



TC03022

Appeal number: TC/2011/00560 & TC/2011/00735

CAPITAL GAINS TAX – residence – whether appellants were resident in the UK – on facts, yes – preliminary issue determined in favour of the respondents

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**(1) STEPHEN NORMAN RUMBELOW Appellants
(2) PAULINE MARY RUMBELOW**

- and -

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

**TRIBUNAL: JUDGE JONATHAN CANNAN
MRS MARILYN CROMPTON**

**Sitting in public in Manchester on 10-12 December 2012 and 22, 23 July 2013
with written submissions on 8 and 27 August 2013**

**Mr John Green of Cobham Murphy Chartered Accountants appeared for the
Appellants**

Ms Kim Tilling of HM Revenue & Customs appeared for the Respondents

DECISION

Introduction

- 5 1. The appellants, Mr and Mrs Rumbelow, each appeal against amendments to their self-assessments for tax year 2001-02 made in closure notices following enquiries into their tax returns for that year. They also appeal against discovery assessments made against each of them for tax years 2002-03 and 2003-04. Mr Rumbelow also appeals against a discovery assessment made against him for tax year 10 2004-05. The assessments relate to both income and gains for the years in question. The tax which is in dispute is as follows:

Tax Year	Mr Rumbelow	Mrs Rumbelow
	£	£
2001-02	168,385	193,543
2002-03	38,347	29,347
2003-04	35,225	77,701
2004-05	45,298	n/a

- 15 2. The issue which arises on these appeals is whether in those tax years the appellants were resident in the United Kingdom. The case for each of the appellants is the same. Namely, that they departed from the UK on 4 April 2001 and became non-UK resident with effect from that date. Mr Rumbelow's case is that he has remained non-UK resident since then, whilst Mrs Rumbelow says that she became UK resident again in 2008. On this appeal however we are only concerned with the position in the 20 relevant tax years identified above.

3. We are not concerned in this decision with the amount of the assessments under appeal. In so far as necessary, both parties agree that any issues as to the amount of the assessments would be dealt with following this decision. We are therefore treating the issue of residency as a preliminary issue.

- 25 4. We heard detailed evidence as to the circumstances in which the appellants came to leave the UK on 4 April 2001 and their living arrangements thereafter. We set out our findings of fact below. Before doing so we set out our understanding of the law in so far as it is relevant to the issues we have to determine.

The Law

- 30 5. Whether a person is resident or ordinarily resident in the UK for present purposes is determined by reference to common law principles which help to define the meaning of those terms. Neither party suggested on the facts of these appeals that it was necessary for us to draw any distinction between residence and ordinary

residence. The principal issue which the parties addressed in their submissions was whether, in the relevant tax years, the appellants were resident in the UK.

5 6. Statutory provisions can override the position under common law. For the years relevant to this appeal we are concerned with provisions in the Income and Corporation Taxes Act 1988 (“ICTA 1988”).

7. We start by considering the common law meaning of the term residence, and in particular the decision of the Supreme Court in *R (otao Gaines-Cooper) v Revenue and Customs Commissioners* [2011] UKSC 47. As is well known, the Supreme Court was concerned with an application for judicial review by taxpayers who claimed that
10 booklet IR20, published by the Inland Revenue, contained a more benevolent interpretation of the circumstances in which a taxpayer would be treated as non resident and non ordinarily resident in the UK than the common law. The taxpayers contended that the court should give effect to their legitimate expectation that the more benevolent interpretation would be applied to their circumstances.

15 8. Lord Wilson, with whom the majority agreed, reviewed the meaning of the term residence. At [13] and [14] he said as follows:

20 *“13. In the absence to date of any statutory definition of residence taxpayers and their advisers have had to turn to the guidance given by the courts – and, importantly, also by the Revenue – in relation to its meaning. But the courts have not – nor, as we shall see, has the Revenue – found it easy to formulate the guidance. For more than 80 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
25 the remaining months staying in hotels abroad. The appellate committee declined to disturb the conclusion of the commissioners that Mr Levene had remained resident and ordinarily resident in the UK during those years. Viscount Cave, the Lord Chancellor, adopted, at p 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"; and, of these three descriptions, the Lord Chancellor chose, no doubt as being the most helpful, that of a "settled or usual abode".*

35 *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
40 the UK which will be necessary if a cessation of his settled or usual abode in the UK is to take place.”*

9. Lord Wilson then went on to consider section 334 ICTA 1988 which provided:

“ 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...”

10. Lord Wilson described the effect of this provision at [16] as follows:

“ If an individual (restricted under the 1988 Act to Commonwealth and Irish citizens) who has been resident and ordinarily resident in the UK 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 the provision puts a second hurdle in his way in that, in order to escape liability as a resident, he 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.”

11. At [20], Lord Wilson considered the meaning of the phrase a “distinct break”. He said as follows:

“ 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 LJ 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 taxpayer'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.”

12. Lord Hope addressed the relevance of the taxpayer’s intention at [63] where he said:

“ ... 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 ...”

13. It seems to us that the passages above encapsulate the principles which apply in determining whether as a matter of general law an individual has become non-UK
5 resident. Of course there are many other authorities which illustrate the application of those principles to particular situations. The parties referred us to a number of those authorities by way of illustration. However no two cases are the same and seeking to compare factual circumstances should not deflect us from our task of determining the issue of residence on the basis of all the facts of the case.

10 14. One authority which it is helpful to mention is that of the House of Lords in *Lysaght v Commissioners of Inland Revenue [1928] AC 234*. It is clear from that decision that frequent and regular visits to the UK for the purposes of business may constitute material which points towards residence in the UK, even where the taxpayer has his home elsewhere. Lord Buckmaster summarised the position as
15 follows:

“*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
20 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 ...”*

15. It is worth noting that both parties accept that the question of residency should not be affected by the fact that the taxpayer is motivated to change his residency by a
25 desire to save tax.

16. It is also important to bear in mind that the question we have to answer is not where the appellants were resident, but whether or not they were resident in the UK for all or some of the relevant tax years. The point is helpfully made in Tiley & Collison’s UK Tax Guide 2012-13 at [46.2]:

30 “*Residence is distinct from domicile in its legal nature and purpose. The tax system asks whether a person is resident in the UK not whether he is resident in this country or another; conflict of laws asks where a person has his domicile. Hence a person may have two residences but not two domiciles. Equally he may have no residence but must have a domicile.*”

35 17. Apart from section 334 ICTA 1988 referred to above, there are a number of other statutory provisions relevant to determining residence.

18. For the sake of completeness we were referred to but we are not concerned with section 335 ICTA 1988 which concerns individuals who leave the UK in order to take up full-time work abroad. Nor with section 336 which deems a person as either
40 resident or non-resident in relation to certain income and gains where he is in the UK for some temporary purpose only.

19. We refer above to booklet IR20 which set out HMRC's guidance and understanding as to the law in relation to residency at the time of the tax years we are considering. The Supreme Court in *Gaines-Cooper* carried out a "detailed textual analysis" of the booklet. Lord Wilson concluded that the booklet could have been
5 much clearer but that when looked at as a whole the booklet could be summarised as requiring "a distinct break" in order to achieve non-resident status.

20. We are not concerned in these appeals with the same issues that were considered by the Supreme Court in relation to the IR20 booklet. It is certainly not appropriate to apply what is said in the booklet as though it were an authoritative
10 statement or summary of the law we must apply in determining these appeals.

Background

21. The following background was the subject of a Statement of Agreed Facts or was not in dispute and accordingly we find as follows.

22. The appellants were both born in Salford and at least until 4 April 2001 they
15 were resident and ordinarily resident in the UK. Mr Rumbelow was born on 27 April 1956. Mrs Rumbelow was born on 8 August 1956. They have 3 daughters. Amanda, Emma and Kayleigh. Kayleigh is the youngest. She was born on 6 July 1985 and in April 2001 she was 15 years old.

23. At least until 4 April 2001 the Appellants lived at Yew Tree Farm, Crowton,
20 Northwich, Cheshire. They bought it at auction and having done quite a bit of work on the property they started living there in about 1997. It is presently unoccupied. Mr Rumbelow said that he did not want to sell it until he knew what his residency status was. It has a mortgage but it is not presently insured.

24. On 4 April 2001 the appellants left the UK travelling by car via Eurotunnel to
25 go to Belgium. The Statement of Agreed Facts says that they left on 3 April, but a Eurotunnel receipt shows that it was in fact 4 April. Two days earlier Mrs Rumbelow had withdrawn £1,500 in cash from her Barclays bank account.

25. On 1 June 2001 the Appellants took possession of an unfurnished flat in
30 Belgium at 52a Diksmuidstraat, Ieper, 8900 Belgium. Both were granted residency status pursuant to Belgian law with effect from 11 June 2001.

26. The Appellants purchased land in Silves, Portugal upon which a villa was to be constructed by a developer. Once built it was known as Villa Rumba. In or about September 2002 the Appellants were granted residency status pursuant to Portuguese law.

The Evidence

27. The appellants both gave evidence and they also relied on evidence from their eldest daughter Amanda Roberts who is known as Mandy. Each had made a witness statement and gave oral evidence.

28. The respondents relied on evidence from Mr Andrew Corless who was the officer who commenced enquiries into the appellant's self assessment returns for the relevant tax years. He also made a witness statement and gave oral evidence.

29. Mr Corless began his enquiry in 2003. We should say that much of Mr Corless' evidence and his cross examination was directed towards the manner in which he commenced and conducted his enquiry into the appellants' tax returns, and in particular their residency status. As such it was irrelevant to the matters we have to decide. The Appellants submitted in closing that Mr Corless had "waged a campaign against them". For the avoidance of doubt we should say that we are satisfied that Officer Corless was simply doing his best to conduct a proper enquiry into the tax returns of Mr and Mrs Rumbelow.

30. The inferences Mr Corless drew from the underlying evidence are not relevant to our decision. It is the inferences we consider it appropriate to make which are material. In so far as Mr Corless' evidence was relevant to the matters we have to decide, for example the underlying documentation which he obtained and exhibited, we have referred to it specifically in this decision.

31. The evidence before us also referred to enquiries into the Appellants' tax affairs and those of their companies going back to 1996. No significant matters arose out of those enquiries and they are not relevant for the purposes of the issue we have to decide save in one respect. It is clear that Mr Rumbelow was deeply suspicious of the Inland Revenue and HMRC in his dealings with them. To some extent this manifested itself in what HMRC viewed as a lack of co-operation in the enquiry into his residency status. For example Mr Corless had to obtain various formal notices for the provision of documents. We do not draw any adverse inferences against the Appellants arising out of these matters.

32. We had considerable documentary evidence which was relied on by both parties. Unfortunately it could not be described as comprehensive. For example there was little or no documentary evidence as to the purchase of Villa Rumba in Portugal. There was very little evidence as to the whereabouts of the appellants in the later tax years, 2003-04 and 2004-05. In all years there were large periods when it is unclear whether Mr and Mrs Rumbelow were in the UK or elsewhere. There was no specific evidence of travelling arrangements for any travelling between countries although obviously such travel took place.

33. In the light of all the evidence before us we make the findings of fact set out in the following section of this decision.

Findings of Fact

34. Mr Rumbelow left school to do an engineering apprenticeship at Shell chemicals. He was employed by Shell until 1992 when he set up his own business in plant hire, excavation and underpinning. Initially he was self-employed and later operated through a limited company called Swiftcause Ltd. He struck up a

relationship with ICI and this resulted in him purchasing parcels of brownfield land from ICI. Mrs Rumbelow looked after the administration and paperwork.

5 35. In 1995, through a limited company, the appellants acquired Winnington Hall from ICI. This comprised approximately 22 acres of buildings and grounds together with 22 staff. Winnington Hall itself was a grade 1 listed building. Mr Rumbelow set about developing land and buildings on the site of Winnington Hall. It provided a good rental income with units being let out on short term licences. In his own words Mr Rumbelow was “a hard hat man” working long hours seven days a week.

10 36. Mrs Rumbelow managed a restaurant and conference venue at Winnington Hall. Her role in managing Winnington Hall was full time, often 7 days a week. It was a very demanding job and one Christmas things became too much for her and she became unwell. Indeed we understand she had a breakdown.

15 37. In Mr and Mrs Rumbelow’s witness statements, in Mandy’s witness statement and in the oral evidence of Mrs Rumbelow and Mandy it was said that Mrs Rumbelow’s breakdown was at Christmas 1998. However when Mr Rumbelow came to give evidence he was initially clear that it was Christmas 1999. In particular he was very clear that Mrs Rumbelow had given him 12 months to get rid of Winnington Hall but in fact they left some 16 months later.

20 38. In closing submissions both parties invited us to find that Mrs Rumbelow’s breakdown occurred at Christmas 1998. Whilst little if anything turns on the point, having heard and seen the evidence and considering it in the context of the overall chronology we accept Mr Rumbelow’s initial oral evidence in this regard. On the basis of the evidence before us we find that Mrs Rumbelow’s breakdown occurred at Christmas 1999 and during 2000 they were seeking to sell Winnington Hall.

25 39. At this time Mandy was in a long term relationship with Mark Roberts and lived near to Yew Tree Farm. She had an accountancy qualification and Mark was a Chartered Accountant with his own practice known as Andersons, not to be confused with Arthur Andersen who appear later in this decision. Mandy and Mark subsequently married in 2004.

30 40. In 2000 Mr and Mrs Rumbelow first began to think about leaving, or at least spending more time outside the UK, partly as a solution to Mrs Rumbelow’s health issues. They were also considering winding down their business interests. They sat down with Mark to discuss the most tax efficient way of doing so. On the basis of their discussions with Mark they began to consider becoming non-resident in order to shelter capital gains tax on the disposal of assets. Later when their plans were coming to fruition they took more specialist advice.

41. In 2000-01 Emma was at Sheffield Hallam University returning to Yew Tree Farm at weekends. Kayleigh was about to take her GCSEs and lived at Yew Tree Farm with the appellants.

40 42. It seems likely and we find as a fact that it was towards the end of 2000 that Mandy and Mark suggested that they would like to purchase Winnington Hall. By this

stage the appellants were considering purchasing a property in Portugal. They had friends who lived there and had taken holidays there. They discussed the possibility of moving to Portugal with their daughters. Mandy and Emma were both settled in the UK and did not wish to move. Kayleigh wanted to complete her GCSEs and then
5 move to Sir John Dean College to do A' Levels.

43. We accept that the Rumbelows were a close family with close family ties. They lived in close proximity to Mr Rumbelow's mother, sister and nephews. They had little time for social events. They occasionally went out with friends and took holidays. Mrs Rumbelow in particular would have liked nothing better than for
10 Kayleigh to move to Portugal with them but she did not want to move and could not be forced to do so against her will.

44. Reluctantly Mr and Mrs Rumbelow decided to let Kayleigh stay in the UK whilst they spent more time abroad. The arrangements that were put in place for Mr and Mrs Rumbelow to spend more time abroad involved a considerable wrench for
15 Mr and Mrs Rumbelow, leaving Kayleigh in the UK at a crucial time in her education. We think it unlikely that many parents of a 15 year old would consider such arrangements. Mr Corless was certainly sceptical as to whether the arrangements put in place by Mr and Mrs Rumbelow were genuine. However we were told and we accept that Kayleigh was a mature, capable and determined young lady. She
20 continued her studies and in October 2003 she went to Nottingham Trent University. She later emigrated to Australia.

45. In early 2001 the appellants took specialist tax advice in relation to the proposed move. They were aware that if they became non-resident for tax purposes on or before
25 5 April 2001 then they would not be subject to capital gains tax in the UK on disposals in 2001-02 and subsequent tax years. They intended to make significant disposals of assets in 2001-02 and later years, in particular a disposal of land owned by Swiftcause Ltd to Linden Homes North West Ltd, disposals of other residential properties which they had developed and a disposal of Winnington Hall to Mandy and Mark. Quite legitimately they wished to mitigate the charge to tax associated with
30 these disposals. They therefore approached Arthur Andersen which at that time had offices in Manchester and representation in Portugal.

46. It is not clear how Mr and Mrs Rumbelow received advice from Arthur Andersen. They only visited the offices in Manchester on one occasion. That visit probably took place at the end of March 2001. They must have received advice before
35 that visit but Mr Rumbelow was adamant that there was no correspondence or other written advice. Mr and Mrs Rumbelow's evidence was that Arthur Andersen emphasised that their advice had to be fully and accurately implemented and that they followed their advice to the letter. However they said that Arthur Andersen did not advise them to keep a record of trips to the UK.

40 47. We find it surprising that there is no written evidence of Mr and Mrs Rumbelow's dealings with Arthur Andersen or the advice which they received. Mrs Rumbelow said that when they subsequently came to compile a record of when they were in the UK it was difficult to remember exact days. We return to this below.

48. Mr and Mrs Rumbelow formed an intention to purchase a property in Portugal. They opened a Portuguese bank account in February 2001. Their plans involved leaving the UK before 6 April 2001 and they were intending to stay initially at a villa belonging to friends whilst searching for their own property. Some 4-6 weeks before their anticipated departure they were made aware by Arthur Andersen that there had been a change in tax law which meant that disposals of certain assets when they were resident in Portugal could result in a tax charge in Portugal. Arthur Andersen advised that if they instead became resident in Belgium any disposals in 2001-02 would be subject to a zero rate of tax. At this stage they received advice from a Mr Wyrzt of Arthur Andersen in Belgium. At the end of March they went over to see him in Brussels where they stayed for 3 days.

49. Mr Rumbelow recalled that they had paid Arthur Andersen some £6,400 for advice. He thought that this payment was made in May 2001 and related to the work carried out by Mr Wyrzt. There was no documentary evidence of this work and no supporting fee note. Nor was there documentary evidence of advice in relation to the proposed move to Portugal although we accept that such advice was given. There was an invoice from Arthur Andersen UK for £500 plus VAT which related to "preparation of UK departure documentation". This must have referred to completion of forms P85 to which we will return.

50. After 4 April 2001 Mr Rumbelow began winding down their business interests. Mr Rumbelow said that this was on the advice of Arthur Andersen and we accept his evidence. At this stage their principal assets and business interests were as follows:

- (1) Winnington Hall Limited.
- (2) Land in their own names which had been held for many years, including the Hefferston Hall partnership.
- (3) Swiftcause Limited which was a building company developing sites including Hefferston Hall where properties known as Hall View Close were developed. It also owned land with considerable development value.
- (4) Winnington Leisure which was on land next to Winnington Hall. This included a go-kart track but by April 2001 Mr and Mrs Rumbelow had no interest in that business.
- (5) Yew Tree Farm

51. Hefferston Hall was a partnership between Mr and Mrs Rumbelow which owned various property interests. The partnership was dissolved in 2001 on the advice of Arthur Andersen as part of the process of loosening their ties to the UK. Hefferston Hall itself was a property the appellant's had purchased in about 1985. They converted the Hall into 4 residences and created further residences from the outbuildings. After April 2001, seven dwellings in Hall View Close were disposed of as follows:

2001-02 8 Hall View Close (To Mandy and Mark)
 1 Hall View Close

- 2002-03 6 Hall View Close
- 5 Hall View Close (Gifted to Emma)
- 2003-04 3 Hall View Close
- 2 Hall View Close
- 5 4 Hall View Close (Gifted to Kayleigh)

52. Mr Rumbelow said that this was part of the process of “tidying everything up”. We accept that evidence and that it was a gradual process. Indeed the Local Authority has only just completed a planning agreement with regard to the adoption of a road which they built at Hall View Close in 1997 or 1998.

10 53. Mr Rumbelow stated that Swiftcause Ltd was de-registered for VAT, employees of Swiftcause were made redundant and Swiftcause ceased to trade on 29 November 2003. We were not referred to any supporting documentary evidence to support these matters but we accept Mr Rumbelow’s evidence. In April 2001 Mr Rumbelow was in negotiations to sell land owned by Swiftcause Ltd to Linden Homes. This was either
 15 going to take the form of a sale of the shares in Swiftcause or a sale of the land by Swiftcause. The circumstances of the transaction were not explored in evidence, but negotiations for a disposal of the land by Swiftcause to Linden Homes continued until after April 2002.

20 54. Both Mr and Mrs Rumbelow were intending to take life easy, or at least easier. They had built up enough assets to do so and wanted a new lifestyle and a fresh start. Mr Rumbelow described this as “a total change to what he had been doing before”. Mr Rumbelow’s role changed from April 2001 onwards. He was not involved in trading or building, but was generally overseeing property investments.

25 55. On 30 April 2001 Mr Rumbelow wrote to his solicitors, Moss Hazelhurst asking them to progress the sale of Winnington Hall to Anderson Bevan & Co Ltd for £400,000. We were not told, but we infer that this was a vehicle through which Mandy and Mark were intending to purchase Winnington Hall.

30 56. Since April 2001 Mr Rumbelow has bought further land from ICI. He described this as a couple of bits of land. We understand that there were 5 such plots. Some years earlier he had informally agreed to buy the land from ICI as and when ICI wanted to sell. The agreements were completed between December 2001 and August 2004. The total cost was approximately £115,000. Mr and Mrs Rumbelow also purchased further land, including land at Yew Tree Farm comprising a small field to protect the property and maintain its value.

35 57. It was on 4 April 2001 that Mr and Mrs Rumbelow left the UK and travelled to Belgium. They drove via Eurotunnel in a Mercedes saloon car with no accommodation planned. The car was loaded with suitcases and a few personal belongings. On arrival in Belgium Mr and Mrs Rumbelow stayed at a hotel in Ieper, also known as Ypres. They travelled around for a few weeks but decided that they

wished to be based in Ieper. Mrs Rumbelow described this as “an adventure” and no doubt it was, although not one they had originally intended. The circumstances of their departure were plainly motivated by a desire to leave the UK before the start of the 2001-02 tax year.

5 58. Whilst in Belgium they located an apartment and took an unfurnished lease commencing on 1 June 2001. They filled in Belgian residency forms and waited to be granted residency which occurred later in June 2001. In due course they went about furnishing the apartment. They opened a bank account in Belgium with KBC in April 2001. They had taken a little cash with them and also used their UK bank cards to draw cash whilst in Belgium.

10 59. It is clear that Mr and Mrs Rumbelow did not find Belgium to their taste as an alternative to Portugal. It was always intended to be a stop gap prior to purchasing a property in Portugal. Indeed they spent comparatively little time in Belgium. The appellants had just one visit from Kayleigh whilst they were in Belgium. No other family members visited.

15 60. In May 2001 whilst waiting for their apartment to become available they went on holiday to the Dominican Republic for 16 days. They flew from Manchester with 2 friends. This involved returning to the UK by car together with all the belongings they had taken with them. Mr Rumbelow said that they left their belongings in the car at Yew Tree Farm. We find that hard to believe and consider it more likely that they simply unpacked the car and left the belongings they did not need for their holiday at Yew Tree Farm.

20 61. In July 2001 Mr and Mrs Rumbelow went to Portugal with Kayleigh and Emma to celebrate Kayleigh’s 16th birthday. This was a family holiday and they were all there for approximately 3 weeks.

25 62. In September 2001 they spent 2 weeks on holiday in Turkey, again with friends.

30 63. Much of the rest of 2001-02 was spent either in the UK or in Portugal. During their time in Portugal they were searching for a property. Tellingly, during cross-examination Mr Rumbelow described the search for a property as looking for “a holiday home abroad” although he later said that he had used “the wrong words”.

35 64. We were not told in evidence when the land in Portugal was purchased, when building work commenced, when the villa was completed or when they moved into the villa. They were granted residency status in Portugal in September 2002. Further, the statements from their Portuguese bank account indicate that they started paying utility and other bills in Portugal in or about October 2002. We find therefore that Mr and Mrs Rumbelow had their own villa in Portugal available from about October 2002.

40 65. Mr and Mrs Rumbelow were both aware in April 2001 that the Inland Revenue booklet IR20 permitted return visits to the UK of up to 90 days per year on average. Mandy stated in her evidence that her parents were always wary of spending more than 90 days in the UK. According to Mr Rumbelow, Mrs Rumbelow made sure that

they didn't exceed the 90 days. In his oral evidence, and for the first time since Mr Corless' enquiry began, Mr Rumbelow said that Mrs Rumbelow maintained a diary and this had been used to produce a schedule of their whereabouts for HMRC in 2004. He did not know what had happened to the diary. We do not accept his evidence in this regard and we are not satisfied that any contemporaneous record was maintained by Mr or Mrs Rumbelow as to their whereabouts or their visits to the UK after 4 April 2001.

66. A schedule was prepared by Mr and Mrs Rumbelow in 2004 and it purports to show the dates in 2001-02 on which they returned to the UK. It was subject to a caveat that the dates may not be precise because they had not retained documentation. The schedule indicated that they returned to the UK 5 times in the year 2001-02. It also indicated that their first return trip to the UK after 4 April 2001 was on 29 June 2001. At a later date this schedule was amended by Mr and Mrs Rumbelow or on their behalf to show where they were when they were not in the UK.

67. In a letter dated 23 January 2007 Mr and Mrs Rumbelow produced a further detailed analysis describing where they were in 2001-02 and identifying the documentary evidence they relied on to produce that analysis. This included reference to material such as transaction receipts and bank statements.

68. Mr and Mrs Rumbelow have not carried out a similar exercise for the later tax years, presumably because they were not asked to do so.

69. When Mr and Mrs Rumbelow returned to the UK they did so together, save on one occasion when Mr Rumbelow returned alone because his mother was ill. Mr Rumbelow gave evidence that visits to the UK would last on average some 4 days. There were however some occasions such as Christmas when they were present in the UK for an extended period. We set out below our findings as to their whereabouts during each of the relevant tax years.

70. Winnington Hall was sold to Emma and Mark in or about December 2001. Prior to that date Emma and Mark had spent more than a year learning the ropes from Mr and Mrs Rumbelow. It seems likely therefore that the year spent learning the ropes started in 2000. Mandy continued her accountancy career whilst Mark shadowed Mr and Mrs Rumbelow in order to understand the business.

71. Mandy stated that from April 2001 onwards she and Mark would speak to Mrs Rumbelow about the running of the conference centre and restaurant business. In oral evidence Mandy said that her mother was not physically there after April 2001 and her only involvement was helping Mark over the phone. Her mother took no managerial decisions. Mark was in charge. She also said that her mother "did not work for the company after Mark and I bought the shares".

72. Mrs Rumbelow's evidence was that her only involvement after April 2001 was if they needed her help with anything out of the ordinary. She was the company secretary of Swiftcause but said that after April 2001 she had no involvement with that company. She said she had no other business interests.

73. During the course of the hearing an issue arose concerning the justices' licence for the bar at Winnington Hall. Mandy did not know who held the justices' licence after April 2001. Mrs Rumbelow accepted that the licence had been in her name prior to April 2001 and she thought that the bar manager, Dennis Bazley had taken it over when she had left.

74. During the course of his enquiries Mr Corless obtained the Rumbelow's client file from Moss Hazelhurst, solicitors. This covered mainly property transactions in which Mr Rumbelow had instructed that firm. The file also contained an attendance note dated 18 June 2001 which records a telephone call made to Mark Roberts by "KP" of Moss Hazelhurst. It is not clear who KP is, but the note records Mr Roberts being asked who is running the bar at Winnington Hall. The answer is as follows:

"Pauline [Mrs Rumbelow] is still there on day to day basis @ moment.

When she leaves will always be John or Paul Bazley in charge.

Would not like to choose between

Will apply 12/7"

75. Mr and Mrs Rumbelow both maintained that Mrs Rumbelow was not working at Winnington Hall on a day to day basis in June 2001. Mrs Rumbelow was not a party to the conversation between Mr Roberts and KP but we regard the note as prima facie evidence that she was still working at Winnington Hall in June 2001. That is at odds with her evidence to us that her only involvement after April 2001 was to help Mandy and Mark over the phone and to pitch in at Christmas time when Winnington Hall was busy.

76. We are surprised that the appellants did not seek to call Mr Roberts to give evidence explaining his recollection, if any, of events in 2001. Nor did they offer any explanation as to why he had not been called. There is a burden on them to satisfy us that Mrs Rumbelow was not still working at Winnington Hall after April 2001. In the circumstances we are not satisfied that Mrs Rumbelow ceased working at Winnington Hall in April 2001.

77. We set out below our findings of fact in relation to the whereabouts of Mr and Mrs Rumbelow after 4 April 2001. There is scope within those findings for Mrs Rumbelow to have been working at the bar after that date. We do not consider that the evidence justifies a finding that Mr and Mrs Rumbelow and Mandy were being untruthful in their evidence. However they have not satisfied us that Mrs Rumbelow ceased working at Winnington Hall on 4 April 2001.

78. The Moss Hazelhurst file gives an insight into the dates on which Mr and Mrs Rumbelow were in the UK to attend to business interests and other legal matters. The file shows that Mr Rumbelow gave instructions to Moss Hazelhurst either in person or by telephone. He only rarely gave instructions in writing. There were numerous inconsistencies between the Moss Hazelhurst file and the schedules produced by Mr and Mrs Rumbelow as to their whereabouts. For example the schedules showed Mr

and Mrs Rumbelow in Belgium throughout the period from 4 April 2001 to 9 May 2001. No doubt this is why they were adamant in evidence that they had not been in the UK on 1 May 2001 or 4 May 2001. One reason for such inconsistencies is the difficulty Mr and Mrs Rumbelow had in piecing together their whereabouts in the absence of any record maintained for that purpose. However we also consider that Mr and Mrs Rumbelow have approached their evidence on the basis that if documents do not show them to be in the UK, then they were not in the UK.

79. The file records numerous meetings in 2001, 2002 and 2003. Mr Rumbelow described these meetings as part of the closing down process. That is generally the case, save for a small number which relate to property purchases referred to above.

80. Mr Rumbelow said that their visits to the UK were generally planned around business meetings, including sorting out the disposals of property. On one occasion Mr Rumbelow came back on his own because his mother was ill. On another occasion in July 2002 they returned because Mrs Rumbelow was having laser eye surgery at Moorfields Eye Hospital. We accept that surgery for Mrs Rumbelow's eye condition was not available in Portugal and they preferred to have it done in London. They were in London for about 3 days but in the UK for about a month. The rest of that month was spent at Yew Tree Farm. Mr Rumbelow said that the only social visits they came back for were at Christmas.

81. As will appear from our analysis of Mr and Mrs Rumbelow's whereabouts in the tax years in question we consider that their return visits to the UK were more frequent and extensive than Mr and Mrs Rumbelow described in their evidence.

82. We have considered all direct evidence available as to where Mr and Mrs Rumbelow were in the relevant tax years in order to identify the pattern of their lives. We have then taken a step back and considered all the evidence before us as to where they were likely to have been. We summarise our findings of fact based on that evidence in the schedule annexed to this decision ("the Annex"). We stress that this is not part of a counting exercise as envisaged by booklet IR20 but is part of a more qualitative exercise to assist in applying the law we have set out above to the facts of this case. It is not simply about where they were, but more importantly their reasons for being there and how that fits into the pattern of their lives.

83. Where we are satisfied based on the evidence and on the balance of probabilities that Mr and Mrs Rumbelow were in a particular place that is recorded on the Annex. If we are not satisfied from the evidence where Mr and Mrs Rumbelow were, then we have recorded that on the schedule. There was more reliable evidence as to the position in 2001-02 than in later years.

84. In making our findings as to the whereabouts of Mr and Mrs Rumbelow we have taken into account the submissions of each party and in a particular the following evidence:

- (1) Evidence from bank statements.
- (2) Evidence from the Moss Hazelhurst file.

(3) Evidence from Mr and Mrs Rumbelow as to there whereabouts.

85. Mr and Mrs Rumbelow had various UK bank accounts in the relevant periods together with an account in Belgium and an account in Portugal. The UK accounts were held prior to April 2001 and were maintained after that date. From these
5 accounts it was possible to identify cash withdrawals in the UK, Belgium and Portugal. With some entries it was difficult to draw any inference as to where Mr and Mrs Rumbelow were on any particular day because of the possibility of remote payment by telephone. Mr Rumbelow said that in 2001 he did not often make purchases over the internet however telephone transactions could have been made.

10 86. It is notable that the Belgian bank account shows mainly direct debits for rent, water and electricity. There are very few “point of sale” transactions and no cash withdrawals. The account was opened in April 2001 and closed in May 2002.

87. The account in Portugal was opened in February 2001 It includes various cheque payments, standing orders, cash withdrawals and point of sale transactions.

15 88. Mr and Mrs Rumbelow both had Barclays UK accounts showing cash withdrawals and point of sale transactions in Belgium, Portugal and the UK. There are very few cash withdrawals on Mr Rumbelow’s Barclays account. Mrs Rumbelow also had a Lloyds TSB account and a Halifax account. The Lloyds TSB account shows cash withdrawals and point of sale transactions in Belgium, Portugal and the UK.

20 89. We did not take into account Mrs Rumbelow’s Halifax account when considering the evidence as to their whereabouts and in making our findings in the Annex. This is because we were told that Kayleigh and Emma had use of the Halifax
25 cashcard as part of the financial arrangements for Kayleigh. The account shows mainly cash withdrawals of £300 almost always at an ATM in Northwich. The balance on the account varied from some £20,000 in July 2001 to some £45,000 in October 2003. When we compare the dates on which cash withdrawals were made from the Halifax account to our findings as to the whereabouts of Mr and Mrs Rumbelow in the Annex it is notable that on no occasion is a cash withdrawal made when we have found Mr and Mrs Rumbelow were out of the country. Similarly, on 8
30 occasions when Mr and Mrs Rumbelow were in the UK there is a withdrawal of £300 from the Halifax account via an ATM.

90. If Kayleigh and Emma did have access to the Halifax cashcard it seems strange that there is no example of its use when Mr and Mrs Rumbelow are known to have
35 been out of the country. It is unlikely Kayleigh would have used it when Mr and Mrs Rumbelow were in the country. We also find that it is unlikely, however mature and responsible Kayleigh was as a teenager, that Mr and Mrs Rumbelow would routinely trust her with immediate access to an account containing up to £45,000.

91. As we have said, Kayleigh went to Nottingham Trent University in October
40 2003. There is a withdrawal of £300 from a Halifax ATM in Nottingham on 22 October 2003. This feature was not canvassed in evidence and it could be consistent with either Kayleigh using the cashcard in Nottingham or Mrs Rumbelow using it in Nottingham if she visited Kayleigh.

92. It is significant that on each occasion that a cash sum is withdrawn it is £300. That suggests to us that it is the same person making the withdrawal. There are several examples of £300 cash withdrawals from Mrs Rumbelow's Barclays account, but no similar pattern to that shown in the Halifax account.

5 93. Based on all the evidence available to us it seems likely that the Halifax account was used by Mrs Rumbelow to draw cash when she was in the UK. We have not taken that conclusion into account in the Annex, but it would add at least 10 further occasions on which Mr and Mrs Rumbelow were in the UK.

10 94. It is possible, looking at the various bank statements, to identify certain patterns of use. For example:

15 (1) On 8 November 2001 there was a point of sale purchase at a restaurant in France. This is consistent with Mr and Mrs Rumbelow's evidence that they drove from Belgium to Portugal at that time via Paris. Thereafter there was regular activity on the account showing point of sale purchases from a hypermarket in Portugal until 13 December 2001. It is reasonable to infer that during this period Mr and Mrs Rumbelow were in Portugal. There is also evidence that at the end of November 2001 they returned to Belgium and then the UK.

20 (2) In certain periods there was a flurry of activity on bank accounts for point of sale transactions in the UK. For example in the period 24 June 2002 to 17 July 2002. Indeed, that includes the period when Mrs Rumbelow attended Moorfields Eye Hospital. It is reasonable to infer that during such periods the Rumbelows were in the UK.

25 (3) It is unlikely that the Rumbelows were in any particular place for only 1 or 2 days. The average stay in the UK was 4 days and in Belgium and Portugal was likely to be longer. When having meetings in the UK they would usually try and incorporate a weekend.

30 (4) During periods when the appellants were agreed to be in Belgium, Portugal or on holiday there was very little UK activity on their bank accounts. The activity that did take place was by cheque or automated transfer.

95. Evidence available from the Moss Hazelhurst file also shows the following:

35 (1) Moss Hazelhurst corresponded with Mr and Mrs Rumbelow at Yew Tree Farm throughout the period from April 2001 until at least November 2003. That in itself carries little weight in our decision because Emma and Kayleigh could forward post to Belgium or Portugal, and Mandy could forward it if it had been diverted to Winnington Hall as Mr Rumbelow suggested. The same point can be made in relation to bank statements addressed to Yew Tree Farm. However it seems strange that Moss Hazelhurst should correspond with Mr and Mrs Rumbelow in relation to commercial matters at Yew Tree Farm if they knew that Mr and Mrs Rumbelow lived outside the UK.

40 (2) A file note apparently dated 1 May 2001 refers to a meeting between Jill Novotny of Moss Hazelhurst and Mr Rumbelow. Mr Rumbelow was adamant in

his evidence that there had been no meeting in the UK on that date. In closing submissions it was accepted that the meeting took place. This illustrates Mr Rumbelow's approach to giving evidence generally. He was not prepared to accept any matter adverse to his case without documentary evidence to establish the matter. By the same token significant aspects of his own evidence were not supported by documentary evidence when we would have expected to see such support.

(3) Formal minutes of meetings of the directors of Winnington Hall Ltd show Mr and Mrs Rumbelow present in the UK on 4 May 2001 and 31 May 2001. Mrs Rumbelow denied that she was in the UK on 4 May 2001 and could not account for the minutes suggesting otherwise. Mr Rumbelow denied that he was in the UK on 4 May 2001 and viewed the minutes as simply a formality. He did not think that there had been any meeting. We do not consider that this admission by Mr Rumbelow affects his credibility generally as far as this appeal is concerned. However we are satisfied that Mr and Mrs Rumbelow were in the UK on 4 May 2001.

(4) A file note dated 10 October 2001 describes Mr Rumbelow as attending the offices of Moss Hazelhurst. Mr Rumbelow was adamant that he could not have been at Moss Hazelhurst on that date. However in closing submissions it was accepted that he was in the UK between 11 October and 22 October 2001. We also find that he was present on 9 and 10 October 2001, although the 9 October may have been a day of travelling.

(5) A letter from Moss Hazelhurst dated 21 August 2002 describes Mr Rumbelow as away on holiday at that time. He was in Portugal. Mr Rumbelow said that he used the expression "away on holiday" when he was not in the UK to "fob the solicitors off". In an email dated 24 March 2003 the solicitors described Mr Rumbelow as being "due to go to Portugal on an extended holiday". Mr Rumbelow maintained that the solicitor was incorrect in this understanding. Mr Rumbelow had considerable dealings with Moss Hazelhurst throughout the period we are concerned with. The understanding of individuals at Moss Hazelhurst who dealt with Mr Rumbelow is relevant in our assessment of the nature of his absences from the UK.

(6) On 10 March 2003 Mr Rumbelow signed a statutory declaration concerning land he had purchased from ICI on 27 June 2002. He gave his address as Yew Tree Farm. The land was later gifted to Cheshire County Council as an open space.

(7) By 18 December 2003 Nicola Roberts of Moss Hazelhurst was dealing with Mr Rumbelow's affairs. A file note indicates that he met her on this date and this was consistent with Mr Rumbelow's evidence that he and Mrs Rumbelow usually came back to the UK at Christmas for 2 or 3 weeks. The first Christmas they came to the UK for 18 days. Mr Rumbelow said that in the following 4 years there was at least one Christmas spent in Portugal. However for the 4 tax years we are concerned with the evidence suggests and we find that they were in the UK for Christmas in each year.

96. Mr Rumbelow was initially very clear in his evidence that he met Nicola Roberts only once. However file notes indicate that he met her in the UK on 24 July 2003, 5 August 2003, shortly before 21 October 2003, 30 October 2003 and 31 March 2004. When it was put to him that the evidence suggested he met her on a number of occasions Mr Rumbelow said that he was dealing with events over 10 years ago and he was doing the best he could to recall those events. This and other discrepancies illustrate the difficulty of providing reliable evidence as to details some 10 years ago in the absence of supporting documentation.

97. In compiling the Annex we have closely considered the parties' written submissions which in each case included schedules as to the whereabouts of Mr and Mrs Rumbelow. There was some measure of agreement. The Annex is based on the inferences we have drawn from all the available evidence. Whilst we cannot be sure that the Annex is accurate in every detail, subject to periods where we cannot be satisfied as to Mr and Mrs Rumbelow's whereabouts we consider that the Annex gives a reasonable indication as to the pattern of their lives.

98. Mr Corless gave evidence to the effect that Mr and Mrs Rumbelow had failed to declare income and gains in their Belgian and Portuguese tax returns. This was not put to Mr or Mrs Rumbelow in cross examination. In the circumstances we are unable to make any findings as to whether this was the case or, if it was the case then why no such returns were made. We do not draw any adverse inferences in relation to this aspect of the respondents' case.

99. By 2008 Mr and Mrs Rumbelow were suffering marital problems and they separated. Since June 2008 Mrs Rumbelow has been resident in the UK. She has lived in Northwich, although not at Yew Tree Farm. Mr and Mrs Rumbelow have not sold Yew Tree Farm and it is presently empty. Mr Rumbelow explained that he is waiting to confirm his UK residency status before selling the property. We should point out that our decision on the present appeal will not say anything about whether or not Mr Rumbelow is currently UK resident.

100. Shortly before 4 April 2001 Mr and Mrs Rumbelow each signed a form P85 intended for taxpayers leaving the UK and claiming relief or repayment of UK income tax. In fact they did not use the forms to make any claim but the forms were submitted to HMRC. Mr and Mrs Rumbelow had been asked by Mr Wyrztz to go to Arthur Andersen's offices in Manchester to sign the forms. Next to the signature the form included a declaration that the information given on the form is correct and complete. On the face of the forms they purport to have been signed on 3 April 2001. We accept Mr Rumbelow's evidence that the forms would have been signed at the end of March 2001. Each form contains the following responses:

<i>Do you intend to live outside the UK permanently?</i>	<i>Yes</i>
<i>Will you be visiting the UK while you are living abroad?</i>	<i>No</i>
<i>Are you leaving the UK to work?</i>	<i>Yes</i>
<i>What type of job is it?</i>	<i>Self-employed</i>

Will you be working full time

Yes

In what currency will you be paid for your work abroad

Belgium Franc

101. Mr and Mrs Rumbelow both say that the handwriting on these forms is not their
5 own and that the forms must have been completed by someone from Arthur Andersen.
Whoever completed them did so incorrectly. In particular they always intended to
visit the UK and they were not leaving the UK to work. Further, that they signed the
P85s without reviewing their contents. We accept that evidence. Signing the forms in
10 that way is at most consistent with an indifferent or casual approach to putting into
effect their plans to achieve non-resident status. We do not consider that Mr and Mrs
Rumbelow were deliberately seeking to mislead HMRC in signing these forms.

102. In their witness statements, Mr and Mrs Rumbelow and Mandy described the
arrangements that were made for Kayleigh. She was to live with Mandy and Mark
some 5 minutes away from Yew Tree Farm. She could walk to school from there. She
15 was to spend weekends at Yew Tree Farm with Emma who would return from
University every weekend to see her boyfriend. Kayleigh would also sometimes stay
at her grandmother's house which was very close to Mandy and Mark. Mrs
Rumbelow was in contact with Kayleigh on a daily basis by phone, and Mr
Rumbelow also spoke to her by phone regularly. Kayleigh spent holidays with Mr and
20 Mrs Rumbelow in Portugal. We accept that these were the arrangements when Mr and
Mrs Rumbelow were out of the UK. We find that when Mr and Mrs Rumbelow were
in the UK they would live together with Kayleigh as a family at Yew Tree Farm.

103. Mr and Mrs Rumbelow were at pains to stress and we accept that they had not
simply abandoned their daughter in the UK. They did not wait until after her GCSEs
25 to depart because their move to Belgium was motivated by tax considerations and
they expected to dispose of assets 2001-02. That is not to say that they put tax
considerations before their daughter and events proved that whatever the
arrangements put in place Kayleigh succeeded academically.

104. Mr and Mrs Rumbelow's witness statements also described the financial
30 arrangements for Kayleigh. It was said that Mrs Rumbelow left a cheque book with
pre-signed cheques at Yew Tree Farm to be used as required for utility bills and the
like. She also said that she left a Halifax cashcard at Yew Tree Farm to enable cash to
be withdrawn from ATMs. The child benefit was mandated to Emma's bank account
so that Emma would have funds available for Kayleigh. There was also a standing
35 order from Mr Rumbelow to Kayleigh. This amounted to £50 per month and in
September 2003 it was increased to £50 per week when Kayleigh went to university.

105. Mandy told us that she did not have much to do with the financial arrangements
for Kayleigh although she did have access to the cash card and the pre-signed
cheques. It was mainly Emma who used the cheques. Both Emma and Kayleigh used
40 the cash card. She said that the appellants were not in the UK very often during 2001-
02. Indeed she did not recall seeing them at all in that year. That is not consistent with

our findings as to Mr and Mrs Rumbelow's presence in the UK during 2001-02. We put that down to Mandy's recollection being affected by the passage of time.

106. For the reasons given previously we are not satisfied that the financial arrangements for Kayleigh involved her use of the Halifax cashcard. Undoubtedly, however, Mr and Mrs Rumbelow did spend a significant amount of time away from the UK in the period after 4 April 2001. On balance we do not think it likely that she was quite as independent of Mr and Mrs Rumbelow as was portrayed in their evidence.

107. Mrs Rumbelow said that they returned to the UK "a couple of times" in the first year. When they did so they stayed at Yew Tree Farm. Her evidence as to the number of trips to the UK is not consistent with our findings as to Mr and Mrs Rumbelow's presence in the UK during 2001-02. Mr Rumbelow said that they returned to the UK 6 or 8 times a year. That at least is more consistent with our findings as to their presence in the UK in 2001-02.

108. Whenever the appellants returned to the UK they stayed at Yew Tree Farm. They returned to a fully furnished house which they owned and could occupy with their daughter Kayleigh. They kept a Mercedes SLK at Yew Tree Farm. This was taxed and insured and available for use on their return to the UK. There was also evidence as to other vehicles owned by Mr and Mrs Rumbelow and as to the purchase of a Mitsubishi pickup truck from a garage in Belgium. However this evidence was not entirely clear and we do not find it helpful in determining the issues before us.

109. In the autumn of 2003 Kayleigh left Yew Tree Farm to go to university. At that stage the property was not permanently occupied, although it remained fully furnished and available to them when they were present in the UK. Mr Rumbelow continued to pay council tax on Yew Tree Farm until at least 2003 when Kayleigh went to university. It was not clear what happened after 2003.

110. Mr and Mrs Rumbelow's post continued to be addressed to Yew Tree Farm. Initially Mr Rumbelow said that post was forwarded to them by Emma or Kayleigh. However later in his oral evidence he recalled that they had diverted the post to Winnington Hall. In any event, one way or another they had arrangements to receive post when they were away from Yew Tree Farm for an extended period.

111. In January 2003 Mr and Mrs Rumbelow remortgaged Yew Tree Farm. The mortgage offer identifies their address as Yew Tree Farm separately from the address of the property to be mortgaged. Mr Rumbelow maintained that the bank was aware that they were not living in the UK. The UK bank statements in evidence cover the period from April 2001 to the end of November 2003. They were all addressed to Yew Tree Farm.

Submissions in Outline

112. Both parties produced written closing submissions. We deal with the detail of those submissions in our decision below. They may be summarised as follows.

113. It was submitted on behalf of the appellants that:

5 (1) They left the UK in April 2001 for a settled purpose, namely to live permanently overseas for the benefit of Mrs Rumbelow's health, to retire and to improve their quality of life.

(2) The distinct changes to the pattern of their daily lives could not have been clearer. There was a substantial loosening of family, social and business ties so
10 as to amount to a distinct break.

(3) When they returned to the UK they did so as visitors.

114. The appellants accept that if they left the UK for only occasional residence abroad then they would be treated as UK resident by virtue of section 334 ICTA 1988. However they submit that the evidence does not support a conclusion that they left for
15 only occasional residence abroad.

115. The respondents submitted that:

(1) The appellants did not make a distinct break in the pattern of their lives in the UK.

(2) They retained their UK home and they were in the UK regularly to see
20 relatives and to look after their business interests.

(3) Even if they achieved non-resident status in April 2001, they were later deemed by section 334 to be UK resident because they left the UK for the purpose of only occasional residence abroad.

(4) Residence in Belgium and/or Portugal did not prevent the appellants from
25 also being resident in the UK.

116. Both parties accept that the burden of proof rests with the appellants to establish that they were non-UK resident in the relevant tax years. The standard of proof is the balance of probabilities and that is the standard we have applied in making our findings of fact.

30 *Decision*

117. In deciding whether Mr and Mrs Rumbelow were resident in the UK in the relevant tax years we must consider the pattern of their lives. In doing so we are seeking to identify whether they had a settled or usual abode in the UK. They were certainly UK resident until 4 April 2001. We have to consider whether there was a
35 distinct break in the pattern of their lives on or after 4 April 2001. In other words a substantial loosening of social and family ties. In seeking to answer these questions we have taken into account all the findings of fact set out above. We have conducted what Lord Wilson described in *Gaines-Cooper* as a "multifactorial enquiry".

118. In early 2001 and in the circumstances set out above Mr and Mrs Rumbelow decided to spend less time in the UK and more time in Portugal. Their intention was, in no particular order, as follows:

- (1) To retire from day to day work.
- 5 (2) To enjoy what they hoped would be a better quality of life.
- (3) Closely associated with that, to improve Mrs Rumbelow's health.
- (4) To mitigate the capital gains tax liability which would arise if they disposed of assets whilst resident in the UK.

119. Mr and Mrs Rumbelow both knew that Mr Rumbelow in particular would need to attend to their ongoing business interests in the UK. Swiftcause ceased trading and Mr Rumbelow ceased to work in property development. He continued to invest in property, with a view to realising existing property investments and in a small way adding to those investments.

120. Mr Rumbelow's retirement from his "hard hat" role was something which occurred on or before 4 April 2001 and enabled them to spend more of their time abroad. There was no suggestion that it would not have happened regardless of any move abroad. The process of winding down and taking life easier is consistent both with ceasing to be resident in the UK and with retaining residence in the UK but spending more time abroad.

121. Spending time abroad was more directly motivated by what Mr and Mrs Rumbelow saw as the prospect of a better quality of life in Portugal. In particular a lifestyle which would involve less stress for Mrs Rumbelow. They plainly intended to enjoy the warmer climate in Portugal and a more relaxed pace of life.

122. Whilst a move to Portugal had been planned for some time, in fact it was disrupted by what Mr and Mrs Rumbelow were advised was an amendment to tax law in Portugal. It was therefore necessary for them to make the hurried and last minute change of plan described above. The decision to spend time in Belgium was motivated solely by a desire to mitigate the charges to capital gains tax which would arise on the disposals they were intending to make.

123. The respondents submit that the appellants did not engage professional advice as to how they should divest themselves of their UK residency. The submission appeared to be based on an inference that a reasonable businessman would not have been so careless in signing the forms P85 and would have obtained written advice. We reject that submission. It seems to us abundantly clear from the evidence that the appellants did seek and obtain advice from Arthur Andersen about divesting themselves of their UK residency.

124. It is curious that the appellants provided us with no documentary evidence as to the nature of the advice they were given and how they monitored their return visits to the UK to ensure that they did not breach the permitted maximum days in booklet IR20. It appears to us that Mr and Mrs Rumbelow were indifferent to the detail of the advice they were given and to the nature and extent of their return visits to the UK.

We have no doubt that advice was received from Arthur Andersen but it seems to us that it was put into effect in a casual manner.

125. Mr and Mrs Rumbelow both said in evidence that when they departed for Belgium on 4 April 2001 it was their intention to live permanently abroad. They had
5 no intention of taking up residence again in the UK. We must test that stated intention by reference to all the evidence before us and our findings of fact based on the evidence. As Lord Hope stated in *Gaines-Cooper*, such an intention is not determinative.

126. It is clear that 2001-02 was an extraordinary year for the Rumbelow family,
10 predominantly because of their desire to achieve non-resident status before 6 April 2001. They were to some extent in a state of limbo. They did not want to be treated as resident in the UK or Portugal. Neither did they want to spend much time in Belgium which was effectively a stop gap on the way to Portugal.

127. The respondents submit that the circumstances in which the appellants departed
15 to Belgium on 4 April 2001 were inconsistent with a decision to leave the UK on a permanent basis. Further, that their presence abroad in 2001-02 was consistent with only occasional residence in Belgium or Portugal. The latter submission appears to have been directed to section 334 ICTA 1988.

128. We accept the respondents' submission that when Mr and Mrs Rumbelow
20 returned to the UK "they were not merely travellers". The fact that they stayed in their own property, furnished and maintained as it had been prior to April 2001, supports the respondents case that the loosening of ties was not sufficiently substantial. The appellants submitted that Yew Tree Farm was viewed as a home for their children, Emma and Kayleigh, and they retained it as such. We consider that they also viewed
25 it as their own home for frequent trips to the UK.

129. The extent of Mr and Mrs Rumbelow's presence in the UK during the period
April 2001 to January 2002 demonstrated by the Annex supports the respondents' case. The Annex is not a day-counting exercise in the sense that IR20 anticipates such an exercise might be used as a practical method for HMRC and taxpayers to
30 determine residence. The question we have to answer based on the authorities involves a qualitative rather than a quantitative test.

130. Most of the time spent out of the UK until 20 January 2002 was spent on
holiday, either in the Dominican Republic, Portugal or Turkey. The periods of time where we are satisfied that they were in Belgium are relatively short. The time they
35 did spend in Belgium was not something they really wanted to do. It was certainly not a holiday for them as was suggested by the respondents. It provided somewhere for them to spend their time so as to avoid being in the UK.

131. In contrast the time spent in the UK until 20 January 2002 was spent at what
remained, essentially, a family home. It was where they lived with their daughter
40 Kayleigh. The circumstances involving Kayleigh and the absence of any real tie to Belgium meant that they returned to the UK much more than they intended and more

than they portrayed in their evidence. It was only after Christmas and New Year, in the early part of 2002 when Kayleigh was no doubt settled in her A' level studies, that they spent any substantial period of time in Portugal. Even then, they were staying at a villa belonging to friends and had Yew Tree Farm as somewhere to live when they were in the UK.

132. The time Mr and Mrs Rumbelow spent in the UK in 2001-02 was to some extent dictated by Mr Rumbelow winding down their business and property interests. Certainly their business ties to the UK remained strong in 2001-02. At the same time it was a considerable wrench for Mr and Mrs Rumbelow to leave Kayleigh in the UK whilst they were away. We consider that return trips by way of business also served the dual purpose of maintaining their social and family ties.

133. The appellants submitted that the changes in their working and family lives could not have been more distinct or clear. However the change in their working lives resulted from a decision to wind down their business interests irrespective of where they resided. There was undoubtedly a loosening of their social and family ties. They did not have a busy social life prior to April 2001 and there is no evidence to suggest that changed significantly after April 2001.

134. We do not consider it appropriate to describe the appellants' absences from the UK as merely temporary. They intended a change in their pattern of life which involved initially living in Belgium and later in Portugal. The real question is whether the loosening of their ties was sufficiently substantial to draw a conclusion that they lost their UK residence.

135. In our judgment the circumstances in which Mr and Mrs Rumbelow travelled to Belgium and the nature of their stay in that country did not involve a substantial loosening of social and family ties. Nor did Belgium become their settled and usual abode. Their settled and usual abode remained Yew Tree Farm in the UK. That was the position until at least 20 January 2002.

136. We have not overlooked the possibility that during 2001-02 Mr and Mrs Rumbelow were not resident anywhere. In other words, that their pattern of life was so itinerant that it cannot be said that they had any settled or usual abode. We do not consider that to be the case. Mr and Mrs Rumbelow had close family ties in the UK. Their social and family ties based around their life at Yew Tree Farm and in particular their daughter Kayleigh remained strong. Inevitably there was some loosening of those ties given the amount of time they spent away from the UK in that year. However it is a matter of degree and we do not consider that their ties were loosened sufficiently to justify a conclusion that they were no longer resident in the UK.

137. We are also not satisfied that Mrs Rumbelow ceased to work at Winnington Hall on 4 April 2001. She certainly spent less time there after 4 April 2001, but there is evidence that she was still there on a day to day basis in June 2001. That would also be consistent with the casual way in which Mr and Mrs Rumbelow implemented the advice given by Arthur Andersen. The burden is on the appellants to satisfy us that

Mrs Rumbelow ceased working at Winnington Hall on a day to day basis after 4 April 2001 and they have not done so.

138. It seems to us that there was a further change in the pattern of Mr and Mrs Rumbelows' lives in January 2002. From 20 January 2002 they spent almost 3 months in Portugal, returning to the UK on or about 13 April 2002. During that period they again stayed at the villa belonging to their friends. It seems to us that this period in Portugal was in the nature of an extended holiday during the winter months. Indeed that was the expression used on the Moss Hazelhurst file to describe their time in Portugal from the end of March 2003 onwards.

139. By October 2002 Mr and Mrs Rumbelow owned a villa in Portugal and the likelihood is that from then on they would spend more time in Portugal than had previously been the case. However when we look at the time spent in the UK during 2002-03 it seems to us that their settled or usual abode remained in the UK. If anything they spent more time in the UK in 2002-03 than they had in 2001-02.

140. We are satisfied that there was no distinct break in the pattern of their lives during 2002-03 and they remained resident in the UK.

141. In 2003-04 the Annex shows that a greater proportion of their time was spent in Portugal than in previous years. However for the vast majority of that tax year we cannot be satisfied from the evidence where they were. From October 2003 Kayleigh had moved away from Northwich to go to Nottingham Trent University. That would give Mr and Mrs Rumbelow less reason to be in the UK. Having said that the Annex shows that from 7 October 2003 onwards there is very little evidence of Mr and Mrs Rumbelow being in Portugal. Part of the reason for this is no doubt the absence of bank statements for the period after November 2003. However that is a deficiency in the evidence and there is insufficient evidence for us to conclude where Mr and Mrs Rumbelow spent their time during this period. They have told us that they lived in Portugal. For a number of reasons we are unable to accept that evidence at face value without corroboration. Firstly we would have expected to see supporting evidence. Secondly we have already noted the difficulty of providing reliable evidence without supporting documentation. Thirdly we have found that in some respects Mr and Mrs Rumbelow's evidence as to the frequency and extent of their visits to the UK is not reliable.

142. In the circumstances we are not satisfied that Mr and Mrs Rumbelow became non-resident in 2003-04.

143. The position in relation to 2004-05 is even less clear. Indeed the only evidence available as to the whereabouts of Mr and Mrs Rumbelow for any particular period shows them to be in the UK. We can only decide these appeals by reference to the evidence before us. It is surprising then that the only reliable evidence we have as to the whereabouts of Mr and Mrs Rumbelow in 2004-05 places them in the UK. Again, that is because we do not have bank statements to cover that tax year. The onus is on the appellants to satisfy us by the evidence how their pattern of life changed after 4 April 2001 and where they spent their lives in the relevant tax years. We are satisfied

that they would have been in Portugal for significant periods but we cannot be satisfied as to when and for how long in Portugal and how the nature of their time in Portugal compared to the nature of their time in the UK.

5 144. In the circumstances we are not satisfied that there was a substantial loosening of social and family ties or that their settled or usual abode was not in the UK. In relation to 2004-05 we are not satisfied that Mr and Mrs Rumbelow were non-resident in the UK.

10 145. For the reasons given above we are satisfied that Mr and Mrs Rumbelow remained resident in the UK during 2001-02 and 2002-03. We are not satisfied that they ceased to be resident in the UK during 2003-04 and 2004-05. In those circumstances we do not need to consider whether section 334 ICTA 1988 was engaged so as to deem them to be resident in any of the tax years under consideration.

146. In the light of our conclusions we must resolve the preliminary issue as to residence in favour of the respondents.

15 147. This document contains full findings of fact and reasons for the preliminary decision. Any party dissatisfied with this preliminary 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.

25 **JONATHAN CANNAN**
TRIBUNAL JUDGE

RELEASE DATE: 31 October 2013

ANNEX

2001-02

Date	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
1		UK	-	UK	UK	Bel	-	Bel	-	UK	P	P	P
2		UK	Bel	P	UK	Bel	-	Bel	-	UK	P	P	P
3		UK	Bel	P	-	Bel	-	Bel	P	UK	P	P	P
4	T	UK	Bel	P	-	Bel	-	Bel	P	UK	P	P	P
5	Bel	-	Bel	P	-	Bel	-	Bel	P	UK	P	P	P
6	Bel	-	-	P	-	Bel	-	Bel	P	UK	P	P	
7	Bel	-	-	P	-	Bel	-	Bel	P	UK	P	P	
8	Bel	-	-	P	-	UK	-	T	P	UK	P	P	
9	Bel	UK	-	P	-	UK	UK	T	P	UK	P	P	
10	Bel	Hols	-	P	UK	UK	UK	P	P	UK	P	P	
11	Bel	Hols	-	P	UK	Hols	UK	P	P	UK	P	P	
12	Bel	Hols	-	P	UK	Hols	UK	P	P	UK	P	P	
13	Bel	Hols	-	P	UK	Hols	UK	P	P	UK	P	P	
14	Bel	Hols	Bel	P	UK	Hols	UK	P	-	UK	P	P	
15	Bel	Hols	Bel	P	UK	Hols	UK	P	-	UK	P	P	
16	Bel	Hols	Bel	P	UK	Hols	UK	P	-	UK	P	P	
17	Bel	Hols	Bel	P	UK	Hols	UK	P	-	UK	P	P	
18	Bel	Hols	Bel	P	UK	Hols	UK	P	-	UK	P	P	
19	Bel	Hols	Bel	P	-	Hols	UK	P	-	T	P	P	
20	-	Hols	Bel	P	-	Hols	UK	P	-	P	P	P	
21	-	Hols	Bel	P	Bel	Hols	UK	P	UK	P	P	P	
22	-	Hols	Bel	P	Bel	Hols	UK	P	UK	P	P	P	
23	-	Hols	Bel	-	Bel	Hols	-	P	UK	P	P	P	
24	-	Hols	Bel	UK	Bel	Hols	-	Bel	UK	P	P	P	
25	-	Hols	Bel	UK	Bel	T	-	Bel	UK	P	P	P	
26	-	UK	Bel	UK	Bel	UK	Bel	UK	UK	P	P	P	
27	-	-	T	UK	Bel	-	Bel	UK	UK	P	P	P	
28	-	-	UK	UK	Bel	-	Bel	UK	UK	P	P	P	
29	-	-	UK	UK	Bel	-	Bel	UK	UK	P		P	
30	UK	-	UK	UK	Bel	-	Bel	UK	UK	P		P	
31		-		UK	Bel		Bel		UK	P		P	

5

Key Bel = Belgium
P = Portugal
T = Travelling (where supported by specific evidence)
10 UK = United Kingdom
- = Cannot identify whereabouts on balance of probabilities

2002-03

Date	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
1		UK	-	UK	UK	P	UK	-	-	UK	-	-	P
2		UK	-	UK	UK	P	UK	-	-	UK	-	-	P
3		UK	-	UK	UK	P	UK	-	UK	UK	-	-	P
4		-	-	UK	UK	-	UK	-	UK	-	-	-	P
5		-	-	UK	UK	UK	-	-	UK	-	-	-	P
6	P	-	-	UK	UK	UK	-	-	UK	-	-	-	
7	P	-	-	UK	-	UK	-	-	UK	UK	-	-	
8	P	-	-	UK	P	UK	-	-	UK	UK	-	-	
9	P	-	-	UK	P	UK	-	-	UK	UK	-	-	
10	P	-	-	UK	P	UK	-	-	UK	UK	-	UK	
11	P	-	P	UK	P	UK	-	UK	UK	UK	-	UK	
12	P	-	P	UK	P	UK	-	UK	UK	UK	-	-	
13	P	-	P	UK	P	UK	-	UK	UK	UK	-	-	
14	P	UK	P	UK	P	UK	-	UK	UK	UK	-	-	
15	P	UK	P	UK	P	UK	-	-	UK	-	-	-	
16	-	-	P	UK	P	UK	-	-	UK	-	-	-	
17	-	-	P	UK	P	UK	UK	-	UK	-	-	-	
18	-	-	-	-	P	-	UK	UK	UK	-	-	-	
19	UK	-	-	-	P	-	UK	UK	UK	-	-	-	
20	UK	UK	UK	-	P	-	UK	P	UK	-	-	-	
21	UK	UK	UK	-	P	-	UK	P	UK	-	-	UK	
22	UK	UK	UK	-	P	-	UK	P	UK	-	-	UK	
23	UK	UK	UK	-	P	-	-	P	UK	-	-	UK	
24	UK	-	UK	-	P	-	-	P	UK	-	-	UK	
25	UK	-	UK	-	P	-	-	P	UK	-	-	P	
26	-	-	UK	-	P	-	-	P	UK	-	-	P	
27	-	-	UK	-	P	-	-	-	UK	-	-	P	
28	-	-	UK	-	P	-	-	-	UK	-	-	P	
29	-	-	UK	-	P	-	-	-	UK	-		P	
30	-	-	UK	UK	P	UK	-	-	UK	-		P	
31		UK		UK	P		-		UK	-		P	

2003-04

Date	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
1		-	P	-	-	-	P	-	-	UK	-	-	-
2		-	P	-	UK	-	P	-	-	UK	-	-	-
3		-	P	-	UK	UK	P	-	-	UK	-	-	-
4		-	P	-	UK	-	P	-	-	UK	-	-	-
5		-	P	-	UK	-	P	UK	-	UK	-	-	-
6	P	-	P	-	-	-	P	UK	-	UK	-	-	
7	P	-	P	-	-	-	UK	UK	-	UK	-	-	
8	P	-	P	-	-	P	UK	-	-	-	-	-	
9	P	-	P	UK	-	P	UK	-	P	-	-	-	
10	P	-	P	UK	-	P	UK	-	P	-	-	-	
11	P	-	P	P	-	P	-	-	P	-	-	-	
12	P	-	P	P	-	P	-	-	P	-	-	-	
13	P	-	P	P	-	P	-	-	P	-	-	-	
14	P	-	P	P	-	P	-	-	P	-	-	-	
15	P	-	P	P	-	P	-	-	P	-	-	-	
16	-	-	P	P	-	UK	-	-	UK	-	UK	-	
17	-	-	P	-	-	UK	-	-	UK	-	UK	-	
18	-	-	P	-	-	UK	-	-	UK	-	UK	-	
19	-	-	P	-	-	-	-	-	UK	-	UK	-	
20	-	-	P	-	-	-	-	-	UK	-	-	-	
21	-	-	P	-	-	-	-	-	UK	-	-	-	
22	-	-	P	-	-	-	-	-	UK	-	-	-	
23	-	P	P	-	-	P	-	-	UK	-	-	-	
24	-	P	P	UK	-	P	-	-	UK	-	-	-	
25	-	P	P	UK	-	P	-	-	UK	-	-	-	
26	-	P	P	UK	-	P	-	-	UK	-	-	-	
27	-	P	-	UK	UK	P	-	UK	UK	-	-	-	
28	-	P	-	-	UK	P	UK	-	UK	-	-	-	
29	-	P	-	-	-	P	UK	-	UK	-	-	-	
30	-	P	-	-	-	P	UK	-	UK	-		-	
31		P		-	-		-		UK	-		UK	

2004-05

Date	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
1		-	UK	-	-	-	-	-	-	-	-	-	-
2		-	UK	-	-	-	-	-	-	-	-	-	-
3		-	-	-	-	UK	UK	-	-	-	-	-	-
4		-	-	-	-	-	UK	-	-	-	-	-	-
5		-	-	-	-	-	UK	-	-	-	-	-	-
6	-	-	-	-	-	-	UK	-	-	-	-	-	
7	-	-	-	-	-	-	UK	-	-	-	-	-	
8	-	-	-	-	-	-	UK	-	-	-	-	-	
9	-	-	-	-	-	-	UK	-	-	-	-	-	
10	-	-	-	-	-	-	UK	-	-	-	-	-	
11	-	-	-	-	-	-	UK	UK	-	-	-	-	
12	-	-	-	-	-	-	-	UK	-	-	-	-	
13	-	-	-	-	-	-	-	UK	-	-	-	-	
14	-	-	-	-	-	-	-	UK	-	-	-	-	
15	-	-	-	-	-	-	-	UK	-	-	-	-	
16	-	-	-	-	-	-	-	UK	-	-	-	-	
17	-	-	-	UK	-	-	-	UK	-	-	-	-	
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23	-	-	-	-	-	-	-	-	UK	-	-	-	
24	-	UK	-	-	-	-	-	-	UK	-	-	-	
25	-	UK	UK	-	-	-	-	-	UK	-	-	-	
26	-	UK	-	-	-	-	-	-	UK	-	-	-	
27	-	UK	-	-	-	-	-	-	UK	-	-	-	
28	-	UK	-	-	-	-	-	-	UK	-	-	-	
29	-	UK	-	-	-	-	-	-	UK	-		-	
30	-	UK	-	-	-	-	-	-	UK	-		-	
31		UK		-	-		-		UK	-		-	