



PRACTICE NOTE

PN 80/99

Date:

The Interaction Of The Cessation Of Residence Provisions With The Short Term Residence Concession

Introduction

Practice Note PN77/99 dealt with persons falling within the Short Term Residence Concession (hereinafter referred to as STRC) who commence permanent residence. This Practice Note complements that document, being issued to provide guidance as to the Division's approach where a person residing in the Isle of Man notifies their intention to depart 'permanently' from the Island but accommodation is to be retained and will be available for their use. Where an individual is permanently ceasing residence and in doing so is disposing of their property in the Isle of Man there are normally no difficulties in that all ties to the Island which could affect the application of the cessation provisions contained in Section 6 of the Income Tax Act 1970 are being severed. Difficulties may arise however where the individual is 'permanently' leaving the Island but by virtue of available accommodation being retained they will fall within the STRC. Under the STRC, notwithstanding that a person resident in the Island has accommodation available for their use, the Assessor will not pursue the Manx resident liability of the individual provided that the period spent in the Island by that individual, his wife or his dependants, does not in the aggregate exceed four months in any two consecutive years.

Principles to be Adopted

Where an individual who is resident for income tax purposes decides to move permanently from the Isle of Man but to retain accommodation available for their use the following principles will apply:

Where a clear date of cessation of residence can be established, for example by tying this in with the commencement of residence elsewhere, then the cessation provisions will be applied at that date. Where a request is received, a continuation basis may be applied. Where such a date is established the STRC provisions will be applied from that date, any earlier period of residence being ignored in determining the four month rule.

Example

A person notifies the Division that they are permanently ceasing residence on 30th September 1998 but are retaining accommodation in the Island for their use as a holiday

home. Subject to being satisfied in relation to the facts presented, the 98/99 year will be the year of cessation and the part year 6th April 1998 to 30th September 1998 assessed, by concession, on a current year basis. The provisions of the STRC will then apply from 1st October 1998 and the prior period, 6th April 1998 to 30th September 1998, will not be taken into account in determining the four month rule.

What if a clear date of cessation of residence cannot be agreed?

Where a person satisfies the Division that during a year of assessment they have ceased residence, however there is no agreed date of cessation, then the date will be taken as 5th April in the relevant year. Taking the above example but with no clear date of cessation, the date of cessation of residence will be taken as 5th April 1999 for the purposes of the 4 month rule. The STRC will apply from 6th April 1999, with the year 1999/2000 being only provisionally agreed pending the full dates and durations of visits for both 1999/2000 and 2000/2001 being available to support the application of the STRC.

Subsequent breach of the STRC provisions

The two year period in relation to the four month rule is a rolling period, for example 1998/1999 - 1999/2000 and 1999/2000 - 2000/2001. Should there be a subsequent breach of the 4 month rule, then the timing of this and the particular circumstances will need to be considered.

If it is established that the breach of the period was outside the person's control, for example, ill health whilst on the Island, an unscheduled visit due to a family bereavement etc, then the unscheduled visit may be excluded from the total period for the purposes of the concession. Any breach falling outside the above will be considered taking an overall view as to the timing of the concessional date of cessation of residence and when the 4 month period is exceeded.

Example

The person in the first example above who was treated by concession as having ceased residence on 30th September 1998 makes the following visits to the Island, with none of the visits being due to exceptional circumstances. These dates exclude days of arrival and departure but see Note below.

- 1st March 1999 to 31st March 1999 - 31 days
- 3rd June 1999 to 19th June 1999 - 17 days
- 7th August 1999 to 20th August 1999 - 14 days
- 1st December 1999 to 7th January 2000 - 38 days
- 1st March 2000 to 31st March 2000 - 31 days
- 5th June 2000 to 18th June 2000 - 14 days

As the above periods exceed the 4 month rule for the years 1998/1999 and 1999/2000 (total 131 days), the individual is resident for the years 1998/1999 and 1999/2000 and will be assessed accordingly. The application of the concessional cessation provisions will be withdrawn. In respect of 2000/2001, should there be any further visits which cause a breach of the 4 month rule for the years 1999/2000 and 2000/2001, then the individual will be resident for that year also. Should there be no further visits during 2000/2001, and the visits during 2001/2002 when considered with that year do not in the aggregate exceed 4

months, then again the person will fall within the STRC and the liability not pursued for those years.

Note

In calculating the duration of visits, by concession, the day of arrival and departure are normally ignored. The Division does however reserve the right to bring these into consideration where an avoidance motive is suspected. The concession whereby the final year on 'permanent' cessation is assessed on a current year basis will not be granted where there is any subsequent breach of the STRC.