The Remittance Basis of Assessment

Part 05-01-21A

Document last reviewed April 2017

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Table of Contents

1. Introduction

In general, income chargeable to income tax under Case III of Schedule D shall "*be computed on the full amount of the profits or income arising within the year of assessment*". This is known as the "*arising basis*" of assessment. (i.e. the income is assessable in the tax year **in which it arises** whether or not remitted to the State) [Section 70(2) TCA 1997].

However, in the case of an individual who satisfies the Revenue Commissioners that he or she is not domiciled in the State, s/he may avail of an alternate computational basis of assessment in respect of income from foreign securities and possessions.

This alternate computational basis of assessment determines that the income from the foreign securities and possessions of persons who are not domiciled in the State to be assessed under Case III of Schedule D shall be computed on the full amount of the actual sums **received in** the State in the relevant tax year rather than the income arising in that year. This basis of computation is more commonly known as the "**remittance basis**" of assessment. [see Section 71(3) TCA 1997].

Since 2006, there have been a number of changes to the remittance basis of assessment and these are outlined in Paragraph 3 below.

2. The Remittance Basis of Assessment – Legislative Basis

Income from foreign securities and possessions is, with some exceptions (see Paragraphs 3.1 and 7 below), chargeable to tax under Paragraphs (e) and (f) of Case III of Schedule D as contained in Section 18(2) TCA 1997.

Section 70(2) TCA 1997 states that the income chargeable under Case III of Schedule shall be "*be computed on the full amount of the profits or income arising within the year of assessment*".

Section 71 TCA 1997 deals with income from foreign securities and possessions. Section 71(1) TCA 1997 states that income chargeable under Case III of Schedule D in respect of foreign securities and possessions shall be computed on the full amount of income arising in the year of assessment (i.e. the 'arising basis'). However, Section 71(2) TCA 1997 provides that Section 71(1) shall not apply to any person who satisfies the Revenue Commissioners that he or she is not domiciled in the State. Where Section 71(2) applies, Section 71(3) states -

> *(3) ………, the tax shall, subject to section 70, be computed on the full amount of the actual sums received in the State from remittances payable in the State, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit or on account in respect of such remittances, property, money or value brought into the State in the year of assessment without any deduction or abatement.*

Therefore, the remittance basis of assessment applies -

- only in respect of persons who are not domiciled in the State (but see Paragraph 3.3 below re the position up to 2009 inclusive); and
- with some exceptions (see Paragraphs 3.1 and 7 below), to income from foreign securities and possessions.

3. Changes since 2006

3.1. Section 15 Finance Act 2006 -Foreign employments.

Tax case law [e.g. *Colquhoun v Brooks* (2 TC 490) and Bennet v Marshall (22 TC 73)] held that an employment is a possession. It has long been accepted that a foreign employment is a foreign possession.

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 above, that the employee was either not Irish domiciled or, at that time, being an Irish citizen, was not ordinarily resident in the State).

As a result of Section 15 FA 2006, with effect from 1 January 2006, 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 Schedule E and is within the scope of the Pay As You Earn (PAYE) system of deduction at source. Therefore, the remittance basis of assessment no longer applies to such income (i.e. the remittance basis of assessment applies only in respect of income chargeable to tax under Case III of Schedule D and cannot apply to income chargeable to tax under Schedule E).

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 to tax under Case III of Schedule D and the remittance basis of assessment is available on this portion of employment income.

For further information on non-Irish employments exercised in the State please refer to Tax and Duty Manual Part 42-04-65 .

3.2. Section 18 Finance Act 2008

Up to 1 January 2008, the remittance basis of assessment did not, by virtue of Section 73 TCA 1997, apply in respect of income arising from UK source securities and possessions.

By virtue of Section 18 of Finance Act 2008, Section 73 TCA 1997 ceased to have effect so that, with effect from 1 January 2008, the remittance basis may apply to UK source income arising after that date to individuals who are non-domiciled in the State. However, this is subject to Paragraph 3.1 re foreign employment income chargeable to tax under Schedule E.

Note - Under the provisions of Section 29(4) TCA 1997, the remittance basis of assessment did not apply in respect of UK source chargeable gains. However, under the provisions of Section 42 of Finance (No.2) Act 2008, the remittance basis of assessment applies to chargeable gains arising in the UK as and from 20 November 2008.

Further information on chargeable gains and the remittance basis is contained in ebrief 47/2010 which is copied in Appendix 1 and also in Tax and Duty Manual Part 05-01-21.

3.3. Section 9 Finance Act 2010 - Re Irish citizens not ordinarily resident in the State

Up to and including the 2009 tax year, an Irish citizen who was not ordinarily resident in the State for a relevant tax year could also have availed of the remittance basis of assessment for that relevant year.

However, Section 9 of the Finance Act 2010 provides that, for the 2010 and later tax years, the remittance basis of assessment no longer applies in respect of the foreign income of an Irish citizen not ordinarily resident in the State.

3.4. Section 6 Finance Act 2013 – Non-Domiciled individual who transfers/loans money to his/her spouse or civil partner.

Section 6 is an anti-avoidance provision which is designed to deal with arrangements whereby funds or property arising from foreign income are transferred to a spouse who subsequently arranges for value derived from the funds or property to be received in the State. It is then argued that the taxpayer, who is chargeable on the remittance basis, is not chargeable on these remittances because he/she has not remitted anything out of foreign income.

The section applies where, on or after 13 February 2013, an individual who is not domiciled in the State uses, outside the State, income arising outside the State to make a loan or transfer money to his or her spouse or civil partner, or transfers a property acquired using income arising outside the State, to his or her spouse or civil partner.

Where, subsequently, money is received in the State from remittances, property imported, money or value arising from property not imported or money or value received on credit or on account in respect of remittances, property, money or value and the money derives from the original loan, or transfer of money or acquisition of property then the individual (rather than the spouse or civil partner) who made the transfer will be treated as if he or she made the subsequent remittance and his or her tax liability will be computed accordingly.

4. Issues as regards UK source income and Gains

Section 18 of Finance Act 2008 and Section 42 of Finance (No.2) Act 2008 do not have retrospective effect. However, arising from matters contained in a recent tax appeal case (which was settled in advance of the appeal hearing), Revenue are prepared to examine – on a case by case basis (and subject to the statutory 4-year time limit for claiming repayment of tax), claims for repayment of tax where it is claimed that a repayment would be due had the remittance basis of assessment, rather than the arising basis, applied for a relevant year of assessment in respect of an individual’s UK source income and/or chargeable gains.

A submission may be made to the individual’s relevant Revenue office. Such submission should contain all relevant details as regards the income assessed and the amount of remittances in respect of which the claim refers.

For further information on UK income and the remittance basis please refer to Tax and Duty Manual Part 05-01-21 and e brief 47/10, which is copied in Appendix 1

5. Frequent Questions as regards the remittance basis of assessment

5.1. What is the basis for stating that a foreign employment is a foreign possession for the purposes of the remittance basis of assessment?

The meaning of possession is not defined in the Taxes Acts. The most frequently quoted tax case on the meaning of a 'possession' is that of *Colquhoun v Brooks* (2 TC 490) wherein Lord MacNaughten stated:

> *.... I am, therefore, forced to the conclusion that in the expression 'foreign possession' as used in the Act of 1799 the word 'possession' is to be taken in the widest sense possible as denoting everything that a person has as a source of income.*

In Bennet v Marshall (22 TC 73), it is stated -

> *It is settled beyond the possibility of a doubt that the word "possessions" in Case V extends to cover trades, professions, employments and vocations. That was settled as long ago as the case of Colquhoun v Brooks, which dealt with the case of a trade, but the reasoning in which has been held by subsequent cases to extend to professions and employments.*

Note: The then UK Case V is similar to part of our Case III of Schedule D.

As stated in Paragraph 3.1 above, since 1 January 2006, the remittance basis of assessment no longer applies to the income of a non-Irish sourced employment attributable to the performance in the State of the duties of that employment as such income is now chargeable to income tax under Schedule E

5.2. What is the 'Income versus Capital' argument in the context of the remittance basis of assessment?

It is an accepted tax principle that a remittance of income is liable to income tax but a remittance of capital is not liable to income tax (but may be liable to a capital tax).

The income versus capital argument, in the context of the remittance basis of assessment, generally arises on the issue of whether a remittance is one of income or capital to determine whether or not such remittance is chargeable to income tax.

5.3. When does an individual's income become his or her capital?

It is generally accepted that income that arose to an individual remains his or her income for the purposes of the remittance basis of assessment notwithstanding that such income may have been invested or accumulated over a number of years prior to being remitted. The basis for this is found in case law.

For example, in the Irish High Court tax case of J.M. O'Sullivan (Inspector of Taxes) v Julie O'Connor as Administratrix of Evelyn O'Brien Deceased (II ITR 61), Maguire, J stated –

> *"it is well established that the accumulation of income remains income and that it does not cease to be income merely because it is allowed to accumulate. This principle is not contested in this case"*

In the UK tax case of Walsh v Randall (23 TC 55), the taxpayer, a non-domiciled UK resident, had sources of income in India that, if remitted, were liable to tax in the UK under the remittance basis of assessment. His Indian source income was paid into his bank account in India and this money was used to purchase certain investments in India. The taxpayer made a donation of £10,000 to a UK hospital funded by way of 'cashing in' his Indian investments acquired from his accumulated Indian income.

It was held that the £10,000 donation to a hospital in the UK was a taxable remittance from India of his income notwithstanding that such income was 'routed' via investments in India before being remitted.

A similar decision is found in Patuck v Lloyd (26 TC 284).

5.4. Where an individual's income qualifies for the remittance basis of assessment, is his or her foreign income, accumulated before he or she became Irish resident for tax purposes BUT remitted here after he or she became Irish resident, liable to Irish tax?

Strictly, YES. However, there is a long-standing Revenue practice to the effect that for individuals moving to Ireland for the first time, or Irish citizens returning to live in Ireland having been non resident and non ordinarily resident when the income was earned, funds accumulated from income earned abroad prior to 1 January in the year that the individual become Irish resident will not be liable to income tax even if remitted after that date.

5.5. What is the purpose of Section 72 TCA 1997 – Charge to tax on sums applied outside the State in repaying certain loans?

In the early 1970s, a tax avoidance scheme was used within which an individual would -

- borrow money from a foreign bank;
- remit such loan to the State to pay for the cost of living; and
- repay the loan out of foreign income.

As the remittance of a loan or overdraft is not a remittance of income, such remittance was not taxable. This scheme was negated by Section 4 of Finance Act 1971, as now contained in Section 72 TCA 1997.

5.6. What is the position if a remittance is made from a 'mixed' fund account?

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

Since 2006, an income account or a mixed (capital and income) fund account may include –

(a) income from a foreign employment that is chargeable to tax under Schedule E whether or not remitted; and

(b) income from a foreign employment that is chargeable to tax under Case III of Schedule D and to which the remittance basis of assessment may apply,

and, possibly, other income.

A remittance from such an account may be treated as coming in the first instance from the income described at (a) as such income is taxable in full whether remitted or not.

6. Section 13 of Finance (No.2) Act 2008 – Relief calculated by reference to employment income remitted to the State

The Section 825B TCA 1997 relief as introduced by Section 13 of Finance (No.2) Act 2008 is not the remittance basis of assessment but rather a relief given by way of a repayment of tax as respects income already assessed to tax here under Schedule E and subject to tax under the PAYE system.

Whilst the relief is calculated by reference to the amounts of remuneration remitted, technically, the relief is not the remittance basis of assessment as that basis can apply only to income that is within the charge to income tax here under Case III of Schedule D and not to income within the charge to tax under Schedule E.

Certain conditions in relation to the Section 825B relief were relaxed by way of Section 10 of Finance Act 2010. See Tax and Duty Manual Part 34-00-08

7. Exceptions to the Remittance basis of assessment.

Excluded from the remittance basis of taxation is foreign income which is chargeable to tax under Case IV rather than Case III (i.e. the remittance basis of assessment is applicable only in respect of foreign source income chargeable under Case III – it does not apply to income chargeable under Case IV of Schedule D.)

8. Example of the remittance basis of assessment

The application/non-application of the remittance basis of assessment is illustrated by the following example:

Mr. Brown has been living in the State since 1990. He is resident and ordinarily resident in the State for the 2010 tax year but is US domiciled.

Income arising in 2010

Source of Income	Can remittance basis apply to source	Amount arising in 2010	Amount remitted in 2010	Amount Assessable in 2010	Balance assessable
Irish employment	No	€100,000	N/A	€100,000	N/A
Irish rental income	No	€12,000	N/A	€12,000	N/A
US Rental Income	Yes	€25,000	€6,500	€6,500	When remitted
UK Rental Income	Yes	€17,000	€5,500	€5,500	When remitted

Income that arose in previous tax years and remitted in 2010

Source of Income	Tax Year income arose	Can remittance basis apply	Amount remitted in 2010	Year Assessable
US Rental Income	2006	Yes	€7,500	2010
US Rental Income	2007	Yes	€3,500	2010
US Rental Income	2008	Yes	€2,500	2010
UK Rental Income	2008	Yes	€5,000	2010

Income to be assessed in 2010

		Amount Assessable
Irish employment	Assess full amount as remittance basis does not apply to this income	€100,000
Irish rental income	Assess full amount as remittance basis does not apply to this income	€ 12,000
UK Rental Income	Assess amounts remitted in 2010 [€5,500 + €5,000]	€ 10,500
US Rental Income	Assess amounts remitted in 2010 [€6,500 + €7,500 + €3,500 + €2,500]	€ 20,000
Total Assessable		€142,500

9. Summary of current position

Type of Income	Charge to Tax	Qualifies for remittance basis of taxation	When assessable	Amount Assessable
Foreign source Income (including UK source income)				
(a) Non-employment income	Case III of Schedule D	Yes if recipient non-domiciled	Tax year in which remitted to the State (even if remitted in a tax year after the tax year in which it arose).	Amount remitted in the tax year
(b) Employment income				
(i) ***attributable to duties of the employment exercised in the State***	Schedule E (even if not remitted to the State)	No	Tax year in which earned. **Note**: Income that arose after 1 January 2009 may, assuming conditions fulfilled, qualify for the Section 825B TCA 1997 relief (See 6 above)	Full amount arising in the tax year
(ii) ***attributable to duties of the employment exercised outside the State.***	Case III of Schedule D	Yes if recipient non-domiciled	Tax year in which remitted to the State (even if remitted in a tax year after the tax year in which it arose).	Amount remitted in the tax year

Appendix 1

Revenue eBrief No. 47/2010

30 June 2010

Introduction

Arising from Revenue eBrief No. 11/10, Revenue have received requests to clarify, in relation to the remittance basis of assessment, the charge to tax in respect of chargeable gains. This is now contained in the revised Note 2 to Revenue eBrief No. 11/10 which is reproduced below.

Reproduction of Revenue eBrief 11/10

The remittance basis of assessment as regards UK source income and chargeable gains

1. Income Tax

Under the provisions of Section 73 TCA 1997, the remittance basis of assessment did not apply in respect of UK source income. However, Section 73 ceased to have effect in respect of UK income arising on or after 1 January 2008 (see Section 18 Finance Act 2008).

2. Capital Gains Tax

The remittance basis of assessment also applies in respect of the foreign chargeable gains of non-domiciled individuals (The remittance basis of assessment for foreign chargeable gains never applied to Irish citizens not ordinarily resident here). Under the provisions of Section 29(4) TCA 1997, the remittance basis of assessment did not apply in respect of UK source chargeable gains. However, under the provisions of Section 42 Finance (No.2) Act 2008, the remittance basis of assessment applies to chargeable gains arising in the UK as and from 20 November 2008.

3. Current Issue

Section 18 Finance Act 2008 and Section 42 Finance (No.2) Act 2008 do not have retrospective effect. However, arising from certain matters contained in a recent tax appeal case, Revenue are prepared to examine – on a case by case basis and subject to the statutory 4-year time limit for claiming repayment of tax - claims for repayment of tax where it is claimed that a repayment of tax would be due had the remittance basis of assessment, rather than the arising basis of assessment, applied for a relevant year of assessment in respect of an individual's UK source income and/or chargeable gains. A submission may be made to the individual's relevant Revenue office. Such submission should contain all relevant details as regards the income and chargeable gains assessed and the amount of remittances in respect of which the claim refers.

Note 1 - With effect from 1 January 2006, the income of a non-Irish sourced employment (including UK sourced employment) attributable to the performance in the State of the duties of that employment is chargeable to income tax under Schedule E and the remittance basis of assessment does not apply in respect of income within the charge to income tax here under Schedule E.

Note 2 - The UK source income relieved under Paragraph 3 above will, if remitted to the State during a future tax year, be chargeable to tax in that future tax year (assuming that the individual is tax resident here in that future tax year). The UK chargeable gains relieved under Paragraph 3 above will, if remitted to the State during a future tax year, be chargeable to tax in that future tax year (assuming that the individual is tax resident or ordinarily resident here in that future tax year).

Note 3 - Where a lesser figure of UK source income or gains is assessed, the credit previously granted in respect of UK tax paid on such income or gains will also have to be reduced to reflect the lesser figure assessed.