

## **The statutory residence test - force majeure in the context of COVID-19**

On 23 March 2020, Revenue updated the existing guidance on 'force majeure' circumstances as it pertains to the residence rules for individuals. This formed part of the immediate response to the unprecedented situation facing individuals as a result of the COVID-19 pandemic.

To assist individuals who were prevented in an intended departure from the State due to a range of difficulties caused by the impact of the COVID-19 pandemic, and in the context of the existing force majeure concession, Revenue confirmed, where a departure from the State is prevented due to COVID-19, this will be considered a force majeure circumstance for the purpose of establishing an individual's tax residence position.

Having regard to the unanticipated length of the pandemic, it is appropriate to further consider the application of this concession. In particular, the circumstances that Revenue may regard as falling within the scope of this concession. That is, the circumstances that may be regarded as giving rise to a departure from the State being prevented due to COVID-19.

An individual who had a planned departure from the State that was prevented due to any of the reasons listed below will be considered to have his or her departure from the State prevented due to COVID-19, provided all other conditions are satisfied:

- That individual has COVID-19 or a family member or partner with whom they are travelling has COVID-19,
- That individual being quarantined or self-isolating in a particular location due to suspected COVID-19,
- That individual self-isolating whether on advice from a health professional or public health guidance or self-imposed,
- That individual has received medical advice not to travel,
- An employer requests that individual not to travel,
- Border controls or entry restrictions in a home country of that individual,
- The non-availability of commercial flights.

The maximum length of time that may be disregarded for residence purposes due to COVID-19 under force majeure circumstances will depend on whether the individual:

- 1) was present in the State on or prior to 23 March 2020, or
  - 2) travelled to the State between 24 March and 5 May 2020.
- *Scenario 1 – Individual present in the State on or before 23 March 2020*  
If an individual is present in the State on or before 23 March 2020 and his or her intended departure from the State is prevented due to COVID-19, then the period from the day after the original planned departure date up until 18 May 2020, or the actual departure date if earlier, may be disregarded for the purpose of determining his or her residence.

- *Scenario 2 – Individual travelled to the State between 24 March and 5 May 2020*  
If an individual travelled to the State between the period 24 March 2020 to 5 May 2020 and his or her intended departure from the State is prevented due to COVID-19, then the period from the day after the original planned departure date up until 18 May 2020, or the actual departure date if earlier, may be disregarded for the purpose of determining his or her residence. This is subject to a maximum of 30 days permitted in all circumstances, except in the case of an individual whose departure is prevented due to him or her having a confirmed COVID-19 diagnosis.

In both scenarios above, the days disregarded must be consecutive days.

In addition, it is mandatory that the individual must have left the State as soon as he or she reasonably could, which must have occurred on or by 1 June 2020. Where a departure hasn't occurred on or by 1 June 2020 force majeure will not apply to any of the days. The only exception to this is where the individual contracted COVID-19 and was not in a position to leave the State on or by 1 June 2020 on health grounds. With regard to such confirmed COVID-19 cases, notwithstanding the fact a departure has not occurred on or by 1 June 2020, force majeure may still apply in respect of the period to 18 May 2020.

Where an individual has more than one trip to the State during the period up to 5 May 2020, only days relating to the first trip may be permitted to be considered for this concession. Any days relating to a second or subsequent trip do not qualify for relief under this force majeure concession.

This force majeure concession seeks to give relief to individuals who, except for the unique and exceptional disruption caused by the COVID-19 pandemic, would not have been considered resident in the State for tax purposes, but only in circumstances where the individual maintains his or her foreign tax residence position, for example he or she remains tax resident in his or her home country.

As the existing force majeure concession requires the occurrence must not "*reasonably have been foreseen and avoided*", individuals who travelled to the State on or after 6 May 2020 will not be regarded as having their departure from the State prevented due to COVID-19 under force majeure circumstances.

Finally, all individuals seeking to rely on this concession must maintain an appropriate record of the supporting facts and circumstances, should this be required for verification by Revenue.

## Examples

*Unless specified, it is assumed all other conditions are met for the purpose of the force majeure provision in the following examples.*

- 1) Chris travelled to the State on 11 March 2020 and was prevented from leaving the State as planned on 14 March 2020, due to medical advice received not to travel. He left the State on 29 May 2020 and remained tax resident in his home country.**

The period from 15 March to 18 May 2020 may be disregarded for the purpose of the statutory residence test.

- 2) Harry travelled to the State on 13 March 2020 and was prevented from leaving the State to return home as planned on 14 March 2020, due to a flight cancellation. Commercial flights became available in early May 2020 but due to a personal preference to extend his time in the State, he didn't leave the State until 30 November 2020.**

As Harry did not leave the State as soon as he reasonably could have, he will not be regarded as having his departure from the State prevented due to COVID-19 under force majeure circumstances.

- 3) Rita travelled to the State on 25 March 2020 and was prevented from leaving the State as planned on 31 March 2020, due to self-isolating because of underlying health issues. She left the State as soon as she reasonably could on 29 May 2020 and remained tax resident in her home country.**

The period from 1 April 2020 to 30 April 2020 may be disregarded for the purpose of determining her tax residence (i.e. 30 day limit applying).

- 4) Isabella travelled to the State on 25 March 2020 and was prevented from leaving the State as planned on 31 March 2020, due to testing positive for COVID-19. She recovered and left the State on 29 May 2020 and remained tax resident in her home country.**

The period from 1 April 2020 to 18 May 2020 may be disregarded for the purpose of determining Isabella's tax residence (a maximum of 30 days does not apply in the case of a confirmed COVID-19 diagnosis).

- 5) Stephen travelled to the State on 12 March 2020 and was prevented from leaving the State as planned on 10 April 2020, due to medical advice received to avoid travel due to health concerns. He left the State on 1 May 2020 and remained tax resident in his home country.**

The period from 11 April 2020 to 1 May 2020 may be disregarded for the purpose of determining Stephen's tax residence.

- 6) Tallia travelled to the State on 27 March 2020 and was prevented from leaving the State as planned on 10 April 2020, due to medical advice received. She left the State on 1 May 2020 and remained tax resident in her home country.**

The period from 11 April 2020 to 1 May 2020 may be disregarded for the purpose of determining Tallia's tax residence.

- 7) Mark travelled to the State on 10 May 2020 and was prevented from leaving the State as planned on 13 May 2020, due to a family member travelling with him being confirmed as having COVID-19. Mark left the State on 1 June 2020.**

As Mark travelled to the State after the 5 May 2020 i.e. on the 10 May 2020, he will not be regarded as having his departure from the State prevented due to COVID-19 under force majeure circumstances.

- 8) Arnie travelled to the State on 12 March 2020 and was prevented from leaving the State as planned on 1 April 2020, due to testing positive for COVID-19. He recovered and left the State on 6 June 2020 and remained tax resident in his home country.**

Notwithstanding the fact a departure has not occurred by 1 June 2020, the period from 2 April 2020 to 18 May 2020 may be disregarded for the purpose of determining Arnie's tax residence.

- 9) Sofia travelled to the State on 15 March 2020 due to a personal preference of spending time with her family in the State given the uncertainty and concern for her elderly parents. She did not have a subsequent planned departure at this time and left the State on 1 June 2020.**

No period may be disregarded in determining Sofia's tax residence as she did not have a planned departure from the State prevented due to COVID-19 under force majeure circumstances.

- 10) Philip travelled to the State on 3 January 2020 and was prevented from leaving the State as planned on 15 March 2020, due to a request from his employer not to travel. He left the State on 1 June 2020. Due to the time spent away from his country of usual residence, he did not retain his residence in his home country.**

No period may be disregarded in determining Philip's tax residence as the force majeure provision is conditional on the individual maintaining residence in another jurisdiction.