

## Ireland relaxes tax residence rules in relation to COVID-19

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This Alert addresses clarification provided by the Irish Revenue Commissioners in respect of the application of the Irish tax residency rules during the current COVID-19 pandemic. All references to Ireland or the State refer to the Republic of Ireland only.

### Guidance issued by the Irish Revenue Commissioners

Where an individual is present in Ireland at any part of the day, this presence is, under normal circumstances, counted as a day for determining Irish tax residence.

In the absence of the "Force Majeure" principle (which has now been enacted), there is no distinction between workdays, holidays, days of illness, etc. when counting an individual's days of presence in Ireland for tax residency purposes.

### Force Majeure

The Irish Revenue Commissioners have confirmed that where an individual's departure from the State is prevented due to COVID-19, they will apply the "Force Majeure" principle for the purpose of establishing an individual's Irish tax residence position.

Where the individual is prevented from leaving Ireland on their intended day of departure because of COVID-19 this will be deemed to fall under the Force Majeure principle. The Revenue Commissioners' guidelines setting out the principle states that, where an individual is prohibited from leaving the State due to extraordinary natural occurrences (e.g., sudden and severe adverse weather conditions) or exceptional third party failure/action (e.g., breakdown of an aircraft or a labor strike), none of which could reasonably have been foreseen and avoided, Force Majeure shall apply. They have confirmed COVID-19 falls within these conditions.

The day of intended departure will be treated as a day of presence in the State under normal rules. Force Majeure will become effective on the day after the day of planned departure, and planned days of absence thereafter will be disregarded when looking at the individual's presence in the State. Where an individual has regular and demonstrable absence from the State, for example, for the purposes of their employment it is unclear how Revenue will apply the Force Majeure principle, and this is likely to be addressed on a case-by-case basis.

### Irish tax residence rules

Under normal circumstances an individual will be treated as being Irish tax resident if they meet one or both of the following tests:

- ▶ Present in the State for 183 days in the tax (calendar) year.
- ▶ Present in the State in the tax year under consideration, plus the immediate preceding tax year for an aggregate of 280 days, where there are more than 30 days presence in each of the two years. This cannot deem an individual to be tax resident in the first year of the aggregate, as the test must be applied to each year separately.

In the absence of the Force Majeure principle these two tests apply.

### Next steps for employers

Outlined below are some of the key questions that employers should be asking to ensure that they can mitigate any potential tax or social security exposures for the business and employees.

- ▶ Where are our employees located, particularly our mobile employee population?
- ▶ Do our employees have the correct visas/work permits in place to work where they are currently based?
- ▶ Will any of our employees create a tax/payroll/social security obligation for the business in the jurisdiction?
- ▶ Do we have the correct tax clearance in place to be relieved from payroll taxes or can we apply to the Revenue Authority for a clearance?
- ▶ Is there a special COVID-19 concession available?
- ▶ Do we have the necessary social security exemptions (A1 certificates/Certificate of Coverage) in place for applicable employees?

### Other jurisdictions

Many other jurisdictions have introduced similar temporary measures. Employers should address the tax residence provisions in jurisdictions where they operate.

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