Provisions Relating to Residence of Individuals

Part 34-00-01

Part 34 Taxes Consolidation Act 1997

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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1. Introduction

Listed below are a number of legislative provisions relevant to the residence of individuals, including the statutory residence test.

- Sections 818 - 822 TCA 1997 contain provisions in relation to whether an individual is resident and/or ordinarily resident in the State for tax purposes.
  - **Section 818** contains a number of definitions relevant to Part 34 of the TCA 1997 (other than section 825).
  - **Section 819** sets out the statutory residence test and the circumstances an individual may elect to be resident in the State in a tax year.
  - **Section 820** sets out when an individual is considered ordinarily resident in the State.
  - **Section 821** provides that an individual who is not resident but who remains ordinarily resident is taxable as if he or she were resident in the State.
  - **Section 822** provides for 'Split Year Treatment' and sets out the tax treatment of an individual in the year of arrival in the State and the year of departure from the State.
- **Section 824** TCA 1997 provides for an appeal procedure for an individual aggrieved by a decision of an Authorised Officer. An appeal against such a decision must be made by notice in writing within two months of the date of notice of the decision. The usual appeal provisions apply to such an appeal.

2. Section 819 - Rules of tax residency for individuals

Section 819(1) TCA 1997 provides that 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 - this is commonly known as the 'look-back rule' (see below).

Section 819(2) TCA 1997 provides that 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.

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.

COVID-19 'Force majeure' circumstances

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

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

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

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

- That individual has COVID-19 or a family member or partner with whom they are travelling with has COVID-19,
- That individual being quarantined or self-isolating in a particular location due to suspected COVID-19,
- That individual self-isolating whether on advice from a health professional or public health guidance or self-imposed,

- That individual has received medical advice not to travel,
- An employer requests that individual not to travel,
- Border controls or entry restrictions in a home country of that individual,
- The non-availability of commercial flights.

The maximum length of time in respect of the 2020 tax year that may be disregarded for residence purposes due to COVID-19 under 'force majeure' circumstances will depend on whether the individual:

1) was present in the State on or prior to 23 March 2020, or
2) travelled to the State between 24 March and 5 May 2020.

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

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

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

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

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

This 'force majeure' concession seeks to give relief to individuals who, except for the unique and exceptional disruption caused by the COVID-19 pandemic, would not have been

considered resident in the State for tax purposes, but only in circumstances where the individual maintains his or her foreign tax residence position, for example he or she remains tax resident in his or her home country.

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

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

Examples

Unless specified, it is assumed all other conditions are met for the purposes of the 'force majeure' concession in the following examples.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Electing to be resident

Section 819(3) TCA 1997 provides that 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.

Usually the main reason an individual elects to be resident is to avail of full personal tax credits, but there may also be other relevant considerations.

Days present in the State

Section 819(4) TCA 1997 provides that for 2009 and subsequent tax years, an individual is regarded as being resident in the State for a day if he or she is present in the State at any time during the day. For tax years up to and including 2008 an individual is regarded as being resident in the State for a day if he or she is present in the State at the end of the day i.e. at midnight.

3. Section 820 - Ordinary Residence

The term ordinary residence refers to an individual's pattern of residence over a number of tax years. If an individual has been resident in the State for three consecutive tax years, he or she is regarded as ordinarily resident from the beginning of the fourth tax year. On the other hand, he or she will cease to be ordinarily resident in the State having been non-resident for three consecutive tax years. A person can be non-resident for a tax year but still be ordinarily resident for that year if the absence is temporary.

An individual who is non-resident but who is ordinarily resident is liable to tax on any passive income (e.g. investment income). Such an individual is also liable to tax on the income from any trade, profession, office or employment, unless that trade, profession, office or employment is exercised wholly abroad. The performance of duties in the State which are merely incidental to the exercise of an office or employment abroad will generally not bring the income within the charge to tax. To note, this does not apply to the exercise of a trade or profession.

The question of whether the performance of duties in the State is merely incidental to the exercise of the duties of the office or employment abroad is one of fact. For this purpose, performance of the duties in the State for less than 30 days in any tax year may generally be regarded as incidental to the performance of the duties abroad.

See Tax and Duty Manual (TDM) Part 42-04-65 for more guidance on employment income and other related content.

The relevant Revenue branch dealing with the taxpayer's affairs will need to consider whether an individual who becomes non-resident but remains ordinarily resident is likely to be taxable in the State for the tax years following the year of departure. In looking at this, consideration should be given to whether any income which the individual is likely to have

may be exempt from tax in this State in accordance with the terms of a Double Taxation Agreement between this State and the State to which the individual is now residing in.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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4. Section 821 – Individuals who are not resident but are ordinarily resident

Under the provisions of **Section 821 TCA 1997**, individuals who are not resident but who remain ordinarily resident are taxable as if they were resident in the State. However, the provisions of **Section 821 TCA 1997** do not apply to:

- income from a trade or profession, no part of which is carried on in the State,
- income from an office or employment, all the duties of which are performed outside the State; and
- other foreign income of an individual which in any year does not exceed €3,810.

Example 1

Alan is not resident but is ordinarily resident in the State for 2020. His income for the year is as follows:

Employment income	€50,000
(all the duties of the employment were performed outside the State)	
Deposit interest arising to a foreign bank account	€2,000
Rental profit from Irish property	€10,000

Alan is chargeable to tax in the State only on the Irish source rental income profits of €10,000.

If, however, the foreign deposit interest was €4,000, Alan would be chargeable to Irish tax on the rental income of €10,000 plus the foreign

deposit interest of €4,000. In such circumstances, he is chargeable on the full €4,000 as his foreign income exceeds the limit of €3,810.

5. Section 822 - Split Year Treatment (SYT)

SYT applies only to income from an employment. It does not apply to income from an office e.g. a directorship.

Unless SYT applies, an individual who is resident in the State in the year of arrival/departure is taxable on all income for that year.

Where SYT applies in the **Year of Arrival**

- an individual is taxable on all income other than pre-arrival employment income.

Where SYT applies in the **Year of Departure**

- an individual is taxable on all income other than post-departure employment income.

Where an individual qualifies for SYT, for the purposes of charging to tax any income from an employment, the individual is treated as resident in the State for part of the tax year of arrival/departure, and non-resident for the remainder of that tax year. In effect, the year is split to ensure that foreign employment earnings prior to arrival or after departure in such cases are not subject to Irish tax.

In the case of an individual arriving in the State (i.e. who was not resident here for the preceding tax year), the measure is aimed at those who, due to the date of their arrival, would be resident in the State for the year of arrival. If during a year of assessment an individual makes a claim for SYT, and the Authorised Officer is satisfied that the individual is in the State with the intention and in such circumstances that the individual will be resident in the State for the following tax year, SYT may be allowed. In this way, the individual is regarded as resident only from the date of arrival so far as the taxation of employment income is concerned.

Employment income arising, or remittances of employment income made in the part of the year for which the individual is treated as non-resident, are not taxable, unless the employment was exercised in the State during that period.

Return visits to Ireland for holidays will not affect the application of split year treatment, assuming of course that all the other conditions of section 822 TCA 1997 are met.

To note, as stated above, SYT applies to employment income only.

Further information on the Remittance Basis of Assessment is covered in TDM Part 05-01-21A.

Example 2

Leo is employed with ABC Ltd in Canada. In March 2019 he is sent by his employer to work in a new company in Ireland, ABC (Irl) Ltd. The contract will last for two years. Leo is not domiciled (see paragraph 7 below) in Ireland.

Leo had the following income in 2019:

January to March 2019 ABC Ltd Canada	€90,000
January to March 2019 foreign employment income	
remitted to Ireland	€30,000
April to December 2019 ABC (Irl) Ltd	€270,000
April to December 2019 foreign dividends remitted to Ireland	€40,000

2019 Liability

Leo wishes to claim split year treatment for 2019. He has satisfied an Authorised Officer that he intends to be resident for 2020.

Leo's employment income from January to March 2019 and his foreign employment income remitted to the state i.e. €90,000 and €30,000 are effectively disregarded. He is therefore assessable on:

Irish employment income from April-December 2019	€270,000
Foreign dividend income remitted	€40,000

Full tax credits are due against this income.

Example 3

Sarah is employed with XYZ Ltd in France. She arrived in Ireland in February 2020 for four weeks to work for XYZ (Irl) Ltd and returned again to France. In July 2020 she is sent back to Ireland by her employer to deliver training to the new staff. The contract will last for three years. Sarah is non-domiciled in Ireland.

Sarah has the following income for 2020

January to June 2020 with XYZ France Ltd	€180,000
February 2020 with XYZ (Irl) Ltd	€40,000
January to June 2020 foreign employment income	
remitted to Ireland	€ 25,000
July to December 2020 with XYZ (Irl) Ltd	€240,000
January to December 2020 foreign dividends	
remitted to Ireland	€ 28,000

2020 Liability

Sarah wishes to claim split year treatment for 2020. She has satisfied an Authorised Officer that she intends to be resident for 2021.

Sarah’s income from XYZ in France and her remitted income from her employment up to the date of her arrival in Ireland are effectively ignored i.e. €180,000 and €25,000. She is therefore assessable on:

Four weeks employment in the State in February 2020	€40,000
Irish employment income July-December 2020	€240,000
Foreign dividends remitted January to December 2020	€28,000

Full tax credits are due against this income.

An Individual Leaving the State

In the case of an individual leaving the State, the measure is aimed at those who continue to be resident for the year of departure. If the Authorised Officer is satisfied that the individual is leaving the State other than for a temporary purpose, with the intention and in such circumstances that the individual will not be resident in the State for the following tax year, SYT may be allowed. This means that the individual is regarded as non-resident from the date of departure so far as the taxation of employment income is concerned.

Example 4

Paul is employed by ABC Ltd. In April 2020 he leaves the state with the intention of living permanently in Australia. He secures employment in Australia in June 2020. His income for 2020 is as follows:

ABC Ltd (to date of departure)	€10,000
Employment income Australia	€20,000

Paul wishes to claim split year treatment for 2020. He has satisfied an Authorised Officer that he intends to be non-resident for 2021.

As Paul is resident in this State on the look-back rule (see paragraph 2), without SYT he is assessable on his worldwide income for 2020. However, by claiming SYT he is assessable as follows:

ABC Ltd (to date of departure)	€10,000

Paul is entitled to full tax credits against this income for 2020.

To qualify for SYT, an individual must satisfy an Authorised Officer that he or she fulfils the requirements as regards intended residence for the following tax year. This should be done during the year of departure/arrival.

If due to unforeseen circumstances (e.g. for domestic or health reasons or cancellation of an employment contract), the genuine intention was not subsequently fulfilled, the previous ruling should not be changed. The original ruling remains valid since, at the time the ruling was made, the requirements to qualify for SYT were satisfied.

Example 5

Greg arrived in Ireland from Canada in May 2020 to work for ABC (Irl) Ltd. His contract is for five years. Greg wishes to claim SYT for 2020. He has satisfied an Authorised Officer that he intends to be resident in Ireland for 2021.

2020 Liability

Greg's employment income before his arrival in the state is effectively disregarded. He is assessable on his employment income with ABC (Irl) Ltd from May 2020 to December 2020 with full tax credits due.

In late December 2020 Greg left Ireland permanently to return to Canada due to family illness.

SYT is still due to Greg for 2020. He should only be assessed on his employment income with ABC (Irl) Ltd from May to December 2020 and full tax credits are still due.

Example 6

John left his employment in Ireland in October 2019 to reside in Australia permanently. He applied for and was granted SYT for 2019 as he satisfied an Authorised Officer that he intended to be non-resident in Ireland for 2020.

John returned to Ireland in June 2020 after receiving a job offer. His liability is as follows:

2019 SYT is still due, this ruling should not be changed despite the fact that he is resident in Ireland for 2020.

2020 John is resident in Ireland and is therefore assessable on his worldwide income for 2020 including any income he earned in Australia.

Where, exceptionally, an individual, during a year of arrival/departure to/from the State, is unable to satisfy the Authorised Officer that the split year requirements will be satisfied, the matter may be reviewed at a later date. If it turns out at that stage that the individual does satisfy the residence requirements for split year, the relief should be allowed then.

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To avail of SYT, an individual leaving the State must be resident in the year of departure and intending to be non-resident in the year following the year of departure. Intended absence from the State for a continuous period of 15 months will generally ensure that this test is satisfied. However, each case should be examined separately, by reference to the number of days intended to be spent in the State in each tax year.

In addition, the absence from the State must be other than for a temporary purpose. This test may be regarded as satisfied where the residence tests are satisfied.

The examples in Appendix 1 illustrate how the residence tests for SYT operate. For convenience, the number of months is converted to days by multiplying by 365/12. The examples show that an absence of 15 months would satisfy the residence test.

Other than for the purposes of charging income from an employment, an individual entitled to SYT is resident in the State for the full tax year in question. Accordingly, the individual is entitled to full personal credits for the year and is chargeable to tax on the full amount of any income, other than employment income, for the year. This is of course subject to any relief which may be available under the terms of a relevant Double Taxation Agreement.

Example 7

Elizabeth arrived in Ireland from Germany in April 2020 to work for ABC (Irl) Ltd. Her contract is for five years. Elizabeth wishes to claim SYT for 2020. She has satisfied an Authorised Officer that she intends to be resident in Ireland for 2021. She is not Irish domiciled.

Elizabeth has the following income for 2020:

January to March 2020 ABC (Germany) Ltd	€16,000
April to December 20120 ABC (Irl) Ltd	€54,000
January to December 2020 other foreign income	€10,000
of which remitted	€ 6,000

Elizabeth is therefore chargeable as follows for 2020:

ABC (Irl) Ltd	€54,000
Other foreign income remitted	€6,000

If Elizabeth was Irish domiciled she would be chargeable on the full €10,000 - other foreign income.

Full tax credits are due.

Electing to be resident (see Paragraph 2 above)

An individual who elects to be treated as resident for a tax year is entitled to claim SYT if the other requirements are satisfied. The election should be in writing and there is no provision for withdrawal of an election.

Double Taxation Relief

Where an individual qualifies for SYT, double taxation relief is not available for the tax year of arrival/departure in respect of foreign tax paid on the income not taxed because of SYT. This is because double taxation relief is available only for tax years for which an individual is resident in the State (Para. 3 Sch. 24 TCA 1997). The income which is not chargeable to tax because of SYT is treated as arising in a year of assessment in which the individual is non-resident (Section 822(3) TCA 1997).

6. PAYE Exclusion Orders

As indicated in paragraph 5, where an individual qualifies for SYT, the individual is treated for the purposes of charging to tax any income from an employment as resident in the State for part of the tax year of arrival/departure and non-resident for the remainder of that tax year. An individual who is non-resident is chargeable to tax on employment income only if the employment is exercised in the State. Accordingly, where an individual is entitled to SYT and in circumstances where the individual performs his or her duties abroad, the income from his or her Irish employment is not taxable and PAYE should not apply for the part of the year for which the individual is treated as non-resident.

As a result, exclusion orders should be granted for the part of the year for which the individual who qualifies for SYT is regarded as non-resident. In practice, this will involve granting exclusion orders for the part of the tax year from the date of departure and cancelling the exclusion orders with effect from the date of arrival in the State, where an exclusion order is already in force.

In the case of an individual leaving the State, the exclusion order should indicate the date from which it is effective and should include the following statement:

"This exclusion order is effective only so long as the employee resides abroad and the duties of the employment are performed abroad".

Where an exclusion order is being withdrawn, the cancellation of an exclusion order notice should indicate the date from which the cancellation is effective.

Where an exclusion order is issued in the case of an individual leaving the State, the question of whether the individual's liability should be reviewed immediately will need to be considered.

In the case of an individual whose only income is from an employment consideration should be given to reviewing the liability, as soon as possible, after the date of departure. Since the individual is resident in the State, full personal credits will be due for the year. Where the person leaving the State is a homeowner, the possibility that the individual will have rental income from the property should be considered in deciding whether the liability may be reviewed immediately.

Where an exclusion order is issued, PRSI automatically ceases to be deductible through the PAYE system. However, the employee may continue to be insurable in the State under Social Protection legislation. Consequently, it may be necessary for employers to remit PRSI directly to the Department of Social Protection instead of to the Collector-General's Office through the PAYE system.

The contact point for PRSI queries in such circumstances is:

PRSI Special Collection Section,

Social Welfare Services Office,

Cork Road,

Waterford.

Email: E101SPC@welfare.ie

Phone number: 1890 690 690

(01) 704 3000

7. What is Domicile

Domicile is a concept of general law. It may, broadly speaking, be interpreted as meaning residence in a particular country with the intention of residing permanently in that country. Every individual acquires a domicile of origin at birth, usually that of his or her father. A domicile of origin will remain with an individual until such time as a new domicile of choice is acquired. However, before that domicile of origin can be shed, there has to be clear evidence that the individual has demonstrated a positive intention of permanent residence in the new country and has abandoned the idea of ever returning to live in the "domicile of origin" country. For example, an individual with an Irish domicile of origin who lives abroad for a number of years and then returns to Ireland would not be regarded as ever having abandoned his or her Irish domicile of origin. This is an important matter for tax purposes as an individual's domicile status affects the extent to which foreign sourced income is taxable in the State.

Non-domiciled individuals and the remittance basis of assessment

The remittance basis of assessment applies to foreign sourced income and foreign capital gains of an individual who although tax resident in the State for a tax year is not Irish domiciled for that tax year. Under the remittance basis of assessment, the non-Irish income and gains are taxable only to the extent that they are remitted to the State.

However, the remittance basis of assessment does not apply to the income of a non-Irish sourced employment i.e. foreign employments, attributable to the performance in the State of the duties of that employment.

8. Other Matters

Public Employments

Income from public employments are generally chargeable to Irish tax regardless of the residence status of the individual, or where the duties of the employment are exercised.

Examples of such employments are Civil Servants, Army Officers etc. (see Section 19(2) TCA 1997). Since the taxation of public employments is not affected by the residence status of the employee, SYT has no effect in relation to such employments.

Special Assignee Relief Programme (SARP)

The interaction between SYT and SARP is covered in TDM Part 34-00-10.

Appendix 2 contains a number of commonly asked questions in relation to residence issues.

A summary of the tax implications of Residence, Ordinary Residence and Domicile is set out in Appendix 3.

Appendix 1

Split year treatment where an individual departs the State in year 1.

In order to claim SYT in the year of departure, the individual must be resident in that year, and not resident in the following year. The table below illustrates the residence rules as provided for in section 819.

Days in Irl Yr 1	Resident Year 1 (y/n)	Days in Irl Yr 2	Resident Year 2 (y/n)	Residence tests for SYT satisfied (y/n)
Abroad for 14 months (426 days)				
28	n (30 day rule)	276	y (183 day rule)	n
60	y (look back rule)	244	y (183 day rule)	n
120	y (look back rule)	184	y (183 day rule)	n
180	y (look back rule)	124	y (look back rule)	n
240	y (183 day rule)	64	y (look back rule)	n
300	y (183 day rule)	4	n (30 day rule)	y
Abroad for 15 months (456 days)				
28	n (30 day rule)	246	y (183 day rule)	n
60	y (look back rule)	214	y (183 day rule)	n
120	y (look back rule)	154	n	y
180	y (look back rule)	94	n	y

240	y (183 back rule)	34	n	y
300	y (183 day rule)	0	n	y
Abroad for 16 months (487 days)				
28	n (30 day rule)	215	y (183 day rule)	n
60	y (look back rule)	183	y	n
120	y (look back rule)	123	n	y
180	y (look back rule)	63	n	y
240	y (183 day rule)	3	n	y

Appendix 2

Frequently asked Questions on residence, non-residence and domicile

How do the concepts of residence, ordinary residence and domicile affect an individual's tax treatment?

Tax Resident Individuals

An individual who is tax resident in the State for a tax year is liable to Irish tax on his or her worldwide income and gains for that tax year. Where appropriate, a credit against Irish tax may be due under the terms of a Double Taxation Agreement in respect of foreign tax paid on foreign source income and gains that are subject to Irish tax.

Non-domiciled individuals and the remittance basis of assessment

The remittance basis of assessment applies to foreign sourced income and foreign capital gains of an individual who although tax resident in the State for a tax year is not Irish domiciled for that tax year. Under the remittance basis of assessment, the non-Irish income and gains are taxable only to the extent that they are remitted to the State.

However, the remittance basis of assessment does not apply to the income of a non-Irish sourced employment attributable to the performance in the State of the duties of that employment.

Non-resident individuals

An Individual who is non-resident but is ordinarily resident in the State for the tax year in respect of which tax liability is to be calculated

Such an individual is, for that tax year –

- treated in the same way as an individual who is tax resident (see Paragraph 2 above.**; but**
- will not be taxable on -
    1. the income derived from a trade or profession no part of which is carried on in the State;
    2. the income derived from a non-public office or a non-public employment all of the duties (except incidental duties) of which are performed outside the State (but see non-resident directors of Irish incorporated companies below and Irish public offices);
    3. other foreign income (e.g. investment income) which, in the tax year, does not exceed €3,810.

Where such an individual has income chargeable to Irish tax, he or she may be entitled to any reliefs (including credit for foreign tax paid) that may be due under the terms of a double taxation agreement.

A non-resident individual is taxable on specified gains only – (see Individual who is non-resident, non-ordinarily resident and not domiciled in the State for the tax year in which liability is to be calculated) below.

Individual who is non-resident, non-ordinarily resident but is domiciled in the State for the tax year in respect of which tax liability is to be calculated

Such an individual is, for that tax year, taxable in the State on all his or her -

1. Irish source income including the income from an Irish public office (see Non-resident directors of Irish incorporated companies);
2. the income derived from any trade, profession or employment exercised in the State; and
3. Irish source gains.

Where such an individual has income or gains subject to Irish tax, he or she may be entitled to any reliefs (including credit for foreign tax paid) that may be due under the terms of a double taxation agreement.

Individual who is non-resident, non-ordinarily resident and not domiciled in the State for the tax year in respect of which tax liability is to be calculated.

Such an individual is, for that tax year, taxable in the State on all his or her -

1. Irish source income including the income from an Irish public office (see Non-resident directors of Irish incorporated companies);
2. the income derived from any trade, profession or employment exercised in the State; and
3. gains on Irish specified assets only (land, buildings and minerals in the State; exploration rights in designated areas; unquoted shares deriving the greater part of their value from the aforementioned assets; assets of a trade carried on in the State).

Where such an individual has income or gains subject to Irish tax, he or she may be entitled to any reliefs (including credit for foreign tax paid) that may be due under the terms of a double taxation agreement.

Non-resident directors of Irish incorporated companies

A director of an Irish incorporated company holds an Irish Public Office and is chargeable to tax in this State on the income attributable to such directorship irrespective of -

1. his or her tax residence position; or
2. where the duties of the office of director are exercised.

However, such directorship income may, in some instances, be relieved from the charge to Irish tax under the terms of a Double Taxation Agreement between the State and the country of residence of the director.

What tax credits is a non-resident individual entitled to?

Non-resident individuals are, in general, entitled to a proportion of tax credits with such proportion being the fraction -

<u>Tax Credits **X** Income within the charge to Irish tax</u>

Total worldwide income.

Non-resident individual's resident in an EU Member State whose income within the charge to Irish tax is 75% or greater of their total worldwide income may be entitled to the full amount of allowances and tax credits.

How are married couples taxed where one spouse is non-resident?

Where only one spouse is resident in the State, that spouse is treated for tax purposes as if unmarried, however, in cases where Revenue are satisfied that the non-resident spouse has no income, the couple may be afforded the benefits of being taxed as a married couple.

What is Double Taxation?

In some cases, part of an individual's income and gains taxable in the State may also be subject to tax in another country. This is known as "double taxation" which is the term used when a source of income is chargeable to tax in more than one country. Relief from this double tax charge is known as "double taxation relief" and is generally available under a Double Taxation Agreement.

What is a Double Taxation Agreement?

A Double Taxation Agreement is an international treaty concluded between the Government of Ireland and the government of another country or territory in order to prevent income and gains being doubly taxed.

Ireland has concluded a number of Double Taxation Agreements with other countries. This list is available at www.revenue.ie.

How does a Double Taxation Agreement prevent income or gains being doubly taxed?

If income or gains is/are chargeable to tax in the State and in a country with which the State has a Double Taxation Agreement, a double charge to tax is prevented under the agreement. This is generally provided by either -

- **crediting** the foreign tax paid against the Irish tax liability on that same income or gains or,
- in certain circumstances, by **exempting** that income or gains from tax in either the State or the other country.

The precise treatment of income or gains will depend on the provisions of the agreement, the nature and source of income or gains and, in some cases, the nationality/citizenship of the individual.

Can foreign tax deducted from income or gains be reclaimed from Revenue?

No, Revenue will only refund tax deducted in the State. A refund of foreign tax should be claimed directly from the revenue authorities in the country in which it was paid. Also note that any foreign tax that has been refunded cannot be claimed as a credit against an Irish tax liability.

Going to work abroad temporarily and remaining resident for Irish tax purposes

How is employment income treated when an individual goes to work abroad but remains resident for Irish tax purposes?

For any tax year that an individual is tax resident in the State, he or she will be liable to Irish income tax on his or her total income from all sources including any income from a foreign employment.

Are full tax credits due?

Any individual that is resident in the State for tax purposes is entitled to full tax credits.

What happens if the income is also taxable abroad?

If tax is also charged in a country with which Ireland has a Double Taxation Agreement, relief is given as specified in the relevant agreement. This is generally provided by either:

- crediting the foreign tax paid against the Irish tax liability on that same income; or,
- in certain circumstances, by exempting that income from tax in Ireland or the other country.

If an individual is going to a country with which Ireland does not have a Double Taxation Agreement, he or she will be liable to Irish tax on his or her foreign income net of foreign tax paid.

Are there any additional allowances/reliefs due to an Irish resident working abroad?

For any tax year that an individual is resident in the State, he or she may be entitled to one of the following additional income tax reliefs:

- Transborder Relief (see below) or
- Seafarer Allowance (see below).

What is Transborder Relief?

Transborder relief is designed to give income tax relief to individuals who are resident for tax purposes in the State but who commute daily or weekly to their place of work abroad and who pay tax in the other country on the income from that employment.

Further information is available in TDM Part 34-00-06

Do special provisions apply to researchers or lecturers going to certain tax treaty countries?

Some of our Double Taxation Agreements provide that remuneration paid to certain researchers or lecturers working or studying abroad at a university, research institute, school, college or other similar establishment during a period of temporary residence not exceeding two years, shall remain taxable in the State.

The Double Taxation Agreement between the State and the country in which the university, research institute, school, college or other similar establishment is situated should be consulted.

If an individual goes abroad temporarily for reasons other than work (e.g. travel, non-paid work) but remains resident for Irish tax purposes. How will any Irish source income of the individual be treated?

As a tax resident in the State, he or she will be liable to Irish income tax on his or her total income from all sources including, Irish source income. However, being tax resident, full tax credits are due.

Going to work abroad on a long term or permanent basis and becoming non-resident for Irish tax purposes

How is the employment income of non-resident individuals treated for Irish tax purposes?

In general, the employment income of a non-resident individual working abroad is not liable to Irish tax. However, such an individual may have a liability to Irish tax on the income attributable to the performance in the State of the duties of that employment.

For more details on the taxation of foreign employment income, see TDM Part 42-04-65 : Employee payroll tax deductions in relation to non-Irish employments exercised in the State.

Note: The income arising to a non-resident individual from the holding or exercising of an Irish Governmental position (e.g. income from positions such as those held by civil servants, Gardaí and members of the Defence Forces working abroad) generally remains chargeable to Irish tax regardless of the tax residence status of the individuals or where the duties of their office or employment are exercised.

An individual is working abroad for an Irish employer but will need to return to Ireland from time to time. How will these return visits affect his or her treatment?

If an insignificant number of days are spent working in the State and are merely incidental to the foreign duties of employment, those days will not affect the exemption from Irish tax. Normally, for this purpose, any number of days up to a maximum of 30 in a tax year will be regarded as insignificant.

An individual is posted to work abroad by his or her Irish employer. How will his or her employment income be treated for tax purposes in the year that he or she leaves?

An individual who is resident during the tax year he or she leaves the State and non-resident for the following tax year, as regards the taxation of employment income, if claiming split year treatment, is effectively regarded as non-resident from the date of departure in respect of his/her employment income. This means that his or her employment income will not be subject to Irish tax from the date of departure.

In order to avail of SYT, it is necessary that the individual satisfies his or her Local Revenue office of his or her intention not to be resident in the State for the tax year following departure. In this regard, a statement from the employer or a copy of a contract of employment indicating the length of time he or she intends to spend working abroad should be submitted in support of his or her claim.

Revenue may then issue a PAYE Exclusion Order to the employer authorising them not to deduct tax from the employee’s salary. An Exclusion Order will operate from the date of departure and will be effective for as long as the individual is non-resident the following and subsequent years and the duties of employment continue to be exercised abroad. Although he or she will be regarded as non-resident from the date of departure, he or she is nevertheless due full personal tax credits for the complete tax year. In those circumstances, he or she may be entitled to a tax adjustment, taking into account the unused portion of tax credits.

Can an employer continue to deduct PRSI from salary if an Exclusion Order is put in place?

Once authorised not to deduct tax under the PAYE system, an employer will no longer be able to deduct PRSI. An individual may, nevertheless, continue to be insurable in the State. In such cases, it will be necessary for him or her to pay PRSI directly to the Department of Social Protection. For clarification as to whether PRSI contributions are due and instructions on the remittance of any amounts due, employers can contact:

PRSI Special Collection Section,

Social Welfare Services Office,
Cork Road,
Waterford.

Email: E101SPC@welfare.ie

Phone number: 1890 690 690

(01) 704 3000

Can an individual, who is going abroad permanently, claim a refund of tax paid?

An individual can claim a refund of tax paid if he or she has not used up the full tax credits for the tax year in which he or she leaves. He or she should contact his or her local Revenue office.

How are sources of foreign income other than employment income treated when an individual becomes non-resident?

For any tax year during which an individual is non-resident but remains ordinarily resident, foreign sourced income (excluding income from an employment, a trade or profession, the duties of which are not exercised in the State) will remain chargeable to Irish tax unless such income does not exceed €3,810 for that tax year. If the income exceeds €3,810 the total amount (not just the excess over €3,810) becomes taxable. However, the provisions of a Double Taxation Agreement between the State and the country in which the individual is resident may affect the taxation of such income.

An individual remains chargeable on worldwide gains so long as he or she is ordinarily resident in Ireland.

If an individual lets his or her home while abroad, will there be a liability to Irish tax on the rental income?

Regardless of an individual's residence status, he or she will have a liability to Irish tax on the rental profits. If the individual does not appoint an agent to collect the rent while he or she is non-resident, the tenant is obliged to deduct an amount equal to the standard rate of income tax (currently 20%) from the rent payable and remit this amount to Revenue.

When an individual returns to live in the State, how will his or her employment income be treated in the year of return?

If an individual is resident in the State for the tax year during which he or she arrives or returns to the State, and he or she intends to be resident for the following tax year, employment income earned before the date of return will not be taxable, where split year treatment is claimed.

As a resident for the tax year of return to the State, he or she will be entitled to personal tax credits for the full tax year.

He or she will be regarded as being resident in the State for a tax year if he or she satisfies either of the residence tests outlined in paragraph 2 above. Should the individual not satisfy either of these tests he or she can, if they wish, elect to be resident for the tax year of return. A condition of making an election is that he or she must establish to the satisfaction of Revenue that he or she will be resident in the State for the following tax year under either of the tests outlined at paragraph 2 above. Once an election is made, it cannot subsequently be cancelled.

If an individual is non-resident in the year of return, he or she will be taxable on earnings from an employment, the duties of which are exercised in the State. As a non-resident, he or she may be entitled to a proportion of tax credits and reliefs. This proportion is determined by the relationship between his or her income for the tax year which is subject to Irish tax and income from all sources (in other words, Irish income divided by all worldwide income).

Whilst an individual was non-resident for tax purposes, he or she saved some of their foreign employment earnings attributable to working abroad. How are these savings treated for tax purposes when on return?

If the savings were from employment income earned in a tax year or years when the individual was non-resident and attributable to duties exercised outside the State, those savings will not be taxable when brought home. However, income (e.g. deposit interest) from the investment of those savings that arises in a year in which an individual is resident or ordinarily resident may be taxable in the State.

Can an individual reclaim, from the Irish Revenue Commissioners, foreign tax deducted from income or gains?

No. Revenue may only refund Irish tax deducted. A refund of foreign tax - if such is due - should be claimed directly from the revenue authorities in the relevant country. Please note also that any foreign tax that has been refunded cannot be claimed as a credit against an Irish tax liability.

A retired individual in receipt of a 'Private Sector' Irish occupational pension is going to live abroad. How will this pension be treated for tax purposes?

Where an individual is in receipt of an occupational pension from an Irish resident employer (other than a Governmental or a Local Authority pension) and the individual is

- not resident in the State for tax purposes and
- is resident in a country with which the State has a Double Taxation treaty for the relevant tax year,

generally, the pension will be taxable solely in the country in which the individual is tax resident.

In such cases, an individual may request a PAYE Exclusion Order in respect of such pension. A PAYE Exclusion Order authorises the pension provider not to deduct Irish tax via the PAYE system on a pension.

An individual with an Approved Retirement Fund (ARF) is going to live abroad. How will withdrawals from an ARF and other such funds be treated?

An ARF is an investment vehicle which is beneficially owned by an individual and managed by a Qualifying Fund Manager. Where an individual withdraws, or is deemed to withdraw, funds from his or her ARF or other such fund (i.e. an Approved Minimum Retirement Fund or a vested PRSA), the withdrawal is subject to tax deduction at source under PAYE regardless of the residence status of the individual.

A retired individual in receipt of an Irish 'Public Sector' Pension is going to live abroad. How will this pension be treated for tax purposes?

A 'public sector' or governmental pension is a pension payable by the State or a Local Authority in connection with the discharge of functions of a governmental nature or in respect of services rendered to the State.

In general, an Irish governmental pension will be taxable solely in the State, irrespective of the residence status of the recipient.

For confirmation that the above treatment applies, or in cases of doubt, please refer to the Government Service Article or Government Pensions Article of the appropriate Double Taxation Agreement between the State and the jurisdiction in which the individual intends to be resident.

Individuals resident in non-treaty countries remain chargeable to income tax in the State.

Note: Irish Social Protection pensions and foreign Social Security pensions are not regarded as governmental pensions.

Tax questions commonly asked by individuals coming to live in Ireland for the first time or by Irish citizens returning to live in the State having been abroad for a number of years

What is the tax treatment of income that an individual has earned prior to moving to Ireland and which he or she wishes to bring with them to the State?

An individual moving to the State for the first time or an individual who is an Irish citizen returning to live in the State having been non-resident and not ordinarily resident when the income was earned, funds accumulated from income earned before 1 January in the year that the individual becomes Irish resident will not be liable to income tax.

Income, other than employment income, earned or arising between 1 January and the date of your arrival are taxable in the State unless the remittance basis of assessment applies, or the income is relieved from Irish tax under the terms of a Double Taxation Agreement.

If an individual brings the proceeds from the sale of a foreign property into the State, will he or she be liable to Irish tax?

If the property was disposed of in a tax year during which the individual was neither resident nor ordinarily resident in the State, there will not be a liability to Irish tax when the proceeds from the sale are brought into the State.

If the property was sold in a tax year during which he or she was either resident or ordinarily resident for Irish tax purposes, there may be a Capital Gains Tax liability. However, if the property was the individual's principal private residence for the full period of ownership the proceeds will be exempt from Capital Gains Tax. The "principal private residence" exemption can be claimed for periods when the individual occupied the house and for certain other periods, including the last twelve months of ownership.

An individual is in receipt of a foreign pension. Will this income be taxable when he or she becomes "resident" in Ireland?

For any tax year that the individual is resident in the State, the general rule is that a foreign pension will be liable to Irish tax unless it is relieved from Irish tax under the provisions of a Double Taxation Agreement. For example, a Double Taxation Agreement may provide that pensions paid in respect of past services of a governmental nature are to be taxed only in the source country and are not to be taxed in the State. Additionally, certain other pensions which would have been exempt from tax in the source country, had the individual continued to reside there, may also continue to be exempt from Irish tax when he or she come to live in the State.

If an individual comes to work in the State and continues to be paid from abroad. How will he or she be treated for Irish income tax purposes?

Unless the income is relieved from Irish tax under the provisions of a Double Taxation Agreement, it will be taxable here from the date of arrival regardless of Irish residence status for tax purposes.

Income from a non-Irish sourced employment, attributable to the performance in the State of the duties of that employment, is chargeable to Irish income tax and subject to PAYE system of tax deduction at source, whether or not such income is remitted into the State. If the individual is resident in the State for Irish tax purposes for the tax year that the income is earned, he or she may be entitled to full personal tax credits and reliefs. Income from a foreign employment that is related to duties performed outside the State is also taxable in Ireland but if the individual is not domiciled in the State, such income is only taxable to the extent it is remitted or brought into the State.

For more details on the taxation of foreign employment income, see TDM Part 42-04-65 - Pay As You Earn (PAYE) system: Employee payroll tax deductions in relation to non-Irish employments exercised in the State.

An individual is coming to Ireland to take up a temporary employment and will not become "resident" for Irish tax purposes. Which tax credits is he or she entitled to?

Proportionate credits and reliefs are available to non-resident Irish citizens, and to citizens, subjects or nationals of another Member State of the European Union, and to residents or nationals of a country with which the State has a Double Taxation Agreement which provides for such relief. The proportion of allowable tax credits is determined by reference to the individual’s income for the tax year that is subject to Irish tax over income from all sources.

However, residents of another Member State of the European Union are entitled to full personal tax credits and reliefs in respect of any tax year in which 75% or more of their worldwide income is taxable in Ireland.

How are married persons treated when one spouse is non-resident?

See Taxation of married couples in TDM Part 44-01-01.

Appendix 3

Summary of the tax implications of Residence, Ordinary Residence and Domicile

Resident in Ireland	**Ordinary Resident in Ireland**	**Domiciled in Ireland**	**Liable to Irish income tax on:**
Yes	Yes/No	Yes	Worldwide income (subject to treaty relief – depends on source of income)
No	Yes	Yes	Worldwide income except: ▪ Income from a trade or profession no part of which is carried out in Ireland; ▪ Income from a non-public office or employment where all the duties (except incidental duties) are exercised outside Ireland; and ▪ Other foreign income provided it does not exceed €3,810 (if exceeds €3,810 then full amount is taxable).
Yes	Yes/No	No	Irish source income (including income from an Irish public office and income derived from any trade, profession or employment relating to duties carried out/exercised in the State). Foreign income to the extent that it is remitted to Ireland, i.e. ‘remittance basis’.
No	No	Yes/No	Irish source income (including income from an Irish public office and income derived from any trade, profession or employment relating to duties carried out/exercised in the State).