

Income Tax Statement of Practice SP - IT/3/07

Pay As You Earn (PAYE) system

**Employee payroll tax deductions
in relation to
non-Irish employments exercised in
the State.**

September 2007

Revenue 

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Chapter 1

Introduction

1.1 The Revenue Commissioners

The tax system in Ireland is under the care and management of the Revenue Commissioners (who are sometimes known as 'Revenue').

1.2 Employee Payroll Tax Deductions

1.2.1 *The Pay As You Earn (PAYE) system*

The PAYE system is the statutory system used by employers (and certain other persons – see paragraph 3.4) for deducting and remitting to the Revenue Commissioners the income tax due on employees' income.

Where the income of employees is within the scope of the Irish PAYE system, employers and other relevant persons (see Chapter 3) -

- (a) deduct the relevant amounts of income tax due from the employees; and
- (b) remit such amounts deducted to the Revenue Commissioners.

For further information on the operation of the PAYE system, see: Revenue's Employers Guide to PAYE - available on Revenue's website www.revenue.ie

Note - There are certain instances where the PAYE system need not apply in respect of employment income – see Chapter 4.

Where Irish Social Insurance contributions [known as Pay Related Social Insurance (PRSI)] and the Health Contribution are due, such contributions are also collected under the PAYE system – see Chapter 6.

1.2.2 *Position prior to 31 December 2005 as regards non-Irish sourced employment income and the PAYE system*

Prior to 31 December 2005, the income from a non-Irish sourced employment was not within the scope of the Pay As You Earn (PAYE) system for payroll deductions at source even if taxable in the State in the hands of the individuals.

In addition, certain individuals could avail of what is known as the remittance basis of taxation (see paragraph 1.3 below).

1.2.3 *Position with effect from 1 January 2006 as regards non-Irish sourced employment income and the PAYE system*

With effect from 1 January 2006 –

- (a) the income of a non-Irish sourced employment attributable to the performance **in** the State of the duties of that employment is chargeable to income tax under what is known as Schedule E and is within the scope of the Pay As You Earn (PAYE) system of deductions at source;
- (b) the income of a non-Irish sourced employment attributable to the performance **outside** the State of the duties of that employment, whilst it may be chargeable to Irish tax in the hands of the

employee, is not within the scope of the Pay As You Earn (PAYE) system of deductions at source.

1.3 The Remittance Basis of Taxation

1.3.1 Remittance Basis of Taxation - General

Where non-Irish income is within the charge to tax in the State and an individual who is liable to pay the income tax due on that income under what is known as Case III of Schedule D is either –

- (a) not Irish domiciled, or
- (b) being an Irish citizen, not ordinarily resident in the State,

he/she may avail of what is known as the remittance basis of taxation as regards such non-Irish income (but excluding United Kingdom income because the remittance basis of taxation does not apply to income arising in the UK).

In brief, the remittance basis means that, for the individuals referred to at (a) and (b) above, the amount of the non-Irish and non-UK sourced income liable to Irish income tax under Case III of Schedule D is confined to the amount that is remitted to, or brought into, the State in the year of assessment.

1.3.2 Remittance Basis of Taxation - Impact on employment income up to 31 December 2005

Up to 31 December 2005, the income from a non-Irish sourced employment, where chargeable to tax in the State, was chargeable under Case III of Schedule D and qualified for the remittance basis of taxation (assuming, of course, as outlined in paragraph 1.3.1 above, that the employee was either not Irish domiciled or, being an Irish citizen, was not ordinarily resident in the State).

1.3.3 Remittance Basis of Taxation - Impact on employment income with effect from 1 January 2006

With effect from 1 January 2006 –

- (a) the income of a non-Irish sourced employment attributable to the performance **in** the State of the duties of that employment no longer qualifies for the remittance basis of taxation as it is now chargeable to income tax under what is known as Schedule E [and is within the scope of the Pay As You Earn (PAYE) system of deductions at source] whether or not remitted to the State;
- (b) the income of a non-Irish sourced employment attributable to the performance **outside** the State of the duties of that employment, remains, where chargeable to tax in the State, chargeable under Case III of Schedule D and qualifies for the remittance basis of taxation (assuming, of course, as outlined in paragraph 1.3.1 above, that the employee was either not Irish domiciled or, being an Irish citizen, was not ordinarily resident in the State).

1.3.4 Remittance Basis of Taxation - Mixed Funds Accounts***Mixed capital and income accounts***

Any remittances out of a fund containing capital and income are treated as first coming out of the income part of the fund until such income is fully remitted (see *Scottish Provident Institution v Allen* – 4 TC 409).

Mixed income accounts

A mixed income account is an account containing

- (a) income that was taxed under PAYE; and
- (b) income that not taxed under PAYE and in respect of which the remittance basis of taxation might apply.

In cases where the remittance basis of taxation might apply, any remittances to the State from a mixed income account shall be treated as first coming out of income that was already taxed at source under the Irish PAYE system.

Chapter 2

Employers - Registration for PAYE system purposes

Employees - Obtaining a PPS Number and notifying the Revenue Commissioners of their employment

2.1 Employers

2.1.1 Registration for PAYE system purposes

It is necessary for employers (or certain other persons – see Chapter 3) to register with the Revenue Commissioners for the purposes of the PAYE system.

To register for PAYE purposes, the employer (or certain other persons - see paragraph 3.4) must complete Form TR1 or TR2 (*available on revenue.ie at <http://www.revenue.ie/forms/formtr1.pdf> and <http://www.revenue.ie/forms/formtr2.pdf> respectively*). In the case of non-resident persons (individuals, partnerships and companies), the Form TR1 or TR2, as appropriate, should be submitted to:

Office of the Revenue	Tel: 00 353 1 8655000
Commissioners	Fax: 00 353 1 8749431
IRDS Section	E-mail: cityreg@revenue.ie
City Centre District	
Áras Brugha	
9/10 Upper O'Connell Street	
Dublin 1	

2.1.2 Failing to register with the Revenue Commissioners

Where an employer pays income which is within the scope of the PAYE system but fails to register for that purpose, the Revenue Commissioners may compulsorily register the employer, estimate the tax due and seek payment of the amount of deductions the employer should have made under the PAYE system from the income paid to employees.

2.2 Employees

2.2.1 Obtaining a Personal Public Service number (PPS number)

The identification number for individuals for many State services in Ireland is known as the Personal Public Service number and more commonly known as a PPS number. The Department of Social and Family Affairs allocates PPS numbers to individuals (see *Appendix A* for further information).

For tax purposes, the PPS number is necessary to enable the Revenue Commissioners issue employees with a determination of their tax credits and correct tax rate bands so that the employer (or other relevant person) can deduct the correct payroll tax under the PAYE system.

2.2.2 Applying to the Revenue Commissioners for a determination of tax credits and rate bands

Once an employee has obtained his/her PPS number, he/she can apply to the Revenue Commissioners for a determination of his/her tax credits and tax rate bands that will apply to his/her emoluments that are within the

scope of the PAYE system by completing Form 12A. Such an application should contain the following information -

- (a) the employee's name, address and PPS number;
- (b) the employee's marital status (e. g. married, widowed or single);
- (c) the employer's name, address & Irish tax reference number;
- (d) the date the employee commenced work;
- (e) the employee's nationality;
- (f) the employee's residence details; and
- (g) where relevant, the employee's spouse's details requested on the form 12A.

Chapter 3

Application of the PAYE system to non-Irish sourced employment income

3.1 Statutory position with effect from 1 January 2006

Irrespective of the tax residence position of the employee or the employer, income from a non-Irish employment attributable to the performance **in** the State of the duties of that employment is chargeable to income tax in the State and is within the scope of the PAYE system of deductions at source.

The following sections of the Taxes Consolidation Act 1997, which have effect from 1 January 2006, supplement the PAYE system –

- **Section 985C** deals with situations where employees are paid by an 'intermediary' (see paragraph 3.4.1);
- **Section 985D** deals specifically with employees of a non-resident employer (see paragraph 3.4.2);
- **Section 985E** deals with the operation of PAYE for individuals performing some duties of a foreign employment inside and outside the State (see paragraph 3.4.3);
- **Section 985F** deals with situations involving a 'mobile workforce' see paragraph 3.4.5).

3.2 What happens if a non-Irish employment is exercised wholly in the State?

All of the income is chargeable to tax in the State and all the income is within the PAYE system of deductions at source.

Note – See Chapter 6 regarding Social Security contributions.

3.3 What happens if a non-Irish employment is exercised partially in the State and partially outside the State?

In this scenario, it is necessary to determine the portion of the income attributable to the performance **in** the State of the duties of that employment (as this income is within the scope of the Pay As You Earn (PAYE) system of deductions at source).

Example

John is an employee of a non-Irish company employed under a foreign contract of employment under which he earns €4,000 per fortnight. He performs the duties of his employment mainly in Ireland except for every fourth week when the duties of his employment are performed outside the State.

	Income to which the PAYE payroll deduction system applies	Note
Fortnight 1	€4,000	As this income is attributable to duties exercised in the State
Fortnight 2	€2,000	As only €2,000 is attributable to duties performed in the State.
Fortnight 3	€4,000	As this income is attributable to duties exercised in the State

This method of apportionment would continue throughout the year.

Note – John, depending on his personal circumstances, may have an income tax liability on the remaining €2,000 not taxed at source under PAYE.

3.4 PAYE provisions

3.4.1 Section 985C - PAYE: Payment by an intermediary

In the first instance, the payer of income to employees applies the PAYE system of tax deductions at source to such income. Therefore, where emoluments are paid by an intermediary acting on behalf of an employer, the intermediary applies the PAYE system.

However, section 985C provides that the obligation to operate the PAYE system remains with the employer where the intermediary fails to operate such system.

An 'intermediary' includes a person, or a trustee, acting on behalf of, and at the expense of the employer, or a person connected to the employer.

Example

Mary is an employee of ABC Ltd. She performs the duties of her employment in Ireland on the premises of CDE Ltd. CDE Ltd agrees to pay Mary's income. CDE Ltd. must apply PAYE to so much of Mary's income as is attributable to the performance in the State of the duties of the foreign employment. However, if CDE Ltd fails to do so, ABC Ltd must account to Revenue for the PAYE deductions.

3.4.2 Section 985D - PAYE: employee of a non-resident employer

Section 985D comes into play when an employee works for a person (referred to as a 'relevant person') who is not the employee's employer.

Under section 985D, where -

- (a) an employee of a non-resident employer works for a person (the 'relevant person') in the State; and
- (b) the non-resident employer or an intermediary of the employer or of the "relevant person" fails to operate the PAYE system on emoluments attributable to the work done in the State by the employee for the 'relevant person',

then, the 'relevant person' must operate the PAYE system.

Example

Patrick is an employee of a non-Irish company, FGH Ltd, employed under a foreign contract of employment. For 2007, he is assigned to work in

Ireland for JKL Ltd. However, FGH Ltd fails to operate the Irish PAYE system in respect of Patrick's income attributable to his work here.

In this instance, JKL Ltd must apply PAYE to Patrick's income attributable to his work with that company.

3.4.3 Section 985E - PAYE: employment not wholly exercised in the State

This section applies in the case of individuals exercising duties under a foreign contract of employment partly in the State.

As previously stated in paragraph 3.1 above, income from a non-Irish employment attributable to the performance **in** the State of the duties of that employment is chargeable to income tax in the State and is within the scope of the PAYE system of deductions at source.

However, in some instances, the amount of income from a non-Irish employment attributable to the performance **in** the State of the duties of that employment that is within the scope of the PAYE system of deductions at source may not be readily ascertainable. In such cases, section 985E allows the employer to apply for a direction from an officer of the Revenue Commissioners as to the proportion of the income that should be within the PAYE system. An application from the employer must include such information as is available and is relevant to the giving of the direction.

Where a direction is given by an officer of the Revenue Commissioners under this section, any material change in the circumstances will render the direction void and require a further direction having regard to the altered circumstances.

Where the amount of income from a non-Irish employment attributable to the performance **in** the State of the duties of that employment is not readily ascertainable and the employer does not apply for a direction under section 985E, the full emoluments must be subjected to PAYE deductions.

3.4.4 Directions under section 985E(3)

A direction need not be sought -

- (a) where there is certainty as to the portion of the employment income assessable to income tax under Schedule E and to which PAYE should be applied (for example, where an individual works in the State under a set work pattern or is assigned into the State for a predetermined period of time); or
- (b) where, in respect of the income of temporary assignees, the obligation to operate PAYE is relieved in accordance with the criteria described in Chapter 4.

Examples where an employer need not apply for a direction

Example A

Anne is an employee of a non-Irish company employed under a foreign contract of employment. She performs the duties of her employment in the State for a continuous period of eight months. The employer is obliged to operate PAYE on the full income arising in that period as it is paid and no direction is required from the Revenue Commissioners.

Example B

Deirdre is an employee of a non-Irish company employed under a foreign contract of employment. She performs the duties of her employment on a regular pattern of two months in the State and one month outside the State. The employer may either operate PAYE on two thirds of Deirdre's income throughout the year, or operate PAYE on the full amount of income attributable to the performance of the duties of the foreign employment within the State as such amounts are paid. No direction is required from the Revenue Commissioners.

NB –In these circumstances, where the employer chooses to operate PAYE on two-thirds of Deirdre's income, but Deirdre leaves the employment at some point before the end of the tax year, the employer should ensure that PAYE has been applied to the correct amount of income chargeable to tax in the State under Schedule E.

Example C

Alan is an employee of a non-Irish company employed under a foreign contract of employment. He has a regular pattern of three work days within the State and two work days outside the State per week throughout the year. The employer should operate PAYE on three fifths of Alan's gross income per week throughout the year. No direction is required from the Revenue Commissioners.

Example D

Liam is an employee of a non-Irish company employed under a foreign contract of employment. For the first four months of the year Liam has a regular pattern as in *Example C* (three work days in the State, two work days outside the State per week). For the last eight months of the year, Liam exercises all the duties of his foreign employment in the State. For the first four months, the employer should operate PAYE on three-fifths of Liam's gross income. For the last eight months, the employer should operate PAYE on the full amount of the income. No direction is required from the Revenue Commissioners.

Example E

Liza is an employee of a non-Irish company employed under a foreign contract of employment. She has an irregular work pattern throughout the year. It is clear from documented experience that the income attributable to the performance of duties within the State is a fixed proportion (e.g. two-thirds) of her gross income from her foreign employment. The employer should operate PAYE on that fixed proportion of her gross income. No direction is required from the Revenue Commissioners.

Example F

Adrienne is an employee of a non-Irish company employed under a foreign contract of employment. She has an irregular work pattern throughout the year. The employer can determine, on a payment by payment basis, the income attributable to the performance of duties within the State, based on the number of work days that she performs such duties in the State. The employer should operate PAYE on each payment of income

attributable to the performance of duties within the State. No direction is required from the Revenue Commissioners.

Example where an employer should apply for a direction

Example G

Patrick is an employee of a non-Irish company employed under a foreign contract of employment. He is obliged to perform certain duties of his employment in the State but, because of his irregular work pattern, the employer is uncertain as to the amounts of his income (including benefits) that are within the scope of the Irish PAYE system. In this instance, the employer should apply for a direction from Revenue as to the proportion of the emoluments that should be within the PAYE system.

3.4.5 Section 985F - PAYE: mobile workforce

This section applies where-

- (a) it appears to the Revenue Commissioners that a person (the 'relevant person') has entered into, or is likely to enter into, a contract to engage employees of another person (the 'contractor'); and
- (b) it is likely that the income paid by or on behalf of the 'contractor', being the real employer, will not be subject to the operation of the PAYE system by the 'contractor'.

Under this provision, the Revenue Commissioners are authorised to direct that the 'relevant person' must operate the PAYE system (notwithstanding that the 'relevant person' is not the employer in this case).

Example

RST Ltd has entered into an agreement with XYZ Ltd to the effect that employees of XYZ Ltd will work in the State for RST Ltd. If it is likely that XYZ Ltd will not apply the PAYE system to the income it pays its employees, then the Revenue Commissioners may issue a direction to RST Ltd to account for the PAYE due.

Note- All the aforementioned references to income include salaries, fees, wages, bonuses, perquisites, profits and taxable benefits from employments. (See paragraph 8.1 concerning bonuses earned before the duties of the foreign contract of employment were performed in the State.)

Chapter 4

Temporary Assignees

Release for employers from the obligation to operate the Irish PAYE system

4.1 General

When dealing with temporary assignees who hold non-Irish employments, two separate and distinct issues arise -

- (a) the operation by employers (and certain other persons – see paragraph 3.4) of the PAYE system of payroll deductions at source; and
- (b) the relief from Irish tax due to the employees under a double taxation agreement between Ireland and another jurisdiction.

The fact that an employee may be temporarily working in the State and relieved from the charge to Irish tax under the terms of a double taxation agreement does not mean that the employer need not operate the PAYE system on the employee's income attributable to the performance in the State of the duties of that employment.

However, the Revenue Commissioners do not require an employer (or certain other persons – see paragraph 3.4) to operate the Irish PAYE system in respect of temporary assignees as described in paragraph 4.2 below.

4.2 Temporary Assignees

4.2.1 *Short term business visits to the State – not more than 60 working days*

Under the terms of the *Employments* Article of Double Taxation Agreements (DTAs) between Ireland and other countries, the income attributable to the performance in the State of the duties of an employment may be relieved from the charge to Irish tax and tax deducted under PAYE must be repaid.

Revenue will not require an employer to operate PAYE where the following criteria are satisfied -

- (a) the individual is resident in a country with which the State has a Double Taxation Agreement and is not resident in the State for tax purposes for the relevant tax year;
- (b) there is a genuine foreign office or employment;
- (c) the individual is not paid by, or on behalf of, an employer resident in the State;
- (d) the cost of the office or employment is not borne, directly or indirectly, by a permanent establishment in the State of the foreign employer; and
- (e) the duties of that office or employment are performed in the State for not more than 60 working days in total in a year of assessment and, in any event, for a continuous period of not more than 60 working days.

Note For the purposes of (e) above a 'working day' is any day in which any work is performed in the State.

4.2.2 Simultaneous deductions under the Irish PAYE system and under a tax deduction system of another tax jurisdiction.

Under the general double taxation agreement principles, where -

- (a) an individual who is a tax resident of another jurisdiction is on temporary assignment in the State; and
- (b) there is an obligation to make deductions at source from that individual's salary / wages under both the Irish PAYE system and a foreign tax deduction system simultaneously,

the obligation to grant relief in respect of such potential double deduction at source generally rests with the jurisdiction of which the individual is resident for tax purposes. More specific detail can be found in the terms of the appropriate treaty. A list of the Double Taxation Agreements between Ireland and other jurisdictions is on the Revenue website at http://www.revenue.ie/services/tax_info/taxes12.htm

However, where temporary assignees of Treaty countries-

1. are present in the State for a period or periods not exceeding in the aggregate 183 days in a year of assessment, and
2. suffer withholding taxes at source in the 'home' country on the income attributable to the performance of the duties of the foreign employment in the State,

then, with effect from 1 January 2007, the Revenue Commissioners will not require an employer (or certain other persons - see paragraph 3.4) to operate the Irish PAYE system in respect of such temporary assignees who have income attributable to the performance in the State of the duties of a foreign employment where the following conditions, in addition to those in paragraph 4.2.1 above (other than condition (e)), are met.

Note- For the purposes of rule 1 above, a day during any part of which, the employee is present in the State counts as a day of presence in the State for the purposes of computing the 183 day period.

The foreign employer must

- (a) be registered in the State as an employer for PAYE tax purposes; and
 - o where there is an intermediary (as defined in section 985C TCA 1997 – see paragraph 3.4.1) paying the employees of the foreign employer, supply details of the intermediary who is paying the employees; and
 - o where there is a relevant person (as defined in section 985D TCA 1997 – see paragraph 3.4.2) supply details of the relevant person for whom the employees of the foreign employer are doing work in the State.

OR

- o Where the employees of the foreign employer are performing in the State the duties of the foreign employment, and are paid by a connected entity in the State of the foreign employer (connected in the sense that the entity is controlled by the foreign employer or visa versa or both are under common control) on behalf of that employer **or** are paid by the foreign employer, and the connected local entity in agreement with the foreign employer has assumed

responsibility for compliance with PAYE/PRSI obligations on behalf of the foreign employer, then the foreign employer need not register as an employer but must supply:

- the PAYE registered number of the connected entity;
 - its own full name and address; and
 - where there is a relevant person (as defined in section 985D TCA 1997 – see paragraph 3.4.2) the name and address of that relevant person for whom the employees of the foreign employer are doing work in the State;
- (b) maintain a record of the full name, latest Irish and overseas address, date of commencement and cessation of the individual, the location where the individual carries out the duties of the temporary assignment and the amount of earnings in respect of the temporary assignment; **and**
- (c) sign a written acknowledgement that in all cases where liability is subsequently found to arise in respect of payments of emoluments to assignees (e.g. because of a breach of any of the conditions) the employer will be liable under the relevant provisions of the Taxes Consolidation Act 1997 to pay the tax that should have been deducted from those emoluments; **and**
- (d) supply evidence (see Note B below) of withholding tax in the foreign jurisdiction on the income attributable to the performance in the State of the duties of the foreign employment; **and**
- (e) on request, supply a copy of the contract(s) relating to the employer's engagement in the State; **and**
- (f) seek clearance in writing from the Revenue Commissioners by the later of 21 days after the date the assignee takes up duties in the State, or 30/10/2007 - pending written clearance from Revenue, PAYE need not be operated if all other conditions are met.

Note A

Where the foreign employer supplies the PAYE registered number of a connected entity in the State who is paying the emoluments on its behalf, Revenue may require evidence that the employment is a genuine foreign contract of employment, and that Treaty relief is due.

Note B

The following will be regarded as acceptable evidence of withholding taxes in the foreign jurisdiction:

- Certified copy of payslip. (Must be certified by the employer or the independent auditor of the employer. In the case of companies certification by a director or company secretary will be acceptable.)

or

- Statement from the relevant foreign tax jurisdiction.

Note C

An application for clearance from a foreign employer may cover more than one employee.

Note D

Applications should be submitted to

Office of the Revenue
Commissioners
IRDS Section
City Centre District
Áras Brugha
9/10 Upper O'Connell Street
Dublin 1

Tel: 00 353 1 8655000

Fax: 00 353 1 8749431

E-mail: cityreg@revenue.ie

4.2.3 Short-term business visits to the State of not more than 30 days - non-treaty countries

Where a non-resident employee from a non-treaty country performs in the State incidental duties and performs those incidental duties in the State for no more than 30 days in aggregate in a tax year, PAYE need not be deducted in respect of income attributable to such duties.

Note- In this context a 'day' is any day in which any work is performed in the State.

The practices set out in this Statement should be relied upon only to the extent that the employment arrangements concerned are undertaken in good faith and for purposes other than tax avoidance. In addition, and without prejudice to Revenue's entitlement to review, amend or withdraw its practices from time to time as appropriate, the practice set out in paragraph 4.2.2 will be subject to review by the Revenue Commissioners after a period of 12 months, and Revenue reserves the right to amend or withdraw that practice on foot of such review, as respects employments commencing after such amendment or withdrawal.

Chapter 5

Internationally Mobile Employees / Tax Equalisation

5.1 Overview

In many instances, internationally mobile employees enter into either a tax equalisation arrangement or a tax protection arrangement with their employer when they are seconded, transferred or assigned to work in another jurisdiction.

This Chapter outlines the Irish tax treatment where such an arrangement exists.

5.2 Tax equalisation / Tax protection / Hypothetical Tax

A *tax equalisation* arrangement may take various forms and, in general refers to an arrangement between an employer and an employee to provide that the employee is no better or no worse off in personal tax terms than if he/she had not relocated.

A *tax protection* arrangement generally refers to an arrangement between an employer and an employee to provide that the employee is no worse off in personal tax terms than if he/she had not relocated.

Hypothetical tax is an estimate of the tax that the employee would have paid had he/she not relocated (this is sometimes known as the hypothetical 'home tax'). The purpose of a hypothetical tax calculation is to determine the employee's after tax position had he/she not relocated as this is very often used as the 'base' for determining the gross pay for tax purposes in the new country where the employee is based.

Note – The detail of a tax equalisation or tax protection arrangement is a matter for the employee and his/her employer.

5.3 Methods to give effect to tax equalisation

The income attributable to the performance of the duties of a non-Irish employment in the State is chargeable to tax under Schedule E and accordingly the appropriate deductions must be made under the PAYE system. Any method of calculation used by an employer must satisfy this requirement.

Income means emoluments (i.e. anything chargeable to tax under Schedule E) and includes any bonus, commission benefit or perquisite, etc. and any tax paid by an employer on behalf of an employee attributable to the performance of the duties in the State. Where an employer pays tax on behalf of an employee under a tax equalisation arrangement, the net take home pay should be regressed for the purposes of calculating the tax due under the PAYE system.

Example A

Joe is a US national. His gross salary in 2006 is €100,000. His salary after US tax in that year is €75,000. He is transferred to Ireland with effect from 1 January 2007. His employer has agreed that he will receive take home pay of €85,000 in 2007. If Joe is single and qualifies for the single persons' standard rate band, single persons' tax credit and the PAYE

tax credit, his gross salary in 2007 will be €126,000 in order that he receives net take home pay of €85,000 (see computation below):

			€
Gross salary			126000
Tax	34000 @ 20%	6800	
	92000 @ 41%	37720	
Tax before credits		44520	
Credits	Single	1760	
	PAYE	1760	3520
Tax after credits			41000
Net salary			85000

Example B

If Joe qualifies for the married persons' one income standard rate tax band, the married persons' tax credit and the PAYE tax credit, his gross salary in 2007 will be €119,814 in order that he receives net take home pay of €85,000:

			€
Gross salary			119814
Tax	43000 @ 20%	8600	
	76814 @ 41%	31494	
Tax before credits		40094	
Credits	Married	3520	
	PAYE	1760	5280
Tax after credits			34814
Net salary			85000

Example C

If Joe works in Ireland three days every week, three-fifths of his income from his foreign contract of employment is taxable in Ireland. If, as above, his employer agrees he will receive take home pay in 2007 of €85,000, he will receive three fifths of his take home pay ($€85,000 \times 3/5 = €51,000$) in respect of the duties exercised in the State of his foreign contract of employment. If Joe qualifies for the single persons' standard rate tax band, the single persons' tax credit and the PAYE tax credit, the gross pay for the duties of his foreign employment will be €68,373 to ensure he receives take home pay in respect of the Irish duties of €51,000:

			€
Gross salary			68373
Tax	34000 @ 20%	6800	
	34373 @ 41%	14093	
Tax before credits		20893	
Credits	Single	1760	
	PAYE	1760	3520
Tax after credits			17373
Net salary			51000

If, as above, Joe exercises the duties of his foreign contract of employment in Ireland for three days a week, but qualifies for the married persons', one income standard rate tax band, married persons' tax credit and PAYE tax credit, the gross pay in respect of the duties of his foreign employment exercised here will be €62,187 in order that he receives take home pay of €51,000:

Gross salary			€	62187
Tax	43000	@ 20%	8600	
	19187	@ 41%	7867	
Tax before credits			16467	
Credits	Married	3520		
	PAYE	1760	5280	
Tax after credits				11187
Net salary				51000

NB – In the examples above, figures have been rounded to the nearest Euro. We have assumed that the individual has a US certificate of coverage, which exempts this income from PRSI and the Health Contribution (see Chapter 6).

5.4 Refunds of Tax

In some instances, a tax equalisation arrangement between an employee and his/her employer may contain an agreement that the employee will reimburse certain refunds of tax to the employer. Such an arrangement is a matter for the employer and the employee.

Chapter 6

Social Security - Pay Related Social Insurance (PRSI) / Health Contributions

6.1 Overview

The Social Security system in Ireland is known as the Pay Related Social Insurance (PRSI) system. A guide to the PRSI system can be found on the website of the Department of Social & Family Affairs at www.welfare.ie/topics/prsi/index.html.

6.2 Collection of PRSI

Whilst the PRSI system is administered by, and is under the control of, the Department of Social & Family Affairs, employee and employer PRSI contributions are collected under the PAYE systems along with employee payroll tax deductions with the total amounts being remitted to the -

Collector-General
Office of the Revenue Commissioners
Sarsfield House
Limerick
Ireland

Tel: 00 353 1 61 488000

E-mail : cgcustserv@revenue.ie

Note- For those employees who are liable to PRSI in the State and who are not on the PAYE system, PRSI is payable through the Special Collection System, Department of Social & Family Affairs, Waterford.

6.3 EU Regulations / Reciprocal Arrangements

EU Regulation 1408 of 1971 sets out the rules governing liability to PRSI/National Insurance/Social Security in the case of EU nationals and non-EU nationals legally resident in the territory of EU Member States, working in other EU jurisdictions. Essentially, the rules provide that contributions by, or in respect of, these workers are not paid in more than one jurisdiction simultaneously. In addition, the State has a number of reciprocal agreements governing liability to PRSI/National Insurance/Social Security with several non-EU countries. These reciprocal agreements provide that contributions are paid in one jurisdiction but not in both at the same time.

6.4 Deduction of PRSI

In the absence of an E101 certificate, certificate of coverage under a reciprocal arrangement or a PRSI exemption certificate from the Department of Social & Family Affairs, employers are required to make PRSI deductions and should note that PRSI is payable from the 1st day of insurable employment for duties performed in the State. In cases of doubt, employers should contact the Department of Social & Family Affairs.

6.5 Contacting the Department of Social & Family Affairs

The Department of Social & Family Affairs contact point for foreign employers and PRSI queries is –

Special Collections Unit
Department of Social & Family Affairs
Government Buildings
Cork Road
Waterford

Phone: 00 353 51 356019

00 353 51 356016

Fax: 00 353 51 8778383

E-mail: e101spc@welfare.ie

6.6 Health Contribution

6.6.1 *Deduction of the Health Contribution where the employer qualifies for release from the obligation to operate PAYE*

Where, in accordance with Chapter 4, an employer qualifies for release from the obligation to operate the Irish PAYE system in respect of emoluments paid to temporary assignees, health contributions need not be deducted from such emoluments.

6.6.2 *Deduction of the Health Contribution in other cases*

US Certificate of Coverage

As Article 2 of the Social Security Agreement between Ireland and the United States of America ([SI 243/1993](#)) covers both Social Security and the Health Contribution, an employer is released from the obligation to deduct the Health Contribution in respect of an employee who holds a US Certificate of Coverage.

Other Social Security agreements

Pursuant to Regulation (EC) 1408/71, persons temporarily posted to Ireland by their employer but who continue to be subject to the Social Security legislation of another EEA Member State (as evidenced by a Form E101 or Form E106) are exempted from the payment of Health Contribution for the duration of the posting in Ireland. In addition, Ireland has Social Security agreements with Australia, Austria, Canada (including Quebec), New Zealand and Switzerland. While these agreements cover PRSI, none of them covers the Health Contribution. Accordingly, the employer is obliged to deduct the Health Contribution in respect of emoluments paid to temporary assignees unless:

- o paragraph 6.6.1 applies; or
- o the employee holds a US Certificate of Coverage; or
- o the employee holds a Form E101 or Form E106.

Chapter 7

Pension Contributions

7.1 Background

Many individuals seconded from overseas parent companies or subsidiaries of an Irish business to work in the State ('seconded individuals') continue to -

- o be paid from abroad;
- o benefit from employer contributions to their foreign pension fund; and
- o continue to make personal contributions to a foreign pension scheme.

The contribution by an employer into a pension scheme for the benefit of an employee is a taxable emolument (see section 777 Taxes Consolidation Act 1997), except where –

- (a) such charge is relieved under the terms of a double taxation agreement, or
- (b) where the provisions of section 778 Taxes Consolidation Act 1997 applies, i.e. where -
 - i. the emoluments of the office or employment are not chargeable to tax in the State; or
 - ii. the remittance basis of taxation applies to the emoluments of the office or employment; or
 - iii. the employer pension contributions are made to:
 - o an approved scheme; or
 - o a statutory scheme; or
 - o a scheme set up by a Government outside the State for the benefit, or primarily for the benefit, of its employees. or
- (c) with effect from 1 January 2006, the conditions of paragraph 7.4 below apply.

7.2 Relief under Double Taxation Agreements

Contributions made by seconded individuals to foreign pension schemes may qualify for income tax relief under the provisions of a relevant Double Taxation Agreement (Article 18(5) of the Ireland/USA DTA or article 17A of the Ireland/UK DTA) (see *Appendices B* and *C*). Under the relevant provisions of both these treaties, contributions made by or on behalf of the individual's employer are not treated as part of the individual's taxable income.

7.3 Migrant Member Relief

Contributions made by seconded individuals to foreign pension schemes may qualify for income tax relief if they come within the scope of migrant member relief, as enacted in sections 787M and 787N TCA 1997 (see *Appendix D*). If migrant member relief is available, contributions made by

or on behalf of the individual's employer are not treated as part of the individual's taxable income.

7.4 Contributions to overseas pension schemes

With effect from 1 January 2006, relief will also be available in respect of contributions made directly by seconded individuals into foreign pension schemes, in bona fide cases, where:

- (a) the employee -
 - (i) has been seconded by a foreign company to work in the State for that company or for a company which is connected to the foreign company;
 - (ii) was, prior to coming to work in the State, employed outside the State for a period of not less than 18 months by the foreign company (or a foreign company connected to that company);
 - (iii) is either not Irish-domiciled or, being an Irish citizen, is not ordinarily resident in the State at the time the pension contributions are made;
 - (iv) had, prior to coming to work in the State, been making contributions to the foreign pension scheme referred to in (c) below for a period of not less than 18 months; and
 - (v) is not resident in the State for a period of more than 5 years (but see Note below);
- (b) the foreign employer -
 - (i) is resident for tax purposes in an EU Member State or in a country with which the State has a Double Taxation Agreement;
 - (ii) has, prior to the individual coming to work in the State, been making contributions to a foreign pension scheme on behalf of the employee for a period of not less than 18 months;
- (c) the foreign pension scheme is a statutory scheme in a state or country mentioned in (b)(i) above, other than a state Social Security scheme, or is a scheme in respect of which tax relief is available in such a state or country; and
- (d) both the employer and employee contributions comply with the rules of that foreign pension scheme.

Revenue will also treat contributions made by the employer to the pension scheme, for the benefit of the employee, as not being taxable.

Note – Where an individual is resident in the State for a period of more than 5 years, ignoring any periods prior to 1 January 2003, written permission of the local Revenue office will be required for the continuation of the above treatment of pension contributions beyond that period.

7.5 Revenue Pensions Manual – Chapter 17

Contributions made by seconded individuals to foreign pension schemes may qualify for income tax relief if they come within the scope of paragraph 17.5 of the Revenue Pensions Manual (see *Appendix E*). However, if the individual's contributions qualify for relief under this provision, but not under the conditions in paragraphs 7.2, 7.3 and 7.4 above, contributions made by or on behalf of the individual's employer are chargeable to tax as emoluments of the employment. Relief will be granted to seconded individuals for such 'employer' contributions. However, the overall relief available in respect of the aggregate of employer contributions and employee contributions will be confined to the limits referred to in paragraph 7.6 below.

7.6 Limits

The normal age related income percentage limits on contributions and the annual aggregate earnings cap (€262,382 for 2007) apply.

7.7 Further information

Further information in relation to overseas pension schemes is available from:

Revenue Commissioners
Large Cases Division
Financial Services (Pensions)
4th Floor,
Grattan House,
Lower Mount Street,
Dublin 2.

Tel: 00 353 1 6474022
Fax 00 353 1 6474748
E-mail: lcdretirebens@revenue.ie

Chapter 8

Miscellaneous

8.1 Bonuses

In general, where, in a year of assessment –

- (a) an individual is in receipt of income from a foreign employment within the charge to tax in the State (either on the full amount earned or, under the remittance basis, on the amount remitted to the State); and
- (b) a bona fide bonus in respect of that employment, which was earned in a year of assessment in which that income was not chargeable to tax in the State under Schedule E, but is paid in a year of assessment in which the individual is in receipt of income from that employment which is chargeable to tax under Schedule E,

such bonus is not within the scope of the PAYE system. Where appropriate, the remittance basis of taxation may apply to the bonus.

However, given the scope for re-characterising income for a current year as a bonus for the previous year, Revenue may investigate the circumstances surrounding the payment of the bonus, with a view to establishing its bona fides.

8.2 Exchange rates

Where an employer has to convert a foreign currency into euro as part of the application of PAYE to the payment of emoluments, Revenue will accept the exchange rate at either:

- (a) the date of calculation, in the employer's records, of the tax liability related to the payment, or
- (b) the actual date of payment of emoluments,

provided the method chosen is used on a consistent basis, and where the rate at (a) above is used, the date of calculation of the tax liability is not later than the date of payment of the emolument.

8.3 Foreign Service Relief - termination of employment

Foreign service relief will continue to be available in accordance with section 201(1) TCA 1997. However, the performance in the State of duties of a foreign office or a foreign employment is not foreign service.

8.4 Permanent Establishment

Revenue's 'Criteria and Guidelines on Permanent Establishment (PE)' in the State are shown in *Appendix F*.

*Appendix A***Extract from the Department of Social & Family Affairs' website****Your Personal Public Service Number****Frequently Asked Questions on the PPS No****Q1. What is my PPS No.?**

A1. Your PPS No. is your Personal Public Service Number. It is a unique identifier for use in any transactions you may have with public bodies or persons authorised by those bodies to act on their behalf. Use of the number eliminates the possibility of confusing one person with another and makes it possible for public bodies to deal in a faster and more efficient manner with their customers.

Q2. How do I find out what my PPS No. is?

A2. Your PPS No. can be found on tax documents and it is often on correspondence from a social welfare or tax office. It may also be on your payslip.

Q3. I've looked for my number and I still can't find it – what should I do?

A3. You should contact your nearest or most convenient Social Welfare office. To find the address of your local offices consult the green pages of the telephone directory, or consult the DSFA website [List of Local Offices](#).

Q4. I have just arrived in Ireland and don't have a number. How do I get one?

A4. You should contact your nearest or most convenient Social Welfare office who will assist you with the registration process. You will be asked to produce documentary evidence of identity and residence in this country. The complete list of documents required can be found on the DSFA website at http://www.welfare.ie/foi/cis_ppsallprocs.html

Q5. What is the format of the PPS No.?

A5. A PPS No. is always 7 numbers, and followed by either one or two letters. If there are two letters, the second letter is always a letter 'W'.

Q6. What am I supposed to use my PPS No. for?

A6. Your PPS No. should only be used in transactions with Government Departments and Agencies or persons or bodies that they have authorised to act on their behalf. ([See Appendix B](#)) – **NB – this is a reference and/or a link to the website of the Department of Social and Family Affairs.**

Q7. Who can ask me for my PPS No.?

A7. You can only be asked for your PPS No. by one of the agencies listed in Appendix B ([via link in Q6 above](#)) or by an authorised agent of one of these bodies. Your employer will also use your PPS No. for the purposes of advising Revenue and DSFA of your tax deductions and PRSI contributions.

Q8. What should I do if someone asks me for my PPS No?

A8. You should provide them with your number once you are satisfied that they are entitled to ask for it. In this regard you may find it helpful to refer to the [list of agencies here](#). In any case of doubt, you should contact Client Identity Services in the Department of Social and Family Affairs for clarification.

Q9. What do I do if someone who is not entitled to use the PPS No. asks me for it?

A9. If you believe that a person asking for your PPS No. is not entitled to do so, do not give them your number until you have contacted Client Identity Services of the Department of Social and Family Affairs, Gandon House, Amiens St, Dublin 1, Tel:704 3236 for advice. You can also email us at cis@welfare.ie

Q10. When should I not use my PPS No.?

A10. You should not use your PPS No. or Social Services Card in ordinary commercial transactions. For example, the number on the Social Services Card should not be requested by or given to a retailer as proof of identity or for any other reason when making a purchase, availing of a hiring service etc.

Q11. Can the Gardaí ask me for my PPS No.?

A11. Social Welfare legislation provides that members of An Garda Síochána and the Defence Forces are only entitled to use the PPS No. in respect of their own members. However, under the Immigration Act 2003 the PPS No. can be used by An Garda Síochána in respect of non-EU nationals.

Q12. Am I obliged to provide the number if a public body asks for it?

A12. Yes. Once an agency is entitled to use the number, a person who has a transaction with that agency must provide the number on request.

Q13. How come the banks were collecting the number when the SSIA scheme was being arranged?

A13. The banks were entitled to collect the PPS No. for the purposes of the Special Savings Incentive Account scheme and for that purpose only. The SSIA scheme is administered by the Department of Finance and the banks are acting as agents of that Department in this regard. Because the PPS No. is a unique identifier, using the PPS No. in connection with the scheme ensures that no one person can avail of the incentive more than once.

Q14. So can a bank or building society ask me for my PPS No. for any other reason?

A14. Yes. These would be where an account holder has a loan on which they are claiming tax relief on the interest paid, for example a mortgage or home improvement loan. In order that the Revenue Commissioners can correctly apply the Tax Relief at Source (TRS) provisions to such a loan, some Financial Institutions notify the interest details to Revenue using the PPS No. as a unique identifier. Note that not all Financial Institutions use the PPS No. in this regard.

The Regulations implementing the EU Taxation of Savings Income Directive require Financial Institutions (Banks, Building Societies, Credit Unions etc.) to establish the identity of prospective customers. In order to comply with the document retention requirement contained in the Regulations, Financial Institutions may retain a manual record or a photocopy of a document

containing the PPS Number. The PPS Number must not be recorded on the bank's computer system and the PPS Number must not be used by the bank for any other purpose.

Q15. Is it possible for me to get a new number?

A15. No. Once a PPS No. is allocated it is never changed. If you cannot find your PPS No. you should contact your nearest or most convenient Social Welfare Office for assistance.

To find the address of your local offices consult the green pages of the telephone directory, or consult the DSFA website [List of Local Offices](#).

Q16. Is the PPS No. a National ID?

A16. No. The PPS No. is not a national identity. It is designed to be used as a service enabler for the purposes of public service administration. The number forms an essential element of your Public Service Identity (PSI) which provides a speedy efficient means of establishing identity for the purposes of access to and dealings with all public service bodies. The PSI comprises the PPS No. and a defined set of personal data. Your PSI is to be used exclusively in dealings with public bodies or with agents acting on behalf of public bodies.

Available online at <http://www.welfare.ie/topics/ppsn/faq.html>

*Appendix B***Extract from Article 18 of Ireland-USA Double Taxation Agreement****Article 18 Pensions, Social Security, Annuities, Alimony and Child Support**

5. For the purposes of this Convention, where an individual who is a member of a pension plan that is established and recognized under the legislation of one of the Contracting States performs personal services in the other Contracting State, contributions paid by the individual to the plan during the period that he performs personal services in the other Contracting State shall be deductible in computing his taxable income in that State within the limits that would apply if the contributions were paid to a pension plan that is established and recognized under the legislation of that State, and any payments made to the plan by or on behalf of his employer during that period shall not be treated as part of the employee's taxable income and shall be allowed as a deduction in computing the profits of his employer in that other State. The provisions of this paragraph shall not apply unless:

(a) contributions by or on behalf of the individual to the plan (or to another similar plan for which this plan was substituted) were made immediately before he visited the other State;

(b) the individual has performed personal services in the other State for a cumulative period not exceeding five calendar years; and

(c) the competent authority of the other State has agreed that the pension plan generally corresponds to a pension plan recognized for tax purposes by that State.

The benefits granted under this paragraph shall not exceed the benefits that would be allowed by the other State to its residents for contributions to a pension plan recognized for tax purposes by that State.

6. Where, under paragraph 5, contributions to a foreign pension plan are deductible in computing an individual's taxable income in a Contracting State and, under the laws in force in that State, the individual is, in respect of income or gains, subject to tax by reference only to the amount thereof which is remitted to or received in that State, and not by reference to the full amount of such income or gains, then the deduction which would otherwise be allowed to the individual under paragraph 5 in respect of such contributions shall be reduced to an amount that bears the same proportion to such deduction as the amount remitted bears to the full amount of the income or gains of the individual that would be taxable in that State if the income or gains had not been taxable on the amount remitted only.

Full text available online at

http://www.revenue.ie/services/tax_info/dtas/usa.htm

*Appendix C***Extract from Article 17A of Ireland-UK Double Taxation Agreement****ARTICLE 17A PENSION SCHEME CONTRIBUTIONS**

* * *

1) Subject to the conditions specified in paragraph (2) of this Article, where an employee ("the employee"), who is a member of a pension scheme which has been approved or is being considered for approval under the legislation of one of the Contracting States, exercises his employment in the other Contracting State:

(a) contributions paid by the employee to that scheme during the period that he exercises his employment in that other State shall be deductible in computing his taxable income in that State within the limits that would apply if the contributions were paid to a pension scheme which has been approved under the legislation of that State; and

(b) payments made to the scheme by or on behalf of his employer during that period:

(i) shall not be treated as part of the employee's taxable income, and

(ii) shall be allowed as a deduction in computing the profits of his employer, in that other State.

(2) The conditions specified in this paragraph are that:

(a) the employee is employed in the other Contracting State by the person who was his employer immediately before he began to exercise his employment in that State or by an associated employer of that employer;

(b) the employee was not a resident of that State immediately before he began to exercise his employment there;

(c) at the time that the contributions referred to in paragraph (1) (a) of this Article are paid, or the payments referred to in paragraph (1) (b) of this Article are made, to the scheme the employee has exercised his employment in that State for:

(i) less than ten years where he was a resident of the first-mentioned Contracting State immediately before he began to exercise his employment in the other Contracting State, or

(ii) less than five years in other cases.

(3) For the purposes of this Article:

(a) the term "a pension scheme" means a scheme established in relation to an employment in which the employee participates in order to secure retirement benefits;

(b) employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person; and the term "control", in relation to a body corporate, means the power of a person to secure:

(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

* * *

Full text available online at http://www.revenue.ie/services/tax_info/dtas/uk.htm

Appendix D**Migrant Member Relief**

Relief is available for contributions paid on or after 1 January 2005 by a relevant migrant member who comes to the State and who wishes to continue to contribute to a pre-existing 'qualifying overseas pension plan' (see paragraph 3) concluded with a pension provider in another EU Member State.

The expression 'overseas pension plan' includes both occupational pension schemes and personal pension plans (products similar to PRSAs and RACs), but excludes any state Social Security scheme (i.e. a system of mandatory protection put in place to provide a minimum level of retirement income or other benefits).

Conditions

The migrant member must meet certain conditions to be a 'relevant migrant member' and to qualify for relief for contributions made to a qualifying overseas pension plan.

The individual must-

- be a resident of the State,
- have been a member of the plan on taking up residence in the State,
- have been a resident of another EU Member State at the time he or she first became a member of the plan and must have been entitled to tax relief on contributions to the plan under the law of that Member State,
- have been resident outside of the State for a continuous period of 3 years immediately before becoming a resident of the State, and
- be a national of an EU Member State or, not being such a national, must have been resident in an EU Member State (other than the State) immediately before becoming a resident of the State.

Where an individual does not satisfy the 3 year test but all other conditions are met, the case should be referred to Financial Services (Pensions) Business Unit, Large Cases Division.

The normal rules (183 day rule and the 280 day look back rule) for determining if an individual is resident in the State should be applied when considering if an individual is resident in the State for the purposes of migrant member relief.

The term 'resident' in the context of another EU Member State means:

- In the case of an EU Member State with whom Ireland has a Double Taxation Treaty, that the individual is regarded as being a resident of that State under the relevant treaty, or
- In any other case, that the individual is by virtue of the law of that State a resident of that State for the purposes of tax.

Overseas Pension Plan – Information

The relevant migrant member must irrevocably instruct the administrator of the overseas pension plan to provide the Revenue Commissioners with any information, in relation to payments under the plan that they may reasonably require.

In addition, on an annual basis, he or she must obtain from the administrator a 'certificate of contributions' setting out contributions made by the migrant

member to the plan, and where relevant, contributions to the plan, made by the migrant member's employer in the State.

Relief for contributions

Where the conditions set out above in relation to the overseas plan and the migrant member are met, relief may be granted in respect of contributions paid under the overseas plan on foot of a completed form Overseas Pension 1.

The claim form must be completed and signed by both the individual claiming the relief and the administrator of the overseas pension plan.

Relief is subject to the same age based relief limits as apply to relief for individual contributions to Irish approved pension plans (occupational, PRSA, RAC). The combined remuneration/earnings threshold of €254,000 also applies.

An employer is authorised to operate the 'net pay arrangement' in respect of allowable contributions to a qualifying overseas pension plan where such contributions are deducted from the employee's emoluments.

Note -Prior to the introduction of Migrant Member Relief secondees from the United Kingdom could avail of relief under the terms of the protocol to the Ireland/UK Double Taxation Agreement. The protocol may still be of relevance to migrant workers coming to the State from a third country.

Appendix E

[Extract from Chapter 17 of Revenue Pensions Manual – Overseas Pension Schemes]

Overseas Employer - Overseas Scheme**17.5**

An employee who was a member of an Overseas Employers Scheme before being transferred to Ireland to work for an associated employer may remain in that scheme and get relief on his contributions against his Irish Tax provided that -

- (i) The secondment is for a period of less than 10 years.
- (ii) The scheme is a Trust Scheme.
- (iii) The benefits to be provided by the Overseas Scheme are within Irish approvable limits.

Appendix F

Criteria & Guidelines on Permanent Establishment (PE)

Introduction

The profits of an enterprise of a country with which Ireland has a double taxation convention are generally taxable in the State only where the enterprise has a Permanent Establishment (PE) here. This note **sets out the criteria for determining the existence of a PE**, and **gives guidelines on how these criteria are applied in the construction industry**.

Given the level of cross border business activity, particular reference is made to the Ireland/UK Double Taxation Convention. **The text of Article 5 of the Ireland/UK Convention is given at the end of this Appendix.**

Definition

Article 5(1) of the Ireland/UK Convention defines the term permanent establishment as being

“a fixed place of business in which the business of the enterprise is wholly or partly carried on”.

Article 3(1)(i) of the Convention provides that, “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively

- An enterprise carried on by a resident of a Contracting State and
- An enterprise carried on by a resident of the other Contracting State.

Article 5(2) of the Convention contains a list of examples of what is generally regarded as constituting a PE. However, the examples listed are PEs only where they fall within the terms of the definition in Article 5(1).

Article 5(3) of the Convention contains a list of examples of what is not regarded as constituting a PE.

Criteria to determine if a PE exists

Whether or not a PE exists is a question of fact. Each case must be considered on its own facts. Below are guidelines for determining whether a PE exists, i.e., whether there is “a fixed place of business in the State in which the business of the enterprise is wholly or partly carried on”.

There must be a place of business

A place, though normally a particular portion of space, is to be read in the context of it being used to define “establishment”. The term “place of business”, therefore, means all the tangible assets used for carrying on the business. It covers any premises, facilities or installations used for carrying on the business whether or not they are used exclusively for that purpose. Thus, a place of business may exist where no premises are available or required for carrying on the business of the enterprise and it simply has a certain amount of space at its disposal.

The place of business may be situated in the business facilities of another enterprise. It may be owned or rented by or be otherwise at the disposal of the business.

The place of business must be fixed

- The place of business must be established at a certain place. In this regard it is necessary that a link exists between the place of business and a specific geographical point.
- For equipment to constitute a PE, it must remain on a particular site but does not have to be fixed to the soil on which it stands. Where roads are being built, canals constructed etc. and the activities performed at each particular spot are part of a single project, the project is regarded as a PE.
- The place of business must have a certain degree of permanency. Mere business relations with enterprises or other customers in the contracting State do not give the requisite degree of permanency. Similarly, a place of business which is of a purely temporary nature cannot constitute a PE, e.g. a once-off stall at a trade exhibition. A place of business which is not of a purely temporary nature can be a PE even if it exists in practice only for a very short period of time because of
 - the special nature of the activity (e.g. a building site), or
 - as a consequence of special circumstances (e.g. death of the taxpayer, investment failure), it was prematurely liquidated.

The business must be wholly or partly carried on in the fixed place of business

For a place of business to constitute a PE, the enterprise using it must carry on its business wholly or partly in it. The activity need not be of a productive character. Interruptions of operations encountered in the normal course of the business of an enterprise do not affect the permanence test, provided the business activities are resumed at the same place. Operations must be carried out on a regular basis. For example, a space in a market place could be a PE provided it is occupied regularly over a period.

Agents

Article 5(4) of the Ireland/UK Convention deals with dependent agents. A dependent agent of a UK enterprise who has and habitually exercises in the State, an authority to conclude contracts in the name of the enterprise, constitutes a PE here.

Dependent

The agent must be dependent on the enterprise he/she represents. He/she must not have independent status of the kind referred to in Article 5(6) (e.g. brokers, general commission agents). An agent who is bound to follow instructions relating to the business is dependent on the enterprise. Employees of an enterprise are always dependent agents. An agent must have power to bind the enterprise.

Authority to Conclude Contracts

The dependent agent must have authority to conclude contracts in the name of the enterprise he/she represents. Whether or not an agent has such authority is a question of fact and is normally decided against the background of the economic situation. If there are valid reasons for the enterprise to reserve its right to conclude contracts itself (e.g. where major contracts are involved) the agent may be considered not to have an authority to conclude contracts. If the agent has authority to negotiate all elements of a contract in a way which is binding on the enterprise, the agent is regarded as exercising his/her authority in the State, even if formal signature of the contract is made by some other person outside the State. The authority could be restricted to specific lines of business within the enterprise's overall business activities. If this is the case, the profits attributable

to the PE would be restricted to profits arising from business contracted by the agent. Direct transactions by the enterprise would be disregarded for the purposes of determining profits attributable to the PE.

Habitual Exercise

The agent must habitually exercise in the State his/her authority to conclude contracts in the name of the enterprise. There must be a certain degree of permanence. An agent would not constitute a PE on the basis of the conclusion of a single contract. The frequency with which an agent concludes contracts will amount to habitual exercise if it corresponds with what is normal in the line of business concerned. In cases of doubt, the continuity of the agent's exercise of authority should be measured by application of the same criteria as those applied under the general PE concept laid down in Article 5(1). It is not necessary that the continuous activity be exercised throughout by the same person. It is sufficient for the post of dependent agent to have been established.

Residence

It is not necessary that the agent must be resident in the State. It is considered that where the foreign enterprise is a sole trader or partnership, the sole trader or any of the partners would be an agent for this purpose. Thus, a Northern Ireland subcontractor who habitually concludes contracts in the State in the name of the enterprise constitutes a PE of the UK enterprise.

Construction Industry - Existence of a PE

Under Article 8 of the Ireland/UK Convention, the profits of a UK based enterprise are taxable in the State only if the enterprise carries on business here through a PE situated here. While all the general principles outlined earlier apply to the construction industry, particular difficulties arise in determining whether a PE is in existence in construction cases. This is especially so where the question to be determined is whether, in a particular case, a building site constitutes a PE. Given the high number of Northern Ireland based enterprises who carry out construction work in the State, Article 5 of the Ireland/UK Convention is regularly invoked to establish the existence or otherwise of a PE in the State. Article 5(1) (h) of the Convention provides that *a building site or construction or installation project which lasts for more than six months* constitutes a PE.

Meat Industry -Existence of a PE

Where a contractor provides services in a meat factory, the factory premises can constitute a PE where the requirements mentioned above under the heading "Criteria to Determine if a PE exists" are satisfied.

Mutual Agreement Procedure

Where a person has a PE in the State, he/she is taxable here on the profits attributable to the PE. Under the Ireland/UK Convention, a UK resident with a PE in the State is entitled to credit in the UK for tax paid in the State in respect of profits attributable to the PE. If the UK Inland Revenue rule that the person does not have a PE in this State, credit for Irish tax will not be allowed against the persons UK tax liability. In this event, the person should request a review under Article 24 of the Convention (i.e. mutual agreement). Under the terms of Article 24, the two authorities will arrive at a mutual determination regarding the existence of a PE in the State. The request for such a review should be made to the Revenue Authority of the State in which the person is resident.

ARTICLE 5 OF THE IRELAND/UK CONVENTION**Article 5 Permanent Establishment**

- (1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
- (2) The term "permanent establishment" shall include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, oil well, quarry or other place of extraction of natural resources;
 - (g) an installation or structure used for the exploration of natural resources;
 - (h) a building site or construction or installation project which lasts for more than six months;
- (3) The term "permanent establishment" shall not be deemed to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
- (4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of independent status to whom the provisions of paragraph (6) of this Article apply - shall be deemed to be a permanent establishment in the first-mentioned State if

he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

- (5) A person carrying on activities offshore in a Contracting State in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that Contracting State shall be deemed to be carrying on a business through a permanent establishment in that Contracting State.
- (6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
- (7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.