SQUIRE SANDERS

RECIPE FOR SHEDDING UK RESIDENCE

As Robert Gaines-Cooper demonstrated, attempting to shed ones UK residency pre-April 2013 was a recipe for disaster. But following two recent decisions the recipe seems somewhat more prescriptive.

All a tax payer needs now is: mountains of evidence as to his whereabouts, some sturdy witnesses, an accountant that is still in business, a QC and a tribunal judge in a good mood.

The parties in *Rumbelow* did not seem to have the correct ingredients. In this recent case, the couple had left the UK in April 2001 on advice from Arthur Anderson with a hope to avoiding CGT on the disposal of various UK properties. The couple had stopped off briefly in Belgium where they obtained Belgian residence before building a home in Portugal for their retirement. The timing of the disposals were throughout 2001/02 during which time they had returned to the UK to attend to business and visit their children.

Their youngest daughter was 15 years old when they left the UK so, of course, they maintained regular contact with the UK as well as retaining a property, a car and various bank and business interests. They thought they had significantly loosened their UK ties and made a "distinct break." The tribunal found otherwise. Importantly, they had no record of their absence from the UK; HMRC had more evidence as to their movements than they did. Even the Daily Mail had sympathy with the couple.

But the more discerning taxpayer like Mr Glyn had written his list, done his shopping and has successfully cooked up a storm.

The Glyn judgment released on 8 November 2013 gives some hope (subject to what the next 56 days hold). Mr Glyn, on advice from BDO, underwent some tax planning of his corporate interests with a view to receiving a large dividend upon his obtaining non-UK residence in 2005/06. He therefore left for Monaco spending less than 45 days in the UK each year on his understanding of the day count test. His wife came with him to Monaco but wanted to be able to stay in the UK a little more often so was not seeking to lose her UK residence; the couple had 2 grown up children.

HMRC argued that by Mr Glyn continuing to visit the UK he actively sought to preserve his UK ties and participate in his old business activities in the UK. Significant evidence was presented to the tribunal by Mr Glyn and his friends and family stood up to rigourous cross examination. The tribunal decided that Mr Glyn had made a distinct break, his entire pattern of life had changed and he had substantially loosened family ties. The fact that he returned for social occasions did not undermine this.

Of course, the law has now changed and the recipe is more clearly set out at Schedule 45 FA 2013 but no doubt these recent decisions will have an impact on the pre-April 2013 cases still clogging the Tribunal. The lessons to be taken by missing out a vital ingredient such as an accurate and adequate record of ones movements should not be forgotten.