

R16 Exceptional days to be discounted for individual residence (section 3)

Introduction

The global pandemic, relating to Covid-19, has led to many countries imposing strict measures on both businesses and individuals, including on the ability of individuals to travel. This has led to individuals spending more time in places than they were intending, as they were forbidden from leaving or entering a jurisdiction.

Further explanation

Under the Law the number of days an individual is physically present (“days spent”) in Guernsey, in a calendar year (which, for individuals, constitutes a year of charge), is used to determine their residential status and what income they are taxable on, for that year. No exceptions to days spent in Guernsey are currently permitted, but the Law is being modified to allow, in exceptional and compelling circumstances, for some days to be disregarded, as provided for in a Statement of Practice.

Circumstances such as illness, or fog preventing travel, would not be considered as exceptional or compelling circumstances. However the restrictions on travel, placed on residents in Guernsey due to Covid-19, would be classed as such an exception. Whilst the public were advised to consider avoiding all non-essential travel on 12 March 2020, no new restrictions were imposed at that time. All non-essential travel was advised to cease, with immediate effect, on 16 March 2020. “Full lockdown” was imposed on 25 March 2020 when all non-essential businesses and schools were closed and all non-essential travel was stopped. From this time anyone returning to the Bailiwick was also required to self-isolate for 14 days regardless of whether they had any symptoms, whereas previously it depended on where they were coming back from, as to whether they needed to self-isolate or not.

Border restrictions remained in place until 30 May when an allowance was made for non-essential travel, but there was still compulsory 14 day isolation for anyone who returned to Guernsey (with exceptions for authorised critical worker travel). Private planes and boats, whilst they could be used in the later stages of lockdown easing, still needed to remain in the Bailiwick.

Details

In order for any days, during the period 12 March 2020 to 30 May 2020 (the time from when it was advised non-essential travel was to be avoided to when it was once again allowed after the lockdown period), to be discounted in Guernsey for tax residence purposes, an individual (who is not normally resident, solely or principally resident in Guernsey for income tax purposes), would need to show:

- They had intended to leave Guernsey on a specific date after 12 March , but were unable to do so as
 - They were following official Government advice not to travel from Guernsey as a result of the virus and/or
 - Their travel plans were cancelled by the airline/ferry operator and/or
 - The borders of their destination country were closed (this would not include countries where mandatory quarantine was available on entry) and/or
 - They were quarantined, or advised by a health professional, to self-isolate in Guernsey, due to the virus

- They have subsequently left Guernsey, or plan to leave as soon as travel is allowed into their intended destination and
- If they are treated as non-resident for Guernsey tax purposes, they will be treated as resident for tax purposes, in another country, in the year of charge.

In these circumstances, and subject in each case to the individual providing a signed declaration and documents by way of supporting evidence (such as confirmation of cancelled flights or ferries), the Revenue Service may, in the Director's absolute discretion, disregard the number of days spent in Guernsey immediately following the original intended date of departure up to and including 30 May. However, in circumstances where (for example) the individual did not leave Guernsey at the first opportunity, or did not make plans for travel, once non-essential travel was allowed, then all days in Guernsey will be taken into account, when calculating an individual's tax residence for the purposes of section 3 of the Law, for the year of charge 2020.

The Director reserves the right to count all days spent in Guernsey if in her opinion, the information provided is false/misleading and the claim is being made to gain a tax advantage. Similarly, the Director may also exercise discretion to disregard days spent in Guernsey beyond 30 May 2020 in extreme cases, if in the Director's opinion an individual's circumstances are such that continued shielding and remaining in the Bailiwick is essential on health grounds, as long as they have been advised to do so by medical professionals. Such discretion would be considered on a case by case basis.

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