Deduction for income earned in certain foreign states (Foreign Earnings Deduction)

Part 34-00-09

This document should be read in conjunction with section 823A of the Taxes Consolidation Act 1997

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1. Executive Summary

This manual provides guidance on the relief from income tax for individuals who are resident in the State but who temporarily carry out duties of their office or employment in certain other countries. It sets out the conditions that must be satisfied for the relief to apply. The foreign earnings deduction (FED) provision applies for tax years 2012 to 2022.

2. Introduction

Section 12 of Finance Act 2012 inserted section 823A TCA 1997 into the Taxes Consolidation Act 1997 (TCA 1997). The section provides income tax relief for individuals who are resident in the State for tax purposes but who spend significant amounts of time working in "relevant states".

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. The deduction only reduces the individual's income for income tax purposes and not USC or PRSI.

3. Definitions

Sections 823A TCA 1997 contains the following 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. 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.
- 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.

For the years 2015 to 2022:

- A "qualifying day" must be one of at least **three** consecutive days, spent in a relevant state, substantially devoted to the performance of duties.
- Time spent travelling from the State to a relevant state or from a relevant state to the State and 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 the State the previous day and the day of departure from the relevant state can be counted, provided the individual does not arrive back in the State until the following day.

Example 1:

Sean leaves Dublin at 3pm on Monday and arrives in India at 7am on Tuesday. He leaves India to return to Dublin at 8pm on Thursday, arriving back in Dublin at 3am on Friday. For the purposes of this relief, each of the days Tuesday to Thursday may be counted as days the whole of which are spent in India (qualifying days).

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".

"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 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 period", in relation to a tax year, means a continuous period of 12 months part only of which is in the tax year and no part of which is in any other relevant period.

"the specified amount" means an amount determined by the formula:

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

D is the number of qualifying days in the tax year 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:

i. any benefit-in-kind under general charging provisions (s118),
ii. any benefit-in-kind arising by virtue of a car being made available by reason of the employment,
iii. any benefit in respect of a preferential loan arrangements,
iv. any gratuitous lump sum termination payments,
v. any payments under restrictive covenants,
vi. expenses paid or recouped by claimants

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. Conditions

The relief can be claimed by an individual who meets **all** of the following conditions:

(a) Is resident in the State for tax purposes.

(b) Spends a minimum of 30 qualifying days working in one or more of the relevant states from 2017. For earlier years see Chapter 6.

(c) Spends at least three consecutive qualifying days in any one period, in a relevant state, substantially devoted to the performance of duties.

(d) Is a director or employee in the private sector or in the commercial semi-State sector.

(e) Is not claiming certain other reliefs simultaneously. Chapter 7 sets out the exceptions.

5. Calculation of the Relief

The relief for FED is granted by allowing a deduction from the individual's employment income, referred to as the "specified amount" which is based on the number of qualifying days the individual has worked in the relevant states. The maximum deduction from tax in any tax year is capped at €35,000.

Example 2
Mary, who is tax resident in the State, worked for Company A for the whole of the tax year 2020. During 2021, she spent 70 qualifying days working in Brazil and a further 28 qualifying days working in China for Company A. Her earnings for 2021 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 (70 + 28) in the tax year and thus exceeds the threshold of 30 qualifying days for the year 2021, Mary can claim the foreign earnings deduction as follows:

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

Her taxable salary for income tax purposes for the 2021 tax year is therefore €69,493 (i.e. €95,000 - €25,507). However, USC and PRSI are payable by reference to her salary of €95,000.

Example 3

Paul, who is tax resident in the State, worked for Company X for the whole of the tax year 2021. During 2021, 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 (90 + 60) in the tax year and thus exceeds the threshold of 30 qualifying days for the year 2021, Paul can claim the foreign earnings deduction as follows:

$$\frac{150 \times €100{,}000}{365} = \quad €41{,}096 \text{ deduction}$$

As the maximum deduction that can be claimed in any tax year is capped at €35,000, Paul's taxable salary for income tax purposes for the tax year 2021 is €65,000 (i.e. €100,000 less €35,000). However, USC and PRSI are payable by reference to his salary of €100,000.

Example 4

Helen, who is tax resident in the State, worked for Company Y for the whole of the tax years 2020 and 2021. During this period, she had the following qualifying days while working in South Africa and China;

Month	Tax Year 2020	Tax Year 2021
Jan	Nil	Nil
Feb	Nil	Nil
Mar	Nil	Nil
Apr	Nil	6
May	Nil	5
Jun	Nil	5
Jul	Nil	Nil
Aug	Nil	5
Sep	5	Nil
Oct	5	Nil
Nov	15	Nil
Dec	Nil	5
Total	**25**	**26**

Her earnings for the year 2020 are €100,000 and for 2021 are €110,000 and no tax is payable on these earnings to the South African or Chinese authorities.

Helen does not have 30 qualifying days in either of the tax years 2020 or 2021. However, the number of qualifying days for the "relevant period" 1 September 2020 to 31 August 2021 (which begins in the tax year 2020 and ends in the tax year 2021) is 46 and thus exceeds the threshold of 30 qualifying days. Accordingly, relief may be claimed.

Helen can claim the foreign earnings deduction as follows for the tax years 2020 and 2021:

Tax Year 2020

$$\frac{25 \times €100{,}000}{365} = €6{,}849 \text{ deduction}$$

Tax Year 2021

$$\frac{21 \times €110{,}000}{365} = €6{,}329 \text{ deduction}$$

The following summarises her tax position:	2020	2021
Taxable salary for income tax income tax purposes:	€93,151	€103,671
PRSI and USC payable by reference salary of:	€100,000	€110,000

Example 5

John, who is tax resident in the State, worked for Company B for the period 1 January 2021 to 30 June 2021 and earned €60,000 during this period. He worked for Company C for the period 1 July 2021 to 31 December 2021 and earned €80,000 during this period. He spent 85 qualifying days working in India between January and June 2021 and 25 qualifying days working in India between July and December 2021. No tax is payable on his earnings to the Indian authorities.

As the number of qualifying days for 2021 is 110 and thus exceeds the threshold of 30 for the year, John can claim the foreign earnings deduction as follows:

Tax Year 2021 (Jan – Jun)

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

Tax Year 2021 (Jul – Dec)

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

Total deduction = €39,047 but restricted to €35,000

His emoluments for tax purposes for the tax year 2021 are €105,000 (i.e. €60,000 plus €80,000 less €35,000).

John's taxable salary for income tax purposes for the tax year 2021 is €105,000 (i.e. €60,000 + €80,000 - €35,000). However, USC and PRSI are payable by reference to his salary of €140,000.

6. 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 2022, the minimum number of qualifying days is 30.

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

7. 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:

- S472D (Research and Development credit),
- S822 (split year residence treatment),
- S825A (relief for income earned outside the State), and
- S825C (Special Assignee Relief Programme).

8. Universal Social Charge (USC) and PRSI

As stated above, emoluments relieved from tax by virtue of Sections 823A TCA 1997 (FED) are **NOT** relieved from the charge to USC or PRSI.

9. 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.

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.