

# UK Statutory Residency Test: first decision on "exceptional circumstances"

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The first judicial consideration of the circumstances necessary to meet the definition of 'exceptional circumstances' for the purpose of the Statutory Residence Test (SRT) has just been released by the First Tier Tax Tribunal in (TC08464: "[A Taxpayer](#)"). The FTT found the exemption was broad enough to cover the Appellant taxpayer's moral obligation to look after her severely ill sibling and her children in a time of crisis.

## Background

The SRT helps provide certainty as to when individuals are UK resident for tax purposes with a key feature being a "day count", if you go over a certain number of days in the UK you will be UK resident. There is however the possibility for days not to be counted if the reason that you could not leave the UK was due to "exceptional" circumstances.

HMRC have historically viewed the circumstances where days are not counted as being in the UK due to exceptional circumstances as being very narrowly defined. In this case HMRC, applied its very restrictive reading of the legislation to a very extreme and distressing fact pattern where the Appellant stayed in the UK to care for her suicidal and alcoholic sister and her children.

## What did the Tribunal decide?

The Tribunal rejected HMRC's position and held that:

- Foreseeability was, of itself, not a factor which excludes the application of the "exceptional circumstances" test.
- The "exceptional circumstances" test did potentially encompass a person who came to the UK under a moral obligation or an obligation of conscience to care for a family member or other person.
- The exemption could apply to a taxpayer who came to the UK because of the "exceptional circumstances" and who was then prevented from leaving by those same circumstances. "Exceptional" should not be given a narrow meaning.
- Being prevented from leaving the UK included situations where such a journey, while perhaps possible, would be impracticable.
- Given the taxpayer's relationship with her sister and the implausibility of any other options the moral obligation to look after her sister was an exceptional circumstance that prevented her from leaving the UK until the situation had been stabilised.

## Observations and practical implications

Taxpayers should be mindful of the Tribunal's observation that the circumstances that will be considered "exceptional" are limited by the statutory language, but no more so than the words demanded. If the circumstances are really exceptional and taxpayers are prevented from leaving the UK (and not just frustrated in your choice of preferred destination) a claim for exceptional circumstances may be possible, but not without careful and dispassionate examination of the facts, and clear identification of the crucial factors which make the circumstances "exceptional".

Please contact us if you would like to discuss, or would like access to our full analysis.

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