[34-00-09] Deduction for income earned in certain foreign states

(Foreign Earnings Deduction) - Section 823A TCA 1997

Updated February 2017

1. Section 823A TCA 1997

The foreign earnings deduction provision (known as the FED) contained in Section 823A TCA 1997 (as inserted by Section 12 of Finance Act 2012) applies for the tax years 2012 to 2020.

Section 823A TCA 1997 provides for relief from taxation on certain emoluments of certain individuals who are resident in the State for tax purposes but who spend significant amounts of time working in a relevant state (see definitions below).

The amount of emoluments that may be relieved from tax for a tax year is quantified by apportioning an employee's emoluments from the "relevant office or employment" for that tax year by reference to the number of "qualifying days" worked in a relevant state in that tax year over the number of days that the relevant employment is held in that tax year (see the 'specified amount' formula below). However, the amount of emoluments that may be relieved from tax in any tax year cannot exceed €35,000.

3. Definitions

Sections 823A TCA 1997 contains a number of definitions -

"qualifying day" means a day the **whole** of which is spent in a relevant state, for the purpose of the performance of the duties of a relevant office or employment. No day will be counted more than once.

For the years 2012 to 2014, a "qualifying day" must be one of at least four consecutive days, spent in a relevant state, substantially devoted to the performance of duties. No day will be counted more than once. The requirement that the whole of a day be spent in a relevant state means that the day of arrival in, and the day of departure from, that state cannot be counted.

For the years 2015 to 2020, a "qualifying day" must be one of at least three consecutive days, spent in a relevant state, substantially devoted to the performance of duties. No day will be counted more than once. Also, for the years 2015 to 2020, time spent travelling from Ireland to a relevant state or from a relevant state to Ireland or to another relevant state is deemed to be time spent in a relevant state. This means that the day of arrival in the relevant state can be counted, provided the individual left Ireland the previous day and the day of departure from the relevant state can be counted, provided the individual does not arrive back in Ireland until the following day.

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Example:

An individual leaves Ireland at 3pm on Monday and arrives in India at 7am on Tuesday and leaves to return to Ireland at 8pm on Thursday, arriving back in Ireland at 3am on Friday. Each of the days Tuesday to Thursday may be counted as days the whole of which are spent in India.

Note: Saturdays, Sundays and public holidays, throughout the whole of which the individual is present in a "relevant state" and which form an unavoidable part of a business trip to a "relevant state", may be counted as "qualifying days".

For the tax years 2012, 2013 and 2014, a day or part of a day spent travelling to or from a "relevant state" where the individual is not present for the whole of the day in a "relevant state" may not be counted. However, a day spent in uninterrupted travel between "relevant states" may be counted.

'relevant state' means Brazil, Russia, India, China or South Africa and, with effect from 1 January 2013, includes Egypt, Algeria, Senegal, Tanzania, Kenya, Nigeria, Ghana and the Democratic Republic of the Congo and, with effect from 1 January 2015, includes Japan, Singapore, Korea, Saudi Arabia, the United Arab Emirates, Qatar, Bahrain, Indonesia, Vietnam, Thailand, Chile, Oman, Kuwait, Mexico and Malaysia and, with effect from 1 January 2017, includes Colombia and Pakistan.

'relevant office or employment' means an office or employment part of the duties of which are performed in a relevant state on a qualifying day;

***'relevant period'*,** means a continuous period of 12 months part only of which is in the year of assessment and no part of which is in any other relevant period.

'the specified amount' means an amount determined by the formula-

$$\frac{D \times E}{F}$$

where-

D is the number of qualifying days in the year of assessment in relation to the individual,

E is the income in the tax year from a relevant office or employment, and includes so much of any gain realised by the exercise, assignment or release of a right obtained by the individual as an office holder or employee in the relevant office or employment, after deducting any pension contribution or qualifying pension premium but excluding the amount of-

(a) any benefit-in-kind under general BIK provisions,

(b) any benefit-in-kind arising by virtue of a car being made available by reason of the employment,

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(c) any benefit in respect of a preferential loan,

(d) any gratuitous lump sum termination payments,

(e) any payments under restrictive covenants,

(f) expenses paid or recouped by claimants

and

F Is the total number of days in the tax year that the individual held a relevant office or employment (365 days in a full tax year).

4. The deduction

The deduction is given on foot of a claim from an office holder or employee who has worked a minimum number of qualifying days in a continuous twelve month period, part or all of which is in the tax year to which the claim relates. For the years 2012 to 2014, the minimum number of qualifying days is 60. For the years 2015 to 2016, the minimum number of qualifying days is 40. For the years 2017 to 2020, the minimum number of qualifying days is 30.

The maximum amount of emoluments that may be relieved from tax in any tax year is €35,000.

The relief applies to all directors and employees in the private sector and to those employed in the commercial semi-State sector. It does not apply to those working in the Civil and Public service.

5. Exception – Non-qualifying income

The relief is not available in respect of income from an office or employment that is chargeable on the remittance basis or in respect of income to which the following sections of the Taxes Consolidation Act 1997 apply:

- 472D (Research and Development credit),
- 822 (Split year residence treatment),
- 825A (Relief for income earned outside the State), and
- 825C (Special Assignee Relief Programme).

6. Universal Social Charge (USC) and PRSI

Emoluments relieved from tax by virtue of Sections 823A TCA 1997 (FED) are NOT relieved from the charge to USC or PRSI.

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7. How is FED granted?

FED is granted by relieving the 'specified amount' (maximum **€35,000)** from tax.

Example 1:
Mary, who is tax resident in the State, worked for Company A for the whole of the tax year 2013. During 2013, she spent 70 qualifying days working in Brazil and a further 28 qualifying days working in China for Company A. Her earnings for 2013 year are €95,000 and no tax is payable on these earnings to the Brazilian or Chinese authorities.

As the number of qualifying days is 98 in the tax year and thus exceeds the threshold of 60 qualifying days for the tax year, Mary can claim the foreign earnings deduction as follows:

Year 2013

$$\frac{98 \text{ X } €95,000}{365} = €25,507 \text{ deduction}$$

Her emoluments for tax purposes for 2013 are, therefore, €69,493 (i.e. €95,000 less €25,507).

Example 2:
Paul, who is tax resident in the State, worked for Company X for the whole of the tax year 2013. During 2013, he spent 90 qualifying days working in Russia and a further 60 qualifying days working in India for the company. His earnings for the year are €100,000 and no tax is payable on these earnings to the Russian or Indian authorities.

As the number of qualifying days is 150 in the tax year and thus exceeds the threshold of 60 for the year, Paul can claim the foreign earnings deduction as follows:

Year 2013

$$\frac{150 \text{ x } €100,000}{365} = €41,095 \text{ deduction}$$

Restricted to €35,000

His emoluments for tax purposes for 2013 are, therefore, €65,000 (i.e. €100,000 less €35,000).

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Example 3:

Helen, who is tax resident in the State, worked for Company Y for the whole of the tax years 2013 and 2014. During this period she had the following qualifying days while working in South Africa and China;

Month	Tax Year 2013	Tax Year 2014
Jan	Nil	Nil
Feb	Nil	Nil
Mar	Nil	Nil
Apr	Nil	10
May	Nil	10
Jun	Nil	10
Jul	Nil	10
Aug	Nil	10
Sep	5	Nil
Oct	15	Nil
Nov	20	Nil
Dec	Nil	5
Total	40	55

Her earnings for the year 2013 are €100,000 and 2014 are €110,000 and no tax is payable on these earnings to the South African or Chinese authorities.

Helen does not have 60 qualifying days in either of the tax years 2013 or 2014. However, the number of qualifying days for the 'relevant period' 1 September 2013 to 31 August 2014 (which begins in the tax year 2013 and ends in the tax year 2014) is 90 and thus exceeds the threshold of 60. Accordingly, all qualifying days in the tax year 2013 may be counted in the specified amount formula for 2013 and all qualifying days in the tax year 2014 may be counted in the specified amount formula for 2014.

Helen can claim the foreign earnings deduction as follows for the tax years 2013 and 2014:

Year 2013

$$\frac{40 \text{ X } €100{,}000}{365} = €10{,}959 \text{ deduction}$$

Year 2014

$$\frac{55 \text{ X } €110{,}000}{365} = €16{,}575 \text{ deduction}$$

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Her emoluments for tax purposes for the tax year 2013 are €89,041 (i.e. €100,000 less €10,959) and for the tax year 2014 are €93,425 (i.e. €110,000 less €16,575).

Example 4:

John, who is tax resident in the State, worked for Company B for the period 1 January 2013 to 30 June 2013 and earned €60,000 during this period. He worked for Company C for the period 1 July 2013 to 31 December 2013 and earned €80,000 during this period. He spent 85 qualifying days working in India between January and June 2013 and 25 qualifying days working in India between July and December 2013. No tax is payable on his earnings to the Indian authorities.

As the number of qualifying days for 2013 is 110 and thus exceeds the threshold of 60 for the year, John can claim the foreign earnings deduction as follows:

Year 2013 (Jan – Jun)

$$\frac{85 \text{X } €60{,}000}{181} = €28{,}177 \text{ deduction}$$

Year 2013 (Jul – Dec)

$$\frac{25 \text{X } €80{,}000}{184} = €10{,}870 \text{ deduction}$$

Total deduction	€39,047
Restricted to	€35,000

His emoluments for tax purposes for the tax year 2013 are, therefore, €105,000 (i.e. €60,000 plus €80,000 less €35,000).

Example 5

Robert, who is tax resident in the State, worked for Company X for the period 1 January 2015 to 30 June 2015 and earned €30,000 during this period. He worked for Company Y for the period 1 July 2015 to 31 December 2015 and earned €40,000 during this period. He spent 28 qualifying days working in Vietnam between January and June 2015 and 22 qualifying days working in Thailand between July and December 2015. No tax is payable on his earnings to either the Vietnamese authorities or the Thai authorities.

As the number of qualifying days for 2015 is 50 and thus exceeds the threshold of 40 for the year, Robert can claim the foreign earnings deduction as follows:

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Year 2015
(Jan – June)

28X €30,000 / 181	=	€4,641 deduction

(July - Dec)

22X €40,000 / 184	=	€4,783 deduction
Total deduction		€9,424

His emoluments for tax purposes for the tax year 2015 are, therefore, €60,576 (i.e. €30,000 plus €40,000 less €9,424).

Example 6
Marie, who is tax resident in the State, began working for Company ABC on 1 March 2016. During 2016 she worked in Chile for 25 days and, in January and February 2017, she worked in Colombia for 10 days. No tax is payable on her earnings to the Chilean or Colombian authorities.

Marie does not have 40 qualifying days in the 2016 tax year nor does she have 30 qualifying days in 2017. However, the number of qualifying days for the 'relevant period' 1 March 2016 to 28 February 2017 (which begins in the tax year 2016 and ends in the tax year 2017) is 35 and thus exceeds the 2017 threshold of 30.

Marie is not entitled to claim the foreign earnings deduction for the 2016 tax year but all qualifying days in the tax year 2017 may be counted in the specified amount formula for 2017.

8. Claims for Relief

Since the amount of any deduction will depend on the number of qualifying days absent in either a tax year or in a period of 12 months straddling two tax years, the deduction will be given by way of end of year review. Claims should be supported by a statement from the employer indicating the dates of departure from and return to the State of the employee and the location(s) at which the duties of the office or employment were performed while abroad.

9. Records

Persons claiming FED should retain all records relating to claims for a period of 6 years after the end of the tax year to which the claim relates.

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