Provisions Relating to Residence of Individuals

Part 34-00-01

Part 34 Taxes Consolidation Act 1997

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Introduction

The purpose of this manual is to provide guidance on the legislative provisions relating to the residence of individuals and how these rules determine the extent to which Irish tax can apply to the income and gains of individuals.

Part 34 of the Taxes Consolidation Act 1997 (TCA 1997) sets out the rules of residence for individuals as follows:

- 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.
    - Section 819 sets out the statutory residence test and the circumstances in which an individual may elect to be resident in the State for 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, subject to the exceptions listed in the section.
    - Section 822 provides for 'Split Year Treatment' 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, where the individual does not satisfy the officer on any question relating to residence as required under the provisions of Part 34. 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.

1 Section 819 – tax residence rules for individuals

Section 819(1) TCA 1997 provides that an individual is resident in the State for tax purposes for a tax year if the individual is present in the State for –

(a) at least 183 days in total in that tax year, or

(b) at least 280 days in total between that tax year and the previous tax year - this is commonly known as the 'look-back rule' (see below).

However, 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 purposes of (b) above.

1.1 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).

1.2 '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.

1.3 COVID-19 'Force majeure' circumstances

In 2020, Revenue updated the existing guidance on ‘force majeure’ circumstances as a result of the COVID-19 pandemic. Please see Appendix 3 for details.

1.4 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 the individual elects to be resident for that tax year and satisfies an Authorised Officer of the Revenue Commissioners that they are in the State with the intention and in such circumstances that they will be resident in the following tax year.

The election should be in writing and there is no provision for withdrawal of an election. The election may be made at any time by the taxpayer. Usually, the main reason an individual elects to be resident is to avail of full personal tax credits. However, there may also be other relevant considerations.

1.5 Days present in the State

Section 819(4) TCA 1997 provides that an individual is deemed to be resident in the State for a day if he or she is present in the State at any time during that day.

2 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 is 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, regardless of the individual’s residence position for the fourth year. An individual will cease to be ordinarily resident in the State if non-resident for three consecutive tax years, regardless of their residence position for the fourth year. 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 not resident but who is ordinarily resident is liable to tax on their worldwide income, with the exception of the following:

(i) income from a trade or profession no part of which is carried out in Ireland;

(ii) income from an office or employment where all of the duties (except merely incidental duties) are exercised outside Ireland; and

(iii) other foreign income which does not exceed €3,810 in total (if the total amount exceeds €3,810 then the full amount is taxable).

In accordance with the above, an individual who is leaving the country in circumstances where they become non-resident but ordinarily resident may remain taxable in the State for the years following the year of departure. However, it is possible that any income which the individual remains liable to tax while he/she is ordinarily resident may be exempt from tax in this State in accordance with the terms of a double taxation agreement between this State and the State of residence of the individual. Please refer to Chapter 6 on Double Taxation Agreements for more detail.

2.1 Exercise of the duties of an office or employment in the State while not resident, but ordinarily resident

An individual who is not resident, but who is ordinarily resident, is liable to tax on income from an office or employment where the duties are performed in the State, unless these duties are merely incidental to the performance of duties outside the State. In effect, the exercise of duties in the State which are "merely incidental" to those outside the State are treated as being performed outside the State.

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.

2.2 Directors of Irish incorporated companies

In the Irish tax case of *Tipping v Jeancard [2 ITR 68]*, it was accepted that a director of an Irish incorporated company holds an Irish public office. Therefore, a director of an Irish incorporated company is chargeable to tax in the State on the income from the office irrespective of their tax residence position, or where the duties of the office of director are exercised. However, in some instances, the director may be relieved from the charge to Irish tax under the terms of a double taxation agreement (DTA).

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3 Section 822- Split year residence

Split Year Treatment (SYT) applies only to income from an employment. Where an individual qualifies for SYT, the individual is treated as resident in the State for part of the tax year of arrival/departure for the purposes of charging to tax any income from an employment and non-resident for the remainder of that tax year.

Further information is available in Tax and Duty Manual Part 34-00-11- Split year residence.

4 Domicile

4.1 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.

Domicile 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.

4.2 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 and/or ordinarily resident in the State, 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 which is attributable to the performance in the State of the duties of that employment.

Further information on the remittance basis, including the circumstances in which it does not apply, is available in Tax and Duty Manual Part 05-01-21A – The Remittance Basis of Assessment.

4.3 The Domicile Levy

An individual who is domiciled in the State may be required to pay a levy known as the “domicile levy”, which is paid annually by every “relevant individual”, which means an individual:

- who is domiciled in Ireland in the tax year;
- whose world-wide income in the tax year exceeds €1m;
- whose liability to Irish income tax in the tax year is less than €200,000; and
- who owns Irish property on 31 December in the tax year where the market value of that property is greater in value than €5m.

It should be noted that an individual's residence or ordinary residence status is not a factor in determining whether they are considered to be a "relevant individual" for domicile levy purposes.

Further information is available in Tax and Duty Manual Part 18C-00-01 - Domicile Levy.

5 Income from a public office or employment

The income from an Irish public office or employment is chargeable to tax under Schedule E irrespective of the tax residence of the individual, or where the duties of the office or employment are carried out, unless the charge to tax is relieved under a DTA.

A list of public offices and employments is provided in section 19(2) TCA 1997 as follows:

a. offices belonging to either House of the Oireachtas;
b. offices belonging to any court in the State;
c. public offices under the State;
d. officers of the Defence Forces;
e. offices or employments of profit under any ecclesiastical body;
f. offices or employments of profit under any company or society, whether corporate or not corporate;
g. offices or employments of profit under any public institution or public foundation;
h. office or employments of profit under any public corporation or local authority, or under the trustees or guardians of any public funds, tolls or duties;
i. all other public offices or employments of profit of a public nature.

The above list includes positions such as the statutory director of an Irish private company (a public office as the position was set up in accordance with Irish law) and Civil Servants (individuals who are employed by a State department and whose remuneration is paid out of public funds).

Further guidance relating to the tax treatment of directors' remuneration are dealt with in Tax and Duty Manual Part 42-04-61 - Tax and Universal Social Charge treatment of income arising from the having or exercising of the public office of director of an Irish incorporated company.

Further guidance on the tax treatment of the remuneration of income paid to members of State bodies is available in Tax and Duty Manual Part 42-04-56 - Tax treatment of remuneration of Members of State & State Sponsored Committees, Boards, Commissions & other Bodies.

6 Double Taxation Agreements

6.1 Introduction

The extent to which an individual is chargeable to Irish income tax on income depends on their residence, ordinary residence and domicile status and a summary of the implications of same is outlined in Appendix I.

In general, an individual who is resident and domiciled in the State is liable to Irish tax on worldwide income and gains. If income arises from sources or has its source in another territory, the governmental authority of that country may also subject this income to tax in that territory. Conversely, an individual who is not resident in the State is generally liable to Irish tax only on Irish sources of income, for example, rental income. However, the country in which the individual is resident may also subject this income to tax in that country.

"Double taxation" is the term used when tax is imposed in two countries on the same taxpayer in respect of the same income and for identical periods (that is, the income is doubly taxed). Relief from this double tax charge is known as "double taxation relief". A Double Taxation Convention, including any Protocols thereto, (sometimes called a "Double Taxation Agreement" (DTA)) is an international treaty concluded between the two jurisdictions to provide, in the main, for the elimination of double taxation.

A DTA does not create taxation or a charge to tax – such a charge is provided by domestic tax law. To avoid or eliminate double taxation caused by overlapping taxing rights of two countries' respective domestic tax laws, the DTA will, depending on the articles of the particular agreement, the nature and source of income or gains and, in some cases, the nationality/citizenship of the individual, specify which country is entitled to tax certain items of income. This taxing right may be exclusive ('shall be') or shared ('may be'). A list of the DTAs that Ireland has signed with other countries may be found in the following link.

Where income or gains are chargeable to tax in more than one country and, under a DTA which is in force and effect, the source State has an unlimited (primary) taxing right (viz. 'income may be taxed'), the residence State is generally required to grant relief for source State taxation by way of credit, exemption or a combination of both to eliminate double taxation.

6.2 Foreign tax credit

For Irish tax purposes, in cases where an individual is entitled to claim relief under a DTA for foreign tax by means of a foreign tax credit, the process for determining the amount of the credit is outlined in Schedule 24 TCA 1997. The steps to follow with respect to the calculation of a foreign tax credit on employment income are outlined in Tax and Duty Manual Part 42-04-62- *Double deduction of tax at source: credit through PAYE system for non-refundable foreign tax.*

For the purposes of Schedule 24, “foreign tax” is limited to any foreign tax that is properly chargeable under the laws of a DTA country and in respect of which the foreign tax is a covered tax under the relevant treaty and is available for relief for Irish tax purposes under the terms of the DTA. A foreign tax credit claim for State or provincial taxes will not be available under a DTA unless the agreement specifically states that it covers these taxes.

6.3 DTA benefits

In order to determine whether treaty benefits are available, Articles 1, 2 and 4 are of primary importance. DTAs only apply to persons who are resident of one or both of the DTA countries. The following is a general overview of the articles relating to persons covered and residence (defined under Article 1 and Article 4) which are typically found in Irish DTAs; such articles generally follow the wording of the OECD Model Double Taxation Convention (MTC).

In a typical treaty, the taxes that are covered by the DTA are generally listed in Article 2. In the case of Ireland, these are income tax (which generally would include the Universal Social Charge (USC)), corporation tax and capital gains tax. The similar direct taxes imposed by the other State are also covered. Inheritance and gift taxes are not covered by the treaties (but Ireland has separate agreements covering these taxes in place with the UK and US). Also, indirect taxes (VAT or sales taxes) are not covered. The article provides that the treaty will apply to any identical or substantially similar taxes that may be subsequently imposed by either State.

DTAs are not uniform. Each DTA is distinct and must be consulted on its own specific terms, including any Protocols thereto.

6.3.1 Article 1 (“Persons Covered”)

A DTA between the State and another country will generally apply to persons who are residents of either State or both, as defined under Article 4 (Resident). This is a central concept in all double taxation treaties as treaty benefits are only extended by one country to a “resident of” of the other country. Where persons are resident of both States, Article 4 (Resident) generally provides tie-breaker rules to determine a single State of residence for the purposes of the treaty, although there are some DTAs which do not.

6.3.2 Article 4 ("Resident") – general principles

This Article of a DTA sets out the rules for determining whether a person is a resident of Ireland or a resident of the other country for the purposes of the treaty. Only residents of the Contracting States can claim the benefits of the treaty. A resident of a Contracting State is a person who is subject to comprehensive taxation in that State.

In accordance with Article 4(1) of the OECD model convention, a resident of a Contracting State is a person who is subject to comprehensive taxation in that State. The OECD's commentary covers various forms of personal attachment to a country which, in the domestic tax laws, result in a comprehensive liability to tax in that country. As such, an individual who is considered resident in Ireland for tax purposes under Irish domestic tax residence tests qualifies as a "*resident of a Contracting State"* as the individual is liable to comprehensive taxation in Ireland by reason of their residence position.

A person will not be treated as a resident of Ireland for DTA purposes by reason of the fact that they are only liable to tax on sources of income in Ireland. For example, a non-resident individual who derives rental income from a property in Ireland would not be considered a resident of Ireland for DTA purposes solely because he/she derives rental income from a property located in the State and does not have any sources of income which are liable to tax in Ireland.

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6.3.3 Article 4 ("Resident") – tiebreaker tests

An individual cannot be dual resident for the purposes of a DTA, since the DTA will provide rules for the allocation of taxing rights on income and gains between a resident of a country and the country where income is sourced.

In cases where an individual is resident for domestic tax purposes in both Ireland and another country, Article 4 in most DTAs contains tie-breaker provisions to determine the country of which the taxpayer is resident for DTA purposes. These consist of a series of tests to be applied successively until residence for the purposes of the DTA is allocated to one country or the other. The tests appear in the following order:

i. Permanent home

An individual is a resident of the country in which they have a permanent home available to them. Please note that the property may not be owned by them, however, it may still be considered the individual's permanent home for the purpose of this test based on the particular facts of the individual's case. If the individual has a permanent home available in both countries it is necessary to look at the next test.

ii. Centre of vital interests

An individual is a resident of the country to which their 'personal and economic relations' are closer, i.e., the State where their centre of vital interests is established. This involves an analysis of the individual's links to each country, including social and business links. If it is not possible to determine the country where the individual's centre of vital interests is located, then it is necessary to look at the next test.

iii. Habitual abode

An individual is a resident of the country in which they have their habitual abode (whichever country is their principal place of abode). If they have a habitual abode in both countries, or in neither, then it is necessary to look at the next test.

iv. Nationality

An individual is a resident of the country of which they are a national. The term 'national' is defined in each treaty, generally under Article 3 (Definitions). If the individual is a national of both countries, or neither of them, and the application of the above criteria does not lead to a clear determination, then the competent authorities of the two countries must settle the question by mutual agreement (see the mutual agreement procedure 'MAP' Article under the treaty and Revenue Tax and Duty Manual Part 35-02-08- *Guidelines for requesting Mutual Agreement Procedure ("MAP") assistance in Ireland*).

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Appendix 1- Summary

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
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).

Appendix 2- FAQ

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 resident and domiciled 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 DTA in respect of non-refundable 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, taxable under Schedule D Case III, and foreign capital gains of an individual who although 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.

Further guidance on the remittance basis of assessment is available in Tax and Duty Manual Part 05-01-21a - The Remittance Basis of Assessment.

Non-resident individuals

Non-resident but ordinarily resident

An individual who is non-resident but is ordinarily resident in the State for the tax year is treated in the same way as an individual who is tax resident, 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; and

3. other foreign income (e.g., investment income) which, in the tax year, does not exceed €3,810.

An individual who is ordinarily resident in the State in a tax year is taxable on his/her worldwide gains in that tax year, irrespective of his/her residency status. However, please refer above to those individuals who are taxable on the remittance basis of taxation.

Non-resident, non-ordinarily resident and domiciled or not domiciled

An individual who is non-resident and non-ordinarily resident in the State for the tax year is taxable on:

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- Irish source income, including the income from an Irish public office or employment);

- the income derived from any trade, profession or employment to the extent that it is exercised in the State; and

- 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).

Non-residents and tax credits

Please refer to Tax and Duty Manual Part 45-01-01- Non-Residents and Tax Credits.

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

Please refer to Tax and Duty Manual Part 44-01-01- Income tax treatment of married persons and civil partners.

Working abroad

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

1. **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, the individual will be liable to Irish income tax on their total income from all sources, including any income from a foreign employment.

2. **Are full tax credits due?**

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

3. **What happens if the income is also taxable abroad?**

If non-refundable 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.

4. **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 or
- Seafarer Allowance

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 in another state with which Ireland has a double tax agreement, and who pay non-refundable tax in that other country on the income from that employment. Further information on Transborder Relief is available in Tax and Duty Manual Part 34-00-06.

Seafarer Allowance provides for an allowance of €6,350 for certain seafarers, which can be set against income from a qualifying employment (i.e., the seafaring employment). Further information on the other conditions for Seafarer allowance is available in Tax and Duty Manual Part 15-01-30.

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

The DTA between the State and the country in which the university, research institute, school, college or other similar establishment is situated should be consulted. Further information is available in Tax and Duty Manual Part 07-01-16.

6. **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, the individual will be liable to Irish income tax on his or her total income from all sources including Irish source income. However, full tax credits as appropriate to the individual's circumstances are due to them.

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

7. **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.

8. **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 the individual returns to the State, the days spent in Ireland will be taken into account when determining his/her residence position for Irish tax purposes.

If the individual performs work in the State on these return trips, then if the employment duties in the State are merely incidental to the exercise of duties abroad, then an Irish tax liability will not arise on these days.

Please refer to chapter 2 for guidance on the meaning of "merely incidental".

9. **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?**

If the individual is resident in the year of departure, they may be in a position to avail of Split Year Treatment (SYT) for the year of departure. For further information on SYT, please refer to chapter 3.

In cases where SYT applies, Revenue may issue a PAYE Exclusion Order to the employer, on application, 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 the duration outlined in the PAYE Exclusion Order as long as the individual is non-resident in the following and subsequent years and the duties of employment continue to be exercised abroad. Further guidance on PAYE Exclusion Orders is available in Tax and Duty Manual Part 42-04-41- PAYE Exclusion Orders.

If the individual is resident in the year of departure, full tax credits as appropriate to their circumstances will be due to them.

10. 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 standard rate band and tax credits for the tax year in which he or she leaves. The refund may be claimed by completing an Income Tax Return for the year of departure.

11. 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 DTA between the State and the country in which the individual is resident may affect the taxation of such income.

12. An individual remains chargeable on worldwide gains so long as he or she is ordinarily resident and domiciled in Ireland. If an individual lets his or her home while abroad, will there be a liability to Irish tax on Irish rental income?

As the individual has a source of income in Ireland, a liability to Irish tax will arise on the rental profits from the property. The liability will arise regardless of the individual's residence status for Irish tax purposes.

For further information, please refer to Tax and Duty Manual Part 45-01-04- Taxation of Non-Irish Resident Landlords.

13. When an individual returns to live in the State, how will their 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 (SYT) is claimed. Further information on SYT is available in Chapter 3.

As a resident for the tax year of return to the State, the individual will be entitled to personal tax credits for the full tax year as appropriate to their circumstances. An individual will be regarded as being resident in the State for a tax year if they satisfy either of the residence tests outlined in chapter 1 above. Should the individual not satisfy either of these tests they can, if they wish, elect to be resident for the tax year of return. If an individual is non-resident in the year of return, they will be taxable on earnings from an employment, the duties of which are exercised in the State. As a non-resident, they 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).

14. 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 the individual returns to live in Ireland?

If the savings were from employment income earned in a tax year or years when the individual was non-resident and the income was attributable to duties exercised outside the State, those savings will not be taxable if brought into Ireland.

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, subject to relief under the terms of a DTA.

15. Can an individual reclaim, from the 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 double tax credit against an Irish tax liability.

16. 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 DTA for the relevant tax year

generally, the pension will be taxable solely in the country in which the individual is tax resident. However, the actual treatment depends on the relevant DTA.

In cases where the pension is taxable solely in the country in which the individual is tax resident, the 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.

Further guidance on PAYE Exclusion Orders is available in Tax and Duty Manual 42-04-41- PAYE Exclusion Orders.

17. 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?

Guidance on this topic is available in Pension Manual - Chapter 23.

18. 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. If the individual takes up residence in a country with which the State has a DTA, then relief from Irish tax may apply under the Government Service Article or Government Pensions Article of the DTA in force between the State and that country.

Individuals who are resident in non-DTA countries remain chargeable to income tax on this income in the State.

Note: Irish social protection pensions (i.e., the State Pension (Contributory) 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.

1. **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 who is returning to live in the State will not be liable to Irish income tax on the income provided the income was earned when the individual was not resident and not ordinarily resident for Irish tax purposes.

Income earned or arising between 1 January and the date of 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. With respect to pre-arrival employment income, relief from Irish tax is available under split year residence. Further guidance is available in Chapter 3.

2. **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 may be exempt from Capital Gains Tax under section 604 TCA 1997 (“Disposals of principal private residence”).

3. **An individual is in receipt of a foreign pension. Will this become 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 DTA. For example, a DTA 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. Further guidance is available in Tax and Duty Manual Part 07-01-09 – Certain Foreign Pensions.

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

If an individual is paid a lump sum from a foreign pension after becoming resident for tax purposes in Ireland, then section 200A Taxes Consolidation Act may apply. This section provides rules for the treatment of lump sum payments from foreign pension arrangements, as defined in the section.

Further guidance is available in Tax and Duty Manual Part 07-01-09a – Taxation of Foreign Retirement Lump Sums.

5. If an individual comes to work in the State and continues to be paid from abroad, how will they be treated for Irish income tax purposes?

Unless the employment 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.

6. An individual is coming to Ireland to take up a temporary employment and will not become resident for Irish tax purpose. What is their tax credit entitlement?

Please refer to Tax and Duty Manual Part 45-01-01- Non-Residents and Tax Credits.

Appendix 3- 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.