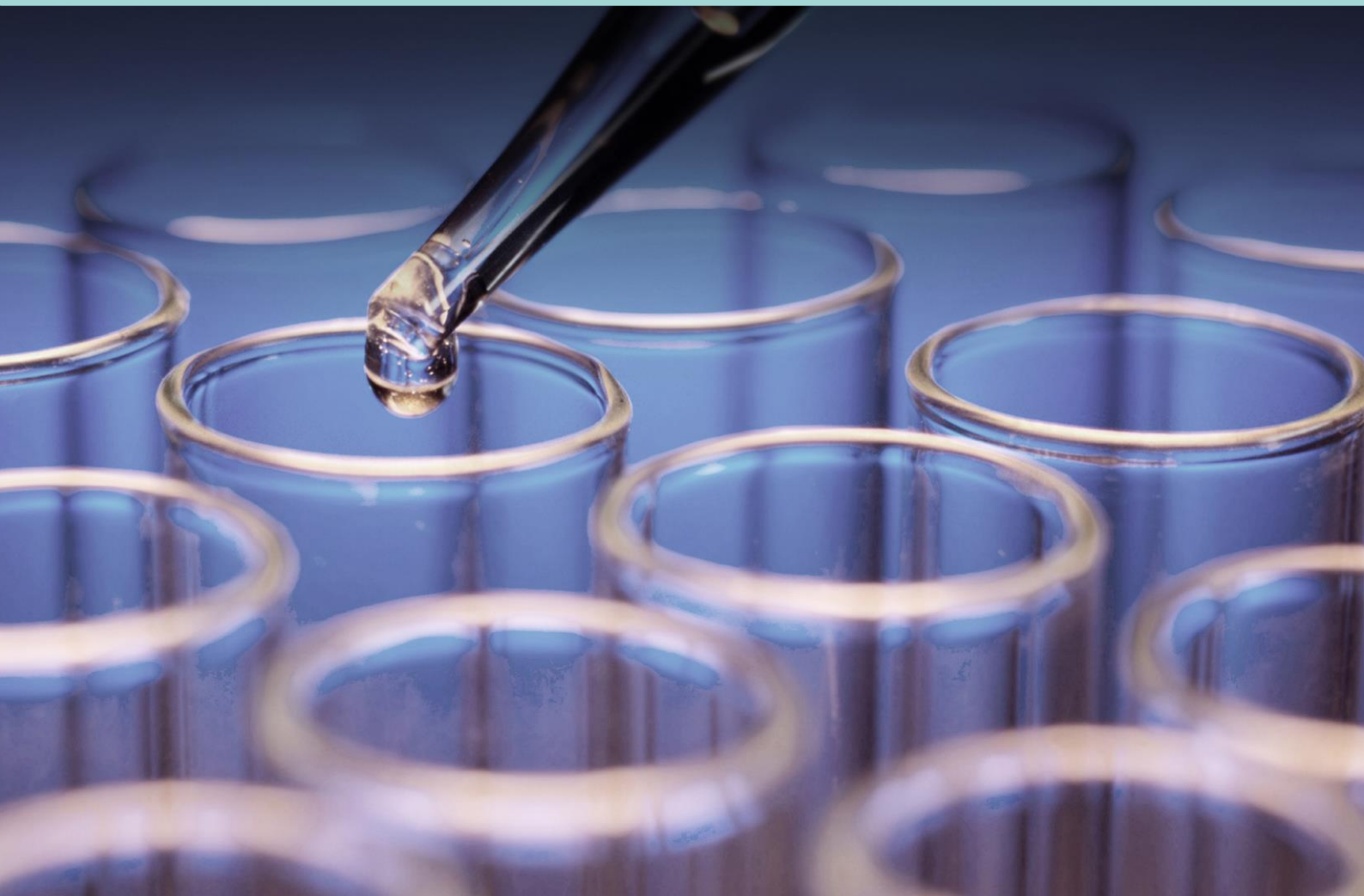


**COVID-19**  
**UK: PRIVATE CLIENT ISSUES**  
30 March 2020



# COVID-19

## UK: PRIVATE CLIENT ISSUES



### IMPLICATIONS FOR TAX RESIDENCY OF NOT BEING ABLE TO LEAVE THE UK

You may be able to exclude days you spend in the UK from your day-count for the purposes of the UK's statutory residence test if you are unable to leave, as a result, for example, of having to self-isolate or because of the cancellation of flights.

Under the UK's statutory residence test, whether an individual is UK resident for tax purposes or not can depend on the number of days they spend in the UK during the tax year (6 April to the following 5 April). How many days an individual can spend in the UK without becoming UK resident depends on his or her circumstances - in particular how many "ties" to the UK they have.

You can exclude any day that you are in the UK (from your day-count) if you are only in the UK at the end of that day as a result of "exceptional circumstances beyond your control that prevent you from leaving the UK". You must, however, leave the UK as soon as you are able. The number of days that can be ignored under this exception is limited to 60 days in the tax year.

HMRC has confirmed that if you:

- are quarantined or advised by a health professional or public health guidance to self-isolate in the UK as a result of COVID-19
- advised by official government advice not to travel from the UK as a result of COVID-19
- unable to leave the UK as a result of the closure of international borders, or
- asked by your employer to return to the UK temporarily as a result of COVID-19

the circumstances are considered as 'exceptional'.



### DIRECTORS OF NON-UK COMPANIES CONDUCTING MEETINGS FROM THE UK

Non-UK incorporated companies are treated as UK tax resident if central management and control of the company's business is carried out in the UK.

If you are a director of a non-UK company and are self-isolating in the UK in accordance with government guidance, or are unable to leave the UK due to travel restrictions, you may end up having to take part in board meetings or make decisions in relation to the company's business while you are in the UK. This on its own may not risk the non-UK resident status of the company, provided the business of the company is otherwise managed and controlled outside the UK. This should be clear looking at the long-term picture both before and after the COVID-19 restrictions.

However, if possible it would be better to avoid having directors who are confined to the UK making key and/or strategic decisions in relation to the company's business. You should check whether the company's articles of association allow for the powers of the board to be delegated to committees made up of individuals who are outside the UK and, if so, consider exercising that power for the duration of the COVID-19 restrictions. The delegation must be a true delegation of power rather than a mere "rubber-stamping" of a decision already taken in the UK. If you attend the meeting virtually, or by telephone, from the UK HMRC may treat the meeting as having taken place in the UK.



### ESTATE PLANNING

You should review your estate planning and your Will and any Letter of Wishes to ensure they still reflect your wishes. It would be a good idea to also ensure your family has copies of important documents, like your Will, Lasting Powers of Attorney and any Advance Decision you have made in relation to life-sustaining treatment.

If you wish to prepare a new Will you should do this as soon as possible. For a Will to be executed validly there must be two witnesses (neither of whom should receive any benefit under the will, or be married to or the civil partner of someone who receives a benefit under the will). Both witnesses must see the testator sign the will, and see each other sign; the testator must also see the witnesses sign the will. Both witnesses must be physically present throughout the procedure. This may prove difficult in light of government guidance or if you are self-isolating. However, it may be possible for the witnesses to witness you signing your Will through a window (and vice versa). Practical steps such as all using different pens, and wearing disposable gloves should also help protect those handling the Will. It would be wise to prepare a contemporaneous note confirming how execution was validly achieved. We are engaging with the government on the introduction of emergency measures relaxing the rules for the execution of Wills. You should take advice on the latest guidance.

You should also ensure that beneficiary designations for pensions and death-in-service benefits are up-to-date.



## FALLING ASSET VALUES: MAKING GIFTS

If you are holding shares or other assets which have fallen in value but are likely to increase in value once the current crisis has passed, you may wish to consider gifting those shares/assets to children now. Any deemed gain made on the gift will be reduced and the future increase in value will be outside your estate.



## LOANS TO TRUST BENEFICIARIES

Beneficiaries impacted financially by the COVID-19 pandemic, or who are unable to access funds, may turn to trustees of family trusts for loans.

As well as ensuring that they have power to make such loans, trustees faced with such requests should check the potential tax implications of making a loan. If a loan to a UK resident beneficiary is made interest-free, or at a rate of interest of less than the official rate (2.25% from 6 April 2020), the beneficiary may be subject to tax on the loan. A loan to a UK resident beneficiary will also be a UK situated asset for inheritance tax purposes unless the debt is due under a deed and the deed is physically held outside the UK.



## LETTERS OF WISHES

Letters of wishes to trustees of lifetime and will trusts should also be reviewed to ensure they accurately reflect your current wishes and family circumstances. Letters of wishes do not need to be in a prescribed form or be witnessed – what is important is that the trustees can satisfy themselves that the document came from you. Letters of wishes are not legally binding but provide valuable guidance for trustees.



## FINANCIAL SETTLEMENTS ON DIVORCE

The impact of the COVID-19 pandemic on asset values and levels of expected income may lead some individuals to query whether financial settlements reached on divorce/ dissolution can be varied, in particular, maintenance payments. Whether there is scope for arguing that a financial settlement should be varied will depend on a number of factors including:

- needs & general resources (notwithstanding that the COVID-19 outbreak may have reduced a party's earnings)
- if it is subject to conditions
- if independent legal advice was obtained
- if full financial disclosure was given
- how long ago the agreement was finalised; and
- whether the change in circumstances was foreseen or foreseeable (arguably unlikely in the case of COVID-19).

If you want to try to vary an agreement you should seek advice as soon as possible.



## POWERS OF ATTORNEY

If you have not already done so it would be wise to consider appointing an attorney to act on your behalf. An attorney under a general power of attorney can act on your behalf immediately provided you still have capacity – this could be useful if you have to self-isolate or are hospitalised.

If you lose capacity, only an attorney appointed under a lasting power of attorney (LPA) will be able to take decisions on your behalf. An attorney under an LPA may not act until the LPA is registered, so it is important that it is registered once made. You can make an LPA in respect of your property and financial affairs, and an LPA in respect of your health and welfare (this allows your attorney to make decisions on your medical treatment). You can include instructions or restrictions in your LPA – but they must be clear.



## UK REAL ESTATE INVESTMENTS

The government has brought in temporary measures to protect both residential and commercial/ business tenants:

- landlords will not be able to evict tenants from private rented accommodation or commercial premises for non-payment of rent for at least a 3 month period (until 30 June 2020) even if the non-payment of rent is unconnected to COVID-19
- landlords with residential mortgages will be able to take advantage of a 3 month mortgage-payment holiday if their tenants are experiencing financial difficulties due to COVID-19.

Tenants will remain liable for the rent (unless a concession is agreed between the parties) and landlords and tenants will have to agree a schedule for payment of any arrears.



## WORKING IN THE UK

If you are unable to leave the UK and decide to work remotely from the UK you should take care that you are not giving yourself an extra UK tie for the purposes of the statutory residence test. Having an extra "UK tie" will reduce the number of days you can spend in the UK without becoming resident. If you do more than 3 hours of work a day in the UK on more than 40 days in the UK tax year, you will have a "UK work tie". You should, therefore, try to limit the amount of time you work each day, and keep careful records.

Carrying out duties of your employment in the UK could also result in a charge to UK tax on your earnings. If you perform employment duties in the UK which are regarded as more than "merely incidental" to your non-UK duties, this could result in a UK tax charge on a proportion of your earnings (even if you remain non-UK resident).

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