become non-UK resident should require that that invariable Jewish tradition should be abandoned or artificially restricted, particularly when the dinner might only have involved the family being together for two or three hours during a visit;
- we were told that the Appellant and Sarah were perhaps particularly keen to see that their children were stable and content because there had been a very disturbing and recent occasion when an ex-boyfriend of Georgina had attempted to murder Toby; and
- finally in terms of the two children progressively living more independent lives, it seemed that their visits to Monaco (between two and four each in the year 2005/2006) were relatively short, and that there was a considerable indication that the children were much more likely to be holidaying independently at the Cannes apartment.

The significance of the retention of 50 Circus Road, and the related issue of whether visits made to it were for a settled purpose

158. A very strange feature of the hearing was that, with the exception of the first three lines of the part of the Appellant's witness statement that gave the reasons for the retention of 50 Circus Road, nobody referred again to the obvious and the real reason why the house was retained. Comments were made in relation to a couple of rather far-fetched reasons, and it was obviously said that it was retained because it would be likely to remain a very sound investment, but the absence of attention to the dominant real reason gave the wrong impression that 50 Circus Road might have been retained because the Appellant and Sarah had an absolute requirement that they should stay there during their visits.

159. The fundamental reason for retaining 50 Circus Road was, as the Appellant acknowledged in the very short reference to which we have just referred, that they both knew that at some time they would return to London permanently and they considered it unthinkable that they would live anywhere but 50 Circus Road.

160. Beyond the fact that they were both obviously very attached to the house, they would have regarded the option of selling it and purchasing an equivalent house, doubtless again in St. John's Wood, on their return as ridiculous. The stamp duty cost on buying back the same house would alone have been £250,000. Ignoring therefore agents fees on selling the house, and the realistic assumption that it would be unlikely that they would find so ideal a house in such an ideal location, and that buying back an equivalent house five years later would probably cost several million more than 50 Circus Road had been sold for, it is obvious that the wages of the housekeeper and the utility bills would all have cost less than just the cost of the stamp duty.

161. Equally letting the house would have been rejected because with or without the removal of all the furniture and contents, the risks of letting out the house would have been regarded as completely out of the question. Furthermore, whilst it might have been convenient that the housekeeper continued to live at 50 Circus Road for the purpose of visits that the Appellant and Sarah might make, it is equally obvious that it would be extremely risky to leave a house completely unoccupied for long periods. Accordingly the fact that the housekeeper continued to live at the house throughout the years in Monaco would almost certainly have remained the case even if the Appellant and Sarah had never set foot in the house.

162. We thus conclude, without hesitation, that 50 Circus Road was retained because of the simple reason that the Appellant and Sarah both wished to live there again permanently when they returned to the UK. This is of course not to say that they regarded it as altogether irrelevant that it would be convenient to drop in to 50 Circus Road when they were making visits. Having gleaned from IR20 that the use of the house would not be fatal to the Appellant's plan to become non-resident and having been advised (again perhaps slightly informally) that there was no fatal objection to the house being used on visits, it was obviously convenient to so use it. Indeed that may have been much more significant to Sarah than to the Appellant.

163. So far as the Appellant was concerned, we consider that he used 50 Circus Road on his visits because it was certainly convenient to do so, and when he believed that it was not going to undermine his tax plan, it was obviously cheaper and perhaps slightly more pleasant than staying at hotels. We were unimpressed by the claim that he used 50 Circus Road "like hotels" because in so many obvious respects it was unlike hotels. We did accept that when he only made very short visits to 50 Circus Road, likely to be packing up and leaving very shortly after arriving, he may indeed never have felt "at home" during his visits. Doubtless on many occasions many friends would have been unaware that he and Sarah were there anyway, so that life would have seemed far from normal.

164. The point that seems to us to be very instructive is the invariable description of the Appellant's personality in the respect that when he set about achieving some objective, he pursued that objective single-mindedly. We have little hesitation in concluding that had the Appellant thought that using 50 Circus Road during his visits could have damaged his very clear objective of sustaining non-UK residence, he would indeed have stayed at hotels and quite possibly reduced his visits. Witness the fact that even when there was little tax at stake in completing the period of five years

of absence in 2010, he nevertheless lived on his own from February 2010 to May 2010, only rarely seeing Sarah, simply one assumes to further his tax objective.

165. The point made in the previous paragraph is not meant to be a complaint about the content of the document IR20 or any suggestion that the Appellant had any legitimate expectation by reliance on anything said in IR20. The significance of the point is that it puts a very different gloss on why 50 Circus Road was used. The inference that we were expected to draw during the hearing, certainly by the Respondents, was that it was utterly vital to both the Appellant and Sarah that they should live at 50 Circus Road, still treat it as a habitual home, with life there remaining a settled purpose. We reject that notion. 50 Circus Road was retained almost entirely for the reason that we have indicated. Having retained it, they might as well use it during visits, particularly as they thought that such use was of little tax significance. But the notion that it was critical to them to live there, allegedly then demonstrating that it was a settled abode for a settled purpose, is totally unrealistic. The Appellant had been perfectly happy to pay for Friday night dinners at restaurants for Toby and Georgina on the majority of the 35 Fridays when he and Sarah were not in London, and we have little doubt that he would have been perfectly prepared to stay in hotels and eat at restaurants on the other 15 Fridays had he thought that significant.

166. We mentioned above the other remark that the Appellant made, to the effect that if they stayed a couple of nights, before or after a fairly long foreign holiday, they regarded that as a "two-stop" holiday. Purely as a matter of terminology that did not sound realistic to us. The feature, however, of "killing two birds with one stone"; using 50 Circus Road as a "stopover" before departing on a long trip, and maybe attending a Saturday night party, one of the two charity events, possibly seeing some friends, and maybe also having the Friday night dinner, seems a far more apt way of describing matters. We would describe the use of 50 Circus Road in that context as that of "dropping in", or using it as a "stopover".

167. We have already described the numerous different reasons for which the Appellant visited 50 Circus Road. None of those purposes was settled, in the sense that he absolutely had to be there, and there regularly. He could have received reports of the state of play from BDO. He could have declined invitations to the occasional party. He could have minimised his trips, but for the fact that on carefully counting his days of presence in the precise way in which he was encouraged to do by HMRC he thought that he could safely do what he did. We conclude, however, that the fact that he did visit for various purposes, often more than one on a short visit, and that none were required or vital, undermines the claim that his presence in the UK was accounted for by any settled purpose.

The time spent in the UK

168. We have already said that we consider that the length of time spent by the Appellant in the UK in each of the tax years is a relevant factor in relation to the question of whether he ceased to be a UK resident. We have already indicated that we find it more realistic to consider this subject at the stage of deciding whether he has "left" the UK, and that it seems odd to ignore it in considering his leaving the UK,

and then to consider it only in the context of whether he has "come back", i.e. has then ranked as an "arriver".

169. We do accept that the Respondents' claim that the Appellant appears to have selected his flight times, to and from London, in order to maximise his time in London, whilst keeping his day count at the minimum level, following the guidance of IR20. We accordingly consider that it is appropriate to adjust it.

170. Before doing that, however, it is worth just speculating as to why IR20 indicated (which it did in a largely unqualified manner) that days of presence should be calculated by ignoring days of arrival and departure. The only explanation that appears to make any sense is that travel days are inevitably very disturbed days. To quote the Respondents' own phrase where they dwelt on "quality days" and "non-quality days", travel days are fairly obviously "non-quality days". We accept that on arriving in London at midday on Friday, Friday might have become, at least in part, a "quality day" if the Appellant enjoyed a dinner with his family. But beyond that, most of the days of departure, and half the days of arrival would have been grim days, rushing to Nice airport, battling with the scrum at the airport, and so on.

171. Bearing the point just made in mind, it does seem fairly extraordinary that the Respondents, the authors of IR20 with its suggestion in relation to counting days of presence, should go to the other extreme, and count as full days of presence in the UK all days of arrival and departure, however short the time spent in the UK. Insofar as the Respondents claim that their approach is designed to produce a realistic count of the time spent in the UK, it appears not to do this on the basis that it grosses-up part days to full days, instead of ignoring them altogether. We accordingly consider that the revised figures that the Appellant produced are much fairer and more realistic. These involved following the Respondents' approach of dividing days into 6 hour "quarters"; then aggregating the "quarters" so that if half a day, or two "quarters" had been spent in the UK, that would count as half a day. Two such half days would thus count as one full day. The Appellant's final calculation was even slightly more complex, in that it observed that in the "quarter" in which the Appellant actually arrived or departed, he might be present for only 10 minutes or for 5 ½ hours. So to even this out, the final suggested calculation counted those quarters as effectively half quarters.

172. Embarrassingly complex as all this sounds, this method appeared fair to us, though still favourable to the Respondents as it counted parts of days that had quite possibly been blighted by potential travel as time spent in the UK, and as "quality days". Nevertheless, on this approach, the calculation demonstrated that in the period 2005/2006, the Appellant was present in the UK for 65 days out of 365 days.

173. Our conclusion therefore in relation to the time spent by the Appellant in the UK during the tax year 2005/2006 (much the same picture emerging in the following four tax years) is that:

- at 65 pays of presence, inclusive of an element of travel days, and 44 days excluding travel days, the Appellant's presence in the UK was for considerably fewer days that the time spent by many of the people who have ranked as non-UK resident in the reported cases, and materially fewer days

than the days spent by the two British Airways pilots, Mr. Gaines-Cooper and indeed by Mr. Abramovich;

- his time spent in the UK was, on any test, for a materially shorter period than the average of 91 days a year, very clearly indicated by HMRC in IR20;
- even on the Respondents' unrealistic way of calculating time spent in the UK, ignoring their own guidance about ignoring travel days, and then grossing-up days on which there was any period of time spent in the UK and counting those days as full days, the Appellant's count was still below 91 days on average;
- it is significant that the Appellant's presence was not for any settled purpose, but for varied purposes, several often being combined on one occasion, and none of them habitual or essential;
- the Appellant plainly limited his time in the UK to comply with the "guidance" given by IR20, and indeed ensured that he was well within that guidance, so that he was lulled into believing that his visits would not jeopardise his non-UK resident status by HMRC themselves and might otherwise have further restricted his non-essential visits to achieve his objective; and finally
- we consider it entirely apt to describe the Appellant's trips to the UK as "visits". There is a very material difference between "visits" and "short visits", and presence for employment requirements or to live back at Old Place, with the fair description that Mr. Gaines-Cooper was then "back at home".

Overall conclusion

174. Our overall conclusions are as follows:

- On 5 April 2005 the Appellant left London with a view to commencing a quite different lifestyle, and with a view to living "permanently or indefinitely" in Monaco;
- The Appellant and Sarah did make a habitual home in Monaco, and adopted a lifestyle that was desired and selected for various personal reasons, going well beyond merely camping abroad to avoid tax;
- The Appellant effected a "distinct break" from his previous life in London;
- He severed virtually every active business connection and, when all the properties for whose management he had been largely responsible, had actually been sold, and when any continuing UK business activities were either trivial, or minor matters of "tidying up", the Respondents' claim that he continued to pursue UK property business is totally rejected;
- He effected a very substantial loosening of ties with his and Sarah's friends in London;
- He saw a reasonable amount, but again materially less than in earlier years of his and Sarah's children;
- 50 Circus Road was retained for a reason having nothing or at least very little to do with interim use, while the Appellant and Sarah were in Monaco. So far as the Appellant was concerned, it was convenient to drop in and stay at 50 Circus Road, but this was never done for a settled purpose. Visits were made for various different purposes, often two or more being combined, and

virtually none were fundamentally required. They were indeed aptly described as "visits".

- While the visits were quite regular, time spent in the UK in long extended periods is more likely to result in use of a house being ranked as a habitual abode or settled abode, than numerous short "stopovers".
- Beyond the days of presence in the UK in the year 2005/2006 being realistically counted as 65 days, in other words, manifestly fewer than those mentioned in HMRC's guidance in IR20, the overall balance of the Appellant's life in the year was of a new life created in Monaco, with periodic visits back to London.
- Our conclusion is that the Appellant was resident in Monaco in the tax year 2005/2006; not dual resident, and therefore not resident in the UK.

Right of Appeal

175. 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.

HOWARD M. NOWLAN

TRIBUNAL JUDGE

RELEASE DATE: 8 November 2013