



Revenue



Cáin agus Custaim na hÉireann
Irish Tax and Customs

www.revenue.ie

Cathaoirleach
Chairman

Oifig na gCoimisinéirí Ioncaim
Caisleán Bhaile Átha Cliath
Baile Átha Cliath 2
D02 F342
Éire

Office of the Revenue Commissioners
Dublin Castle
Dublin 2
D02 F342
Ireland

Ref: 100164/18

Date: 1 May 2018

Ms. Margaret Falsey,
Committee Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin 2.

Dear Ms. Falsey,

I refer to your letter of 17 April 2018.

I enclose information as follows which was requested by the Committee during the meeting of 22 February 2018:

Appendix 1: A note on non-resident high-wealth cases and how Revenue monitors their compliance with residency rules.

Yours sincerely,

Niall Cody,
Chairman.



Appendix 1

A note on non-resident high-wealth cases and how the Revenue monitor their compliance with residency rules.

Rules

General Rule

An individual is resident in the State for tax purposes for a tax year if he or she is present in the State for –

- a) 183 days in that tax year, or
- b) 280 days between that tax year and the previous tax year with a minimum of 30 days in any year – see below. This is commonly known as the 'look-back rule'.

If an individual is present in the State for not more than 30 days in a tax year –

- that individual will not be resident for that tax year, and
- such days are ignored for the purpose of (b) above.

Electing to be resident

An individual may also be resident in the State for tax purposes for a tax year if he or she elects to be resident for that tax year and satisfies an authorised officer of the Revenue Commissioners that he or she is in the State with the intention, and in such circumstances, that he or she will be resident in the following tax year.

The election should be in writing and there is no provision for withdrawal of an election.

The main reason an individual elects to be resident is to avail of full personal tax credits.

Days present in the State

For 2009 and subsequent tax years, an individual is regarded as being present in the State for a day if he or she is present in the State at any time during the day and for tax years up to and including 2008 an individual is regarded as being present in the State for a day if he or she is present in the State at the end of the day i.e. midnight. In the practical operation of this rule, Revenue applies the following treatment:



Individuals in transit

An individual will not be regarded as being present in the State for any period during which he or she arrives in, and departs from, the State and throughout which he or she remains "airside" - that is, remains throughout the period in the State in a part of an airport or port not accessible to members of the public (unless, of course, such members of the public are arriving in, or departing from, the State).

'Force majeure' circumstances

Where an individual is prevented from leaving the State on his or her intended day of departure because of extraordinary natural occurrences or an exceptional third party failure or action - none of which could reasonably have been foreseen and avoided - the individual will not be regarded as being present in the State for tax residence purposes for the day after the intended day of departure provided the individual is unavoidably present in the State on that day due only to 'force majeure' circumstances.

Example of extraordinary natural occurrences: sudden and severe adverse weather conditions.

Example of exceptional third party failure or action: the breakdown of an aircraft or a labour strike.

High Wealth Individuals ("HWIs") – Large Cases Division ("LCD") Criteria

HWIs are dealt with in 3 HWI Districts within Revenue's LCD. The criteria for determining which individuals should be dealt with by these Districts is as follows:

- An individual with net assets greater than €50 million. Family members with lower net assets/ income may also be included as part of the HWI remit.
- A non-resident individual with substantial economic interests in Ireland.

HWIs - Cases

There are circa 500 individuals dealt with by the 3 HWI Districts in LCD. In addition, the 3 HWI Districts in LCD also deal with certain companies and other legal entities, such as trusts and partnerships, related to these individuals.

The total number of HWIs who filed income tax returns for 2016, the latest year for which these figures are available, and indicated that they were not Irish resident is 36. Generally, non-resident individuals are liable to Irish income tax and USC in respect of Irish source income and liable to Irish capital gains tax on gains arising from disposals of certain specified assets (these assets include land and buildings in the State, minerals, or rights to minerals, in the State, and the assets of a trade carried on by a non-resident by way of a branch).



HWIs – Compliance

Under the self assessment system, taxpayers are responsible, in the first instance, for declaring their tax residency status on their annual tax return. It is the responsibility of those taxpayers who claim non-resident status to retain sufficient documentary evidence to prove their non-resident status.

The procedures adopted in validating non-residence in any given instance will have regard, *inter alia*, to the particular circumstances of that case and include a range of tests and intelligence-based verifications.

The LCD HWI Districts carry out residence compliance interventions and other checks on individuals in the HWI case base who claim not to be resident in Ireland. Revenue uses a broad range of data, intelligence and analytical technologies to identify possible abuses of the tax residency rules. Revenue's approach is determined by the behaviour of the taxpayer. If there are indications of non-compliance with the tax residency rules, Revenue will undertake a targeted and risk focused compliance intervention or examination that is designed to deliver a proportionate and effective response to non-compliance and secure voluntary compliance for the future. The nature of Revenue's compliance intervention or examination will be matched to the nature and the scale of the non-compliance that needs to be tackled. Revenue in deciding on which non-resident cases need to be examined is very much focused on cases that present a clear risk of non-compliance.

The results of these compliance interventions/examinations show that non-resident HWIs keep very detailed information and support documents to support their claims to be non-resident and, in the vast majority of cases, retain professional advisers to ensure that they have sufficient documentary evidence to sustain their claim for non-resident status. The 3 LCD HWI Districts have not identified any individual who has incorrectly claimed to be non-resident.