[2018] UKFTT 219 (TC)

TC06452

Appeal number: TC/2012/00708

INCOME TAX – whether the appellant had ceased to be non-UK resident by 5 April 2005 – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR JAMES GLYN **Appellant**

- and -

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

TRIBUNAL: JUDGE HARRIET MORGAN
MRS JO NEILL

Sitting in public at the Royal Courts of Justice on 10 to 13 December 2016

Mr Patrick Way QC and Ms Emma Chamberlain, counsel instructed by Pinsent Masons, for the Appellant

Mr Akash Nawbatt and Mr Sebastian Purnell, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by Mr James Glyn against an assessment to income tax of £5,530,291.86 on a dividend of £24,591,611 (the "**dividend**") paid to him in the tax year 2005/2006. The sole issue was whether Mr Glyn had ceased to be resident in the United Kingdom ("**UK**") for that tax year. It is common ground that if he was not resident in that year, he is not liable to income tax on the dividend, whereas he is so liable if he was resident in the UK in that year (under s 128 of the Finance Act 1995). Mr Glyn also claims that he was non-resident in the following four tax years but that was not an issue which arose for determination

2. The dividend was paid to Mr Glyn on his exit from substantial involvement in a property business he ran with his brother, Mr Stuart Glyn. Mr Glyn argued that he had ceased to be UK resident on moving to Monaco on 5 April 2005.

3. This appeal was initially heard by this tribunal in 2013 (the "**2013 hearing**") and the appeal was allowed in favour of Mr Glyn in a decision released on 8 November 2013. On an appeal by HMRC, the Upper Tribunal remitted the case back to this tribunal to be re-heard but without new oral evidence as set out below (in *HMRC v James Glyn* [2015] UKUT 0551 (TCC)).

Evidence

4. The Upper Tribunal decided, at [102], that in view of the complete transcripts of the extensive cross-examination of the witnesses at the 2013 hearing, it would be unnecessary to bring new oral evidence at the re-hearing. We have determined the facts, therefore, on the basis of the transcripts of the witness oral evidence that was provided during the course of the 2013 hearing, the witness statements and other evidence produced at that hearing.

5. During the 2013 hearing, Mr Glyn was cross-examined extensively for approximately three days. His wife, Mrs Sarah Glyn, and his brother, Mr Stuart Glyn, and his friends, Mr Harvey Rosenblatt and Marion Goulden were also cross-examined. At that time HMRC agreed to accept the evidence of six other witnesses namely Mr Glyn's daughter, Mrs Georgina Zarko, his son Mr Toby Glyn and friends Mr Alan Goulden, Ms Elane Isaacs, Mr Stephen Berman and Mr John Smetana. Their witness statements stood as undisputed evidence save in the limited respects identified below.

Facts

6. Mr Glyn is a British citizen who was born in 1949. He was tax resident in the UK at all times prior to the tax year 2005/06. He has been married for many years to his wife Sarah and they have two children, Toby and Georgina, who in early 2005 were aged 29 and 24 respectively. Both children had by then left home (Toby in 2000 and Georgina in 2003), each living in accommodation provided by Mr Glyn. From 1993, Mr Glyn and his wife lived in St John's Wood in a house at Circus Road ("**CR**") which they and their children regarded as the family home. For most of the time they used the services of various housekeepers for tidying, cleaning and general chores of maintaining the property.

Business and planned retirement

7. For many years before 2005, Mr Glyn was involved in a family property investment business originally started by his grandfather. The business was run as a partnership which held shares in 39 property owning companies (the "**companies**") and owned some properties directly. Following his father's death in 1971, Mr Glyn became involved in this business and became a director of the companies.

8. By 1987 Mr Glyn was running the partnership and the companies and his brother was also involved, although at that time his brother was also working separately on his own behalf. At that time the two brothers began buying out the interests of the other family members, on a 50/50 basis, which took a number of years to complete due to the number of companies and widespread family ownership. Following the purchase of the majority of the shares, Mr Stuart Glyn was also appointed as a director of the companies. The two brothers were the sole directors.

9. In 1989 a new holding company, Milverton Group Limited ("**MGL**"), was inserted in the structure as the parent of the companies. On 3 December 1990 Mr Glyn and his brother were appointed as directors of MGL (and they were also the sole directors of this company). Over time the properties held in the companies were transferred into MGL's direct ownership. The companies became dormant and were gradually allowed to be struck-off the register at Companies House. Later the brothers purchased in their own names the properties which had been directly owned by the partnership including a property at Parkfield in Islington ("**Parkfield**").

10. As at March 2004, the MGL group had net assets of around £48 million, a turnover or rental income of around £2.1 million per year and owned some 175 properties (of different kinds (residential and commercial) but all in Greater London) and other investments worth £3 million. For the three years prior to April 2005, the company paid corporation tax of just under £13 million.

11. From 1993 MGL had an office in Harley Street which until the end of March 2005 Mr Glyn attended on a daily basis for five days a week arriving between 8.30am to 9.00am and leaving at around 5.30pm. He usually commuted from home to the office on foot; he drove if he needed the car for meetings. The staff during this time time were a bookkeeper, a secretary and general assistant.

12. Mr Glyn said that his brother was mostly concerned with property acquisitions and disposals whilst he was mostly concerned with management (although there was some overlap and these were not strict demarcations). They both handled lettings and Mr Glyn dealt with rent collection and general corporate management matters.

13. Mr Glyn regularly met lawyers and accountants and visited properties on several days each week but mostly his time was spent in the office where he had frequent meetings with tenants, buyers, sellers, agents, lawyers, accountants and others. He devised a rent collection and diary system, supervised the internal bookkeeping and accounting, dealt with all legal matters and participated in what was required to buy and sell properties and building maintenance works. The business required his daily attention; it was a full time role. It included dealing with tenants in

arrears, insurance claims, complaints from neighbours, supervision of repairs, negotiations on rent reviews and finding tenants.

14. He confirmed at the 2013 hearing that he was responsible for supervising all of the internal bookkeeping, accounting and legal matters. He said that "as between my brother and myself that would have been certainly something he [Mr Stuart Glyn] was very uncomfortable with and I would have assumed the responsibility for those things."

15. In his witness statement Mr Glyn said that this work became a drudgery to him and at the end of 2003 he decided he wanted to retire. He found the daily work irksome and uninteresting. From a financial point of view he did not need to work. He decided he wanted a better quality of life whilst he and his wife were still in good health. Having worked all his life in that sector, it no longer held the attraction it once had and he felt constrained by having to be in the office at certain times (such as at quarter end or rent review dates) which he said limited the time he could take as holiday in one go to seven to ten days. He and his brother thought that in any event the property market was very much a seller's market and could even have been heading for a fall. They saw no reason to delay his retirement. Mr Stuart Glyn had no desire to take on Mr Glyn's role. They decided to sell the properties.

16. At the 2013 hearing Mr Glyn explained further why he wanted to retire. He said that he had always been labouring under a great sense of duty rather than any enthusiasm to be involved in the property business. His father died suddenly when he was 21 and it had always been made clear to him that one day it would be his responsibility to look after his father's affairs and to take care of his mother. He then gave up his expectation of becoming a professional (he had started to train to be a lawyer) and assumed responsibility for managing his father's affairs in relation to the partnership with the other family members which were in disarray. Mr Goulden noted in his witness statement that Mr Glyn "felt immense pressure to run the family business properly when his father died."

17. Within months he was put in the position of running the enterprise and the affairs of the other family members such that he became "almost the godfather" of the extended family (dealing with their money problems and other issues). Mr Glyn said that after many years of this, he decided this had to come to an end, not least for his own sanity, and he and his brother tried to persuade the other family involved to "cash in". That lead to the process outlined above but to achieve that was a great deal of work and not just a nine to five job reflected in the hours he spent in the office.

18. Mr Glyn noted that he married at the age of 22 and had two children who were privately educated. He made them a gift of a home each and a small property investment that would produce an income in the hope they would become independent of him financially and not feel under the sort of obligation he had felt under as set out above.

19. He continued that before his retirement he had worked under a considerable sense of responsibility and duty that he was unable to avoid. He reached a stage that he could tolerate that no longer. That was what lead to his wish to retire. The responsibilities of his work probably contributed to the state of his health; he had severe migraines. He never had another migraine following his retirement to Monaco.

His personality lightened and his sense of responsibility was shared without him forgetting the affection he has for his family and friends. He said:

> "The routine of my life was changed and the pattern of my life was changed. It was part of the change – I'm not sure it was conscious or subconscious …….I was downsizing my life. I wanted to make – to cast off responsibilities and I wanted to cast off possessions. I don't mean by that I wanted to give them all away. I meant that I didn't want them to be defining the nature of my life, and so the move to Monaco was essentially with that in mind….it was certainly intended to be for an indefinite, very extended period. I wasn't sure I would ever be content to return to the UK, and I was convinced at the time that, were I to do so, I would be sucked into the level of responsibility that had become burdensome, intolerably so."

20. Mr Glyn said that in fact the consideration of his emigration probably started many years previously but he considered it actively from some time in 2003. What happened in 2004 was a focus on Monaco rather than France as the location for his emigration. Originally he considered moving to Cannes where he and his wife already had a holiday apartment they had bought in 1999. They thought they could have a pleasant lifestyle there due in part to the better climate (compared with the UK). He noted that it was not too far away from the children so they would be able to visit easily.

21. He thought if he stayed in the UK he would be drawn back into the business or would never actually retire. He decided that "a complete break from the UK, a time deadline for everyone to work to and a change in lifestyle made considerable sense". At that time, around Christmas 2003, he did not even consider the tax consequences but as the plan developed they did become a significant consideration. His children were adults, they were unmarried and although his mother was in her 80s, she was in reasonable health and, although frail, she lived alone and was independent. He thought the circumstances were as good as they could ever be to allow him to move abroad.

22. The brothers decided to sell the property portfolio recognising that the next generation would not necessarily want to continue the business. Mr Stuart Glyn did not want to run the business alone and the brothers wanted to be more financially independent from each other. Mr Glyn said that "we both always knew that he would - although he may have been more of a deal doer than I was, I could manage on my own and he could not." They wanted to go their separate ways in a business sense albeit retaining some more limited joint property interests. Stuart also intended to continue to use the holding company as an active investor in property albeit to a more limited extent and to explore venture capital opportunities and the stock market which was booming at the time. Mr Glyn said that given the long family investment in the business the decision to dispose of it was a very significant one and demonstrated his desire to retire.

23. By the spring of 2004, Mr Glyn and his brother agreed that the most sensible way forward was to sell the properties piecemeal rather than as a whole portfolio. Mr Glyn told his brother he intended to retire within a year but agreed he would not do so until the properties were sold in an orderly fashion so that his brother would not have

to deal with this alone. There were 175 properties (with over 300 tenants) to dispose of. Around that time they instructed BDO Stoy Hayward ("**BDO**") to advise them on an efficient exit strategy as set out below. There was a record of meetings with BDO as early as 12 January 2004 and on 16 March 2004 which Mr Glyn thought were probably to discuss his exit from the business. There followed a number of further meetings with BDO in the period before Mr Glyn set up home in Monaco which he thought his brother also attended (see [41]).

24. Mr Stuart Glyn said in his witness statement that he and his brother were conscious that he would miss the specialist input that only Mr Glyn could bring. However, Mr Glyn was adamant that he had had enough and that he did not want to have any further involvement in the business and that he was looking forward to rest and travel, using Monaco as a place to enjoy his retirement. Mr Stuart Glyn accepted his brother's position and they began selling the properties. He said at the 2013 hearing that his brother's heart had not been in the job for a while, they had discussed the retirement for perhaps months or possibly more than that and it was not a surprise when the final decision was taken.

Other interests/life before 1 April 2005

25. Mr Glyn agreed that CR was a substantial family home which in 2013 was probably worth around £4 to £5 million. It comprised on the ground floor a study, lounge, dining room and kitchen and a toilet and upstairs six bedrooms (although at the time only three to four rooms were used as bed rooms) with a sizeable garden. Mrs Glyn said it was very beautiful and provided everything she and her husband needed to live in comfort. Mr Glyn said that it was comfortable in terms of the number and size of rooms, the location of the house, proximity to shops and transport facilities.

26. Once the children moved out of CR they lived in apartments within walking distance of CR. Mr Glyn's mother, sister and brother and their families also lived in St John's Wood and continued to do so during the period in question. The Glyns also had many friends who lived in St John's Woods or relatively close by although some of them had homes or holiday homes elsewhere such as in the South of France. As a general matter the Glyns socialised with these people in both London and the South of France.

27. Before his retirement, Mr Glyn was kept busy with work or socialising with his family and a close circle of friends. He was not a member of any clubs (except the Lords cricket club (MCC)). He was not that sort of person. He was more solitary than his wife and liked to read. Once a year Mr Glyn went on an extended trek for around five days with his close friends. That did not happen once he moved to Monaco.

28. The family were very important to Mr Glyn and they were very close. Mrs Glyn said the family were of paramount importance to her. She spoke to Georgina at least once a day and to Toby two or three times a week. They had dinner together at CR often with Mr Glyn's mother also. The family are of the Jewish faith but are not religiously observant. They regarded the dinners as a chance to get together as a family rather than as a religious celebration although the dinner followed, in a secular way, the tradition of Shabbat. Mr Glyn described Mrs Glyn as an excellent cook. She

prepared the food for the family. Occasionally the family would dine out on Fridays instead, such as for a special family event or the party of a close friend or, sometimes others, such as Mr Stuart Glyn and his wife or close friends, may be invited to join them for dinner at CR. At the hearing, Mr Glyn confirmed that on each of the 36 Fridays he was in the UK in 2004/05 the family most probably dined together at CR; it would be exceptional for them not to do so.

29. The Glyns regularly also had their close friends and family round to CR for Saturday or Sunday evenings or went to their homes for dinner. Mrs Glyn described the habit of dining with their good friends as a sort of Sunday supper club. Otherwise at the weekends the Glyns went for walks together often around the London parks. The Glyns regularly entertained a wider circle of friends at CR. Mr Glyn said that as well as being an excellent cook, Mrs Glyn was known among their friends as a superb hostess so CR was a popular venue for social gatherings. Mrs Glyn said that aside from her charity work she was very much a home-maker, cook and hostess. Seeing their friends was a big part of their lives in the UK and Mr Glyn said that was what made CR their home. If they were not entertaining at home they were being entertained at friends' houses or out with them for dinner or other social occasions. Mrs Glyn said that in a typical month, excluding Friday nights, they would have people to visit the house for dinner at least three times. Mrs Glyn described seeing her friends on a regular basis before the move including Ms Elane Isaacs with whom she used to have coffee and lunch regularly.

30. Mr Stuart Glyn described in his witness statement the closeness of his family and that of Mr Glyn. Their family homes were within a mile of each other and his four children were of a similar age to Mr Glyn's children. They met on Jewish holidays as well as other social occasions. They occasionally shared dinner on Friday nights. The affairs of each family were common knowledge with the other and little would go on in one family that was not known to the other. Their wives spoke on the telephone regularly and they moved within the same circle of friends although their close friends tended to be different.

31. Mrs Glyn was heavily involved in charitable work in particular for the Women's International Zionist Organisation ("**WIZO**"). She had been a trustee of this charity since 1998 and was the President of it from 2001 until the move to Monaco. In 2001 she joined the board of the Institute of Jewish Policy Research. She described her work with these charities until 2005 as an absolutely core part of her life. She said that the work was very interesting and rewarding and that she had a large number of friends who she made through her association with these organisations. Many of their friends were also involved in charitable work and as a sign of support and reciprocity the Glyns often attended fund-raising events to which their friends invited them. In the tax year 2004/05, they attended at least 14 fund-raising events for various charities. That level of attendance at such events was similar in prior years.

32. Before the move to Monaco, Mrs Glyn was at WIZO's offices at Gloucester Place most days and she had staff working for her there. Her role was very varied; she was responsible for fundraising events, speaking at conferences, meeting interested parties and travelling to Israel to look at actual or potential beneficiaries of the charity. She decided that she could not continue with such an active role when

they moved to Monaco and resigned as a trustee of the charity although she remained involved.

33. When they could Mr and Mrs Glyn spent weekends and occasional weeks in their apartment in Cannes, typically for around 60 to 80 days per year on average. These were short holidays on which they enjoyed the sun and met with some of their friends who also had apartments there. Mrs Glyn said that often they would enjoy traditional Friday night dinners with friends and family whilst there.

34. As regards religion, Mr Glyn noted that he was not a devout Jew. Mrs Glyn said they considered themselves to be secular Jews. Mr Glyn supported a number of Jewish charities but these were more secular in nature or the reason was the close links his friends had to them. The involvement also came about through his wife's involvement in WIZO. From 2004 onwards, Mr Glyn retained his membership at the Western Marble Arch Synagogue but he said that was a reflection of the fact it was difficult to obtain burial rights without being a member. He had not been an active member of the synagogue for a long time.

Informing others of the decision to move

35. Mr Glyn recalled telling his daughter of the decision to move abroad in the summer of 2004. He recalled it being an emotional event explaining that he and his wife would not be around in the UK as much although they assured her she could visit when she wished. He had a similar conversation with his son. Mrs Glyn told them she expected to be visiting the UK more often than Mr Glyn as she did not wish to withdraw entirely from her charitable activities. The Glyns said they would be keeping CR as they were told by the advisers they could do so without that interfering with Mr Glyn's intended non-residence. They informed others of the move from around October 2004 once the move to Monaco had become a certainty.

36. Georgina and Toby confirmed in their witness statements that Mr Glyn said he did not want to continue with his business and wanted to emigrate to Monaco and retire there to experience a more relaxed lifestyle. Toby recalled that there were also tax advantages to his father becoming non-UK resident. Georgina confirmed that she and her mother were very emotional and that she had a "very profound sense of loss, a sense that my world was changing and that the future held something new and different for me, as well as for them."

Exit proposal

37. Following discussions with BDO it was agreed that Mr Stuart Glyn would keep his share of the cash realised from the sale of the property portfolio and the MGL group would belong to him once Mr Glyn had received his share. As part of this, on BDO's advice, on 24 April 2004, there was a restructuring whereby a new holding company, Hillpride Solutions Limited ("**Hillpride**"), became the parent of MGL on being issued with redeemable C shares in MGL. In outline, Hillpride had substantial carried forward capital losses which BDO advised could be used to off-set the capital gains arising on the property disposals.

38. Mr Stuart Glyn said that his brother was generally more involved in the BDO planning than he was and he remembered it as being particularly complex. He said he and Mr Glyn did not fully understand the scheme and so instructed Blick Rothenberg

to act as their personal adviser in this matter. They attended meetings with BDO with the brothers and explained the issues if they had questions or queries. Mr Stuart Glyn said Mr Glyn's involvement and understanding of the planning was ultimately far more detailed than his own as he was in a far better position to deal with the issues given his legal background and closeness to the corporate structure and accounts of the group.

39. To effect the exit strategy, on 24 April 2005, the issued share capital in Hillpride was converted into two different classes of A and C shares held by Mr Stuart Glyn and Mr Glyn respectively. Under amended articles of association the C shares held by Mr Glyn carried the right to all dividends paid out of the company before 31 May 2005 on the basis that, if a dividend of more than £25 million was paid, the shares would convert into deferred shares carrying no voting rights and no right to any further dividends. (Once that took place the shares were sold to Mr Glyn's niece for a nominal sum.) The idea was that Mr Glyn obtained his share of the business in the form of the dividend.

40. The sequence of events whereby Mr Glyn received his dividend was as follows.

(1) On 3 December 2004 MGL paid a dividend of £32.785 per each C redeemable share to the new holding company, Hillpride. Hillpride received a total dividend of £32,785,000.

(2) Mr Glyn retired from the business in effect from 1 April 2005 (although see below). He and Mrs Glyn took up a residence in Monaco on 5 April 2005.

(3) On 4 May 2005 Hillpride paid a dividend of £29,242,000 (attracting a tax credit of £3,249,111) to Mr Glyn as the sole holder of C shares in Hillpride.

(4) At some point in 2005 or 2006 HMRC investigated the group's tax position resulting, on the conclusion of the enquiry in 2010, in additional corporation tax payable of around £16.5 million including interest. HMRC decided that the brought forward capital losses could not be used to offset gains on the property sales.

(5) Mr Glyn, therefore, had to return £8,264,550 to the holding company in July 2010 as the additional corporation tax due reduced the profit available to be paid to him by way of dividend. It was agreed with HMRC that the adjusted amount of the dividend was £20,977,450 (net of the notional tax credit).

41. It appears that in the period from January 2004 up to 5 April 2005 Mr Glyn and his brother had around fifteen meetings with BDO and other advisers on the tax sheltering proposal although the meetings may have also concerned other issues. Mr Glyn accepted that the meetings with BDO prior to 5 April 2005 principally concerned (a) audit matters in respect of the various group companies (b) the corporation tax loss scheme and (c) certain new corporate structures being put in place in respect of the brothers' business interests such as Glyn Cousins LLP (see [93] to [101] below).

42. There were a number of subsequent meetings with BDO which Mr Glyn attended as set out below (see [78] to [92]). Mr Stuart Glyn's evidence was that he attended many if not all of these meetings with BDO but that his contribution was minimal owing to the fact that the matters being discussed were way beyond his skill base. Mr Stuart Glyn also confirmed that he did not attend any meetings in which Mr Glyn discussed the preparation of company accounts with BDO and that he had no involvement with the preparation of those accounts.

Advice on residence

43. Mr Glyn confirmed that it was during the time of the planning and sale of the properties was going on, he thought in August 2004, that he consulted Blick Rothenberg for advice on his own personal tax position. He was made aware that he would not be taxable on the dividend if he was not resident in the UK at the time it was paid and remained non-UK tax resident for at least three years. He was also made aware of HMRC's guidance in IR 20 on UK tax residence. He said in his witness statement that:

> "Accordingly, I was aware that under that guidance I would be treated as non-resident on the proviso that I did not return to the UK for 90 days. As such, I always maintained a careful count of the number of days I spent in the UK as I saw no reason to be caught out by such a simple thing."

44. He considered he would not be in the UK for anything like 90 days a year as the whole point of his retirement was to break from his life in London and to live abroad. Mrs Glyn was not concerned as to whether she remained UK tax resident or not and did not wish to be restricted in her movements.

45. At the 2013 hearing he noted that he was told that IR 20 set out what the rules were regarding non-residence at the time. He read them to establish whether he was comfortable complying with those rules, which he was. He has since been directed to the significance of the phrase that "these are guidelines and not law", but at the time he did not pay any attention to the warning and regarded IR 20 as an authoritative explanation of what was required to establish non-residence. He felt, although there is little that can be done about it, "that the goalposts have been moved retrospectively."

46. He said that it was made clear to him that non-residence is concerned with his situation in the UK, not so much with arriving somewhere else, although that would be very indicative of his status in the UK. He did not agree that he was not aware that he had to leave the UK.

47. He was asked if the only advice he received on the non-residence issue was in two emails dated 14 and 15 October 2004 as his advisers had said. He said that was probably also incorrect. There were various conversations in which he was told that becoming non-resident was regarded as a non-aggressive tax arrangement which was accepted by HMRC, "and that as my intention was to become non-resident and to comply with IR 20, foolishly perhaps I did not require any further detailed advice, whether in writing or on the record". Also, however, he had advice from BDO in an informal way, during the course of other discussions. He also had friends who are accountants with some experience in these matters with whom he had conversations

which were not in the nature of seeking formal advice but "nevertheless I gained information which was helpful".

48. He later said that conversations took place which accountants may not consider was formal advice on the subject, but which "I, perhaps as a foolish layman, treated as advice. Conversations whilst we were having a cup of tea during a meeting about other matters which guided me as to what the rules and regulations were in relation to non-residence, I treat as advice".

49. It was put to him that he was not advised that he had to do anything other than to keep his day count below 90 days in order to become non-resident. He said that was not true. He had various conversations in which all kinds of matters were discussed, such as whether or not it would frustrate a claim to be non-resident if he were to retain his share in CR, whether he was required to relinquish his membership of any clubs (not that he was a club member other than of the MCC) and he was told the difference in requirements for being non-resident and non-domiciled. He understood full well that non-residence is a matter which is multifaceted. He was pointed to the above statement in his witness statement (see [43]). He said that he was there addressing precisely the matter of day counts but not other issues.

50. It was put to him at the 2013 hearing that, as at 5 April 2005, he did not understand that he had to loosen any ties with the UK in order to become non-resident. He said that he had not heard that phrase at that time. He did understand that becoming non-resident meant going abroad but he did not think that he understood the concept that one could be resident in two places simultaneously. He recognised that being not resident in the UK meant more than simply keeping to 90 days maximum in the UK in terms of visits. For example, he considered the question of whether it was legitimate to retain CR during a period when he was non-resident. He was not thinking of it in terms of a tie but he recognised that CR could be regarded as a connection that he retained with the UK. It was put to him that he was told he was able to retain a home in the UK. He said he could not clearly recollect, but he did recall his acknowledgment that the use of CR as his home would have been inconsistent with him ceasing to be UK resident.

51. It was put to him that it was clear that he took very limited advice on becoming non-resident. He thought that was perfectly fair and, with the benefit of hindsight, he should have had very much more detailed advice (although he thought probably it would have been inadequate because the goalposts have been moved to such a degree since the date of his emigration).

Activity prior to exit from the businesses

52. Mr Glyn said that there was a period of great activity prior to his departure from the UK which involved deciding how best to sell each property, producing sales particulars, instructing agents or auctioneers, engaging in negotiations and instructing lawyers. Mr Stuart Glyn mostly dealt with the agents and buyers and Mr Glyn with the lawyers and managing agents. As each property was sold there was much activity in handing over management to the buyers, notifying tenants, verifying and settling the invoices for the fees of the agents, lawyers and accountants and accounting internally for the sales proceeds including computing gains arising. Mr Glyn mostly

dealt with these issues. The properties were mostly sold in the period June to December 2004.

53. It was whilst the sales were taking place that Mr Glyn started to consider if Monaco would be a better retirement destination. He noted that compared with Cannes, the tax system was better in Monaco, there was less crime and life continues unabated in Monaco throughout the year. It is also possible to walk everywhere which was important to Mr Glyn, there was an "endless supply" of cultural events and a more substantial and permanent expat community. Overall Mr Glyn felt there was more going on in Monaco particularly for his wife, who he considered to be more extrovert than him. By August 2004 he had decided Monaco was more attractive and had consulted advisers on becoming resident there and started to look for accommodation.

54. In late 2004 the Glyns chose an apartment in Monaco in a building named Villa Rosa. There was a long waiting list for an apartment in their preferred building, Roccabella. The Villa Rosa apartment had three double bedrooms each with its own bathroom, a living room and kitchen. All the rooms had balconies. It was within five to ten minutes walking distance of the shops, the main square and the sea front. Mr Glyn reserved two spaces in the underground car park. There was a concierge although towards the end of their stay there he left and was not replaced.

55. They signed a lease for a period of three years starting from 1 February 2005 with a one year break clause enabling them to terminate earlier. In fact they later then found it was possible to approach the family office directly as regards acquiring an apartment in their preferred Roccabella building. The family did not want any tenant they considered would be transient and Mr Glyn indicated that their intention was to reside in Monaco for some time. Mr Glyn later exercised the break clause as regards the Villa Rosa apartment and he and Mrs Glyn moved into an apartment in the Roccabella building in March 2007.

56. On 18 November 2004, the Glyns went to Monaco and negotiated with the landlord regarding the refurbishment of the Villa Rosa apartment. They set about buying furniture most of which was bought from a place in Italy around 40 minutes drive away. They never considered moving furniture from CR as that was designed for a very different climate and style. In any event, they were looking forward to down-sizing and decorating their home in Monaco in a more modern style. They also arranged things such as satellite, telephone and broadband access. They returned to Monaco on 15 December 2004 for much of the same purpose.

57. On 17 January 2005 they returned to Monaco and instructed lawyers to assist them with obtaining Monaco residency permits. That was quite an involved process which required them to have an interview with the immigration authorities and a medical examination by a local doctor and a criminal record check. The meeting with the authorities took place on 22 March 2005. At that time the Glyns put in place banking facilities in Monaco. Mr Glyn was told he could obtain a Monaco driving licence on surrendering his UK one as he later did. He did not obtain a UK licence again until he returned to the UK in 2010. There were further meetings with the lawyers and bankers and he arranged for phone lines to be installed at Villa Rosa and obtained mobile phones for Monaco.

58. Meanwhile he was working hard to close his office in London and leave matters as clear and simple as possible for his brother to handle. That was constantly interrupted by his trips to Monaco (six visits between August 2004 and March 2005). That involved entrusting his day to day responsibilities to others and gathering together his personal papers and files to take to Monaco.

59. He needed to ensure the rent collection system was up to date and that the staff understood it as they would still perform that function for any properties which Mr Stuart Glyn acquired for himself through Hillpride/MGL, for existing properties still held by Glyn Cousins LLP and Cavendish Coombe Limited and properties the brothers continued to own personally. He also needed to ensure that insurance renewals, which he had dealt with previously, were up to date and understood by his brother. He had always been the person to deal with the accountants/auditors and he was in constant contact with them to ensure that their audit work ran smoothly following his departure. His brother wanted to move to smaller premises and Mr Glyn took responsibility for sorting out the considerable volume of old files at the Harley Street office. He wanted to take information he needed to Monaco such as that relating to the properties that were being sold and other personal information so he could liaise with BDO on the potential capital gains and corporate tax issues should the need arise.

60. The Glyns were issued with Monaco residency cards in March 2005 for one year being the maximum period they could obtain at that time. They later received additional one year permits until they received a three year permit in 2007 entitling them to stay until 21 March 2011.

Departure - motivation

61. The move took place on 5 April 2005 when the Glyns flew to Nice departing on a one way ticket (although they returned to the UK for a few days before the end of April as set out below). Mr Glyn said he would have moved earlier except that (a) the length of time to wind everything up took longer than anticipated (b) they did not receive their residence permits until 22 March (c) the final services were still being supplied to the Villa Rosa apartment (for example the landline was not installed until 29 March 2005) and (d) he was engaged until almost the last moment in final matters at the Harley Street office.

62. At the 2013 hearing he was asked to confirm if his evidence was that the departure on 5 April 2005 was not tax-motivated but was in fact the earliest practical date when he could leave. He thought that, if he had been anxious to do so, he could have left prematurely a week or two earlier and in more unseemly haste. He said that, if he was not mindful of the significance of 5 April, he might have preferred to leave a week or two later so as to make a more leisured departure, but the plan was not that he would leave at the last possible day that would be effective for that forthcoming tax year. His plan was to go, and to go as soon as possible, and 5 April proved to be a convenient day. He thought that was a Tuesday and "there's a rather nice Jewish tradition that Tuesday is a lucky day". He was not a religious man, but he was "very much steeped in my tradition as a Jew, and Tuesday is a lucky day for people to do things" and he thought that probably also had some significance in going on 5 April, for example, rather than 4 April.

63. It was put to Mr Glyn that he never intended to emigrate to Cannes and the reason for making that claim was to mask the fact that the entire move was tax motivated (to avoid tax on the dividends) and he knew that if he was really intending to leave the UK it would take longer than six months to plan. It was put to him that the reality was that the choice of Monaco was entirely tax motivated. He did not agree. He said that there was no question that the tax advantages of living in Monaco were very apparent to him, and had significance, but there were a whole range of reasons why the Glyns settled on Monaco rather than Cannes (see [53])

64. Mrs Glyn said in her witness statement that it was Mr Glyn who decided that they should move to Monaco. It was what he wanted and, as the children were in their twenties and living independently, she thought they both agreed that was the one time when emigration for a sustained period was possible. She said that Mr Glyn had wanted to retire for some time and the move to Monaco suited him well because he wanted to make a clean break. If he stayed in London it would be harder to break the ties with the business. He had always said he wanted to retire in his fifties and he was ready for a change from his work which he found un-stimulating.

65. She described the period leading up to the move as an emotional roller-coaster. Part of her was angry at having to leave her charitable roles, she was concerned she would be bored and she was reluctant to leave her children. On the other hand she knew there was a lot going on in Monaco and the South of France generally, the children could visit and part of her was excited about getting away from the daily routine. She thought she would be able to spend time with her husband and travel within Europe would be easier. She said that "ultimately, despite my reservations, James had made his mind up and we moved to Monaco".

66. She said she had little choice but to resign her positions at the charities as she would not be able to provide the commitment required when living in Monaco. She thought she was cut off in her prime in that there was far more she could do if still in the UK. For that reason she was originally cross about the decision to move. Her life and family were in London and she did not want to live in Monaco despite its attractions. Mr Stuart Glyn said he recalled that Mrs Glyn had concerns and reservations and that she was not as keen on the idea of emigration as Mr Glyn was. He noted her involvement in charities and her concern at being away from the family.

67. At the 2013 hearing Mrs Glyn said she loved a project and the practicalities of the move had not troubled her. At first she thought "fantastic what an exciting thing to do, I am really up for this" but she had then had concerns. Really, however, the main ones were the children and, looking at it sensibly, they were in their mid-twenties and had their own homes and lives so this was a perfect time to take this step and have an adventure. When she got there increasingly she did not want to go back to London, in particular, when the sun came out and it was a great opportunity to travel, she loved the sea and the view, in particular, from Roccabella. She also noted the beneficial effect on her husband as he stopped having migraines and that he loved being involved with Barclays bank as regards investing his funds as well as all the things they did together.

68. Mr Glyn said that his wife was more hesitant than he was about the reality of emigrating rather than the daydream, but they were united and came to a joint

decision. It was a bit strong to say that she wanted to go to Monaco. She was content to go to Monaco, albeit with substantial reservations; she was nevertheless happy to go to Monaco. She had a much greater sense of need to see friends and family. She was very much enjoying the work that she did, which was a very full-time and very responsible activity, and, when the dream was becoming a reality, she had cold feet about the degree of separation from her old life that would occur, but having weighed the situation and balancing the pros and the cons, he thought it was not overstating it to say she was happy to go. She was a highly moral and responsible person and was anxious to make clear to him that what they were doing, in going to live abroad, was a very serious matter and involved a very substantial diminution in the performance of their obligations to family and the community and their friends,

69. Mr Glyn continued that Mrs Glyn was fully supportive of the decision to go despite her reservations but her attitude was that she was not going to trouble about sticking to the number of days set out in IR 20 so that she would not declare herself as non-UK tax resident. He thought his wife had concerns which were not entirely dispelled but she was happy to join him and be part of the joint enterprise of emigrating and starting a new life. He thought it was a joint decision albeit he was driving it forward and encouraging her. It was a large step they did not take lightly.

70. He thought it was certainly him that was anxious about the timing (meaning at that stage in their lives) and driving forward the proposal from dream into reality but, having been persuaded, his wife was fully supportive of the conclusion that was reached. He did not think that his wife was angry at his decision. She was emotionally affected by the whole consideration of the matter (for example, when they first told the children) but if she was angry, he was unaware of it.

71. It was put to him that the reality was that because of his wife's reservations he had no way of knowing whether or not the Monaco experience would last. He said they went in the expectation they would be there indefinitely or for five years or so. It was not intended to reverse the decision but if his wife was very unhappy he would not have hesitated to re-consider.

72. It was put to him that his plan was always to go for at least three years to avoid tax on the dividend and, if possible, five years to avoid tax on any capital gains. He said "no" in fact his decision was to go and live abroad. The decision to go to Monaco was partly influenced by the tax advantage and having made that decision they did not decide how long they would be living abroad.

73. Mr Glyn said that he and his wife were well aware that family circumstances would change as the family grew older or grew up, and as they themselves grew older and perhaps grew frailer. He certainly did not anticipate spending his latter years abroad away from his family. He anticipated that if his mother should become more infirm he had a responsibility to return to the UK to look after her. He thought that if there were grandchildren, he and his wife would want to be with them. So the plan, to the extent that it was thought of in those terms, was "probably we'd be away for five years and then if we're really enjoying it we would stay longer and if we weren't enjoying it we'd probably come back, was more related to what life was likely to produce for us……and certainly wasn't motivated by the three-year or five-year

periods". He regarded the move as permanent in the sense it was not temporary but it was not permanent in the sense of forever.

74. The Glyns' friends gave evidence which supported that of Mr and Mrs Glyn as to the nature of and reasons for the move. Mr Goulden said that he thought it was potentially an attractive change in Mr Glyn's lifestyle and a less pressurised existence being away from the London social scene and extra family commitments. He also felt that Mr Glyn "wanted to experience living abroad as a resident and not just as a holiday maker because, due to his father's untimely death, he had assumed great responsibility at a relatively early age and therefore never had the opportunity to spend a long period of time away". Mr Rosenblatt said that Mr Glyn seemed very determined to retire and emigrate and that this was "consistent with James' character – once he makes a decision he sets his mind to the required actions and sees them through". He recollected that Mr Glyn told him he was determined to take this step and he was attracted by the complete change in lifestyle that retiring to Monaco would bring. He, Mr Goulden and Mr Smetana all referred to Mr Glyn as being a determined and decisive person who, as Mr Goulden said, "is someone who likes to do things thoroughly, not by halves, and after a great deal of quiet thought." Ms Isaacs confirmed that Mrs Glyn told her that they were going to move to Monaco for a number of years.

75. Mr Rosenblatt said that Mr Glyn told him that steps were being taken to allow him to retire from the property business in peace and that any properties retained "would not be any that would require active involvement by James and thereby influence his retirement."

Retirement from the MGL/Hillpride business

76. As noted Mr Glyn considered he retired from the family business in effect from 1 April 2005. However, his resignation as director at some of the companies was not documented at Companies House until late 2005 in many cases and as late as November 2006 in the case of Hillpride. In his witness statement he said that 1 April 2005 was his last full working day at the office. He said that from then on he did not have any active role in decision making or management of the business as regards its on-going and future activities and investments. His role was limited to sorting out the past affairs of the business and he was no longer involved in the daily collection of rents and management of any properties retained by either family. By that time all but one of the relevant properties was sold and that was sold within three months of his retirement (the brothers retained some properties as set out below). He served a function which was useful to his brother but without having any obligation to do so.

77. He noted that he did sign some documentation relating to some of the companies following his departure for Monaco. For example he signed a special resolution required in relation to the reorganisation BDO advised on as the mechanism for the exit. He also signed forms notifying Companies House of the change in the office and the annual return reflecting the share reorganisation and his move to Monaco. He did not consider this impacted on his retirement. He merely signed what was put before him. It did not require him to do any work in the UK and did not involve any executive decision making.

78. He said in his witness statement that he did subsequently attend meetings with BDO concerning issues relating to periods when he had an active role when his brother "occasionally asked him to do so". He said that these meetings predominantly concerned the allowability of the losses. He agreed to attend the meetings as that issue potentially directly affected his own position. He thought the initial meetings concerned the progress of other taxpayers' appeals through the tribunal system which were sufficiently similar to indicate the group's prospects of success as regards the losses. They discussed whether there was anything that the company could do to protect its position. The later meetings dealt with HMRC's enquiry and the provision of requested information. He was not forwarded any agenda for these meetings.

79. At the 2013 hearing Mr Glyn accepted, as noted, that not all of the properties within the portfolio had been disposed of by 5 April 2005, he had not been able to tie everything up prior to flying to Nice on 5 April 2005 and that "matters were not finished". He said that on 5 April 2005 he knew that he would be required to have further dealings with BDO and that the "huge number of questions that would arise would probably be beyond my brother's ability to satisfy". He accepted that it was accurate to say that he continued to have a "role" with MGL after 5 April 2005, which he described as serving "a function which was useful to my brother".

80. He noted that part of the plan prior to his departure included scanning all the property files on to disk. In 2004/5 scanning was quite novel. It was a very lengthy exercise on the part of the small staff to copy each property file which was scanned onto disks which he took with him to Monaco. He did that so that if questions arose from BDO he would be able to have a quick look at the file in Monaco and answer the question, and that did happen on a couple of occasions. The files remained in London with his brother but Mr Glyn thought that his brother would have had great difficulty in giving the answer which he could deal with fairly readily.

81. Mr Glyn, therefore, tried to prepare himself with the information in Monaco that would enable him to answer the kind of questions that might arise from there. It was noted to him that he was still having meetings right up to his departure as there was one with BDO on 1 April 2005. It was put to him that, in the circumstances, he must have been aware when he left for Nice on 5 April 2005 that he would have to come to the UK after 5 April to have meetings with BDO. He said that was not so, as he had armed himself with the information that would enable him to satisfy their enquiries without any need to return to the UK. Nor was there any ongoing obligation between his brother and himself for him to do that. It was an act of friendship and responsibility on his part. He did not particularly remember the contents of the meeting of 1 April but he did remember the time fairly well, it was quite a significant time in his life, and, to the best of his recollection, the meeting with BDO was to say farewell to a team he had been working with very closely for a long time and not actually to resolve any outstanding issues, although it is quite possible that in the course of any such meeting, such issues could have been discussed.

82. He agreed that after 5 April 2005 he attended at least the nine further meetings with BDO in London between 5 April 2005 and 3 November 2006 which are referred to in his travel diary. He thought the list of the meetings in that period was probably exhaustive, but he could not say that there was not positively another occasion. He also thought it was possible that that he had telephone conversations in between

meetings almost certainly with his brother, but possibly also with BDO. He said, however, that the quality of the meetings and the length of the meetings in that period was entirely different to the prior meetings, and to equate the period prior to 5 April 2005 with the period subsequent, would be entirely misleading.

83. He said that at the time of the move to Monaco, he was only concerned with the computation of gains on the property disposals which was quite a lengthy process to determine and settle with the accountants/auditors. That was the type of thing he expected questions on whilst in Monaco. It was not until sometime later that it became apparent there was an issue with the availability of the capital losses which was rather a surprise. It was not something that required any particular role on his part initially. As set out in his witness statement, the matter was being heard in the courts as regards other taxpayers. The meetings he had were really to question whether the circumstances were distinguishable from those cases. The facts about the cases were emerging gradually and it was the reaction to those various things that exercised their minds and which his brother did not feel competent to deal with on his own. At the time when he left for Monaco he regarded the capital loss planning as complete and effective. He said that the meetings related to other matters but did not explain what those were.

84. He thought that when he left for Monaco on 5 April 2005 the draft capital gains calculations had been prepared but probably had not yet gone to the auditors; the audit was usually around six months after the end of the tax year. The capital gains tax computations were fairly complicated because the base cost had to be determined by reference to the market value of the properties in 1965 according to the circumstances that related to the properties at that time. Therefore, in respect of each such disposal, it would be necessary to go back through the file of the individual property to establish what the circumstances were at April 1965. A lot of the work had been done, but understandably, when the time came for the auditors to look at that, they had questions to raise about the basis on which things had been done.

85. Mr Stuart Glyn said in his witness statement that whilst he attended most of the meetings with BDO regarding the loss scheme alone, Mr Glyn would "on rare occasions" attend a meeting also. He said that in any event he and his brother relied on BDO to resolve the situation as they were largely out of their depth as regards detailed tax analysis (that was certainly the case as far as he was concerned). Mr Glyn commented that he intended his brother no disrespect in saying that however limited his own ability may have been, his brother's was significantly less.

86. Mr Stuart Glyn recalled that when matters were settled with HMRC as regards the capital loss scheme, Mr Glyn was most unhappy with the terms of the settlement offered but Mr Stuart Glyn decided that the terms were reasonable and settled the matter. He agreed on this on behalf of the group.

> "I saw the settlement of the issue as something that I was responsible for, given that James had retired and moved to Monaco. I therefore decided, very much in the face of James' opposition to settle the matter on what I thought were reasonable terms, despite James' reservations."

87. At the 2013 hearing Mr Stuart Glyn confirmed that he had no involvement whatsoever in the computational matters arising after April 2005. He confirmed that

he was not able to say what the nine BDO meetings were about, nor whether he in fact attended them with his brother.

88. When questioned at the hearing in 2013 Mr Glyn was firm that it was his intention to leave the business in April 2005 in the sense of having active involvement and that that is what happened. He said that the filings at Companies House as regards his directorships were made late because it was left to his brother to deal with these filings. He is not good at such matters. He said that his brother's "failure to file the appropriate papers, prepare them and file them, get me to sign them and file them, was entirely predictable and I'm sure that my brother will impress you with his inability to deal with such matters".

89. There was some confusion surrounding whether he had signed resignation letters at an earlier stage and precisely how the formalities of the resignation was actually dealt with. Mr Glyn said that "it was not the habit between my brother and myself to require formalities. I certainly don't recollect signing any letter of resignation and I think it is highly unlikely that there was one".

90. At the 2013 hearing Mr Glyn agreed that at the meetings with BDO he was informed of the progress of the cases before the courts on the capital loss scheme. He said that information seemed to be obtained "on some professional network which enabled BDO to express a view as to the conduct of these appeals which probably was not available to the general public. It wasn't published decisions that they were going on, they seemed to have some inside track as to how the matters were progressing."

91. It was put to Mr Glyn that it was not coincidence that he resigned as director of Hillpride on 7 November 2006, four days after a meeting at BDO on 3 November 2006, and from Hillpride Capital Limited around a week later, in view of the fact that, by that time there had been a case in the tribunal in which it was held that the loss scheme did not work. The implication was that Mr Glyn was prepared to resign as director only once it became clear from discussions with BDO that the loss scheme did not work. He said he did not think it was a coincidence in that his resignation probably directly arose out of the meeting with BDO. At the time, his brother used BDO to prepare the statutory papers and filings and probably, although he did not specifically recollect it, at this meeting the appropriate paper was in front of Mr Glyn for signature and was then filed by BDO on behalf of his brother. So it seemed highly logical to him that the two dates were close together. He noted that the implication of the question was that he remained a director, in any meaningful sense, of the companies until that time. He said he did not. He also did not agree that his resignation as a director was triggered by a decision in a court case. He did not think there was any significance in the gap between the two filings. He did not recall but he thought it likely that when the first set of papers was whipped in front of him for signature of one company he asked whether the other one was done and that was then also prepared.

92. At the 2013 hearing Mr Stuart Glyn said that it was "without any question of doubt" that Mr Glyn retired on 5 April 2005 and:

> "he grabbed the opportunity to get out of the business and to some extent it could be said that he abandoned responsibilities that we shared, whether that was Parkfield or Glyn Cousins. It was no big deal

> in the sense that I was perfectly capable of dealing with it, but we had been partners for 40 years and…..I don't say I felt hard done by but I was left to deal with a lot of stuff that was not really my experience".

Glyn Cousins LLP and Cavendish Coombe Limited

93. Mr Glyn had a number of on-going business interests although he said his involvement was as a passive investor only. He said that whilst he did not give up all property investments when he retired in April 2005, the investments he retained did not involve him dealing with tenants and agents as regards collecting rents and such matters. He had no wish to manage a substantial property investment portfolio as he had done previously but felt that let property was still a good long term investment for his family and one that he clearly knew something about. He gave up his lifetime job of managing investment properties but remained a passive investor on a considerably smaller scale both personally and through Glyn Cousins LLP ("**GC**"). This required no day to day activity from him.

94. Mr Glyn and his brother set up GC on 14 December 2004. This was formed as to 96% for the benefit of the children of Mr Glyn and his brother and as to 4% for the two brothers themselves (2% each). It acquired 23 of the properties owned by MGL/Hillpride all of which were residential properties leased to tenants. The brothers considered that these would appreciate in value considerably once the tenants left. They did not want to sell them to third parties in 2004 as they considered the price they could obtain then did not reflect the full potential value. The partnership acquired some of these properties through buying the shares in Cavendish Coombe Limited from MGL as that avoided the need for the properties first to be offered for sale to the existing tenants under their pre-emption rights. This was funded initially by a loan from Hillpride which was initially replaced by a loan from Mr Glyn and later loans from the two brothers in differing proportions.

95. Mr Glyn noted that GC was established for the benefit of the children at the time but none of them have shown any interest in the property business (although his niece now works with his brother but that was a later development). In order to enable his brother to be managing partner he had to have a share, however small, in the activities and, because they undertook all their joint activities on a 50/50 basis, he was put in the same position as his brother to maintain equality of ownership between them. He said that in practice his brother was responsible for the management of this vehicle. The rents were collected by managing agents who were appointed by and reported to him. In addition solicitors were appointed, if required, which meant Mr Glyn's involvement was very minimal. He said that his brother would advise him if a property became vacant and of what efforts or success he was having in the disposal of the property. That was and remains the limit of his involvement

96. It was noted to Mr Glyn that his brother said in his witness statement that the 4% interest was to enable him and Mr Glyn to control the investments made rather than being for their actual benefit. He agreed that he did have the potential to exercise control but in fact he exercised no management activities whatsoever nor was there any occasion where his brother's decision as to what should be done regarding this vehicle was challenged by him or even questioned by him. His brother was, however, meticulous in keeping him informed which he thought was appropriate as his children

had a significant interest in this; his brother discussed these matters with Mr Glyn rather than with them.

97. It was noted at the 2013 hearing that Mr Glyn remained a director of Cavendish Coombe Limited after his departure to Monaco and as company secretary until his resignation on 26 September 2006. Mr Stuart Glyn said that he was surprised that this was not dealt with more efficiently. It should have been but although the documents seemed to suggest otherwise his understanding was that Mr Glyn was no longer a director of these companies. He said that his brother did not know that he remained a director. Mr Glyn said he had no idea why he remained a director or company secretary and suggested it was down to an administrative oversight by his brother. The brothers were consistent in their evidence that Mr Glyn had no active executive function in relation to Cavendish Coombe Limited or GC.

98. Mr Stuart Glyn noted that his brother would be interested in seeing the accounts as regards GC before they were signed off but saw this as a natural protection of his children's investment. He saw the figures as they were coming through. He had a significant interest in the facility that was available or the loan that was available and would want to make sure that the appropriate repayment of the loan that he personally had made was being made. He described the preparation of the accounts as straightforward and said that to provide the relevant information did not "necessarily need any particular skill on my part and it is not something that I would not necessarily be unable to deal with" and in any event Mr Glyn had left matters in such good order that there were no problems that arose.

99. Mr Stuart Glyn confirmed at the 2013 hearing that Mr Glyn took no part in relation to the disposal of the properties held by GC other than as set out above. He said that the only participation or involvement that Mr Glyn had was when, from time to time, a property became vacant and he instructed agents to sell it, he advised Mr Glyn that that is what he had done. He said that the strategy as regards the sale of the properties when vacant had been laid down many years before, "we knew exactly what we were doing, and the management of that residential portfolio did not require any detailed decision making process, and certainly James wasn't party to any." He said that the "decisions were of a constant nature, they were always the same. Before 2005, "by definition they were made jointly but the decision was the same one. We knew exactly what we were doing and after 2005 the strategy remained unchanged. All that I would do would be to report to James what was happening."

100. It was put to Mr Stuart Glyn that it was inconsistent given the interest Mr Glyn and his family had in GC that he would sit back and have no involvement. He said it was not inconsistent:

> "The strategy…is entirely clear and has been clear from the outset…These are properties which were held as an investment but in effect with a view to disposal at the earliest opportunity. The strategy was clear, it didn't require any deep thought, there was no particular issue in relation to which the children could be compromised, either family, as the properties became vacant they were to be sold. The proceeds were to be applied either in reduction of debt or paying the children's tax bill, until such time as all the debt was paid off. Thereafter the money would be distributed to the children as and when

> the assets were realised. That did not require a joint decision. The decision was made a long time before James went offshore. It was the way we had been running our business for many, many years and James and I had been operating in a relationship of complete trust for 40 years. There was nothing – and I mean nothing – for James to worry about. The strategy had been laid down, the assets were there, he was aware when properties were being sold, he received copies of completion statements when a property was sold and there's no reason at all why he should have remained involved….It was a constancy of strategy and when James left, the strategy continued."

101. He said that was different to the disposal of the rest of the portfolio which involved complex commercial transactions. There were significant alternative ways of disposing of properties and those were tactical decisions that needed to be made jointly. As regards the portfolio in GC, there was nothing tactical; there was nothing particularly demanding in the decisions that needed to be taken. The decisions took themselves. The properties when they fell vacant were to be sold.

Other on-going business interests/investments

102. Mr Glyn also retained five other investment properties held jointly with his brother. His share of the aggregate net rents for those properties for the tax year 2005/06 was £25,000. They had owned these properties for at least 15 years. Mr Glyn was from that time a passive investor only as regards these properties.

103. As agreed with his brother, on 4 May 2005, Mr Glyn purchased the shares in Milverton Venture Partnership Limited ("**MVP**") from MGL for £2.2 million. He was and remains a director of that company. This was originally formed to act as a vehicle the brothers could use to make investments into projects run by Mr Stephen Lyall who had been introduced to them by a mutual friend. Mr Lyall would typically identify investments, arrange non-recourse mortgage finance and actively manage them and then sell the properties and distribute the proceeds. The investments and projects that Mr Lyall managed all usually shared a common "Chester" brand. Mr Glyn was only ever a passive investor. He continued to receive periodic dividends from this vehicle but it had one disastrous investment which meant the whole partnership investment had to be written off.

104. As regards MVP, Mr Glyn said at one stage at the hearing in 2013 that he had probably made two to three investments through this vehicle before April 2005 and five or six after that time. He thought two investments were made when he was in Monaco for around £1 million in total. In his evidence the following day he was unsure on this and said he could not confirm whether there were five or six after April 2005 or confirm precisely what investments were made.

105. It was put to him that given his on-going investments in the Chester brand he would have met Mr Lyall in the UK to discuss the investments. He said he had lunch with him in the UK to discuss their mutual investments probably around three times a year. He thought Mr Lyall came to see him once in Cannes. His brother's new office was in the building where Mr Lyall was based and, when visiting his brother there, he would see Mr Lyall and they would briefly discuss how the investments were going.

He did not participate in this vehicle equally with his brother after he had left for Monaco. His brother then participated to a larger extent.

106. Mr Glyn also had an interest in a company, Statespace Limited, which at the relevant time owned one tenanted property which was managed by his cousin, Mr Howard Glyn. He said his involvement in this company as director was minimal with his cousin rendering quarterly rent accounts and managing all required payments and expenditure. An independent accountant produced the annual accounts.

107. He said at the 2013 hearing that he recalled that whilst he was in Monaco he had a joint investment with his brother in an invoice factoring business. At some stage that required an injection of cash which may have occurred when he was in Monaco. The company was SME Invoice Finance Limited and he was a director of it only on his return to the UK; he was a shareholder before then.

108. He could not recall making any personal investments in the UK after April 2005 except that he used Goldman Sachs to invest around £7 million of his funds. He did not think GC made any new investments. It may have spent money on existing properties to refurbish them.

109. Mr Glyn used some of the dividend proceeds received on his exit from the family business as follows. £15,000 was used to clear an overdrawn account maintained by Mr Stuart Glyn in respect of their personal investments, £827,505 was loaned to GC to allow it to purchase the shares in Cavendish Coombe Limited (under a facility he provided to GC of £7 million) and £1,200,231.50 was loaned to MVP.

Parkfield

110. At his retirement, the properties he owned jointly with his brother included the land at Parkfield. In September 2006 he transferred his interest in all of these properties to his wife as a gift. The Parkfield property was subject to a long lease to a business that used it as a car park. This lapsed in March 2007 and the brothers considered what to do with the property. Eventually Mr Stuart Glyn secured planning consent for a hotel to be built on the site and went on to put in place an "oven ready scheme" with a fixed price building contract and a tenant, Premier Inns, in place.

111. Mr Stuart Glyn discussed this with his brother rather than Mr Glyn's wife given his past experience. They discussed on the phone what to do with the property when planning permission was obtained. Mr Glyn's preference was to sell the property on the open market but Mr Stuart Glyn wanted to complete the development and realise the additional value. Mr Glyn had no experience of property development prior to this and Mr Stuart Glyn had only done one development. Mr Stuart Glyn dealt with the development and Mr Glyn and his wife agreed to it on the basis that their involvement would be minimal. Mr Stuart Glyn said in his witness statement that the decision to go ahead with the project was on the understanding that he was to be principally responsible for it. He confirmed at the 2013 hearing that:

> "after some rather heated discussions the agreement we came to was that we should build it out and keep it as an investment on the primary condition that I would run the entire project and that's in fact what happened over the next two years. We built the hotel and it's now operating and very successfully and it's a cash cow which produces good income which we both enjoy".

112. Mr Stuart Glyn appointed a professional team to undertake the development and he was responsible for liaising with them. Mr Glyn said that he and his wife had hardly any involvement in the development of the hotel although his brother did keep him informed on the progress of the project but these were little more than courtesy calls with no input from him. He said he probably spoke to his brother on this less than once a week on average on calls from Monaco. He visited the site two or three times during the period that he lived in Monaco. Mr Stuart Glyn said that Mr Glyn's involvement was near enough to zero.

113. At the 2013 hearing Mr Glyn confirmed that there were probably occasions when he spoke to his brother three times in a day regarding this project but other occasions where they might not discuss it for a month. He agreed that he not only discussed this with his brother on the telephone, but also when he was in London and saw his brother and that he also discussed with him on such occasions their other joint business interests. He said that:

> "We were brothers who had been working together all our lives and when we got together, the subject that we were most familiar with discussing amongst ourselves were business matters…..And we would discuss those matters, we would discuss what I was doing in Monaco so that he could consider whether it was a good idea for him to follow similar things, and he would tell me what he was doing, and we were probably both a little unimpressed with what the other was doing, and that's how it was."

114. He agreed that he visited his brother at his office and they might have a coffee together or they would go out for lunch together over which they would discuss business matters. He did not agree, however, with any implication that he was attending the office to conduct business activities. He was attending the offices to visit his brother and discuss matters of common interest which included their business activities and "I would probably concede that our business activities were the main interests that we shared. Discussions of my mother's health would probably have been an equally important matter as she was becoming increasingly dependent". He thought visiting his brother's office was fairly infrequent, maybe one visit in four, but that was a vague recollection of what the probability was. He had no record of these visits.

115. Mr Stuart Glyn was questioned at the 2013 hearing about how frequently he phoned his brother as regards this project. He said that the calls were not frequent. He said that there may have been "hot moments" during the process when he would speak to Mr Glyn more regularly but he was consistent in his view that the project was something "James showed very little interest in and I had to accept full responsibility for". He took the responsibility for arranging a facility with the bank for £7 or £8 million as a development contract and awarding contracts to the builders and given that the ultimate investment at the end of the day would be worth £15 million, he said he made no apology for speaking to Mr Glyn "occasionally and on some occasions more than once a day when these decisions were in the process of being made". He said, however, that Mr Glyn was "extraordinarily reluctant to get involved in the development".

Retention of CR and related assets/matters

116. Mr Glyn said in his witness statement that whilst they decided to keep CR on moving to Monaco it ceased to be his home in the sense of a settled abode when he left for Monaco. He set out the following reasons for retaining it:

(1) He knew he was going to return to the UK at some point. He and his wife had not agreed a timescale but they did expect to be living in Monaco for a number of years and on his return he wanted to live at CR.

(2) His children were in a vulnerable state having undergone a traumatic event; his daughter's ex-boyfriend had attempted to murder his son. That was the main reason the children were not pleased with their parents' decision to move abroad. They were brought up in that house and although they had moved out they considered it their home and kept some of their possessions there. His wife thought that selling or renting the house out might add intolerably to the children's stress at that time.

(3) His mother was elderly and although in reasonable health, a little frail. She lived alone in an apartment close to CR. Mr Glyn thought that she might in time need a resident carer, possibly at short notice, in which case CR would provide an ideal place she could move into to receive such care as her apartment was not suitable for that. That would also mean he would not need to return to the UK unexpectedly should his mother take a turn for the worse.

(4) It represented an excellent investment opportunity in terms of capital appreciation.

(5) He did not need to raise money by selling it or renting it out. It was convenient to use when back in the UK. In the light of the advice he received he saw no reason not to use it for occasional visits. He did not use it as a home nor even a holiday home but rather a stop-over place. It was not his base and he generally did not return to it after his holidays. His base was in Monaco where he kept his personal papers. He said he used it when he visited as a hotel. Many of his visits were transitory. He and his wife would often have to fly in to or out of Heathrow en-route to or from their destination and on such occasions they would stay there rather than staying at an airport hotel.

117. At the 2013 hearing he clarified that the possessions his children kept at CR were items such as books, items they had made at school and the cups his son had won for his athletic activities and probably some clothes.

118. It was put to him that one of the reasons for retaining CR was so that his wife could stay there when in London. He said that was overstating matters. That was not the reason but one of the recognised advantages was that it was a place they could both stay rather than using a hotel. He felt his wife was entitled, as between husband and wife, to insist that particular house rather than some other accommodation should be retained for their benefit. He agreed that she did insist that it was retained although he did not think it needed her insistence for him to share that view.

119. Mr Glyn said that on 5 April 2005 he simply shut the door to CR and went away without changing anything in the house. On 30 July 2005, he renewed his UK home insurance, which comprised:

> (1) deluxe contents insurance in the sum of £472,500. He confirmed that this covered such items as dining table and chairs, cabinets, sofas, a collection of books, china, crockery, cutlery and general household items such as glass and linen, all of which remained at CR after 5 April 2005 (although they took some valuable items to Monaco which were covered on a world-wide basis); and
>
> (2) fine arts insurance in the sum of £251,000. He confirmed that all of the artwork at CR remained there after 5 April 2005.

120. Following the move to Monaco, he also retained at CR phone lines, an internet connection and maintained his sky subscription. He said he left the house "fully operational". He noted that the family were keen sports followers and his son did not have Sky and it was a very nice tie that when there was an event his son would come to CR to watch it. It was something that brought him to CR with added frequency and Mr Glyn was not going to cancel the subscription that his son made use of after he had gone. His son continued to visit CR for that purpose and other reasons, such as to use the phone and check up on the place.

121. He retained two cars in the UK, a Mercedes E 500 bought in 2002 and a Mercedes CLK 320 bought in October 2004, and maintained insurance and AA membership. The first car was frequently used by his mother who was driven in it by a friend. The other was really his wife's car and was driven almost exclusively by her. HMRC noted that Mr Glyn accepted he had bought the Mercedes CLK320 for use in the UK after the date at which he claimed to have formed the intention to emigrate to Monaco (and only 5 months before his flight to Nice on 5 April 2005). HMRC considered that wholly inconsistent with either an intention to effect a distinct break or the actual effecting of a distinct break on or before 5 April 2005. Mr Glyn accepted that he and his wife used these cars whenever they were in London after 5 April 2005.

122. Mr Glyn obtained parking permits for CR for all of the years from 2005 to 2010. He said in his witness statement that he later became aware that Westminster Council operated a policy that to obtain a parking permit a person's sole or main home must be in the controlled parking zone. He said he was not aware of this at the time but, having learnt of it, he wanted to confirm that he did not consider CR as his sole or main home during these years.

123. At the 2013 hearing it was noted to him that in order to obtain such a permit he had had to sign a declaration, which stated: "The Westminster address shown in section 1 of this form is my sole or main domestic residential address and the motor vehicle(s) is or are solely kept by me in Westminster and I am the main driver". He accepted that the declaration had contained a criminal caution which provided that it would be a criminal offence to provide false information. He accepted that in signing this declaration in respect of each of the years of claimed non-residence, he had represented to Westminster Council that CR was at the time his sole or main

residential address. He acknowledged that with hindsight his use of the form was improper.

124. In Monaco he had a left hand drive VW Golf (originally purchased for use at the apartment in Cannes) which he replaced in 2006 with a left hand drive Mercedes CL 500 that he used as his everyday car.

125. Before he left the UK and during his residence there he had a Coutts & Co world credit card for which there were four authorised signatories and card holders – he and his wife and their children. He also maintained a joint account with his brother at the Cooperative Bank which was used as a means of funding the investments they held jointly.

126. The house was near his National Health Service doctor in St John's Wood where he remained registered throughout the period of claimed non-residence and where he retained a repeat prescription for statins. It was also within easy travelling distance of Mr Steven Bailey, his Harley Street eye specialist, under whose care he underwent treatment for cataracts in London in 2006 and 2007. Mr Glyn said he did not consult his NHS doctor for any other matter during his Monaco residency. His brother's secretary used to collect the prescription for him and he collected the drugs when he was in the UK.

127. The house was also within walking distance of Lords cricket club where he retained his MCC membership. It was noted that he maintained this membership on the basis that he was an out of town member (although that was on the basis he did not live within 20 miles). He could perhaps have had a cheaper overseas membership but he thought it would be churlish for him to seek the cheapest possibility as he regarded the MCC as worthy of support. It was his habit at the time to buy two or four tickets in advance for important matches he wanted to attend with his son in the knowledge that if he could not go plenty of his friends would like to go.

128. Mr Glyn had what he described as his main bank account in Monaco through which much of his monies passed (such as the dividend) and credit card bills were sent to Villa Rosa. However, following the move to Monaco he retained a joint UK bank account to pay bills in the UK. He continued to receive at CR his bills for that property and related assets (such as an Aon motor insurance policy for UK based cars, City of Westminster Council tax demand notices, gas, electricity and water bills, BT and Talk Talk telephone bills, Thames Water invoices, house and contents insurance for CR and the apartment in Cannes) and bills relating to the Cannes apartment (such as the telephone bills), bank account statements for accounts held in Cannes and in the UK and an Axa PPP Healthcare policy. Mr Glyn noted that the Cannes bills were paid by direct debit from his account in the UK. His evidence was that he would pick up and read this correspondence in his office at CR and file it away there. He would not take it back to Monaco with him.

129. At the 2013 hearing Mr Glyn said that he left the London accounts/statements in CR and filed them away there, and the French accounts he took back with him to Monaco. It was rather an old-fashioned accounting system like having a tin for the rent money and a tin for the gas money, as he would take the Barclays Cannes accounts and physically keep them in the apartment in Cannes so he would take them back with him to Monaco.

130. He remained on the electoral register at CR as a postal voter. It never occurred to him not to retain the ability to vote.

131. HMRC said it is noteworthy that Mr Glyn had been specifically advised that the retention of a "home" would not be relevant to whether or not he became non-resident. HMRC asserted that this was significant because it meant he was all the more likely to continue to use CR after 5 April 2005 in exactly the same way as he always had, i.e. as a home, as he was not aware it might impact on his tax planning. We have commented on this in our conclusions.

Life in Monaco

132. Mr Glyn said at the 2013 hearing that when he moved to Monaco on 5 April 2005 he effectively closed down his life in London after a period of lengthy planning with no intention to return in the foreseeable future. He not only moved physically but also mentally. He took his papers and possessions and effectively said goodbye to his family and friends (not that he would never see or speak to them but it was a farewell) and he and his wife knew they were starting a new life in Monaco as their new home.

133. He described his life in Monaco as an idyllic existence. He spent his time walking, swimming, sitting in cafes, reading and generally enjoying the delights of Monaco and the neighbouring French and Italian towns and villages. They were often visited by friends from the UK. He was able to travel quite extensively on holidays in accordance with his retirement plans. He executed a will in Monaco in case he died as a resident there with substantial liquid assets there.

134. He received the dividend into his bank account in Monaco where he managed his financial investments personally from an office in his apartment in Monaco. The dividend funds represented perhaps 99% of his liquid assets and probably 75% of his net worth. He was assisted in managing these funds by Barclays Wealth in Monaco and later the Private Wealth team at Goldman Sachs. Barclays advised him but the investment decisions were his. He enjoyed learning about investment and the various markets and for a time this occupied quite a bit of his time. Goldman Sachs were later engaged on the basis they could make investments on his behalf but only after agreeing a general strategy with him.

135. He described dealing with the investing of his money in Monaco as his main activity following the move and his retirement. The rest of his investments did not require any participation on his part and were entrusted to his brother and sub-entrusted by him to managing agents because of his inability to do those kind of management functions. So from being a full time participator in the property business he became a passive investor.

136. He said at the hearing that, therefore, he "adopted a different pattern of life". He enjoyed learning how to manage the cash he then had and he spent his time in Monaco:

> "studying this new financial discipline alone, by reference books and by reading prospectuses, by discussion with my Monaco bankers…..And my life became extremely pleasant, stimulating and despite my referring to – conceding that my life was one of entire

> leisure and irresponsibility, it was actually …. A life that I was finding stimulating in a way that my life in London had ceased to be."

137. He said that following his retirement he became far more sociable. He engaged in much greater physical activity (swimming and walking as set out below) and was spending time with his wife for the first time in his married life in the sense that he thought his wife would say that before he was invariably preoccupied and difficult to talk to. By the time they got to Monaco he was excessively garrulous and spending much time with her. They had never played scrabble together before but became keen players. They solved crossword puzzles together, they walked and drove and spent all their time together. In the context of adjusting to him being retired and spending so much more time together he considered that the fact that Mrs Glyn typically went to London a few days before him and came home to Monaco a few days afterwards was not at all surprising.

138. Before the move, CR was very much the family home where he had brought up the children and they had entertained very frequently but sadly when he returned to the UK he did not feel that same connection:

> "My life had moved to Monaco and remarkably, almost instantly……Monaco was my home and returning to London, I accept it was not a hotel or anything like a hotel in the accommodation and so on, but it was very much like staying in a rented apartment, it wasn't my home suddenly."

139. He thought that for him what made a home was where his books, computers, business papers, the files about the new shares and the "exciting stuff I was starting to investigate. I think those were the things that probably made Monaco my home and meant that CR no longer was."

140. Previously the Glyns had spent around eleven weeks each year in the apartment in Cannes. In the first year in Monaco they spent only six nights in Cannes. They visited Cannes less than a dozen further times in that year even including trips to move possessions from Cannes to Monaco. There was a similar pattern in later years. Mrs Glyn said they went there if they had to go for some reason such as if the children were there or a social reason. But she really had no interest in going there when she was in Monaco – it was only if there was a particular reason.

141. Mr Glyn said that they developed a pattern of living in Monaco. He walked vigorously every morning before breakfast for about an hour buying a newspaper on the way back from a newsagent opposite Villa Rosa. Prior to moving to Monaco he had not taken regular lengthy exercise so at first these walks were strenuous for him but they became easier. He bought walking trainers and a walking tracksuit for the winter and later bought a treadmill which he installed on a covered balcony at the apartment for days when the weather prevented him walking on the streets. He described himself as a poor swimmer but when the weather became warm enough he started swimming in the sea and each day swam a bit further until he was able to go over 500 metres a day which he considered a considerable achievement. He lost nearly two and a half stones in weight after about six months of being in Monaco. He was clearly benefitting from his retirement which was what he had planned and he took great pleasure from it.

142. In cooler months typically he would spend the first part of the morning working in his office or reading. The work consisted of phone calls and reading financial data and prospectuses, bookkeeping and some filing. During that time his wife probably did a little shopping and cooking. In the mid-morning they would go for a coffee and return to the apartment for a light lunch. In the afternoon they would either read and play scrabble or visit a gallery or exhibition or go for a drive to a town or village in France or Italy. They ate in the apartment about five times a week and out at restaurants on the remaining two evenings. About once a fortnight they would visit the English cinema which for a couple of months in the summer was held outside.

143. In warmer weather they followed a similar routine but spent as much time as possible at the beach swimming, playing scrabble, reading (business papers and for pleasure), sunbathing and general whiling away the time. They had a cabana at one of the beach clubs in Monaco where they spent much of their time in the summer months. They were also sometimes invited to spend days on boats of friends they made. There were people whom they saw regularly and chatted with at the beach but they hardly exchanged names and did not socialise with them away from the beach.

144. Whilst this was their general routine in Monaco it was interspersed with visits from friends and family. They also took holidays, trips to the UK and regular trips to Nice and Cannes.

145. Mr Glyn agreed that the Villa Rosa apartment was small compared to CR. Mr Glyn said he was reasonably content with the apartment but he hoped to get something larger as he did when they moved to an apartment in the Rocabella building. It was satisfactory but he hoped for better and was later able to secure better. He said that it was a requirement of his that the lease of the Villa Rosa apartment included a one year break clause. That had surprised the agent and his solicitor as the norm was a fixed three year term but he was hopeful of obtaining better and wanted to retain the ability to do so. The object of the clause was that they were looking to make a permanent home and were prepared to commit to a larger apartment as soon as it came available. In fact that is what happened as the break clause was exercised so they could move to Roccabella in March 2007.

146. In her witness statement Mrs Glyn said that it was important to her that Monaco was a proper home. She needed to be able to live there as she had in London. It was critical the apartment had at least three bedrooms so that the children could stay. She said that she arranged things so that the children could just come over with very little luggage and live there as if it was their family home. She made sure things were the same at Roccabella and it also had three bedrooms. At the 2013 hearing she described how they had purchased art for Villa Rosa and Roccabella. From her descriptions of the purchases made it appeared she was enthusiastic about furnishing and equipping the apartments.

147. She noted that as it happened the children stayed several times in Monaco in the first year and three or four times on their own or with friends in Cannes. The children wanted their own holidays but it was important to her they could just turn up in Monaco whenever they wanted.

148. Her account of how the Glyns passed their time in Monaco largely accorded with that set out by Mr Glyn above. She said that they made a lot of friends in

Monaco particularly when they moved to Rocabella which was more sociable. She also spoke to her friends on the telephone. Generally there was always the odd person turning up at the apartment as several of their friends had holiday homes in the South of France and would come over for supper or they would go out. When friends came to visit she cooked for them on the first night, which she enjoyed doing, and then they would eat out. The amount of entertaining she did picked up the longer they were there but she entertained on average around twice a month, perhaps more in summer. She spoke of the pleasures of attending music, cultural and sporting events in and around Monaco and that she liked to shop for clothes and for items for the apartments (such as Baccarat champagne flutes, Christoffel whisky tumblers and Limoges china).

149. In her witness statement she said that although there were a lot of good times there were less good times. In the first year or two she found there was little to do in winter and she had panic attacks as she would not know what to do with herself. She also had some health problems in 2007. Both her sisters in law were diagnosed with cancer and she was upset that she could not fully support them as she was not in London as well as feeling bad she was not there to support her mother-in-law. She also missed the children and recalled not being with them for a number of key moments such as when her daughter got engaged or announced her pregnancy. She missed the spontaneity of family life. At the 2013 hearing she said it was really as big an adjustment for her getting used to the situation in retirement as it was for her husband. There were times she missed the children and she was used to a life in London where she would be out all day and doing whatever she wanted to do when her husband was working. In Monaco their lives changes so much and as Mr Glyn was retired they were together 24/7.

150. The Glyns' friends who visited them in Monaco and their children gave evidence as to their lifestyle in Monaco consistent with that set out above.

Overview of time spent in the UK

151. Mr Glyn set out in his witness statement a detailed schedule of how he had spent his time in the tax year 2005/06, details of which are set out below. He confirmed that when he and his wife flew to London they typically took the morning flight from Nice at 8.00am or 10.45 am and returned to Nice on the evening flight arriving at around 11.30 pm. In summary in 2005/06:

(1) Mr Glyn was present in the UK, counting any presence on a day, for 86 days and his wife for 134 days. Excluding days of arrival and departure he was in the UK for 44 days and for 64 days on the basis of presence at midnight.

(2) Mrs Glyn was present in the UK for seven days or more, consecutively, on nine occasions.

(3) Mr Glyn was in London on 22 occasions in that year and was in the UK for 16 weekends as set out below.

(4) Mr Glyn was in Monaco, excluding days of arrival and departure, for 191 days and, on the basis of midnights spent there, for 214 days.

152. In summary in 2005/06, Mr Glyn was present in London as follows:

(1) From 22 to 25 April 2005 (three nights).

(2) Before and after flying from London on holiday, on Friday 6 May 2005 (leaving on 7 May), on Sunday 15 May 2005 (leaving on 16 May) and on Friday 20 May 2005 (leaving on 21 May).

(3) From Thursday 9 to Monday 13 June 2005 (four nights) and from Thursday 23 to Monday 26 June 2005 (four nights).

(4) From Sunday 10 to Tuesday 12 July 2005 (two nights) on return from a holiday to the US.

(5) From Tuesday 16 August to Wednesday 24 August 2005 (eight nights).

(6) From Thursday 15 to Sunday 18 September 2005 (three nights) and from Friday 30 September to Thursday 6 October 2005 (six nights) and Wednesday 12 to Saturday 15 October 2005 (three nights).

(7) From Friday 4 to Monday 7 November 2005 (three nights) and from Friday 25 to Thursday 1 December 2005 (six nights).

(8) From Wednesday 7 to Sunday 11 December 2005 (four nights) before going on a long holiday.

(9) From Saturday 7 until Monday 10 January 2006 (two nights) on return from holiday and from Friday 27 to Sunday 29 January 2006 (two nights).

(10) From Saturday 4 February to Monday 6 February 2006 (two nights) and from Wednesday 8 February until Sunday 12 February 2006 (four nights), on which day they departed on holiday, and from Monday 27 February to 2 March 2006 (three nights) on return from holiday.

(11) From Friday 24 to Monday 27 March 2006 (three nights).

(12) From Saturday 1 April to Sunday 2 April 2006 (1 night)).

153. In the tax year 2005/06 Mr Glyn was in the UK for all of the family's birthdays except his wife's. He was present in the UK for each of his children's birthdays in the tax years 2006/07 to 2009/10. He was present in the UK for his wife's and his mother's birthdays in three of the tax years from 2005/06 to 2009/10.

154. Mr Glyn was in London in each of the years 2005/06 to 2009/10 for events of significance in the Jewish faith such as Passover, Rosh Hashanah (or Jewish New Year) and Yom Kippur.

155. As noted Mr Glyn was present in the UK in 2005/06 for 15 Fridays (10 of those being part Fridays). In the subsequent tax years the Glyns were present in London on Fridays as follows:

(1) In 2006/07 Mr Glyn was present in London for 12 Fridays and his wife for 15.

(2) In 2007/08 Mr Glyn was present in London for 17 Fridays and his wife for 19.

(3) In 2008/09, Mr and Mrs Glyn were both present in London for 19 Fridays.

(4) In 2009/10 Mr Glyn was present in London for 19 Fridays and Mrs Glyn for 27.

156. We note that Mrs Glyn said in her witness statement that Mr Glyn was extremely careful with his day count and would only travel to London if necessary and generally as little as possible. He wanted to move to Monaco properly and in her mind that is what he did. She said he was always focussed and disciplined in whatever he did. She said that the family Friday evenings stopped and she saw a lot less of her family and friends in London. If she was in the UK on a Friday they would eat at her daughter's or at a friend's or with her sister in law. She said "the pattern of us eating Friday dinner at CR had stopped" as Georgina also said. Toby and Georgina said in their witness statements that they maintained the family Friday night tradition by eating together at a restaurant and their parents would join them when they were in London. Toby said the Friday night dinners at CR had ceased.

157. Mr Glyn confirmed at the 2013 hearing that, as regards the Fridays he was in the UK as set out in [155] above, he spent "almost every one of them, those Friday nights, with my children" and "the majority would have been at Circus Road, yes, sir." Mr Glyn's evidence under cross examination was clear (and we note that neither Toby nor Georgina were cross-examined). It appears that whilst it was correct that it was not every Friday when Mr Glyn was in the UK that the family were together at CR, it was the majority of Fridays.

Details of 2005/06 tax year

158. As noted, the Glyns arrived in Nice on 5 April 2005 on a one way ticket. The Glyns returned to the UK for a short visit on 19 and 22 April 2005 as set out below. It is not clear whether these flights were pre-booked when they initially flew to Monaco. Mr Glyn thought it was in his contemplation he would be returning in a short time but he could not be more specific.

159. On arrival in Monaco on 5 April 2005 the Glyns went to Cannes to collect their car and pick up clothes, linen, utensils, business papers, books and games and general household items they had been collecting there in preparation for the move to Villa Rosa. They drove to Villa Rosa in the evening. Mrs Glyn went shopping at a nearby supermarket for basic food and cleaning materials and, having unpacked, they went out for dinner at a local restaurant.

160. On 6 April 2005 they walked to the local markets, had breakfast at a street café, bought food and walked around to familiarise themselves with the neighbourhood. After lunch at the apartment Mr Glyn started sorting out his papers and possessions. He went to a habitat store to buy storage boxes and a desk chair. He noticed an Italian barber shop which he then visited every few weeks for a hair-cut. That afternoon his computer was set up at the apartment.

April 2005

161. In the following days in April 2005:

(1) In the initial few days the Glyns met the cleaner who they engaged to clean the apartment on three mornings a week, they visited the shopping centre, they met up with London friends, Mr Glyn had meetings with Barclays and his Monaco solicitor and resolved computer issues and they had a shopping trip to Nice. Mrs Glyn noted that the cleaner remained working for them when they moved to an apartment in the Roccabella building (and her sister worked for them also). Mrs Glyn recalled making sure the kitchen was fully equipped as she wanted to be able to entertain. She also bought what was required for Shabbat in case they had friends visiting on Fridays who were more observant.

(2) On 13 April Mr Toby Glyn came to stay for three nights whilst Mrs Glyn left for Paris to see their daughter. Mr Glyn and Toby visited the Gorge du Verdun and the Cocteau museum/gallery in Menton and they drove to Cannes to collect some further things from the apartment there.

(3) On 19 April Mrs Glyn flew to London and Mr Glyn was alone for three nights before also going to London on 22 April for three nights.

(4) Mr Glyn started to develop the routine described above. He worked, walked and read and used the CD/DVD player to watch a film. He enjoyed having a go at cooking for himself and he started a French language course on CDs which he spent many hours on over the following months but with little success.

(5) On 21 April he had another meeting at Barclays in Monaco and then drove to Cannes where he met a valuer at the apartment so he could make a wealth return to the French authorities.

(6) Mr Glyn could not recall how he spent the time in London except that on 23 April (a Saturday) they had dinner with the family at his brother's house. He confirmed that the dinner in London on 23 April was for Passover and so was quite a big event with around probably 20 people present mostly relatives but possibly some of his brother's friends.

(7) The Glyns returned to Monaco on 25 April accompanied by Elane Isaacs, who stayed within them until 29 April when their daughter arrived. During this time they and Elane met with British friends, the Rosses, who had a home in Cannes. When their daughter arrived they had lunch with her at the beach club on a couple of day and ate out elsewhere the other day. Mr Glyn followed his usual morning routine even when there were visitors in Monaco.

162. Whilst Mr Glyn could not remember many specifics of his time spent in London in April (or all details of the other trips set out below), he said that typically on a visit to London at this time he would spend his time as follows:

(1) As noted he typically flew into London from Nice on the morning flight and flew back to Nice on the evening flight. He noted that would mean leaving London around 5.30pm to catch a flight at around 8.30 pm and he was probably in travel mode in terms of organising his packing from around 4.00pm. He agreed he would most likely spend the morning

on arrival in London at CR. He said it was no longer his home but it was homely as a place to stay. He noted that the housekeeper was there all the time; his wife retained her services whilst they were in Monaco.

(2) On the day of arrival, which was often a Friday, he would probably visit his mother, he would look through the post at CR and sort through papers at his office at CR to see if he needed to take anything such as reference books or files to Monaco. When he had left the Harley Street office he brought only those papers of personal relevance to him to CR. Typically he would have dinner with his children and wife at CR on a Friday evening but he could not recall whether that was the case on the visit to London in April 2005.

(3) On Saturdays at that time he would probably read the English newspapers (as those available abroad did not contain all the sections), he may go for a walk or meet friends for a coffee whether at their house, CR or elsewhere. He may go shopping or watch sport on television. It was a bit of a village where he lived and walking down the high street he would probably bump into at least three people he knew and he could stop with any of them. He would not typically see his brother on such an afternoon especially not on the visit in April 2005 as he saw him for dinner.

(4) He said he would typically spend Sundays in London in largely the same way as Saturdays except that he and his wife would probably go for a walk for an hour and a half or so if the weather was suitable. They may see friends or the children but that was not so likely on a Sunday unless he was returning to Monaco that day.

(5) The friends he saw most frequently were the Gouldens, the Rosenblatts, the Smetanas and the Bermans. At this time he would be more likely to see them at their homes than at CR. Before they moved to Monaco it would have been 50/50 at CR or their homes. There was previously a pattern of a group:

> "of us being at someone's home on a Saturday evening. That would be the Gouldens, the Rosenblatts and the Bermans and depending on whose home it was, the immediate close friends of the host would probably be present too with whom we were all friendly …. And we ceased to be included as hosts of any of those evenings and I wouldn't say we were forgotten but it was understood that we were not available on most Saturday evenings were in Monaco and if we were in London the freedom to devote each of Saturday night we were in London to that same small group was restricted. So we stopped being a full member of this Saturday night grouping."

(6) He later clarified that he thought the gatherings were more likely to be on Sundays than Saturdays. They attended several of these evening get togethers when in London. On this particular weekend in April 2005 he would probably have been at CR on Sunday (as it was Passover and those who were more observant of the Jewish faith would be observing a second ritual on that day).

(7) He said that on a three or four day visit his wife would typically cook at CR on one or two nights and otherwise they would eat out at a restaurant or the home of friends. If he was getting a 5.00pm flight home on a Monday he would probably just have followed his normal morning routine of breakfast and reading the papers, packed and said goodbye to his mother.

163. It was noted to him that he was in the UK on 15 Fridays in 2005/06 and it was put to him that he dined with the family at CR on those evenings. He said that he generally came to the UK at the weekends as one of the reasons was to see his family and friends and that was when they were free. He confirmed that his children continued with the family tradition and when he and Mrs Glyn were in London they would join them. He thought this was generally at CR and possibly once at his daughter's home and one time his son catered which he remembered as that was memorable. He said that "on many of the occasions it would have been at Circus Road…On other occasions it might have been at my daughter's house, and I think on only one occasion, I think - and I can't remember if it was in the year 2005/6 or subsequently I believe my son catered which was …memorable." He agreed that the majority of Friday dinners would have been at CR (see also [158]).

164. Mr Glyn said that before he left the UK, Passover for him involved a family dinner with the extended family usually at home at CR. The Glyns stopped hosting these dinners once they were in Monaco but invariably they would attend a dinner hosted by another family member (as they did in 2005/06).

165. It was put to him that the reason there was little detail on what happened in the UK was because he was doing nothing exceptional but just what he always did in London as part of the normal routine of his life and that was why he could not remember it specifically. He said that, quite the opposite, it was because:

> "my life was in Monaco. What was significant to me was what was happening in Monaco. The activities in London were my holiday time which was relaxed, casual, unrecorded. I appreciate that by any normal standards, my life in Monaco was also relaxed and casual but my life in Monaco was my real life. My life in London was holiday time. It was not time that was structured or organised."

166. It was put to him his normal routine in London was reading, walking and spending time with family and friends. He said that was part of the routine – it was more probably seeing family and friends and less reading and walking.

167. The Glyns' friends gave evidence that they saw them much less in London after the move to Monaco than previously. Mr Goulden said that in the years before the move he and his wife would see the Glyns around three to four times a month and were in constant phone contact. The Gouldens said that the Glyns stopped being a full member of the Sunday supper evenings and no longer hosted them although they sometimes attended if around. Mrs Goulden continued to meet with Mrs Glyn informally when she was in London but as she was working fulltime this was confined to evenings. Mrs Goulden noted that she and her husband had to plan to see the Glyns much more in advance; that was not the case when they were living in London. Mr Rosenblatt made the same point and noted that he and his wife hardly

spoke to the Glyns on the phone and not with the same regularity as they had when they were in London. Mr Smetana said that following the move he and his wife went from seeing the Glyns every couple of weeks to seeing them two to three times a year and Mr Berman described contact after the move as infrequent.

168. Mr Stuart Glyn said in his witness statement that he estimated that he saw his brother after the move to Monaco ten or fifteen times in London and four to five times in Monaco and Mr Glyn would occasionally call him on his mobile. He became responsible for looking after their mother which he found difficult. At the 2013 hearing he said he had not intended in referring to ten to fifteen times to limit himself. It could have been eight or sixteen. He was trying to give an indication of the limited number of times he had seen his brother in London after the move to Monaco.

May 2005

169. In May 2005:

(1) On 3 May Mrs Glyn went to London. On the following three nights alone the only thing Mr Glyn particularly remembered was speaking many times to Barclays about the anticipated arrival of the dividend which he decided initially simply to place on a fixed term deposit until he returned from a holiday he was about to take. He thought he spoke to his brother about the dividend on 3 May.

(2) On Friday 6 May Mr Glyn went to London and the following day he and his wife flew to Tobago for a holiday with friends. They stayed overnight at CR. Mr Glyn said that on this and other occasions he stayed at CR he was using it as a convenient stop over and not as the family home. They flew back to London on Sunday 15 May and spent the night there again before leaving the next day for Israel. They flew back to London on Friday 20 May and spent the night there again before Mr Glyn returned to Monaco the following day. 20 May is Mr Glyn's birthday. As it was a Friday Mr Glyn thought they probably spent the evening with their children but probably not at CR as they had just flown in from Israel.

(3) On 24 May Mrs Glyn returned to Monaco with Mr Glyn's mother who stayed until 30 May. They went on a number of excursions including a visit to the apartment in Cannes, dinner with London friends the Arnolds who had a home in Antibes, a day in Italy, lunch at the Monaco beach club, dinner at Café de Paris and a drive around the grand prix circuit. They drove his mother to the airport in Nice on 30 May and then had a walk around Nice. They had dinner in Monaco with English friends living in Nice. The following day Mr Glyn had a meeting with Barclays.

170. It was put to Mr Glyn that from Monaco it would have been just as easy for him to take flights on holiday, such as that to Tobago, from Paris as to go to London to do so. He said that:

> "London is a fabulous hub, to the extent that any airport can be fabulous, and my holidays from Monaco were…two-centre holidays in the sense that if I was going to have to travel somewhere and pass through a hub airport, I could use the opportunity to make London that hub and spend a couple of days in London on occasions. Sometimes I

> ….. simply stayed airside and kept travelling. But if I was going to have a night over somewhere, it was better to be in London, where I could see people or do things, than Paris or Milan which have no relation to me at all….the days in London were part of the holiday. The holiday was from Monaco, not from London….I did not regard myself as returning home to Circus Road. It was on my way home to Monaco that I stopped at Circus Road….And it was a stopover which is being incorporated as part of the holiday plan, the holiday from Monaco."

171. It was put to him that one of the reasons for flying into London prior to the holiday was because his wife was there. He said that was not the case. His wife was in London as part of the planned trip. They met up in London as part of the plan. He was not flying in to meet his wife; he was doing so to go off to Tobago. He did not return to London because his wife was there. They were travelling together as husband and wife.

172. It was put to him again that he flew back to London from Tobago because Mrs Glyn was staying an additional four days at CR. He said that was not the reason. The flight was a return one from and to London and they needed to move straightaway to Israel so it made sense to fly there from London and the most economic and sensible way to make flight arrangements is to buy return tickets from and to the same place. It would have been more convenient for him to fly direct to Nice but that just did not happen.

173. It was noted to Mr Glyn more generally that his wife was often present in the UK for a consecutive period of as much as seven days or more and put to him that meant he was often flying into the UK to be with his wife. He said that was misleading as he was flying in for a whole range of reasons.

June to August 2005

174. In June to August 2005:

> (1) The next few weeks involved similar activities. From time to time the Glyns had dinner with friends from the UK, who came to see them in their new home when holidaying in the area as well as with his Monaco solicitor. They did not make particular friends with the expat community at the villa. That came later when they moved to Roccabella which was more social as there was a pool and other amenities. In any event Mr Glyn was exhausted after the previous year and welcomed time alone or just spent with his wife. He described himself as self-contained and said he did not feel the need for endless socialising.
>
> (2) On 6 June Mrs Glyn went to London to attend a WIZO charity lunch she had helped to organise. Mr Glyn was alone in Monaco for three nights and again met with Barclays during that time.
>
> (3) On Thursday 9 June Mr Glyn went to London where his daughter was to have her wisdom teeth extracted the following day. He also saw his son and mother at that time. The Glyns planned to return to Monaco together on 13 June but at the last minute Mrs Glyn decided to stay in London for a few more days before returning to Monaco on 16 June.

(4) On Thursday 23 June the Glyns flew to London for the weekend returning to Monaco on Monday 26 June.

(5) On 28 June Mr Glyn thought that Toby came to visit in Monaco and stayed until 30 June. There was a discrepancy in that Mr Toby Glyn said in his witness statement that he only visited Monaco twice in this period identifying the two other periods referred to of 13 to 16 April 2005 and 5 to 7 September 2005. Mr Glyn thought it was his son's recollection which was incorrect. He thought that Toby may have forgotten as it was part of a longer trip to the South of France and he moved on to the apartment in Cannes. We accept Mr Glyn's evidence on this as from the transcript he was very clear on the point.

(6) On Thursday 30 June the Glyns flew to New York via London but they did not leave the airport. They were in the US until 10 July. In New York they had dinner with American friends and attended the wedding of the son of English friends who had been living in the US for a long time. They also visited friends in San Francisco and went with them to the Napa Valley. On Sunday 10 July the Glyns flew back to London from the US where they stayed for two nights returning to Monaco on Tuesday 12 July.

(7) It was Mrs Glyn's birthday on 13 July and they spent the day together in Monaco and had a celebratory dinner out with Canadian friends.

(8) On 14 July they went to Cannes for two nights and saw a number of London friends who have holiday homes in France.

(9) On 20 July they were visited by an American friend who was staying in a villa fairly close by and had dinner with her in Monaco.

(10) On Friday 29 July the children arrived and they went to Cannes to collect some of their things from the apartment and stopped for dinner in Nice on the way back to Monaco. The children stayed until 31 July.

(11) On 4 August the Glyns drove to Porto Ercole in Italy where they stayed with friends in a hotel until Monday 8 August when they returned to Monaco. Separately on 5 August their daughter went to stay in Cannes for a few days.

(12) On their return to Monaco they settled back into their routine. They met London friends, the Gouldens, for coffee and dinner that evening with three other London friends. On Saturday 13 August they visited Cannes during the day and then dined with London friends, the Bermans, in Biot before returning to Monaco.

(13) On Tuesday 16 August they flew to London and returned to Monaco on Wednesday 24 August. Mr Glyn visited his old office to help his brother with his office move to Hanover Square. He considered he was helping his brother out rather than fulfilling any business role. On Friday 19 August he visited his father's grave as that was the anniversary of his death. On Saturday he probably had dinner with friends (as indicated by a diary entry) and on Sunday 21 August the Glyns attended the wedding of a son of their friends the Warrens. Mr Glyn thought it is possible he met

friends on one or other of the remaining days. He said at the 2013 hearing that "I saw all of my friends whenever I could".

September to December 2005

175. In September to December 2005:

(1) The Glyns' daughter and son both came out briefly to Monaco again in August and September. Toby arrived on 5 September for two nights and the Warrens also arrived that day. On 8 September they went to Cannes with the Warrens where they stayed in the apartment for four nights until Monday 12 September when they returned to Monaco to resume their usual routine there.

(2) On 14 September Mrs Glyn flew to London and Mr Glyn followed on the next day Thursday 15 September. They returned to Monaco on Sunday 18 September. Whilst they were in London Mr Glyn attended a meeting with BDO and they were introduced to the man who later married their daughter. He could not recall where that took place. Mrs Glyn said this took place at a restaurant.

(3) On 20 September the Glyns set off from Monaco by car for Madrid to attend the wedding of Canadian/Spanish friends. They stopped in Barcelona for two nights before arriving in Madrid on 22 September. They left there on 26 September and spent a couple of nights in Gerona on the way back arriving back in Monaco on 28 September.

(4) On 29 September Mrs Glyn flew to London and Mr Glyn followed her on Friday 30 September. They returned to Monaco on Thursday 6 October. During this time in London Mr Glyn attended a further meeting with BDO. He said he would not have come over then but for the on-going tax issue as regards the capital loss scheme.

(5) He said that as Monday 3 October was the night before Rosh Hashanah (Jewish New Year) they would have celebrated with a family dinner possibly with the extended family. On 4 October the Glyns attended a New Year lunch party at the home of their friends the Rosenblatts (see [176]).

(6) On 11 October Mr Glyn attended a meeting at Barclays in Monaco and Mrs Glyn flew to the UK.

(7) On Wednesday 12 October Mr Glyn flew to London to attend another meeting with BDO on Friday 14 October. He said in his witness statement that he went for the specific reason of meeting with them because his brother felt slightly out of his depth dealing with this on his own.

(8) 13 October was Yom Kippur (see [176]).

(9) The Glyns returned to Monaco on Saturday 15 October with London friends the Smetanas who stayed with them in Monaco until Friday 21 October.

(10) On Wednesday 26 October the Glyns' London friends the Gouldens arrived in Monaco and stayed until Sunday 30 October.

(11) On 31 October Mrs Glyn flew to London. On Friday 4 November Mr Glyn flew to London and attended another meeting at BDO and on 7 November a meeting with his UK accountant. It was his daughter's birthday on 5 November. He could not remember if they celebrated that together at CR. In his witness statement he said he would not have come over at all if it had not been for the need to sort out the past corporation tax issues.

(12) He returned to Monaco on 7 November and Mrs Glyn joined him the day after.

(13) The Glyns went to Cannes on 9 November to check the apartment. On 10 November Elane Isaacs arrived to stay until 12 November and Mr Glyn had another meeting with Barclays regarding his investments.

(14) On 17 November the Glyns drove to Milan and stayed there for two nights before returning to Monaco.

(15) Mrs Glyn returned to London on 22 November. Mr Glyn flew to London on Friday 25 November returning to Monaco on Thursday 1 December 2005. On this trip he attended meetings with Barclays to discuss whether their UK bank accounts could be handled more efficiently and with his UK accountant regarding his tax affairs. The Glyns also attended the annual fund raising dinner of World Jewish Relief a charity several close friends were involved in (and he attended that in each subsequent year except 2007). On 30 November he took his mother out for lunch for her birthday. He was in the UK for her birthday on each later year. At the 2013 hearing Mr Glyn said that except for the obvious significant birthdays his mother's birthday was an event that "we would mark at a convenient time if we happened to be together, but no great play was made of it. In fact my mother rather resents her birthday being mentioned or celebrated".

(16) Mrs Glyn flew back to London on 7 December and Mr Glyn flew on 8 December. As they were going to be away for nearly a month including over Christmas he wanted to see the family.

(17) On Sunday 11 December the Glyns left London for Hong Kong and then Australia and New Zealand.

176. We note that Mr Glyn was in London for both Yom Kippur and Rosh Hashanah. As regards Yom Kippur, Mr Glyn said that it was part of the family tradition to be together but it was an event in which there was an undue concentration on religious observance and ceremonies. Mr Glyn confirmed he usually attended the synagogue on the first night of Yom Kippur for an hour or two (but otherwise it would be like any other day) and at some point the following day. As regards attending the synagogue on the day of Yom Kippur he attended as briefly as seemed decent and normally tried to coincide with the sermon which was a more lively part of the day long service. He tried to attend at least part of the service with his son (noting that

men and women attend separately) probably drifting in and out as it lasted all day. They would both try to be present for the sermon and during a very entertaining question and answer session that would occur in the early afternoon, and probably at the end of the service they would be together and break the fast together by eating together. That was not a grand meal; it was tea and toast or whatever at someone's house. As his daughter lived very close to the synagogue and had an apartment within 100 yards, they might have gone to her house, or they might have returned to CR. Mr Glyn could not recollect precisely where it was in any particular year.

177. For Rosh Hashanah the family typically had a meal with the children on the first evening and possibly attended synagogue on the first day but would almost certainly have lunch with the children. He thought that was the case in each of the relevant years. Mr Glyn noted they had celebrated this with the Rosenblatts in 2005/06. He could not remember where this took place in other years. He thought he would probably have done that every subsequent year if he was in London at that time. Following the move to Monaco, the family would probably convene at his brother's house. Before they went to Monaco the celebration would have alternated between being held at his and his brother's homes which resumed on their return to the UK.

178. He did not otherwise attend the synagogue except for special events such as weddings or a Bar Mitzvah. He confirmed that the Marble Arch synagogue of which he remained a member had a newsletter which announced family events including those for his family such as the birth of his grandson.

179. As regards the dinner for World Charity Relief (see [175(15)]), he said he only attended such events when they happened to coincide with times he was visiting London and were organised by close friends. He remained a trustee of a UK charity but this had no fundraising activities and he was not required to do anything in the UK.

180. As regards the meetings with BDO, at the 2013 hearing Mr Glyn was asked if he came back to London specifically for them as he had indicated in his witness statement as set out above. He said he flew into London with the knowledge that was specifically one of the purposes of the visit. He did not make the arrangement in order to see BDO but he was constantly in contact with his brother and would tell him when he was planning to be in London. He would on occasions arrange a meeting at a time that Mr Glyn had indicated would be fine for him:

> "So it was true to say that I flew into London to see [BDO] in that sense, but the visit was not for the exclusive purpose or even for the principal purpose of seeing [BDO] but for the specific purpose, was it one of the purposes? Yes it certainly was on a couple of occasions – more than a couple of occasions - that I flew in specifically knowing that I would be, whilst I was here, I would be joining my brother on a visit to BDO."

181. As regards the statement that he came to London specifically for a meeting with BDO on 14 October (see [175(7)]), he said:

> "I came with the specific purpose of seeing [BDO]. That doesn't mean it was the sole reason or principal reason for my visit but I did come

specifically to – on that occasion, specifically I had it in my mind that I would be seeing them when I came."

182. He said that he thought that it was not correct that he would not have attended London on 4 November but for the need to meet BDO (see [175(11)] (and he apologised for the error). It was his daughter's birthday on 5 November and the probability was that he would have chosen to come to London then for that. So he was pretty sure he would have come anyway even if it had not been for the meeting with BDO.

183. He said that this was another example of having multiple reasons to be in London not just a specific reason. He said that he did not "seek to suggest that any of my visits to London or elsewhere were for one reason only. I have tried to indicate significant reasons for the visits but I suppose everything we do in life has a series of thought processes behind them."

184. It was noted to Mr Glyn that his wife often came to London ahead of him (such as when she went on 7 December 2005 and he followed on 8 December 2005). He said that CR was not being maintained as a home and so it did not have the fresh food that would be required and so, out of her sense of propriety, his wife would be anxious to arrive a day before him, not least to see the house was ready and comfortable for when he arrived. It was put to him that often she would arrive three or four days before him. He thought his wife to some extent enjoyed getting away from him as they were new to retirement and adjusting. On this occasion in December 2005, as they were going to be away for nearly a month including over Christmas he wanted to see the family.

185. In her witness statement Mrs Glyn said that CR was to all intents and purposes used as a hotel. She used to drop back every now and again when she was in London but she hardly did any entertaining (perhaps a couple of times a year at the most) and it was much less formal than before. Whilst they retained the house keeper the fridge would usually be empty save she would get in essentials if she knew they were coming such as bread and milk. The children would check in on the house and use the phone there.

186. She said she spent more time in the UK than her husband to see their friends and family. She also dealt with her more limited charitable commitments but she prioritised seeing family and friends. She thought she only went into the office over the five years maybe six times. She tended to meet Toby for a curry and Georgina for a coffee, lunch or dinner. Her friends would look out for her when she was in London. On numerous occasions her friends would take her out to dinner or she would go to their homes. She went to the occasional dinner party and weddings on her own and would also go out with her single friends such as Elane Isaacs. She definitely saw her friends more often in Monaco than in London.

187. At the 2013 hearing she said that when she was back in London whilst they lived in Monaco, it was not a pleasant thing for her. In the evening when she was at home she would sit in the kitchen with a bowl of Weetabix and then go upstairs and watch television in her bedroom. It was pretty miserable for her to be there on her own. It really was an empty house situation. She had to give support to her children. She was with her husband most of the time and they had a very good quality of life.

She also had to see his mother who was in hospital quite often and give support to her sister in law who had been diagnosed with cancer in 2005. Also her mother in law fell over and smashed her face quite badly on two occasions and "I would be the one to be around a bit".

188. She said the difference between the amount of time she and her husband spent in London and that her husband did was not significant. If he came he would arrive on Thursday or Friday (unless they were travelling somewhere) and she came a day or two beforehand. She could not remember why she had been there for longer in February 2006. She said there was always a reason such as to see the children and her mother-in-law.

189. At the 2013 hearing Mrs Glyn described her activities in London as "general living". It was put to her that every time she went to London she went to the same hairdressers as shown by her credit card statements. She said "yes" but she did not go every week; it was if she had an event or an occasion. In Monaco she did not go to the hairdresser because she was swimming. She had been going to the same hairdresser in London for 15 years. She also regularly went to the same deli and local supermarket.

January to April 2006

190. In January to April 2006:

(1) The Glyns flew back from their trip to London on Saturday 7 January and stayed there until 10 January in Mr Glyn's case and 14 January in Mrs Glyn's case. During this time in London Mr Glyn attended a lunch at the London offices of Goldman Sachs and a meeting with BDO which was probably relating to the capital loss position. He also thought he and his wife attended a brunch on Sunday at the Dorchester which is held every January. Monday 9 January was Toby's birthday and the family celebrated at a restaurant.

(2) Back in Monaco Mr Glyn attended a meeting at Barclays on 17 January.

(3) Mrs Glyn was then in London from 25 January until and 29 January and from 2 February until 12 February. Mr Glyn joined her on Friday 27 January returning to Monaco with her on Sunday 29 January and from Saturday 4 February to 6 February, when he again returned to Monaco, and from 8 February until 12 February when they departed on holiday to the US.

(4) On the first trip to London Mr Glyn attended another meeting at BDO and a retirement party for a friend held at Claridges. On the second the Glyns attended the wedding of the daughter of friends and Mr Glyn visited his private Harley Street eye specialist and then returned to Monaco alone for two nights. On his return to London on 8 February Mr Glyn attended another meeting at the BDO offices and they both attended the annual fund raising dinner of WIZO on 9 February.

(5) They left London for a holiday in the US on 12 February returning to London on Monday 27 February. On 2 March Mr Glyn returned to Monaco alone. Mrs Glyn joined him there five days later on 7 March.

(6) In March in Monaco Mr Glyn had further meetings with Barclays and with Goldman Sachs to discuss appointing them and he saw his lawyer. On 9 March he drove to Cannes to check the apartment and returned to Monaco the same day. He was invited to attend the annual MPIM property conference in Cannes which took place on 15 and 16 March but he did not attend. He bought the treadmill on 11 March. On 13 March the Glyns went to the cinema in Monaco and on Friday 17 March their London friends, the Bermans, arrived to stay with them until 20 March.

(7) Sunday 19 March was their 34th wedding anniversary and their daughter arrived to stay with them until 22 March. Mrs Glyn flew back to London with her on that date – Mr Glyn thought this was because she wanted to see her gravely ill friend who she had worked with at WIZO. Mr Glyn commented at the 2013 hearing that he thought a lot of play has been made about celebrating various anniversaries in one place or another. He said he did not think that "the location of any celebration was significant to us, but if travel arrangements could be made to coincide with anniversaries it was a nice thing to do and on this occasion we can see that it occurred in Monaco".

(8) On Friday 24 March Mr Glyn flew to London also to visit the friend who was very ill but he died that day and he was too late to see him. On 25 March they saw friends and on Sunday 26 March they attended the friend's funeral and then the wedding of the daughter of friends. On 27 March Mr Glyn attended another meeting with Goldman Sachs returning to Monaco alone later that day.

(9) Mr Glyn returned to London on Saturday 1 April and that evening the Glyns attended a birthday party for two friends. On 2 April they returned to Monaco. Mrs Glyn noted that she was in London longer than she meant to be due to the death of her friend and former colleague.

191. Mr Glyn noted that 9 January was his son's birthday and no doubt he would have chosen to come to London on that weekend and his brother would have known he was coming and would have asked him to join the BDO meeting and he would have come with that as one of the specific purposes of being in the UK.

Subsequent years and return to the UK

192. The following years followed a similar pattern:

(1) Mr Glyn confirmed that he and his wife were present in the UK for the following number of days (counting any presence on a day as presence):

(a) In 2006/07 for 91 and 138 days respectively.

(b) In 2007/08 for 97 and 121 days respectively.

(c) In 2008/09 for 82 and 124 days respectively.

(d) In 2009/10 for 91 and 178 days respectively.

(2) Counting presence excluding days of arrival and departure, Mr Glyn was present in the UK:

(a) In 2006/07 for 46 days.

(b) In 2007/08 for 55 days.

(c) In 2008/09 for 60 days.

(d) In 2009/10 for 64 days.

(3) Counting days on which Mr Glyn was present at midnight, he was present in the UK:

(a) In 2006/07 for 69 days.

(b) In 2007/08 for 74 days.

(c) In 2008/09 for 83 days.

(d) In 2009/10 for 91 days.

193. By 2010 Mr Glyn's mother's blindness had become profound and she had become very hard of hearing. The Glyns' daughter married in 2008 and she had a son in December 2009. Since then Mrs Glyn was reluctant to leave London and Mr Glyn found himself alone in Monaco far more than previously. Having lived abroad for five and a half years the novelty wore off and Mr Glyn began to think that his wider family responsibilities could not be fulfilled if he were to remain in Monaco. He returned to the UK on 10 June 2010.

194. Mrs Glyn said that once her daughter became pregnant she did not want to be anywhere other than London. She returned on 14 December 2009 to prepare for the birth. She said in her witness statement that she flew out to spend most weekends with Mr Glyn through the spring and winter although she agreed at the 2013 hearing that was probably overstating matters. They were certainly together a lot at this time whether in London, Monaco or on holiday. She said that she felt she gave up a lot to live in Monaco. It was a huge change to her life and as time went by she grew to love it but once there was a grandchild in prospect there was no question of her staying there.

195. The Glyns' friends said that they thought they returned to the UK due to their grandchild being born. Mrs Goulden said that "I think they really settled in very well in Monaco. They were very happy there and in fact I think they would have stayed for longer in the end had it not been for a grandchild being born. It was a lovely lifestyle and we loved our visits there. It was a proper home, both apartments were proper homes and frankly they were most generous with invitations."

Pattern of holidays

196. As set out above Mr Glyn's evidence in his witness statement was that prior to April 2005 his work had limited him to going on holidays lasting no more than 7 to 10 days and that he had never been able to take holidays "for any length of time". His pattern of holiday taking was as follows as Mr Glyn accepted at the 2013 hearing:

(1) In 2002/03 the Glyns went on 6 holidays lasting 7 days or more, and spent a total of 62 days in Cannes, 7 days on a friend's yacht, 22 days in Jamaica and Israel and 5 days in St. Moritz, totalling 92 days of holiday, or over 13 weeks.

(2) In 2003/04 they went on 7 holidays lasting 7 days or more, and spent a total of 82 days in Cannes, had a holiday in August to Cannes and Switzerland comprising 24 consecutive days, and a trip to Mexico for 16 consecutive days. In total his holidays in 2003/04 comprised 108 days or over 15 weeks.

(3) In 2004/05 they went on 4 holidays lasting 7 days or more, and spent a total of 68 days in Cannes, 2 weeks in Mexico, and embarked on further trips to Israel and St. Petersburg. In total his holidays in 2004/05 comprised 79 days or over 11 weeks.

(4) In 2005/06 they went on 5 holidays of 7 days or more.

(5) In 2006/07 they went on 4 holidays of 7 days or more

(6) In 2007/08 they went on 3 holidays of 7 days or more.

(7) In 2008/09 they went on 2 holidays of 7 days or more.

(8) In 2009/10 they went on 4 holidays of 7 days or more.

197. In his witness statement Mr Glyn said that his trip to Australia in December 2005 was his first opportunity to go to a warmer clime at Christmas but he said at the 2013 hearing that he had in fact been to Jamaica and Mexico at this time in the two previous years.

Law

198. In the absence at the relevant time of any statutory definition of residence taxpayers and their advisers have had to turn to the guidance given by the courts. There are, however, two statutory provisions which in effect deem a person to be resident or non-resident which at the time in question were in s 334 and s 336 of the Income and Corporation Taxes Act 1988 (now in s 829 of the Income Tax Act 2007).

199. Section 334 provides that:

> "Every Commonwealth citizen or citizen of the Republic of Ireland –
>
> (a) shall, if his ordinary residence has been in the United Kingdom, be assessed and charged to income tax notwithstanding that at the time the assessment or charge is made he may have left the United Kingdom, if he has so left the United Kingdom for the purpose only of occasional residence abroad, and
>
> (b) shall be charged as a person actually residing in the United Kingdom upon the whole amount of his profits or gains…"

200. Section 336 provides that a person who is in the UK "for some temporary purpose only and not with the intention of establishing his residence there shall not be treated as resident in the United Kingdom if he has not in the aggregate spent at least six months in the United Kingdom in the year of assessment, but shall be treated as

resident there if he has". That question is to be decided "without regard to any living accommodation available in the United Kingdom for his use".

201. In this case s 334 would be in point only if it is found that the appellant was not resident in the UK under general law. We have concluded that is not the case and, therefore, there is no issue under that provision. Whilst these provisions are not directly in point here, therefore, they (or similar provisions in place at the relevant time) are referred to in a number of the relevant cases and an understanding of the provisions assists in understanding the relevance of some of the commentary in those cases.

Caselaw

202. For many years the leading authority has been *Levene v Inland Revenue Comrs* [1928] AC 217. Until 1919 Mr Levene was resident and ordinarily resident in the UK. During the next five years he spent about five months (mainly in the summer) each year, staying in hotels in the UK and receiving medical attention or pursuing religious and social activities. He spent the remaining months staying in hotels abroad. It was held that Mr Levene had remained resident and ordinarily resident in the UK during those years.

203. Viscount Cave, the Lord Chancellor, adopted, at page 222, the definition of "reside" given in the Oxford English Dictionary, namely:

> "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place".

204. He continued that in most cases there is no difficulty in determining where a man has his settled or usual abode, and if that is ascertained he is not the less resident there because from time to time he leaves it for the purpose of business or pleasure:

> "Thus, a master mariner who had his home at Glasgow where his wife and family lived, and to which he returned during the intervals between his sea voyages, was held to reside there, although he actually spent the greater part of the year at sea (*Re Young*; 1875, 1 Tax Cases 57; *Rogers v. Inland Revenue*, 1879, 1 Tax Cases 225). Similarly a person who has his home abroad and visits the United Kingdom from time to time for temporary purposes without setting up an establishment in this country is not considered to be resident here…… But a man may reside in more than one place. Just as a man may have two homes—one in London and the other in the country—so he may have a home abroad and a home in the United Kingdom, and in that case he is held to reside in both places and to be chargeable with tax in this country. Thus, in *Cooper v. Cadwalader* (1904, 5 Tax Cases 101) an American resident in New York who had taken a house in Scotland which was at any time available for his occupation, was held to be resident there, although in fact he had only occupied the house for two months during the year……..."

205. It is clear from *Levene* that the tribunal is not limited to an enquiry into the situation in a particular year of assessment. As Viscount Sumner said, at 226:

> "It is suggested that the Commissioners misdirected themselves in point of law, because they took into account, with regard to the earlier years, conduct which only occurred subsequently. I agree that the

> taxpayer's chargeability in each year of charge constitutes a separate issue, even though several years are included in one appeal, but I do not think any error of law is committed if the facts applicable to the whole of the time are found in one continuous story. Light may be thrown on the purpose, with which the first departure from the United Kingdom took place, by looking at his proceedings in a series of subsequent years. They go to show method and system and so remove doubt, which might be entertained if the years were examined in isolation from one another."

206. In the *Cadwalader v Cooper* case referred to in *Levene* an American citizen who had his ordinary residence and practised his profession in New York took a lease for three years of a furnished shooting lodge in Scotland with certain rights of shooting and fishing. The lessor was bound to maintain the buildings, to keep the grounds in order, to pay all rates and taxes, and to pay the wages of certain servants whose services were at the disposal of the lessee. The lessee resided at the shooting-lodge for a period of two months in each year during the shooting season, but the lodge was available for his occupancy at any time. He had no place of business in the UK, and during his stay in the UK his residence in New York was kept open so that he could return at any time.

207. It was held that the lessee was a person "residing in" the UK within the meaning of the Income Tax Acts, and accordingly was liable to assessment for income-tax. He did not fall within the exception applicable at the time under the equivalent of s 336. The Lord President said:

> "He has, in effect, a lease of heritage in Scotland, he occupies personally the subjects let to him for a considerable portion of each year, and when he is absent in America these subjects are kept in readiness for his return. His occupation of the subjects is not of a casual or temporary character, but is substantial, and as regards some of its incidents it is continuous."

208. He continued that he did not think that the appellant could reasonably maintain that he is in the UK "for some temporary purpose only, and not with any view or intent of his establishing his residence therein," in the sense of the section, as he took the Lodge with the view of residing there during a material part of each year, and maintaining his connection with it as tenant during the rest of the year, as he has a residence always ready for him if he should choose to come to it". Finally he concluded that it was not necessary for a person to be chargeable that he had his sole residence in the UK: "A man can reside in more countries than one, although he can only have one domicile".

209. Another early leading authority is the case *Lysaght v Commissioners of Inland Revenue* [1928] AC 234. Mr Lysaght had lived in England and had run a company here as director and managing director until 1919. He retired but retained the post of advisory director. He sold his English residence and went to live in Ireland. During the relevant years he had no definite place of abode in England, but he came to England every month to attend directors' meetings, remaining here for about a week each time. He contended that he was neither resident nor ordinarily resident in England.

210. The Special Commissioners held that he was resident and ordinarily resident in England. In the Court of Appeal decision ([1927] 2 KB 55) a majority held that the Special Commissioners had erred in law because his visits to this country were for strictly business purposes only, not involving any choice by him of England as a desirable abode, no intention of being present otherwise than in the course of his duties and no intention of making England his home in any ordinary sense of the word, the place where he worked being "much less dependent on his own volition and independent of social considerations."

211. The majority of House of Lords held that the Court of Appeal had not been justified in interfering with the decision of the Special Commissioners. Lord Buckmaster said at page 247-8:

> "It may be true that the word "reside" or "residence" in other Acts may have special meanings, but in the Income Tax Acts it is, I think, used in its common sense and it is essentially a question of fact whether a man does or does not comply with its meaning."

212. He continued to conclude that the Court of Appeal's reasoning was not sound:

> "They state that it was not of his own free choice but in obedience to the necessities of his position in relation to the company of John Lysaght, Ld., that he was over here, from which it would appear that the element of choice is regarded by the Court of Appeal as a factor of great, if not of final, consequence in determining residence. In my opinion this reasoning is not sound. A man might well be compelled to reside here completely against his will; the exigencies of business often forbid the choice of residence, and though a man may make his home elsewhere and stay in this country only because business compels him, yet none the less, if the periods for which and the conditions under which he stays are such that they may be regarded as constituting residence, as in my opinion they were in this case, it is open to the Commissioners to find that in fact he does so reside, and if residence be once established ordinarily resident means in my opinion no more than that the residence is not casual and uncertain but that the person held to reside does so in the ordinary course of his life."

213. Mr Glyn's counsel referred to the distinction which seemed to be drawn in the judgement of Viscount Sumner between visits to the UK under a continuous obligation, such as the necessities of business, and visits of chance and occasion which such a continuous obligation would seem to preclude:

> "If he came for the first three months in the year for the purpose of his duties and then returned home till the next year, would there not be evidence that he was resident here, and, if so, how does the discontinuity of the days prevent him from being resident in England, when he is here in fact, though the obligation to come as required is continuous and the sequence of the visits excludes the elements of chance and of occasion?"

214. It has become accepted that when looking at whether a taxpayer has ceased to be UK resident it is relevant to ask whether the taxpayer has made a distinct break from the UK. This formulation was first made in the context of s 334. It was confirmed in the case of *Reed v Clark* [1986] Ch 1 to be the effect of that section that,

where the relevant person ceases to be resident in the UK, he will nevertheless be deemed to have remained resident in the UK if he has left the UK for the purpose only of occasional residence abroad. So in order to escape liability as a resident, a person needs to establish not only that he has become non-resident but also that his change to non-residence was not for the purpose only of occasional residence abroad. It was in the context of deciding whether the taxpayer had left the UK for the purpose only of occasional residence abroad, that Nicholls J referred to the test of whether a taxpayer had made a distinct break from the UK.

215. In that case Mr Dave Clark, who had been resident and ordinarily resident in the UK, moved to Los Angeles on 3 April 1978 and made his home and place of business there until 2 May 1979, when, not having set foot in the UK in the interim, he returned to reside here. Nicholls J dismissed the appeal against the ruling of the commissioners that he had not been resident nor ordinarily resident in the UK in 1978-79.

216. Nicholls J, at 15C, accepted the submission that s 334 brought into the tax net those who were not resident in the UK at all in the year of assessment. He held, at 16H, that "occasional residence" was the converse of "ordinary residence". He cited, at 17D, the statement of Lord Scarman in *R v Barnet London Borough Council, Ex p Nilish Shah* [1983] 2 AC 309, 343 that "ordinary residence" referred "to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life or the time being, whether of short or of long duration". He contrasted "occasional residence" with residence for a settled purpose. He then held, at 18G, that there had been a "distinct break" in the pattern of Mr Clark's life in the UK such that his becoming non-resident had not been for the purpose only of occasional residence abroad.

217. In referring to a "distinct break" Nicholls J, as he acknowledged at 14F, adopted a phrase used in the same context of s 334 in the decision of the Court of Session in *Inland Revenue Comrs v Combe* (1932) 17 TC 405. In that case until 1926 Captain Combe was resident and ordinarily resident in the UK. Then he went to New York to work as a broker for a firm on Wall Street. The objective was that he should become its European representative and, in furtherance of it, he returned to the UK, staying in hotels, for 52 days, 175 days and 181 days during each of the following three years. In upholding the conclusion that he was not liable to tax as a UK resident for those years the court concluded that the captain had not left the UK for the purpose only of occasional residence abroad. It was implicit in its conclusion that he *had* left the UK in the sense of becoming non-resident in it. When, therefore, Lord Sands observed, at page 411, that "there was a distinct break" in the captain's "residence" in the UK, it was with a view to explaining his conclusion that the captain's residence abroad had been more than occasional.

218. In the later case of *HMRC v Grace* [2008] EWHC 2708 (Ch); [2009] STC 213, Lewison J summarised, at [3], the relevant legal principles to be derived from earlier cases including as regards the "distinct break" test. Although a number of propositions deal specifically with whether a person is "ordinarily resident", rather than "resident", we have set out the summary in full:

"i) The word "reside" is a familiar English word which means "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 v Commissioners of Inland Revenue* (1928) 13 TC 486, 505. This is the definition taken from the Oxford English Dictionary in 1928, and is still the definition in the current on-line edition;

ii) Physical presence in a particular place does not necessarily amount to residence in that place where, for example, a person's physical presence there is no more than a stop gap measure: *Goodwin v Curtis* (1998) 70 TC 478, 510;

iii) In considering whether a person's presence in a particular place amounts to residence there, one must consider the amount of time that he spends in that place, the nature of his presence there and his connection with that place: *Commissioners of Inland Revenue v Zorab* (1926) 11 TC 289, 291;

iv) Residence in a place connotes some degree of permanence, some degree of continuity or some expectation of continuity: *Fox v Stirk* [1970] 2 QB 463, 477; *Goodwin v Curtis* (1998) 70 TC 478, 510;

v) However, short but regular periods of physical presence may amount to residence, especially if they stem from performance of a continuous obligation (such as business obligations) and the sequence of visits excludes the elements of chance and of occasion: *Lysaght v Commissioners of Inland Revenue* (1928) 13 TC 511, 529;

vi) Although a person can have only one domicile at a time, he may simultaneously reside in more than one place, or in more than one country: *Levene v Commissioners of Inland Revenue* (1928) 13 TC 486, 505;

vii) "Ordinarily resident" refers to a person's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life, whether of short or long duration: *R v Barnet LBC ex p Shah* [1983] 2 AC 309, 343;

viii) Just as a person may be resident in two countries at the same time, he may be ordinarily resident in two countries at the same time: *Re Norris* (1888) 4 TLR 452; *R v Barnet LBC ex p Shah* [1983] 2 AC 309, 342;

ix) It is wrong to conduct a search for the place where a person has his permanent base or centre adopted for general purposes; or, in other words to look for his "real home": *R v Barnet LBC ex p Shah* [1983] 2 AC 309, 345 and 348;

x) There are only two respects in which a person's state of mind is relevant in determining ordinary residence. First, the residence must be voluntarily adopted; and second, there must be a degree of settled purpose: *R v Barnet LBC ex p Shah* [1983] 2 AC 309, 344;

xi) Although residence must be voluntarily adopted, a residence dictated by the exigencies of business will count as voluntary residence: *Lysaght v Commissioners of Inland Revenue* (1928) 13 TC 511, 535;

> xii) The purpose, while settled, may be for a limited period; and the relevant purposes may include education, business or profession as well as a love of a place: *R v Barnet LBC ex p Shah* [1983] 2 AC 309, 344;
>
> xiii) Where a person has had his sole residence in the United Kingdom he is unlikely to be held to have ceased to reside in the United Kingdom (or to have "left" the United Kingdom) unless there has been a definite break in his pattern of life: *Re Combe* (1932) 17 TC 405, 411."

219. The propositions in sub-paragraphs (i)-(vi) and (xiii) are concerned with "residence", while the remaining sub-paragraphs are concerned with whether a person is "ordinarily resident". This summary was cited with approval on appeal by the Court of Appeal: see *Grace v HMRC* [2009] EWCA Civ 1082; [2009] STC 2707 at [6].

220. In that case the issue was whether an airline pilot working for British Airways (BA) on long-haul flights out of the UK was UK tax resident. He had to be in England for some days before any outward flight and, in practice, sometimes between inward and outward flights. He had been flying in this way since 1987 latterly owning and living in a house in Horley. He argued that he ceased to be UK tax resident in 1997 when he took a rented apartment in Cape Town, and later bought a house there. That was on the basis that he regarded his house in Cape Town as his home, spending as much time there as he could, consistently with performing his duties as a BA pilot, and that he intended to spend his retirement there in due course. HMRC argued that his continued presence in the UK, as the base from which he did his work, showed that he was still resident here. There was also an issue as to whether s 334 and s 336 applied.

221. The Special Commissioners decided that the taxpayer had ceased to be resident in the UK in 1997 and that, in any event, he satisfied the requirements of s 336. Lewison J reversed that decision and held that the only possible conclusion from the primary facts found was that he remained resident in the UK and that the conclusion on s 336 was wrong. The Court of Appeal agreed that the Special Commissioner, Dr Brice, had misdirected herself but held that the case should be remitted to the tribunal for re-determination.

222. In the Court of Appeal Lloyd LJ, who gave the leading judgment, described the correct approach as follows, at [3]:

> "The issue of residence in the UK only arises in a case in which the person in question spends time outside the UK. The circumstances in which he or she does so, and the pattern of, and reasons for, time being spent in the UK and elsewhere may be infinitely various. Decided cases illustrate a great variety of examples, and the result of one case cannot normally be used as a guide to how another should be decided, even if the two have some factors in common."

223. At [7], he referred to the Special Commissioner's comments at [58] of her decision in *Shepherd v HMRC* [2006] STC 1821, a case which also related to an airline pilot, as to the factors to be taken into account in determining residence:

> "- 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 United Kingdom 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 United Kingdom 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 United Kingdom he is chargeable to tax here (*Cooper* and *Levene)*;"

224. He said, at [8], that the proposition that a home elsewhere is of no consequence is not to be understood as meaning that the other home is entirely irrelevant to the necessary enquiry. That would be inconsistent with the obligation to take into account all the facts of the case. However, the existence of another home is not decisive, because of the possibility of simultaneous residence in several places.

225. He referred to *Lysaght* as being of particular relevance, citing in full the passage set out above. He noted, at [16], that the Special Commissioner's salient findings are as follows:

> "First, he has retained the Horley house in the United Kingdom which he uses in order to rest before or after carrying out his duties as a long haul pilot or if he has only a few days between flights. The house is fully furnished and equipped. He is on the electoral roll at Horley as a resident. Post is sent to him at the Horley address. This includes credit card statements, bank statements and correspondence with HMRC. He keeps a car in the United Kingdom and uses it to travel from the Horley house to work and from work to the house….. He also keeps a car in Cape Town. He has a bank account in the United Kingdom into which his salary from British Airways is paid. Although he is registered with a dentist in Horley he has only visited one dentist in the entire time that he has been in the United Kingdom…….He has visited his doctor in Horley four times between 1993 and 2003. He has no relatives in the United Kingdom. His ex-wife and daughters live in the United Kingdom but he has had no contact with his children for over 30 years. He has only met his ex-wife twice in the last thirty years. He is a member of the professional body of the British Airline Pilots Association but is not a member of any other club or society in the United Kingdom."

226. He further noted, at [17], that the conclusions on the amount of time spent in the UK were as follows at [23]:

> "On the evidence before me I find that the pattern of the Appellant's life after 1 September 1997 was that the long haul flights he made would last about four or five days. For two or three days before or after each flight he would stay in the United Kingdom. He piloted a number of flights to and from Cape Town. In addition there were regular breaks of thirteen to fifteen days which were spent in Cape

> Town. I conclude that the time spent in the United Kingdom was time either before or after a flight, or time when the Appellant was sick, but that most of the other time not spent in the air was spent in Cape Town."

227. He described the nature of the enquiry the Special Commissioner was required to take as follows, at [18]:

> "Thus, the enquiry which she had to undertake involved assessing the duration of Mr Grace's presence in the [UK] and the regularity and frequency of his visits, the nature of the visits and his connection with this country. Equally, she had to take into account also his connection with South Africa, including his ownership and use of a house there, and his activities, ties and other connections there. She could not regard his ownership and use of a house there as conclusive that he did not reside in the UK, but it was a relevant factor to be taken into account."

228. He noted that Dr Brice from paragraph [31] to paragraph [44] of her decision set out a number of the cases and then cited her comments at [37]:

> "Applying those principles to the facts of the present appeal it is relevant that, after 1997, the nature of the Appellant's presence in the [UK] was to get to and from his work. He had very few connections with this country. He was not born here, he was not educated here, and no members of his family lived here apart from his divorced wife and children whom he has not seen for thirty years. He had no social life here. He did reside here from 1986 to 1997, during which time he began his present employment which he has retained, but in the relevant years of assessment he only visited the [UK] because each of his long haul flights started and ended here. The Appellant's lack of connections points to the view that, although he might spend time in the [UK] each year, he is not necessarily resident here."

229. He noted at [22] that Dr Brice then referred to *Levene* and *Lysaght* noting from *Levene* that the word "to reside" meant "to dwell permanently or for a considerable time". Applying that principle to the facts of this appeal she found that after 1997 the taxpayer "did not dwell permanently in the [UK] as his permanent residence was in South Africa". Also the UK "was not where he had his settled or usual abode as that was in South Africa". During the relevant years of assessment the taxpayer "left Cape Town for business purposes only. Although he retained a house in the [UK] that house was not in the nature of a home but was rather a substitute for hotels." At [24] Lloyd LJ noted that this is open to the comment that one can be resident in a country even though one stays in one or more hotels, not in a house or flat, as in *Lysaght*.

230. At [25] he noted that she looked at *Combe*, and considered the proposition that, in the case of a taxpayer who has been resident in the UK, the making of a "distinct break" in his pattern of life, including establishing a residence elsewhere, may mean that even lengthy or regular visits to this country may not amount to continued or resumed residence. He noted that at paragraph [42] she said that applying that principle:

> "….. I find that although the Appellant was resident in the [UK] before 1997 in that year there was a distinct break and since then his settled

> mode of life has been in South Africa. In 1997 he set up home in South Africa and purchased a house there. The home is near his parents and brother. He is very attached to his private aeroplanes and it is significant that they are all in Cape Town and that there are none in the [UK]. He intends not to return to the [UK] when he retires. Since 1997 he has returned to the [UK] but only for the purpose of his employment."

231. At [28] he noted that she concluded that s 336 did apply so that the appellant was treated as non-resident as set out at [59] of her decision, on the basis that:

> "……after September 1997 the Appellant was in the [UK] for temporary and occasional purposes only. He was here in order to do his work and for no other reason. He had no intention of establishing his residence here and his intention was to establish his residence in South Africa."

232. At [29] he set out her conclusions from her decision at [60] as follows:

> "….especially having regard to the Appellant's past and present habits of life, the reasons for his visits here, the temporary nature of his ties with this country, the more permanent nature of his ties with South Africa, and the distinct break made in 1997, I have come to the conclusion that from 1 September 1997 he ceased to be resident and ordinarily resident in the [UK]. After that date this was not where he dwelt permanently nor where he had his settled or usual abode which was in South Africa….."

233. Lloyd LJ concluded, at [30], that there was an error as regards the conclusion on s 336. It seemed to him that Mr Grace's presence in the UK before every outward long-haul flight, and between flights on some occasions, the UK being the base from which he operated as a pilot, was not for some "temporary purpose only".

234. He noted, at [31] to [35], that HMRC argued that the Special Commissioner's conclusion on residence was infected by her wrong conclusion on s 336. In particular, taken with the repeated references to his visits to the UK having been for business purposes *only*, this showed that the Special Commissioner was (wrongly) treating the appellant's regular and repeated presence in the UK as being "temporary and occasional", and that this was reflected in her assessment of the various factors relevant to the common law issue of residence. Lloyd LJ noted that it was also argued, at [33], that Dr Brice had been wrong to find that there had been a distinct break in the appellant's pattern of living. The demands of his employment did not change in 1997 and the time which he spent in the UK attributable to his employment did not change. In that respect there was continuity in his pattern of existence. What did change was the place where he spent that part of his time when his whereabouts was not dictated by his employment. Lloyd LJ concluded that the facts fell far short of those which, in other cases, have been held to amount to a "distinct break".

235. Lloyd LJ agreed with Lewison J, at [35], that even if the appellant did not satisfy s 336, it does not follow that he is resident for tax purposes. Specifically, the fact that his presence in the UK cannot be said to be "for temporary purposes only", "does not of itself show that his presence amounts to residence according to the common law test, because that presence must, for that purpose, be assessed in the

light of all other factors including in particular those connecting him with another country".

236. He concluded, at [36], that the Special Commissioner misdirected herself in law as regards s 336 and that this affected her decision as regards residence generally. Among the other points taken, he agreed with Lewison J's comments about the status of the appellant's house at Horley as a "home" referring to his comments at [40]. He also considered that Dr Brice's reference to the "temporary nature of his ties with this country" followed from her conclusion on s 336.

237. At the passage referred to Lewison J queried why the Special Commissioner concluded that the house in Horley was not "a home". The only explicit reason she gave was that the Horley house was "a substitute for hotels".

> "But as Viscount Cave explained in *Levene*, and as Mr Lysaght found to his cost, living in a hotel or a series of hotels can amount to residence, particularly if (as in *Lysaght*) the stays in hotels are attributable to a continuous business obligation and the sequence of visits excludes the elements of chance and of occasion. Mr Grace's stays in the Horley house were attributable to performance of his employment duties; and they were regular and predictable. Moreover, unlike a hotel room, the Horley house actually belonged to him; and unlike a hotel room no one else used it. In my judgment the explicit reason that the Special Commissioner gave cannot be sustained."

238. However, Lloyd LJ disagreed, at [38] to [41], with Lewison J's further conclusion that there was only one possible answer on the primary facts found, namely, that the appellant was resident. He considered that it was wrong to treat the appellant's presence for the purposes of his employment as a factor which necessarily showed residence. It may well be a strong pointer in that direction, but the decisions show clearly the need to "take into account, weigh up and balance all relevant factors". He did not think "it would be right to regard Mr Grace's presence in this country in order to perform the duties of his employment as a trump card which of itself concludes the issue in favour of residence". He therefore decided to remit the case to the tribunal to be re-heard.

239. In the later decision in the tribunal in *Grace v HMRC* ([2011] UKFTT 36 (TC), the tribunal decided in favour of HMRC. As regards the use of the house in Horley, the tribunal commented as follows:

> "I cannot agree that he treated his Horley house just like a hotel. He kept his car parked there even when he was out of the country. He paid council tax and received mail. He owned the furniture in the house and was surrounded by his personal possessions. When in Horley he did his washing and went out shopping. He read his post and caught up on his paperwork. He had exclusive possession of the house (even though for a period his girlfriend lived with him)…."
>
> I also take into account the availability of living accommodation in the UK. As I have said, I think his occupation of his own house gave a different quality to his time in the UK than if he had stayed in hotels. Staying in hotels is not necessarily incompatible with residence but

> staying in one's own house makes it more likely (though not conclusive) that a person is resident.
>
> When staying in the UK he was much more than a visitor: he had a settled and regular presence here staying in his own house that had been his only home up to September 1997 and I find continued to be a home after that date."

240. In *R (Gaines-Cooper) v HMRC* [2011] STC 2249 the Supreme Court was primarily concerned with the effect of IR 20. However, the judgments in the Supreme Court contain, as was stated in the Upper Tribunal decision in this case, "important observations" on the issue of residence more generally. After referring to the decision of the House of Lords in *Levene*, Lord Wilson continued at [14]:

> "Since 1928, if not before, it has therefore been clear that an individual who has been resident in the UK ceases in law to be so resident only if he ceases to have a settled or usual abode in the UK. Although, as I will explain in para 19 below, the phrase "a distinct break" first entered the case law in a subtly different context, the phrase, now much deployed including in the present appeals, is not an inapt description of the degree of change in the pattern of an individual's life in the UK which will be necessary if a cessation of his settled or usual abode in the UK is to take place."

241. He then proceeded to explain the effect of s 334 and the comments on "distinct break" in *Coombe* and the *Reed v Clark* case. At [18], he explained how Nicholls J in *Reed v Clark* had used the concept of residence for a settled purpose in contrast to "occasional residence" for the purposes of s 334. He noted that when Nicholls J observed at 18A, that his construction might give little scope in practice for the operation of s 334 as an independent charging provision, "Nicholls J perhaps had in mind that, were the person's residence abroad not to have been for a settled purpose, his settled or usual abode might have remained in the UK with the result that, in the light of the definition adopted in *Levene*, he would not have ceased to be a UK resident and so would already have fallen at the first hurdle". He said that nevertheless the concepts of settled purpose and settled abode are clearly different. As Lord Wilson later said at [41]:

> "Nicholls J was describing the settled purpose not as a route to becoming non-resident but as a means by which the taxpayer who had become non-resident escaped being treated otherwise under what is now section 829 of the 2007 Act."

242. Lord Wilson further explained what was meant by a distinct break at [20]:

> "It is therefore clear that, whether in order to become non-resident in the UK or whether at any rate to avoid being deemed by the statutory provision still to be resident in the UK, the ordinary law requires the UK resident to effect a distinct break in the pattern of his life in the UK. The requirement of a distinct break mandates a multifactorial inquiry. In my view, however, the controversial references in the judgment of Moses L.J. in the decision under appeal to the need in law for "severance of social and family ties" pitch the requirement, at any rate by implication, at too high a level. The distinct break relates to the pattern of the tax-payer's life in the UK and no doubt it encompasses a

> substantial loosening of social and family ties; but the allowance, to which I will refer, of limited visits to the UK on the part of the taxpayer who has become non-resident, clearly foreshadows their continued existence in a loosened form. "Severance" of such ties is too strong a word in this context."

243. Lord Wilson continued at [45] as follows:

> "when all the passages in it to which I have referred were considered together, [IR20] informed the ordinarily sophisticated taxpayer of matters which indeed were unlikely to come as a surprise to him, [the general law in the submission of the appellant] namely that (a) he was required to "leave" the UK in a more profound sense than that of travel, namely permanently or indefinitely or for full-time employment (b) he was required to do more than to take up residence abroad; (c) he was required to relinquish his usual residence in the UK; (d) any subsequent returns on his part to the UK were required to be no more than visits and (e) any property retained by him in the UK for his use was required to be used for the purpose only of visits rather than as a place of residence. He will surely have concluded that these general requirements in principle demanded - and might well in practice generate – a multifactorial evaluation of his circumstances on the part of the Revenue.. if invited to summarise what the booklet required, he might reasonably have done so in three words: a distinct break."

244. Lord Hope described the essential inquiry at [63]:

> "But the underlying principle that the law has established is that it must be shown that there has been a distinct break in the pattern of the taxpayer's life in the UK. The inquiry that this principle indicates is essentially one of evaluation. It depends on the facts. It looks to what the taxpayer actually does or does not do to alter his life's pattern. His intention is, of course, relevant to the inquiry. But it is not determinative. All the circumstances have to be considered to see what light they can throw on the quality of the taxpayer's absence from the UK."

245. Lord Walker, who agreed with Lord Wilson, noted at paragraph 67 that Lord Wilson's reasons were effectively those of Moses LJ in the Court of Appeal: [2010] STC 860. Moses LJ observed the importance of a distinct break in distinguishing exclusive residence abroad from dual residence: see [52] of the judgment of Moses LJ. Even if a taxpayer limits his return visits, in the absence of a distinct break, that will not lead to cessation of residence status: see [56] of the judgment of Moses LJ.

Discussion

246. As set out in *Levene,* residence is tied to where a person has a "settled or usual abode" or where he "dwell[s] permanently or for a considerable time". Essentially it is established, as set out by the Supreme Court in *Gaines-Cooper* that where a person has been resident in the UK, he will cease to have a settled or usual abode in the UK only if he makes a distinct break in the pattern of his life in the UK. That does not require a severance of ties in the UK but a substantial loosening of them. Return trips must be no more than visits. As a person may have more than one residence, the

question of whether the distinct break has been made is not determined by whether the taxpayer is resident elsewhere.

247. The Supreme Court described the inquiry required to establish whether that is the case as "multifactorial", a factual evaluation. Lord Hope said that it is a question of assessing what the taxpayer actually does or does not do to alter his life's pattern. His intention is relevant but not determinative. Consistently with this, in the earlier decision in *Grace*, Lloyd LJ approved comments in *Shepherd* that 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, his birth, family and business ties, the nature of visits and the connections with this country. The availability of living accommodation in the UK is a factor. The fact that a person has a home elsewhere is relevant but not determinative given that a person may be resident in more than one place.

248. Whilst the question is whether Mr Glyn had made a distinct break in the pattern of his life on or before 5 April 2005, from *Levene* it is clear that the tribunal may look at the taxpayer's proceedings in later years as they may throw lights on the purpose with which the first departure from the UK took place.

249. Whilst residence connotes some degree of permanence and continuity, short but regular periods of physical presence may amount to residence, especially if, as in *Lysaght*, they stem from performance of a continuous obligation (such as business obligations). That does not mean, however, that a person is not resident if there is no such obligation. As the Upper Tribunal noted in their decision in this case, at [72] and [73], in *Lysaght* the contrast was between the "continuous business obligation" which required Mr Lysaght to come to England from his home in Ireland each month for a week and visits resulting from the "the elements of chance and of occasion". The Upper Tribunal commented, at [73], that the fact that:

> "Mr Lysaght's continuous business obligation required him to make regular monthly visits to the UK was relevant to whether he was resident in the UK, but the absence of a continuous obligation on the part of Mr Glyn to make visits to the UK is not determinative or even relevant as to whether he remained resident in the UK after April 2005."

250. We are mindful that it is not correct to approach this by reference to whether Mr Glyn had a settled purpose when assessing the impact of his visits to the UK. As was held by the Upper Tribunal decision in this case, at [71], there is nothing in the authorities which "justifies the view that the existence of a settled purpose, or equally a single or fundamental settled purpose, is relevant in the case of a person such as Mr Glyn when assessing the impact of his return visits to the UK". The Upper Tribunal considered that this was made clear by Lord Wilson in *Gaines-Cooper* at [18] where he stated that "the concepts of settled purpose and settled abode are clearly different" and his later comment at [41] (as set out in full above).

251. The Upper Tribunal accepted, at [74] and [75], that in considering facts relevant to a "departer" the quality of presence, and the reason why an intending "departer" seeks to explain his limited presence in the UK is all relevant. In this context, and bearing in mind the central feature that residence is geared to "habitual presence",

"having a settled abode", and "dwelling permanently or for a considerable time"… it is certainly relevant to consider the circumstances that occasioned visits to the UK." It was not correct, however, that it is a relevant issue, "whether Mr Glyn had a settled purpose, or a single or dominant purpose, for his visits to the UK" when considering the significance of those visits. Rather, at [75], as Lloyd LJ said in *Grace* at [18], the enquiry which the tribunal has to undertake involves:

> "assessing the duration of Mr Glyn's presence in the UK and the regularity and frequency of his visits, the nature of the visits and his connection with this country. The reasons for those visits are, in my judgment, relevant but what is irrelevant is whether they demonstrated any settled purpose".

252. In that context the Upper Tribunal noted, at [76], that in looking at the use of CR the correct approach is to assess the effect that its retention and continued use had on the quality of Mr Glyn's presence when he was in the UK. The Upper Tribunal continued, at [78], that:

> "there is again no basis in the authorities for considering that the reasons for the retention of a house in the UK, still less the dominant reason for doing so, are relevant to whether the individual continued to be resident in the UK. There might be some circumstances in which it had some relevance, but in a case such as the present where Mr Glyn returned on a number of occasions to his house in London, the issue is to determine whether the frequency and nature of his visits, and generally the quality of his presence in the UK, meant that he continued to be resident in the UK."

Submissions

253. In summary, counsel for Mr Glyn submitted that the evidence demonstrated that Mr Glyn effected the requisite distinct break by substantially loosening his family, social and business ties as part of a carefully planned exit from the UK such that he ceased to be UK tax resident on or before 5 April 2005. On making the exit he made a radical change in his lifestyle on his retirement from the family business which contrasts with his "life of leisure" in Monaco. With such a low number of days of presence in the UK that conclusion is entirely consistent with the case law.

254. Mr Glyn's counsel noted that Mr Glyn came back to the UK for a series of different reasons and asserted that the visits were merely made on the basis of "chance and occasion". That distinguishes his case from that of taxpayers who were required to return for specific business or employment related reasons (such as in *Lysaght* and *Grace*).

255. That his ties with the UK were substantially loosened is further bolstered by the fact that Mr Glyn had clearly established a home and life in Monaco. Counsel noted that it is not disputed that Mr Glyn spent the vast majority of his time in Monaco benefiting from a full social and leisure life and managing his financial affairs there. He is a man of quiet habits who enjoyed socialising but was also happy in his own company and with his wife reading, playing scrabble, learning French and walking and managing his cash as he built up a private share portfolio with the liquid funds from MGL (that represented 75% of his net wealth and were kept outside the UK). He operated an entirely different way of life, freed from what he perceived as the

"drudgery" of his former occupation. Counsel submitted that it is clearly more likely that his ties in the UK were sufficiently loosened if similar ties were established instead in Monaco.

256. Counsel noted that Mr Glyn acquired a three year lease of a three bedroomed flat in Monaco (so that friends and family could stay) moving to a larger apartment in 2007 and arranging the connection of phones and computer lines to the flat prior to 6 April 2005; he opened bank accounts in Monaco, obtained a driving licence (having surrendered his UK licence) and residency permit and acquired cars there. He effected a complete change in lifestyle ceasing to go to work each day and instead living in Monaco a life of leisure.

257. Counsel noted that the Court of Appeal stressed in *Grace* at [18] that all relevant factors must be considered. Thus having a house abroad is not conclusive but it is relevant and not, as HMRC have asserted, of "little consequence." As the Court of Appeal noted, the test is multifactorial – one has to look at the very many facts which apply to any individual in determining their residence.

258. HMRC submitted that Mr Glyn did not effect a distinct break on or before 5 April 2005. He did not cease to be resident in the UK during the 2005/06 tax year nor during any of the tax years thereafter. The focus should not be on the "day count", which in their view has no basis in law, but on the pattern, nature and quality of Mr Glyn's presence in the UK. Mr Glyn's frequent and habitual presence in the UK after 5 April 2005 was not "casual or transitory residence" but was part of the regular order of his life.

259. He retained a home in London to which he returned regularly and frequently every month to be with his wife and children, to continue his social life with his friends and family, and to attend business meetings. Throughout the relevant years, the quality, consistency and regularity of his presence in his home at CR was wholly inconsistent with his having been a visitor or a person on holiday. The cumulative effect of all of these factors is that the quality of that presence was habitual and part of the regular order of his life and not temporary, transitory or casual. This repeated regular presence coupled with the fact that he had multiple reasons for returning to the UK is indicative of the continued existences of significant ties with the UK.

260. HMRC noted that the issue is not whether Mr Glyn became resident in Monaco but whether he ceased to be resident in the UK. Any change of lifestyle involving a reduction of UK ties will only effect the necessary distinct break if it occurs before the start of the tax year. HMRC said that there is inevitably a change of life-style post-retirement and that of itself is not evidence of the distinct break but simply of retirement. Further, retirement may well involve increased time spent abroad and the acquisition of a home abroad. In such circumstances a person may become resident in another country but he will then be dual resident unless and until UK residence is relinquished.

261. HMRC asserted that on any view Mr Glyn did not make the necessary distinct break as claimed in circumstances where:

> (1) He retained and continued to use his substantial family home in the UK which he left unchanged and fully operational ready for his return two

weeks later and to which he and his wife returned each month to live and carry on their married and family life.

(2) He returned to the UK on 22 separate occasions in 2005/2006.

(3) His wife remained resident in the UK spending extended periods of time each month in the family home.

(4) His family life (his children and mother) remained in the UK and he continued to have the traditional Friday family meals at the family home at least once a month and visit his mother several times on each return.

(5) He chose to observe the three main religious festivals in London with his family each year.

(6) He continued an active (albeit reduced) social life in the UK attending both informal and formal social engagements each month with family and friends.

(7) He continued to have business interests which required his regular presence in the UK (7 meetings in 5 months in the period between September 2005 and February 2006).

262. HMRC noted that Mr Glyn only took very limited advice on becoming non-resident and accepted that in April 2005 the notion of "loosening his ties" had not been in his mind at all and that he had not understood that a person could be resident in two places simultaneously. Further, as noted, prior to his departure he had been advised that the retention of a "home" would not be relevant to whether or not he became non-resident. As he was not advised that he needed to make a distinct break and substantially loosen his ties with the UK, he is less likely to have done so, in circumstances where he had no reason to believe it was necessary and where his "move" to Monaco was so obviously tax motivated and driven. Similarly, if he was not aware that the retention and continued use of a home might negatively impact his residence status he was all the more likely to continue to use CR after 5 April 2005 in exactly the same way he always had, as a home.

Day count

263. The parties took different views on the significance of "day count" and how days of presence in the relevant locations were to be calculated. Mr Glyn's counsel asserted that day count should be the starting point of the enquiry into an individual's residence. It is relevant not only in terms of the absolute number of days spent in the UK but also in the context of (a) how much time was spent in one place abroad as opposed to in the UK and (b) the nature and quality of visits to the UK in terms of whether they were one off trips or for continuous periods. The length, frequency and nature of visits to the UK lies behind many of the factors set out by the Court of Appeal in *Grace* and day count was central to many of the earlier decided cases.

264. Mr Glyn's counsel said that the strength of Mr Glyn's ties in the UK has to be assessed by reference to his presence in the UK and the quality of his presence. The less time that an individual spends in a country, the less likely he is to be resident there as he will have far less opportunity to form or maintain ties.

265. As regards the tax year 2005/06, counsel noted that:

(1) If only days on which Mr Glyn was present in the UK at midnight are counted, he was present on 44 days.

(2) If all days on which he was present in the UK for a quarter of the day are counted, he was present for 65 days.

(3) Even including every day of presence in the UK, however short, (such as including travelling to the US or Far East via Heathrow) Mr Glyn spent only 86 days here.

(4) Out of the 22 trips that Mr Glyn made to the UK in 2005/6, three were for more than six days, twelve were weekend trips and four were en-route to another travel destination via Heathrow (but using CR overnight). His average length of stay was just over two days in the UK and where he did not spend an entire day in the UK the average length of each part day visit is just over half a day.

(5) Mr Glyn was in Monaco, excluding days of arrival and departure, for 191 days and, on the basis of midnights spent there, for 214 days.

266. In counsel's view a high day count in Monaco assists in showing that ties with the UK were substantially loosened. Mr Glyn retained for virtually a full five year period his pattern of a low number of days in the UK and a high number in Monaco.

267. Counsel noted that different tribunals have adopted different methods of counting days to reflect the quality of presence in the UK. In *Gaines Cooper v HMRC* [2007] STC (SCD) 23 and *Hankinson v IRC* (No 2) [2009] UKFTT 384(TC) a midnight day count was used. In the tribunal decision in *Grace*, the tribunal ignored single day visits and counted each day of arrival and departure as a half day. The methodology used by HMRC of counting as a day of presence any day on which Mr Glyn was in the UK for any point of time is clearly unreliable.

268. Counsel noted that Mr Glyn's day count is very low and substantially less than that in the cases where taxpayers have been held to be UK tax resident. If he were found to be in the UK, on the basis of either of the day counts used by Mr Glyn, that would be the lowest number of days spent in the UK giving rise to a finding of residence. Counsel noted, for example:

(1) In *Levene* the taxpayer spent an average of 144 midnights in the UK and in contrast to Mr Glyn he acquired no base in Monaco where he spent much of the remaining time.

(2) In *Lysaght* the taxpayer was in the UK for a week every month to attend board meetings.

(3) In *Grace* the taxpayers' day count was never less than 114 days in any relevant year.

(4) In *Shepherd*, the taxpayer spent 92 whole days in the UK in 1998/99 excluding the day of arrival and departure and only 52 days in Cyprus including days of arrival and departure.

(5) In *Gaines Cooper* the taxpayer spent 147, 121, 158, 110 and 146 midnights in the UK in the tax years in question.

(6) In *Hankinson* the appellant spent 82 midnights in the UK

269. It is clear from the tribunal's decision in *Grace* that the higher day count led to a different weight being accorded to his continuing ties in the UK (and in that case the taxpayer spent twice the amount of days in the UK compared with Mr Glyn and also continued to work for BA here as a full time pilot). Over the six years the time spent in the two places was about equal (see [109] of that case). In short a higher day count is indicative of a greater quality of presence and more ties here.

270. Similarly, in *Shepherd* the taxpayer was an airline pilot who continued to work for BA; he retained a house in the UK and his wife continued living there. He rented a flat in Cyprus in October 1998 and claimed he had moved there and thus was non-resident in 1998-9 and 1999-2000 but spent little time there. The Special Commissioner found that his whole days in the UK were 92 days in 1998-9 (68 in Cyprus) and 80 days in 1999-2000 and concluded he remained UK resident in both years.

271. HMRC responded that the appellant's position has no basis in legal authority. Lloyd LJ in *Grace* expressly cautioned against such a day count comparison because each case will turn on its own facts (see [3] of that decision). It is particularly dangerous to isolate one factor such as day count and ignore other material differences the existence of which are relevant to the weight to be attributed to day count in any particular case. For example, in *Lysaght* the taxpayer did not retain a home or have any family or social ties in the UK. Similarly, although Captain Grace retained a home and had a British employer, he did not have any comparable family or social ties.

272. HMRC emphasised that it is important to have regard to the recurrent and habitual nature of the appellant's regular and frequent returns to the UK on 22 separate occasions in 2005/2006 alone. The authorities clearly state that short but regular periods of physical presence may amount to residence. HMRC noted that Mr Glyn was present in the UK (a) in every month of the five years of claimed non-residence and (b) on at least two separate occasions per month in 48 out of the 60 months, according to Mr Glyn's day count schedules, and 50 out of the 60 months, according to HMRC's day count schedules. Significantly, irrespective of the methodology used, the day count of both Mr Glyn and his wife increased, rather than diminished, during the later periods of claimed non-residence.

273. The purpose of HMRC's schedules is to demonstrate the pattern, nature and quality of the appellant's presence in the UK. Mr Glyn himself accepted that a methodology which seeks to reflect where a person is in any part of a given day is going to provide a fair and accurate reflection of their presence in a particular location on that day. This is particularly so given his practice of arriving in the UK early on the day of arrival and departing early evening on the day of departure. The methodology which counts only midnights as full days of presence, is far more likely to distort the true picture of Mr Glyn's presence.

274. HMRC noted that Mr Glyn's counsel said that there were "a number of occasions where he did not even leave the airport". However, there were only two such occasions in five years, one of which was not even in the tax year under consideration. HMRC said that the methodology behind the assertion that in 2005/06 Mr Glyn spent on average only two full days in the UK each time he returned is unclear. It is not borne out by either party's day count schedule. Further, it is highly artificial, and entirely fails to reflect the quality of the appellant's presence in the UK.

Business ties

275. Mr Glyn's counsel considered that it was plain that Mr Glyn's business ties were substantially loosened given his total change of lifestyle on his retirement. Following the sale of nearly 200 properties as part of a careful plan drawn up a year before he finally left, Mr Glyn retired from what he perceived as a life of drudgery and instead adopted a life of leisure based in Monaco. By contrast in *Levene* the taxpayer had a continuing and unchanged tie with the UK and in *Grace* and *Shepherd* the taxpayers were obliged to be in the UK to perform their employment obligations. Mr Glyn made a distinct break pursuant to a deliberate and well considered plan and then made visits for a variety of random reasons, as visits of chance and occasion.

276. This is not like the situation in *Grace* where it was noted that the taxpayer made "short frequent and predictable stays in the UK throughout the year to enable him to work" and at [175] it was noted:

> "a very important part of his life, his employment, remained in the UK. When staying in the UK he was much more than a visitor: he had a settled and regular presence here staying in his own house that had been his only home up to September 1997."

277. Mr Grace's presence in the UK was not a stop gap measure: it was indefinite while his employment with BA continued and (like *Lysaght*) meant he had to come to the UK for predictable purposes to perform a continuous work obligation.

278. HMRC said that the evidence contradicts Mr Glyn's assertion that his work had prevented him from getting away for any length of time and that it had only been after his retirement from a lifetime of drudgery that he had been able to enjoy extended holidays abroad. It is clear that he took extended holidays abroad prior to his retirement from the UK family business.

279. HMRC noted that where an individual retires, there will inevitably be a substantial loosening of work ties and consequent change of lifestyle post-retirement. Following 5 April 2005, there was undoubtedly a significant loosening of Mr Glyn's business ties and consequent change in lifestyle. However, as noted in the years prior to 2005 the appellant took numerous and lengthy holidays each year. He remained a director of several companies and continued to carry out executive functions in respect of them after that date. His business interests continued to require his attendance at business meetings with advisors in London in circumstances where his brother was not qualified or capable to deal with them alone. Significantly, he retained the business papers for these purposes in his office at CR.

280. HMRC said that it is significant that prior to 5 April 2005 Mr Glyn and his brother had carried out separate roles within their business. His brother was "very

uncomfortable" with the aspect of the business carried out by Mr Glyn and could not manage on his own without support. Whilst Mr Stuart Glyn attended many if not all of these meetings his contribution was minimal. He did not attend meetings in which Mr Glyn discussed the preparation of company accounts with BDO and he had no involvement with the preparation of those accounts. Mr Glyn knew on 5 April 2005 that he would be required to have further dealings with BDO and he accepted that it was accurate to say that he continued to have a "role" with MGL. Mr Glyn's witness statement makes clear that his presence in the UK on a number of occasions was specifically to attend these meetings with BDO although in cross examination he said that these business meetings were one of a number of reasons for his presence in the UK. Mr Stuart Glyn's evidence was that he had no involvement whatsoever in the computational matters arising after April 2005. He confirmed that he was not able to say what the nine BDO meetings which took place after 5 April 2005 were about, nor whether he in fact attended them with his brother.

Circus Road

281. Mr Glyn's counsel submitted that it is clearly not the case that any retention of a house in the UK is incompatible with establishing non-UK residence. Otherwise both Mr Grace and Mr Gaines-Cooper would automatically have been UK resident. As Lord Wilson noted in *Gaines Cooper*, the question is whether the retention of a house in the UK is compatible with visits rather than a place of residence. HMRC accepted that retention of a home is merely a factor in considering whether a person has left the UK in a press release issued in 1993 (regarding an amendment to s 336).

282. Mr Glyn's counsel continued that a house, as the bricks and mortar, may have the physical quality of continuity and permanence but it is a question of how the particular individual uses the property. A house can be a relevant tie for one individual and not another. In *Cherney v. Deripaska* [2007] EWHC 965 and *Yugraneft v Abramovich* I2008] EWHC 2613 the High Court held, in each case, that in determining whether an individual was resident in the UK for the purposes of whether a claim could be brought against him, ownership of very substantial properties in the UK did not make the individual resident under general law.

283. Mr Glyn's counsel asserted that Mr Glyn's tie with CR was substantially loosened. Before he left the UK on 5 April 2005, Mr Glyn commuted back and forth from CR to the office each day. CR was his base and family home where he socialised and entertained apart from when he was on holiday. After the sale of the properties there was nothing for him to do in the UK, CR was no longer his base from which he commuted, the number of Friday dinners and socialising from there was dramatically reduced and he moved all his personal papers and valuables to Monaco. In that context and bearing in mind the much reduced time spent in the UK, it was a place to visit when Mr Glyn came over to the UK to see friends or was en-route somewhere else. It became in the nature of a pied de terre or high quality holiday accommodation, "a place to visit" in Lord Wilson's words, not a settled abode. CR was no longer used as home.

284. HMRC said that in arguing that CR was merely high quality holiday accommodation, Mr Glyn repeated the error made by the Special Commissioner in *Grace* [2008] STC (SCD) 531 where she stated, at [40], that the taxpayer's Horley house "was not in the nature of a home but was rather a substitute for hotels". It was

noted by Lewison J, at [40] and the Court of Appeal, at [33], that staying in hotels or accommodation akin to a hotel does not necessarily prevent a person from being UK resident. HMRC also referred to the comments of the tribunal decision in *Grace* in 2011 as set out above at [239].

285. HMRC said that in any event CR was plainly not a "pied de terre" but a substantial family home. Mr Glyn left everything as it was, renewed his insurance, maintained all connections required to keep it fully operational, kept two cars parked (one of which was bought only five months before 5 April 2005), applied for and secured a resident's parking permit for Westminster on declaring it was his sole residence and continued to have bills sent there including for his Cannes apartment. His read this correspondence in his office at CR and filed it away there because on each and every occasion that he returned there, he knew that he would be back again within a matter of weeks. He maintained his typical routine from CR at a location where he continued to be within walking distance of his family and friends and other facilities as set above.

286. In HMRC's view it is significant that Mr Glyn was advised that the retention of a "home" was not relevant to the residence issue and that he had not understood the concept that one could be resident in two places simultaneously. This means that he was all the more likely to continue to use CR after 5 April 2005 in exactly the same way as he always had, as a home, as he was not aware it might impact on his tax planning.

287. HMRC asserted that CR clearly continued to be Mr Glyn's home and he accepted that it continued to be such. Mrs Glyn's evidence was that whenever she was at CR during the period of claimed non-residence she was at "home" and that her time spent in the UK in the relevant period was not a holiday but "general living" which included continuing to visit the same hairdresser and frequenting the same local shops. She described a "home" as somewhere she could "live, cook and welcome the children". The appellant's children continued to regard CR as the family home and they retained some of their possessions there such as books and clothes.

288. In all the circumstances, Mr Glyn's retention and use of CR plainly gives a different quality to his time in the UK. When staying there he could not properly be described as a "visitor". He slept there in every month of the five year period. According to HMRC's schedules, he returned at least twice a month in 50 out of 60 months and habitually continued to spend time with his wife and enjoy family meals together with his children on the substantial number of Fridays upon which he was present in the relevant period. He was also able to visit his mother and friends who all lived nearby.

289. Mr Glyn's counsel responded that the size and grandeur of CR was irrelevant. On the contrary it may be said that leaving a big house was demonstrative of a major break. Given that a person can keep a house without becoming UK tax resident it follows that the payment of bills and the retention of cars is not a negative factor. The size of the apartment in Monaco is also irrelevant given that small apartments are the norm in Monaco. Mr Glyn was happy anyway to downsize. The test is not the nature of the physical assets but rather the quality of the use. Sleeping in a house or driving

a car are not indicative of residence. As noted by Mr Glyn's counsel, Mr Glyn's use of CR changed dramatically.

Social and family ties

290. Mr Glyn's counsel asserted it was apparent that Mr Glyn's family and social connections were substantially loosened given the much reduced time he spent in the UK and the much less frequent basis he saw his family and friends. That was particularly the case given the pattern of his new life in Monaco where his family and friends frequently visited him.

291. HMRC said that Mr Glyn's close family and social ties to the UK continued to such an extent and with such a degree of regularity that the ties were not substantially loosened. He described his family as his "hobby" and accepted that his very close relationship with his children did not diminish when he went to Monaco. His family lived within walking distance of CR. When he was in the UK he would see them all and would usually visit his mother several times on each visit. He was in the UK for their birthdays as set out above. By contrast between 8 September 2005 and 5 April 2006, Mr Glyn's son did not visit Monaco and his daughter visited only once for a period of four days. CR was the only place that was a home, as described by Mrs Glyn in her witness statement, as a place she could "live, cook and welcome the children". The only place that met this description in the relevant tax year was CR.

292. HMRC continued that Mr Glyn, his wife and his children all emphasised the importance of the tradition of their Friday family dinner. Whilst Mr Glyn was not a religiously observant Jew, nevertheless his Jewish identity was important to him. The Friday night family dinners at CR continued on 15 Fridays in 2005/06 (compared to 36 the previous year). This was a pattern which continued in all five years of claimed non-residence.

293. HMRC noted that Mr Glyn was present in the UK for a number of Jewish holidays in every one of the five years of claimed non-residence, taking into consideration that these holidays fall on different days of the English calendar every year so that he had to plan specifically to be in the UK on these occasions.

294. He and his wife did not join a synagogue in Monaco. The extent of their religious observance during the period of claimed non-residence took place at the Western Marble Arch synagogue in the same way as it always had done prior to 5 April 2005. Mr Glyn himself characterised his unwavering observance of these holidays in the UK as a "social ritual".

295. HMRC stated that Mrs Glyn always intended to remain resident in the UK throughout the five tax years in question. In 2005/06 alone she was present in the UK regularly and for 7 consecutive days or more on 9 occasions living her life in London in the same way as she had prior to 5 April 2005. She, therefore, was a substantial tie with the UK and one of the reasons Mr Glyn was present in the UK was to be with his wife at their home in CR.

296. HMRC said that whilst Mr Glyn asserted the decision to "emigrate" to Monaco was a decision taken jointly with his wife the evidence of Mrs Glyn and Mr Stuart Glyn contradicts that. Moreover whilst Mr Glyn may have been happy to have lived a solitary life in Monaco, his wife was not and returned frequently and regularly to their

home in London. Mr Glyn accepted that because his wife was in the UK for such regular and substantial periods of time, at least one of the reasons for him being in the UK was for him to be with her.

297. In HMRC's view, the regular pattern of Mr Glyn's returns to the UK one to three days after his wife is another clear indication of his continuing UK residence in order to continue his married and family life in what was and continued to be the family home. Mrs Glyn's insistence that she remain resident in the UK and substantial presence in the UK was a substantial tie with the UK which led Mr Glyn to return in order to carry on his married life with his wife, and to be together with their children as a family.

298. Finally HMRC noted that Mr Glyn had attended a significant number of formal social occasions, often more than one in each month, during 2005/06 and maintained his links with the many friends in the local area. Quite apart from coming to London only for specific reasons such as weddings, funerals or medical appointments the appellant accepted that he had multiple reasons for being in London not least his attendance at numerous social engagements. He said that when in the UK at the relevant time he saw "all of my friends whenever I could". He met up with friends for coffee and attended the Sunday night supper club meals with his close friends. The more formal social events he attended resulted in Mr Glyn's presence in the UK every month, most often on two separate occasions per month leaving aside the other reasons for his presence in London.

Decision

299. The question of whether, on or before 5 April 2005, Mr Glyn made a distinct break in the pattern of his life in the UK is one of fact and degree to be determined by reference to all the circumstances of Mr Glyn's life before and after that time including the period of planning for the move to Monaco.

300. We accept that, by 5 April 2005, Mr Glyn had decided he wanted to spend time outside the UK in order to break so far as possible from his former responsibilities in relation to the family business and to live a more leisurely life. He felt it had become something of a burden or a "life of drudgery" to continue in an occupation he did not particularly enjoy. We note that his reference to the ability to take longer holidays on retirement seems to be overstated given the pattern of Mr Glyn's holidays before and after his retirement (see [196] and [197]). However, that does not invalidate his evidence that his occupation had become an unbearable strain on him and that he wanted to live a different life free from the family business. He felt the best way of achieving this was to move abroad as if he stayed in the UK he was more likely to be sucked back into family business.

301. Mrs Glyn was less keen on the move, at least initially, due to the impact on her ability to see her family and friends and having to scale down very considerably her charitable work. The extent of her misgivings is not clear. She can be described as having at best mixed feelings albeit that she said at the hearing that she grew to like being in the sunshine in Monaco with all its attractions. In the event, whilst after 5 April 2005 she typically went to the UK before her husband and often returned to Monaco after him, she was otherwise with him for the majority of the time.

302. Whatever the initial motivation, as he accepted, Mr Glyn was mindful of ensuring that in making the move to Monaco he was outside the UK tax net or that he maintained his "absence" from the UK for a sufficient period to avoid tax on the dividend received on the retirement from the family business. Prior to the move, he received advice (albeit limited advice in a formal sense) that it was possible to do so provided he was non-resident during a period of three years as regards income tax and five as regards capital gains tax. That there was at least to some extent a tax motive for staying out of the UK does not of itself affect the position. The question remains whether, as a factual matter, Mr Glyn made a distinct break in the pattern of his life in the UK.

303. Mr Glyn did not want to slip up on the 90 days test he thought was relevant to him being non-resident from the terms of HMRC's published guidance on residence/non-residence in IR 20. He kept a detailed diary following 5 April 2005 it seems with a view to ensuring that there was no such slip. He accepted that he was advised that he could retain CR without that affecting his non-residence status. He did not know that a person could be dual resident but he was aware it was not simply a case of becoming resident elsewhere and there was more required to be non-resident than simply sticking to the 90 day "limit" albeit he was not thinking of it in terms of having to loosen ties.

304. By the time the Glyns set off on 5 April 2005 to take up residence in their new apartment in Monaco, leaving aside the properties which were to be retained in GC or retained by Mr Glyn personally, all bar one of the properties of the family business had been sold following a fairly lengthy and active period of preparation and planning for the retirement and the move. We accept that Mr Glyn intended to set up a home in Monaco given the Glyns had obtained residence permits for Monaco, leased a substantial apartment in Monaco for a three year period for which they took time and trouble over choosing the furnishings and made attendant arrangements (such as for a telephone line), that they took valuables with them from CR and Mr Glyn took scanned files he thought he may need to deal with queries on the property sales. We note Mr Glyn insisted on having a break clause in the lease of the apartment at Villa Rosa but that was with a view to being able to leave that apartment if the Glyns could later obtain an apartment in their preferred location in the Roccabella building, as they did in March 2007.

305. It is less clear to what extent, at that point, Mr Glyn anticipated being in the UK and for what purposes after that time. He left CR "fully operational" with all facilities including a resident house keeper and two cars (one of which was purchased five months before the move) (see [116] to [130] above). One of the reasons, although there were others, for retaining CR, was that the Glyns would be able to stay there whilst in the UK. He accepted that he was aware he may have to input on the remaining issues regarding the disposal of the properties of the family business (although he thought at the time that he may be able to deal with this from Monaco), retained some paperwork at CR and still had bills and bank statements sent there, including those for the Cannes apartment. He kept his registration with his NHS doctor in London, carried on with his statins prescription and maintained his MCC membership. He accepted that his wife did not intend to be constrained by any 90 day time limit as regards visits to the UK, as it did not matter to her whether she was

resident in the UK or not, but said that there was no particular anticipation as to how much she would be in the UK. In the event, as noted, she was largely with Mr Glyn except that usually she went to the UK ahead of him and returned to Monaco later. He accepted that he anticipated returning to London quite soon after the initial departure on 5 April and in fact did so for three nights on 22 April 2005.

306. Taking all of this into account we consider it is reasonable to infer that, as at 5 April 2005, Mr Glyn anticipated he would be returning to CR with at least some degree of regularity over the coming months within the parameters of the time limit of 90 days which he thought he could spend in the UK without affecting his residence status. We note the argument that leaving such a substantial property as CR evidences a distinct break from the UK, in terms of the significance of the move. However, in our view, the retention of all facilities required for the house to function as a home for the Glyns when in the UK points to the contrary.

307. Overall we consider that the evidence as to Mr Glyn's intentions and motivations as at 5 April 2005 is not of itself sufficient to determine one way or the other whether he had made a distinct break in the pattern of his life in the UK. Moreover, whilst his intention is relevant, as noted by Lord Hope in *Gaines-Cooper*, it is not determinative. HMRC argued that the fact that Mr Glyn was to some extent unaware of what was required to be non-resident means that it was more likely that Mr Glyn did not loosen his UK ties substantially and continued to use CR as a home. We do not, however, see any basis for drawing any inference to that effect from the extent of Mr Glyn's awareness of the residence test. As noted it is a question of assessing all the facts and circumstances of Mr Glyn's life in looking at the pattern and quality of his continued presence in the UK. It is a matter of looking at the actuality of all the circumstances. It is necessary to move on, therefore, to examine the pattern of Mr Glyn's life before and after the move.

308. As set out, there is no specific time limit but the amount of time spent in the UK is clearly a relevant factor in assessing a taxpayer's on-going connections and ties with the UK. It is not a factor to be looked at in isolation but as part of the overall assessment of the pattern of Mr Glyn's life and the nature and quality of his presence in the UK. Given that Mr Glyn typically flew to the UK in the morning and returned to Monaco in the evening, on a relatively short flight, it would give an artificial impression not to take into account that he spent a significant amount of time on those days in the UK and what he did on those days. We have taken into account, therefore, in making our assessment, all time spent in the UK, including parts of days spent in the UK, according to the evidence of how that time was spent (as set out in detail in relation to the tax year 2005/06 at [158] to [191]).

309. We accept that, in all the circumstances, by 5 April 2005 Mr Glyn had certainly significantly reduced his UK business activities and interests. However, he did retain substantial UK investments albeit largely as a passive investor rather than as an active property manager.

310. Clearly Mr Glyn's retirement from the family business was a major change in his life albeit that he remained involved in a limited way, after 5 April 2005, as regards dealing with issues relating to the prior periods such as the computation of gains on the property disposals and the tax loss planning. He attended at least nine

meetings with BDO in the tax year 2005/06 and accepted that he may have had other meetings or conversations with them and that he had other conversations with his brother. Mr Glyn thought his record of nine meetings was correct but could not recollect with absolute certainty.

311. We note that Mr Glyn remained formally engaged as a director at some of the MGL/Hillpride companies following the date on which he considered he had retired (1 April 2005). That appeared to be because Mr Stuart Glyn was not prompt in organising the paperwork for his formal resignation as a director rather than any desire on Mr Glyn's part to remain as a director. We accept Mr Glyn's evidence, as supported by his brother's evidence, that notwithstanding he remained formally as a director of some of the companies, he did not have an active or on-going role in the winding-up of family business in the period from 5 April 2005 onwards beyond that set out in further detail above (see [76] to [92]).

312. Otherwise Mr Glyn retained some UK property investment interests in relation to which we accept that he was a passive investor rather than an active manager. Whilst in the UK he had the occasional lunch or discussion with Mr Lyall regarding the investments made through MVP and he discussed what was happening with his investments with his brother. We accept that he had no significant role as regards the sale of the properties held in the GC structure on the basis of the evidence set out at [93] to [101].

313. Whilst the precise frequency of the discussions with his brother is not clear, Mr Glyn was involved in the plans for the Parkfield property in the sense that he initially opposed his brother's plans as he would have preferred to have sold the property prior to its development. The brothers were consistent in their evidence, however, that Mr Stuart Glyn organised and dealt with the development project once it was going ahead albeit he kept his brother informed and discussed progress with him given the substantial sums involved and potential returns for them both (see [111] to [116]).

314. We accept Mr Glyn's evidence that following 5 April, on the business and investment side of things, he was more pre-occupied with managing from Monaco the cash he had realised on his exit from the family business as evidenced by his frequent meetings with Barclays in Monaco.

315. We note that continuing to have accommodation available in the UK is not of itself determinative of the residence issue nor does staying in hotels in the UK or similar preclude a finding that a person is UK tax resident. However, the fact that Mr Glyn continued to use CR as a home, as in our view he clearly did, adds a different quality to his time spent in the UK.

316. We do not accept that CR became a place Mr Glyn dropped into merely as a convenient stop off or that it ceased to be used as a home for Mr Glyn. He said it was "homely" but it had ceased to be his home; he regarded Monaco as his home at that time and being in London was like being on holiday. However, whatever Mr Glyn's feelings as regards CR during the period of claimed non-residence, as a factual matter, it is clear that it continued to be used as a home by the Glyns when in London in any natural sense of that term.

317. As noted, CR, a substantial family size house located within close reach of the Glyn's family and social network, was kept exactly as it was on a fully operational basis (including with a live-in housekeeper) for Mr and Mrs Glyn's use whenever they chose (see [116] to [130]). When in London, using CR as his base, Mr Glyn lived life much as he had before 5 April 2005 as regards his personal, family and social life albeit on a reduced scale. He and Mrs Glyn sometimes hosted family dinners there on Friday evenings when they were in London; Mr Glyn said the majority of Friday evening dinners (comprising 15 in the tax year 2005/06 and similar numbers in the subsequent years) took place at CR. From CR Mr Glyn went for dinner elsewhere with the family, he went for strolls in the neighbourhood, he met with friends in the vicinity for coffee or dinner, he visited his mother, he celebrated family birthdays and religious events (in a social manner) and he attended more formal social events. He dealt with many of his bank statements and post there and kept some of his paperwork there. He said he tried to see all of his friends whenever he could.

318. Mrs Glyn typically went to London ahead of Mr Glyn and stayed in London longer than he did. Otherwise her activities in London were seeing family and friends and what she described as "general living". She shopped at the same shops as she had previously and regularly went to the same hairdresser. Mrs Glyn insisted that CR was retained although Mr Glyn said she did not really need to insist for him to be of the same view. She may not always have been as happy there as she was before 5 April 2005 when she and Mr Glyn would have spent less apart but we do not consider that affects the conclusion that she was using CR as her home in the UK.

319. Mrs Glyn's status and pattern of activities does not of itself directly affect Mr Glyn's position. Their residence status has to be assessed independently. The fact that Mrs Glyn may well have remained UK tax resident does not of itself mean Mr Glyn must be such. However, we consider her longer presence in London at CR and use of CR when there as another factor evidencing that CR continued to be used as a home by Mr Glyn. He accepted that Mrs Glyn liked to have the house ready and comfortable for him when he arrived in London. When Mr Glyn went there, he was essentially joining his wife for the two of them to use CR much as they had always done albeit he was doing so for less time.

320. We do not consider that it affects the position that CR was no longer Mr Glyn's base from which he commuted to work on a daily basis on weekdays. CR would have ceased to be such a base on Mr Glyn's retirement from the full time business, whether he decided to retire abroad or to remain in the UK. Mr Glyn's retirement inevitably brought with it a change in his lifestyle. The question is the quality of the continued use of CR in the changed circumstances of Mr Glyn's retirement which necessarily involved greater leisure time. It is a question of weighing up Mr Glyn's on-going UK connections in the light of this changed lifestyle.

321. We note that Mr Glyn made 22 trips to the UK in the tax year 2005/06. He was typically present twice a month in most months throughout the period of claimed non-residence. We accept Mr Glyn's evidence that there was not a single specific reason for his presence in the UK on most of these occasions. Usually he came to the UK for a variety of reasons including to see his family and friends, sometimes for particular occasions, but also fitting in business meetings at BDO (and occasionally with other

advisers). We note that in his witness statement he had indicated that on occasions he came to the UK specifically for business meetings with BDO but at the 2013 hearing he clarified that he kept his brother informed of his plans and his brother arranged these meetings for when he was otherwise planning to be in the UK.

322. Mr Glyn's counsel argued that this meant Mr Glyn merely made visits to the UK of "chance and occasion" which is to be contrasted to presence under an obligation or tie such as for employment (as in *Grace* or *Lysaght*). However, we cannot see that the fact that Mr Glyn came for multiple reasons and spent his time in the UK on many occasions in a variety of ways detracts from the pattern and quality of the time spent. On virtually every occasion he spent time in the UK with family and friends using CR as his home in substantially the same way as he had before the move (albeit he also used CR prior to the move as his base for commuting). We cannot see that the fact it was his entirely voluntary choice to do so diminishes the nature of his on-going connections of this kind.

323. Moreover it is the very regularity and frequence of the time spent in the UK in this way that demonstrates that these were not merely visits of "chance and occasion" but substantial on-going connections. It was habitual for Mr Glyn to be in the UK, as noted, usually on two occasions per month and, on those occasions, it was habitual for him to carry on with the pattern of his previous personal, family and social life in the UK using CR as his home in the UK. That was a pattern that continued throughout the claimed period of non-residence.

324. We note that Mr Glyn's friends said that they individually saw less of the Glyns in the period of claimed non-residence, that the Glyns ceased to be full time members of the Sunday supper club and, unlike before 5 April 2005, plans had to be made in advance to see the Glyns when they were in London. Mr and Mrs Glyn also emphasised the reduced scale of their social activities in the UK (including as regards attending charitable events) and reduced time spent with their family in the UK compared with their life before 5 April 2005. Whilst we accept that there was clearly a reduction in the scale of these activities in absolute terms, again it is the on-going habitual nature of the pattern of these activities in the UK which, in our view, mean these ties were not sufficiently loosened for Mr Glyn to have made a distinct break in the pattern of his life in the UK.

325. Overall we consider that this on-going habitual pattern of spending time in the UK in substantially the same way, as regards Mr Glyn's family and social connections, from what we consider to be a continued home in the UK, combined with his on-going reduced but still substantial UK investments and business interests demonstrates that, as at 5 April 2005, Mr Glyn had not made a sufficiently distinct break in the pattern of his life in the UK for him to have become non-UK tax resident. We do not consider that, given this regular and habitual pattern of his UK lifestyle over the full claimed period of non-residence, in the context of Mr Glyn's changed life on retirement from the family business, the reduced time spent in the UK and the change in his UK business interests from active hands on manager to passive investor suffice to demonstrate that he had made a distinct break.

326. We acknowledge that Mr Glyn did clearly have an established life and a home in Monaco during the relevant period and he spent more time there than in the UK.

However, whilst that is not to be ignored, given that a person may be resident in more than one location, it is not a question of simply measuring the amount of time spent in or the quantity or scale of a person's ties with one place compared with the other. It is a question of whether, in all the circumstances of Mr Glyn's life, his existing ties with the UK were so substantially loosened that he made a distinct break with the UK. For all the reasons set out we consider they were not.

Conclusion

327. For all the reasons set out above, the appeal is dismissed.

328. 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.

HARRIET MORGAN
TRIBUNAL JUDGE

RELEASE DATE: 18th APRIL 2018