Pay As You Earn (PAYE) system

Employee payroll tax deductions in relation to non-Irish employments exercised in the State

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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Chapter 1

1 Introduction

This manual outlines the treatment of employee payroll tax deductions in relation to non-Irish employments exercised in the State. It replaces and supersedes Statement of Practice SP-IT/3/07.

1.1 Employee Payroll Tax Deductions

1.1.1 The PAYE and USC systems

The Pay As You Earn (PAYE) and Universal Social Charge (USC) systems are the statutory systems (hereinafter referred to as the PAYE system) used by employers (and certain other persons – see paragraph 3.4) for deducting and remitting to Revenue sums in respect of the income tax and USC due on employees' income.

Where the income of employees is within the scope of the Irish PAYE system, employers and other persons must –

(a) deduct the appropriate amounts of income tax and USC due from the employees' income; and

(b) remit such amounts deducted to Revenue.

For further information on the operation of the PAYE system, see Tax and Duty Manual Part 42-04-35A – The Employer's Guide to PAYE.

There are certain instances where the PAYE system need not apply in respect of employment income – see Chapter 4.

Where Irish Social Insurance contributions, known as Pay Related Social Insurance (PRSI), are due, such contributions are also collected under the PAYE system – see Chapter 6.

1.1.2 PAYE position prior to 31 December 2005 as regards non-Irish sourced employment income

Prior to 31 December 2005, the income from a non-Irish sourced employment was not within the scope of the PAYE system for payroll deductions at source even if taxable in the State in the hands of the individuals.

In addition, certain individuals could avail of what is known as the remittance basis of taxation (see paragraph 1.2).

1.1.3 PAYE position with effect from 1 January 2006 as regards non-Irish sourced employment income (that is, income arising from a foreign employment contract)

With effect from 1 January 2006 –

(a) 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 what is known as Schedule E and is within the scope of the PAYE system of deduction at source;

(b) the income of a non-Irish sourced employment attributable to the performance **outside** the State of the duties of that employment, whilst it may be chargeable to Irish tax in the hands of the employee, is not within the scope of the PAYE system of deduction at source.

1.2 The Remittance Basis of Taxation

1.2.1 Remittance Basis of Taxation – General

For the tax year 2010 and later tax years, where non-Irish income is within the charge to tax in the State and an individual, who is liable to pay the income tax due on that income under what is known as Case III of Schedule D, is not Irish domiciled, he or she may avail of the remittance basis of taxation as regards such non-Irish income.

The remittance basis means that, for such non-domiciled individuals, the amount of the non-Irish sourced income liable to Irish income tax under Case III of Schedule D is confined to the amount that is remitted to, or brought into, the State in the tax year.

1.2.2 Irish citizens resident but not ordinarily resident in the State

Up to and including the 2009 tax year, an Irish citizen who is resident but not ordinarily resident in the State for a relevant tax year could avail of the remittance basis of assessment for that year in respect of his or her foreign income.

However, section 9 of Finance Act 2010 provides that, for 2010 and later tax years, the remittance basis of assessment is no longer available in respect of foreign income of an Irish citizen who is resident but not ordinarily resident in the State. **Therefore, the remittance basis of assessment is now available only in respect of individuals who are resident but not domiciled in the State.**

1.2.3 The remittance basis and UK sourced Income

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

However, following the enactment of Section 18 of Finance Act 2008, with effect from 1 January 2008, the remittance basis may apply to UK source income arising after that date. However, as outlined in paragraph 1.2.5 – foreign (including UK)

employment income attributable to the performance of the duties of an employment in the State is chargeable to tax under Schedule E.

For further information on UK income and the remittance basis of taxation see Tax and Duty Manual Part 05-01-21a.

1.2.4 Remittance Basis of Taxation - Impact on employment income up to 31 December 2005

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

1.2.5 Remittance Basis of Taxation - Impact on employment income with effect from 1 January 2006

With effect from 1 January 2006 –

(a) the income of a non-Irish sourced employment attributable to the performance **in** the State of the duties of that employment no longer qualifies for the remittance basis of taxation as it is now chargeable to income tax under what is known as Schedule E [and is within the scope of the PAYE system of deductions at source] whether or not remitted to the State;

(b) 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 under Case III of Schedule D and qualifies for the remittance basis of taxation (assuming, of course, that the employee was not Irish domiciled or, for the years up to 31 December 2009 being an Irish citizen, was not ordinarily resident in the State).

1.2.6 Remittance Basis of Taxation - Mixed Funds Accounts

Mixed capital and income accounts

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

Mixed income accounts

A mixed income account is an account containing

(a) income that was taxed under PAYE; and

(b) income that was not taxed under PAYE and in respect of which the remittance basis of taxation might apply.

In cases where the remittance basis of taxation might apply, any remittances to the State from a mixed income account shall be treated as first coming out of income that was already taxed at source under the Irish PAYE system.

1.3 Basis of assessment

For the year of assessment 2017 and prior years, the statutory basis of assessment (as set out in section 112 TCA 1997) for employment income is the amount actually earned in the year regardless of whether or not the income was paid to the individual during that year of assessment. This is known as the "earnings basis" of assessment.

Finance Act 2017 amended section 112 TCA 1997. Consequently, for the year of assessment 2018 and subsequent years, the statutory basis of assessment for employment income is, in most cases, the actual amount of income received (paid to the employee) in the year of assessment i.e. the "receipts basis". This change has the effect of aligning the statutory basis of assessment with the practical operation of the PAYE system.

Further information on the Schedule E basis of charge is available in Tax and Duty Manual Part 05-01-08.

Chapter 2

2 Registration

Employers must register for PAYE system purposes.

Employees need to obtain a Personal Public Service Number (PPSN) and then notify Revenue of their employment.

2.1 Employers

2.1.1 Registration for PAYE system purposes

It is necessary for employers (or certain other persons – see paragraph 3.4) to register with Revenue for the purposes of the PAYE system. To register for PAYE purposes, the employer (or certain other persons - see paragraph 3.4) must complete Form TR1 (FT) or TR2 (FT).

2.1.2 Failing to register with Revenue

Where an employer pays income which is within the scope of the PAYE system, but fails to register for that purpose, Revenue may compulsorily register the employer, estimate the tax due and seek payment of the amount of deductions the employer should have made under the PAYE system from the income paid to employees.

2.2 Employees

2.2.1 Obtaining a Personal Public Service number (PPS number)

The identification number for individuals for many State services in Ireland is the Personal Public Service number, more commonly known as a PPS number. The Department of Social Protection allocates PPS numbers to individuals. Further information is available on the DSP website.

2.2.2 Applying to Revenue for a determination of tax credits and cut-off point

Once an employee has obtained his/her PPS number, he or she can apply to Revenue for a Tax Credit Certificate (TCC). A TCC gives a breakdown of an employee's tax credits and rate bands for income tax and Universal Social Charge (USC). This ensures that the employee pays the correct amount of income tax and USC.

An employee can obtain a TCC by registering his or her new job online through the Jobs and Pensions service which is available in 'myAccount'. A first-time employee in Ireland must use this service to register his or her job details with Revenue (having first obtained the PPS number from the Department of Social Protection).

Further details on registering for myAccount and the Jobs and Pensions service are available on the Revenue website.

Chapter 3

3 Application of the PAYE system to non-Irish sourced employment income

3.1 Statutory position with effect from 1 January 2006

Irrespective of the tax residence position of the employee or the employer, income from a non-Irish employment attributable to the performance **in** the State of the duties of that employment is chargeable to income tax in the State and is within the scope of the PAYE system of deduction at source.

The following sections of the Taxes Consolidation Act 1997, which have effect from 1 January 2006, supplement the PAYE system –

- **Section 985C** deals with situations where employees are paid by an 'intermediary' (see paragraph 3.4.1);
- **Section 985D** deals specifically with employees of a non-resident employer (see paragraph 3.4.2);
- **Section 985E** deals with the operation of PAYE for individuals performing duties of an employment partially inside the State and partially outside the State (see paragraph 3.4.3);
- **Section 985F** deals with situations involving a 'mobile workforce' (see paragraph 3.4.5).

3.2 What happens if a non-Irish employment is exercised wholly in the State?

All of the income is chargeable to tax in the State and all the income is within the PAYE system of deductions at source.

Note – See Chapter 6 regarding Social Security contributions.

3.3 What happens if a non-Irish employment is exercised partially in the State and partially outside the State?

In this scenario, it is necessary to determine the portion of the income attributable to the performance **in** the State of the duties of that employment as this income is within the scope of the PAYE system of deduction at source.

Example 3.1

John is an employee of a non-Irish company employed under a foreign contract of employment under which he earns €4,000 per fortnight. He performs the duties of his employment mainly in the State except for every fourth week when the duties of his employment are performed outside the State. He is tax resident but not domiciled in the State.

	Income to which the PAYE payroll deduction system applies	**Note**
Fortnight 1	€4,000	This income is attributable to duties exercised in the State
Fortnight 2	€2,000	Only €2,000 is attributable to duties performed in the State.
Fortnight 3	€4,000	This income is attributable to duties exercised in the State

This method of apportionment would continue throughout the year.

As John is tax resident but not domiciled in Ireland, he is subject to tax on the remittance basis. Therefore, if John remits the balance of his foreign employment income (i.e. the portion which has not been subject to PAYE), he will have a liability to income tax on this income also.

3.4 PAYE provisions

3.4.1 Section 985C - PAYE: payment by an intermediary

In the first instance, the payer of income to employees applies the PAYE system of tax deduction at source to such income. Therefore, where emoluments are paid by an intermediary acting on behalf of an employer, the intermediary applies the PAYE system.

However, section 985C provides that the obligation to operate the PAYE system remains with the employer where the intermediary fails to operate such system.

An 'intermediary' includes a person, or a trustee, acting on behalf of, and at the expense of the employer, or a person connected to the employer.

Example 3.2

Mary is employed under a foreign contract of employment with ABC Co. She performs the duties of her employment in Ireland on the premises of CDE Co. She is tax resident but not domiciled in the State. CDE Co agrees to pay Mary's income. CDE Co must apply PAYE to so much of Mary's income as is attributable to the performance in the State of the duties of the foreign employment. However, if CDE Co fails to do so, ABC Co must account to Revenue for the PAYE deductions.

3.4.2 Section 985D - PAYE: employee of a non-resident employer

Section 985D comes into play when an employee works for a person (referred to as a 'relevant person') who is not the employee's employer.

Under section 985D, where -

(a) an employee of a non-resident employer works for a person (the 'relevant person') in the State; and

(b) the non-resident employer or an intermediary of the employer or of the "relevant person" fails to operate PAYE on emoluments attributable to the work done in the State by the employee for the 'relevant person',

then, the 'relevant person' must operate PAYE.

Example 3.3

Patrick is an employee of a non-Irish company, FGH Co, employed under a foreign contract of employment. He is assigned to work in Ireland for JKL Co. He is tax resident but not domiciled in the State. FGH Co fails to operate PAYE in respect of Patrick's income attributable to his work performed in the State.

In this instance, JKL Co must apply PAYE to Patrick's income attributable to his work with that company.

3.4.3 Section 985E - PAYE: employment not wholly exercised in the State

Income from a non-Irish employment attributable to the performance **in** the State of the duties of that employment is chargeable to income tax in the State and is within the scope of the PAYE system of deductions at source.

However, in some instances, the amount of income from a non-Irish employment which is attributable to the performance **in** the State of the duties of that employment and which is within the scope of the PAYE system of deduction at source may not be readily ascertainable. In such cases, section 985E allows the employer to apply for a direction from an officer of the Revenue Commissioners as to the proportion of the income that should be within the scope of the PAYE system of deductions at source. An application from the employer must include such information as is available and is relevant to the giving of a direction.

Where a direction is given by an officer of the Revenue Commissioners under section 985E, any material change in the circumstances will render the direction void and require a further direction having regard to the altered circumstances.

Where the amount of income from a non-Irish employment which is attributable to the performance **in** the State of the duties of that employment is not readily ascertainable and the employer does not apply for a direction under section 985E, the full emoluments must be subjected to PAYE deductions.

3.4.4 Directions under section 985E (3) TCA 1997

A direction need not be sought -

(a) where there is certainty as to the portion of the employment income assessable to income tax under Schedule E and to which PAYE should be applied (for example, where an individual works in the State under a set work pattern or is assigned into the State for a predetermined period of time); or

(b) where, in respect of the income of temporary assignees, the obligation to operate PAYE is relieved in accordance with the criteria described in Chapter 4.

Examples where an employer need not apply for a direction

Example 3.4

Anne is an employee of a non-Irish company employed under a foreign contract of employment. She performs the duties of her employment in the State for a continuous period of eight months. The employer is obliged to operate PAYE on the full income arising in that period as it is paid, and no direction is required from Revenue.

Example 3.5

Deirdre is an employee of a non-Irish company employed under a foreign contract of employment. She performs the duties of her employment on a regular pattern of two months in the State and one month outside the State. The employer may either operate PAYE on two thirds of Deirdre's income throughout the year or operate PAYE on the full amount of income attributable to the performance of the duties of the foreign employment within the State as such amounts are paid. No direction is required from Revenue.

Note – In these circumstances, where the employer chooses to operate PAYE on two-thirds of Deirdre's income, but Deirdre leaves the employment at some point before the end of the tax year, the employer should ensure that PAYE has been applied to the correct amount of income chargeable to tax in the State under Schedule E.

Example 3.6

Alan is an employee of a non-Irish company employed under a foreign contract of employment. He has a regular pattern of three workdays within the State and two workdays outside the State per week throughout the year. The employer should operate PAYE on three fifths of Alan's gross income per week throughout the year. No direction is required from Revenue.

Example 3.7

Liam is an employee of a non-Irish company employed under a foreign contract of employment. For the first four months of the year Liam has a regular pattern as in **Example 3.6** (three workdays in the State, two workdays outside the State per week). For the last eight months of the year, Liam exercises all the duties of his foreign employment in the State. For the first four months, the employer should operate PAYE on three-fifths of Liam's gross income. For the last eight months, the employer should operate PAYE on the full amount of the income. No direction is required from Revenue.

Example 3.8

Liza is an employee of a non-Irish company employed under a foreign contract of employment. While she has an irregular work pattern throughout the year, it is clear from documented experience that the income attributable to the performance of duties within the State is a fixed proportion (e.g. two-thirds) of her gross income from her foreign employment. The employer should operate PAYE on that fixed proportion of her gross income. No direction is required from Revenue.

Example 3.9

Adrienne is an employee of a non-Irish company employed under a foreign contract of employment. She has an irregular work pattern throughout the year. The employer can determine, on a payment by payment basis, the income attributable to the performance of duties within the State, based on the number of workdays that she performs such duties in the State. The employer should operate PAYE on each payment of income attributable to the performance of duties within the State. No direction is required from Revenue.

Example where an employer should apply for a direction

Example 3.10

Patrick is an employee of a non-Irish company employed under a foreign contract of employment. He is obliged to perform certain duties of his employment in the State but, because of his irregular work pattern, the employer is uncertain as to the amounts of his income (including benefits) that are within the scope of the Irish PAYE system. In this instance, the employer should apply for a direction from Revenue as to the proportion of the emoluments that should be within the PAYE system.

3.4.5 Section 985F – PAYE: mobile workforce

This section applies where-

(a) it appears to the Revenue Commissioners that a person (the 'relevant person') has entered into, or is likely to enter into, a contract to engage employees of another person (the 'contractor'); and

(b) it is likely that the income paid by or on behalf of the 'contractor', being the real employer, will not be subject to the operation of the PAYE system by the 'contractor'.

Under this provision, the Revenue Commissioners are authorised to direct that the 'relevant person' must operate the PAYE system (notwithstanding that the 'relevant person' is not the employer in this case).

Example 3.11

RST Co has entered into an agreement with XYZ Co to the effect that employees of XYZ Co will work in the State for RST Co. If it is likely that XYZ Co will not apply the PAYE system to the income it pays its employees, then Revenue may issue a direction to RST Co to account for the PAYE due.

Note - All the aforementioned references to income include salaries, fees, wages, bonuses, perquisites, profits and taxable benefits from employments. See paragraph 8.1 concerning bonuses earned before the duties of the foreign contract of employment were performed in the State.

3.5 Operation of PAYE from 1 January 2019

From 1 January 2019, employer PAYE reporting moved to a real-time basis under the modernisation of the PAYE system. On or before the making of a payment of emoluments to an employee, employers must make a payroll submission to Revenue, setting out the pay and tax deduction details of each employee.

Some employers may have dual payroll withholding responsibilities in both Ireland and a foreign jurisdiction. If so, they will often run what is known as a "shadow payroll" in Ireland to account for Irish PAYE in respect of an employee's taxable income. Where pay dates in foreign jurisdictions do not align with Irish pay dates, the payroll submission can be aligned with the Irish employer's next pay date for equivalent Irish employees.

Employers should provide a best estimate of the number of days an employee works in Ireland. If there are more (or less) workdays than originally estimated, the pay (i.e. income attributable to the performance of duties within the State) should be amended in the following payroll submission.

Example 3.12

A UK individual is assigned to perform duties in the State for an Irish company, IRL Co. The individual is paid by the UK employer, UK Co. on the 14th and 28th of the month. IRL Co pays their local employees on the 25th of the month. The assignee's pay details for the 28th of January and the 14th of February should be included in IRL Co.'s payroll submission on 25th February.

Chapter 4

4 Temporary Assignees – 1 January 2020

Release for employers from the obligation to operate Irish PAYE

(Previous drafts of this Chapter setting out the rules in operation prior to January 2020 are contained in Appendix F)

4.1 Background

A temporary assignee for the purpose of this TDM includes both a short-term business visitor (i.e. someone who visits the State for business meetings) and an individual temporarily assigned to the State (i.e. someone who is sent here for a defined period, e.g. 5 months).

4.2 Basis of taxation

As noted under paragraph 3.1 above, irrespective of the tax residence position of the employee or the employer, income from a non-Irish employment attributable to the performance **in** the State of the duties of that employment is chargeable to income tax in the State and is within the scope of the PAYE system of deduction at source.

At a very simple level, where a temporary assignee travels to the State to work under the terms of a foreign employment contract, the foreign employer has an obligation under Irish domestic tax legislation to operate PAYE on the portion of the employment income attributable to duties carried out in the State. The foreign employer may be released from this obligation to operate the PAYE system on this income in certain circumstances. The following factors are to be considered when determining the availability of the release from the obligation to operate PAYE:

i. The number of days and workdays the temporary assignee spends in Ireland.

ii. Whether or not the temporary assignee has come to Ireland from a country with which Ireland has a Double Taxation Agreement (DTA).

iii. If a DTA is in place, the taxing rights allocated to Ireland on the employment income of the temporary assignee under the terms of the DTA.

The definitions of “day” and “workday” are outlined in paragraph 4.4.

Revenue does not require a foreign employer to operate PAYE in the following circumstances:

1) Short term business visits of up to 30 workdays in a tax year, whether from a DTA or non-DTA country.
2) Short term visits greater than 30 workdays and not more than 60 workdays in a tax year from a DTA country.
3) Short term visits greater than 60 workdays and not more than 183 days in a tax year from a DTA country, where dispensation from the requirement to operate the PAYE system has been issued.

With effect from 1 January 2020, each year should be considered on a standalone basis.

4.2.1 Short term business visits to the State of not more than 30 workdays per tax year, whether from a DTA or non-DTA country

Where an individual employed under the terms of a foreign employment contract (i.e. a temporary assignee) performs duties in the State for **no more than 30 workdays in aggregate** in a tax year, those days may be disregarded. There is no requirement for the foreign employer to operate PAYE on the income attributable to duties carried out in the State.

Where the temporary assignee exceeds this 30 workday threshold and an obligation to operate PAYE exists, PAYE must be operated from the first workday in the State.

4.2.2 Short term business visits to the State greater than 30 workdays and not more than 60 workdays per tax year

Where an individual, who is a resident of country with which **Ireland has a DTA**, is employed under the terms of a foreign employment contract and performs duties in the State **for more than 30 workdays but for no more than 60 workdays in aggregate** in a tax year, those days may be disregarded for PAYE purposes, subject to the conditions of Article 15(2) of the DTA being met (or the employment income article in the applicable DTA). In such circumstances, there is no requirement for the foreign employer to operate PAYE on the income attributable to duties carried on in the State.

Where the employment income of the temporary assignee is not relieved from the charge to Irish tax under the terms of an applicable DTA, or where the workdays in the State exceed 60 and there is no PAYE dispensation in place, PAYE must be operated from the first workday in the State.

The conditions of Article 15(2) are detailed below – see paragraph 4.3.

4.2.3 Short term business visits to the State greater than 60 workdays and not more than 183 days per tax year

Where an individual, who is a resident of a country with which **Ireland has a DTA**, is employed under the terms of a foreign employment contract and performs duties in the State **for more than 60 workdays but for no more than 183 days in aggregate** in a tax year, those days may be disregarded for PAYE purposes if:

1. the conditions of Article 15(2) are met (or the employment income article in the applicable DTA), **and**
2. a dispensation from the requirement to operate the PAYE system has issued from Revenue.

If the above conditions are satisfied, there is no requirement for the foreign employer to operate PAYE on the income attributable to duties carried on in the State. If the above conditions are not satisfied, then PAYE must be operated on the employment income attributable to duties carried out in State in the tax year.

Each case should be reviewed on an individual basis, as the exact position for each individual will depend on the particular DTA in question. A case by case review is required as Article 15(2)(a) of the applicable DTA may refer to 183 days in either the fiscal year or the "rolling twelve-month period".

Details concerning the application process for a PAYE dispensation are outlined below – see paragraph 4.5.

4.2.4 Visits to the State greater than 183 days

PAYE should be operated in respect of all temporary assignees posted to Ireland for a period for 183 days or more in a tax year, as they will be deemed to be tax resident in Ireland for the year. Where an individual is resident in Ireland for tax purposes for a tax year, he/she is liable to income tax on his worldwide income, subject to any relief available under a DTA.

In such cases, the foreign employer is required to operate PAYE on the employment income attributable to the performance of employment duties in the State. Depending on the domicile position of the temporary assignee, the remittance basis may apply to the employment income attributable to the performance of employment duties outside the State.

Please refer to Tax and Duty Manual (TDM) Part 34-00-01 for more guidance on the provisions relating to residence of individuals.

4.3 Article 15(2) of the OECD Model Convention

If a temporary assignee is a resident of a country with which Ireland has a DTA, it is necessary to determine which country has taxing rights on the foreign employment income. Although it is a foreign source of income, part of this income has been earned in the State and it is subject to tax under domestic tax rules.

The DTA in place between the State and the individual's country of tax residence will determine each country's taxing rights in relation to the income arising in respect of duties performed in the State.

For illustrative purposes, we will first consider the OECD Model Tax Convention on Income and Capital. Article 15 deals with salaries, wages, and other similar remuneration (but excluding pension income, directors' fees and salaries, wages and other similar income derived from government service).

It is important to note that not all DTAs follow the OECD Model Tax Convention.

Article 15(1) of the OECD Model Tax Convention on Income and Capital states that:

Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

Article 15(1) clearly provides that Ireland has a taxing right where an individual employed under the terms of a foreign contract of employment is working in the State.

However, it is also necessary to review the provisions of Article 15(2) which apply notwithstanding the provisions of Article 15(1).

Article 15(2) states that:

Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) **the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and**

b) **the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and**

c) **the remuneration is not borne by a permanent establishment which the employer has in the other State.**

Article 15(2) therefore removes the taxing right provided by Article 15(1) in cases where such individuals meet the conditions as outlined in Article 15(2). Where the conditions of Article 15(2) are met, sole taxing rights are granted to the State of residence of the individual.

It is important to consider how a DTA interacts with the domestic legislative position. A DTA cannot impose a charge to tax in Ireland. In order for Ireland to be able to charge tax arising from a taxing right under a DTA, such a charge must also be provided for under domestic legislation.

Under TCA 1997, there is such a provision - income from foreign employments which is attributable to the performance of duties in the State is within the charge to tax under Schedule E. It follows that such income is considered "emoluments" and is within the scope of the PAYE system of deductions at source.

There is clearly a difference between those taxing rights afforded by a DTA and the charge imposed by domestic legislation. In this regard, it is important to remember that domestic legislation is designed to deal with all such individuals, including those not covered by a DTA or those cases where a DTA contains variances from the OECD Model Tax Convention.

As noted under paragraph 4.2.2 and 4.2.3 above, the conditions of Article 15(2) must be satisfied in order for the days spent in Ireland to be disregarded for Irish PAYE purposes. Article 15(2) contains three conditions and it is necessary to consider how each is interpreted by Revenue.

4.3.1 Article 15(2)(a)

Article 15(2)(a) of the OECD Model Tax Convention on Income and Capital applies where the individual:

> **is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned**

This paragraph is easily interpreted and is akin to any statutory residence test.

However, it is important to note that not all DTAs follow the OECD Model Tax Convention with regard to Article 15(2)(a). A number of DTAs contain a variation to this Article and apply where the individual is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned.

It is essential, therefore, that the circumstances of each temporary assignment are reviewed having regard to the particular DTA in question. Each case should be reviewed on an individual basis, as the exact position for each individual will depend on the particular DTA in question. A case by case review is required as Article 15(2)(a) of the relevant DTA may refer to 183 days in either the fiscal year or a "rolling twelve-month period".

4.3.2 Article 15(2)(b)

Article 15(2)(b) of the OECD Model Tax Convention on Income and Capital applies where:

> **the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State**

This paragraph is intended to ensure that there is a genuine foreign office or employment and the employee continues to be paid by that foreign employer. "Paid" refers to the physical transfer of funds to the employee. In a change from previous practice, Revenue will consider the legal nature of the term employer in determining whether a genuine foreign employment exists.

4.3.3 Article 15(2)(c)

Article 15(2)(c) of the OECD Model Tax Convention on Income and Capital applies where:

> **the remuneration is not borne by a permanent establishment which the employer has in the other State**

This paragraph requires careful consideration.

This paragraph aims to avoid the source taxation of short-term business visits or short-term assignments to the extent that the employment income is not allowed as a deductible expense in the State of source because the employer is not taxable in that State as it is neither a resident of that State nor has a permanent establishment in that State.

Revenue's 'Criteria and Guidelines on Permanent Establishment (PE)' in the State are shown in Appendix E.

For the purposes of Article 15(2)(c), a permanent establishment is determined in accordance with the relevant 'Permanent Establishment' article of the treaty.

Depending on the particular facts and circumstances of each case, a subsidiary company or a branch of a company may constitute a permanent establishment for the purposes of Article 15(2)(c). For the purposes of the example that follows, it is taken that the subsidiary or branch located in the State constitutes a permanent establishment of the foreign employer in the State.

Where the foreign employing entity has a permanent establishment in the State, and the costs of the business trip or short-term assignment are borne by the permanent establishment in the State, the conditions of Article 15(2)(c) are not met.

Example

An individual employed by a foreign company in Poland is temporarily assigned to a branch or subsidiary in the State of that foreign company. The branch or subsidiary constitutes a permanent establishment in accordance with the relevant facts and circumstances. All costs associated with the temporary assignment are borne by the branch or subsidiary in the State. Article 15(2)(c) is not met.

Where the foreign employer has no permanent establishment in the State, Article 15(2)(c) is not relevant and requires no further consideration.

In the event that the foreign employer has a permanent establishment in the State, it is necessary to consider how Revenue consider costs to be "borne" for this purpose.

In cases where a re-charge of costs occurs, such costs will be considered to be "borne" by the Irish entity and Article 15(2)(c) is not met. In considering whether the costs have been recharged, all costs associated with the short-term assignment should be considered. For example, where an Irish permanent establishment of the foreign employer partially bears the costs of the short-term business visit or the short-term assignment (e.g. travel and subsistence expenses), the condition in Article 15(2)(c) will not be met.

Management charges (with a mark-up) are not considered recharges for the purpose of interpreting this article.

A list of the Double Taxation Agreements between Ireland and other jurisdictions is available on the Revenue website.

4.4 How are a "day" and a "workday" defined?

The residence rules define "a day" as a day during any part of which an individual is present in the State.

A workday is a day during any part of which an individual performs work in the State.

4.5 Application for a dispensation from the operation of PAYE

There are several requirements to be satisfied by a foreign employer when making an application for the release from the obligation to operate PAYE.

4.5.1 Requirement to register as an employer for PAYE

The foreign employer must register in the State as an employer for PAYE/PRSI.

Where there is an intermediary paying the assignee, the foreign employer must supply details of the intermediary who is paying the assignee. "Intermediary" is defined in section 985C TCA 1997 – see paragraph 3.4.1.

Where there is a relevant person, the foreign employer must supply details of the relevant person for whom the assignee is doing work in the State. "Relevant Person" is defined in section 985D TCA 1997 – see paragraph 3.4.2.

In the first instance, the foreign employer, as the "payer of emoluments" is required to register for PAYE/PRSI.

However, where the temporary assignee works in the State for a person who is not the employee's employer (i.e. the "relevant person" for the purposes of section 985D TCA 1997), Revenue will not require the foreign employer to register for PAYE/PRSI provided the following conditions are met:

- The temporary assignee meets the conditions as set down in Article 15(2) of the relevant DTA; **and**
- The "relevant person" as defined in section 985D TCA 1997 agrees to operate PAYE/PRSI where required on behalf of the foreign employer.

In this scenario, the foreign employer must supply:

- its own full name and address; and
- the PAYE registration number of the "relevant person".

4.5.2 Requirement to apply for a PAYE Dispensation

The foreign employer must seek approval in writing from Revenue within 30 days of a temporary assignee taking up duties in the State.

The foreign employer should provide:

- its full name;
- its address;
- its employer's registration number if registered for PAYE/PRSI.

If the employer has not registered as an employer on the basis that the "relevant person" has agreed to operate PAYE/PRSI, where required, details should be provided in respect of the "relevant person".

A single application may be used in respect of one temporary assignee or multiple temporary assignees.

In either case, the application should include confirmation that Article 15(2) of the relevant DTA applies.

Where an application for a dispensation from the operation of PAYE is not sought within 30 days of the employee taking up duties in the State, PAYE/PRSI must be operated on the emoluments paid to the temporary assignee from the date the employee takes up duties in the State.

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

[…]

Revenue will not penalise an employer for failure to give the required notice where it was not expected or readily apparent that the individual will be present in the State for more than 60 workdays in the tax year.

An application from a foreign employer may cover more than one foreign employee. A new application is required for each year of assessment. Applications should be submitted, via 'MyEnquiries', to the relevant Revenue Division/Branch dealing with the tax affairs of the company. Where the employer's tax affairs are dealt with by Large Corporates Division (LCD), applications should be sent to largecasesdiv@revenue.ie.

In the event that a dispensation from the operation of PAYE is not obtained, PAYE/PRSI should be applied in respect of all workdays spent in the State in the tax year and any Revenue Payroll Notification will operate on a Week 1 basis.

4.6 Summary of Position with effect from 1 January 2020

Category	DTA countries	Non-DTA countries
Less than 30 workdays in the tax year	No PAYE obligation	No PAYE obligation
Between 30 and 60 workdays in the tax year	No PAYE obligation where Article 15(2) is satisfied	PAYE obligation
More than 60 workdays but less than 183 days present in the tax year	PAYE obligation in the absence of a PAYE Dispensation	PAYE obligation
More than 183 days present in the tax year	PAYE obligation	PAYE obligation

***Where PAYE applies – the obligation to deduct arises from day one.**

4.7 Position to 31 December 2019

Please refer to Appendix F for detailed information relating to procedures in place for the period to 31 December 2019.

Chapter 5

5 Internationally Mobile Employees and Tax Equalisation

This chapter has been removed. Please refer to Tax and Duty Manual Part 02-04-01- Tax Equalisation Arrangements for further information.

Chapter 6

6 Social Security - Pay Related Social Insurance (PRSI)

6.1 Overview

The Social Security system in Ireland is known as the Pay Related Social Insurance (PRSI) system. A guide to the PRSI system can be found on the website of the Department of Social Protection.

While the PRSI system is administered by, and is under the control of, the Department of Social Protection, employee and employer PRSI contributions are collected under the PAYE system along with employee payroll tax deductions with the total amounts being remitted to the Collector General.

6.2 Contact Details

Contact details for the Collector General's Division are as follows:

Collector General's Division

Sarsfield House

Francis Street

Limerick

Ireland

V94 R972

Phone: 01 738 36 63

E-mail: Please use the secure 'MyEnquiries' service available in 'myAccount' or ROS.

6.3 Deduction of PRSI

Where a temporary assignee is liable to PAYE, PRSI is also due unless a valid A1 Form, a Certificate of Coverage or a Certificate of Exemption is in place for the duration of the temporary assignment.

Further information can be obtained from the Department of Social Protection.

Chapter 7

7 Pension Contributions

7.1 Background

Many individuals seconded from overseas parent companies or subsidiaries of an Irish business to work in the State ('seconded individuals') continue to -

- be paid from abroad; and
- benefit from employer contributions to their foreign pension fund;

and make personal contributions to a foreign pension scheme.

The contribution by an employer into a pension scheme for the benefit of an employee is a taxable emolument (see section 777 TCA 1997), except where –

(a) such charge is relieved under the terms of a Double Taxation Agreement (DTA), or

(b) the provisions of section 778 TCA 1997 apply, i.e. where -

(i) the emoluments of the office or employment are not chargeable to tax in the State; or

(ii) the remittance basis of taxation applies to the emoluments of the office or employment; or

(iii) the employer pension contributions are made to:

- an approved scheme; or
- a statutory scheme; or
- a scheme set up by a Government outside the State for the benefit, or primarily for the benefit, of its employees, or

(c) migrant member relief applies, or

(d) the conditions described in paragraph 7.4 apply.

7.2 Relief under Double Taxation Agreements

Contributions made by seconded individuals to foreign pension schemes may qualify for income tax relief under the provisions of Article 18(5) of the Ireland/USA DTA (see Appendix A) or Article 17A of the Ireland/UK DTA (see Appendix B). Where these provisions apply, contributions made by or on behalf of the individual's employer are not treated as part of the individual's taxable income.

7.3 Migrant Member Relief

Contributions made by seconded individuals to foreign pension schemes may qualify for income tax relief if they come within the scope of migrant member relief, as provided for in Chapter 2B of Part 30 (sections 787M and 787N) TCA 1997 (see Appendix C). Where migrant member relief applies, contributions made by or on behalf of the individual's employer are not treated as part of the individual's taxable income.

7.4 Contributions to overseas pension schemes

Revenue will –

- treat contributions made by an employer to an overseas pension scheme, for the benefit of an employee, as not being taxable, and
- allow tax relief for contributions made directly by seconded individuals into foreign pension schemes,

in bona fide cases, where:

(a) the employee -

(i) has been seconded by a foreign company to work in the State for that company or for a company which is connected to the foreign company;

(ii) was, prior to coming to work in the State, employed outside the State for a period of not less than 18 months by the foreign company (or a foreign company connected to that company);

(iii) is either not Irish-domiciled or, being an Irish citizen, is not ordinarily resident in the State at the time the pension contributions are made;

(iv) prior to coming to work in the State, had been making contributions to the foreign pension scheme referred to in (c) below for a period of not less than 18 months; and

(v) is not resident in the State for a period of more than 5 years (but see **Note** below);

(b) the foreign employer -

(i) is resident for tax purposes in an EU Member State or in a country with which the State has a DTA;

(ii) prior to the individual coming to work in the State, has been making contributions to a foreign pension scheme on behalf of the employee for a period of not less than 18 months;

(c) the foreign pension scheme is a statutory scheme in a state or country mentioned in (b)(i) above, other than a state Social Security scheme, or is a scheme in respect of which tax relief is available in such a state or country; and

(d) both the employer and employee contributions comply with the rules of any pension scheme referred to at (c).

Note – Where an individual is resident in the State for a period of more than 5 years, ignoring any periods prior to 1 January 2003, written permission of the local Revenue office will be required for the continuation of the above treatment of pension contributions beyond that period.

7.5 Revenue Pensions Manual – Chapter 17

Contributions made by seconded individuals to foreign pension schemes which do not fall within paragraphs 7.2 to 7.4 inclusive may qualify for income tax relief if they come within the scope of chapter 17.5 of the Pensions Manual (see Appendix D). Where chapter 17.5 of the Pensions Manual applies, contributions made by or on behalf of the individual's employer are chargeable to tax as emoluments of the employment. Relief will be granted to seconded individuals for such 'employer' contributions. However, the overall relief available in respect of the aggregate of employer contributions and employee contributions will be confined to the limits referred to in chapter 3.2 of the Pensions Manual.

7.6 Limits

The amount of tax relief for contributions made by an employee to a pension scheme is subject to two main controls.

1. The first control is an age-related percentage limit of the employee's remuneration or, as the case may be, net relevant earnings in respect of the office or employment for the year in respect of which the contributions are paid. This provides that the maximum amount of pension contributions in respect of which an employee can claim tax relief may not exceed the relevant age-related percentage of his or her remuneration or net relevant earnings in any tax year.

2. The second control places an overall upper limit on the amount of remuneration and net relevant earnings that may be taken into account for the purposes of giving tax relief. The earnings limit is set at €115,000 for 2011 and subsequent years.

These limits apply whether an employee is contributing to a single pension scheme or to more than one scheme.

Please refer to paragraphs 3.2, 21.3, 24.2 and chapter 26 of the Pensions Manual for additional information.

7.7 Further information

Further information in relation to overseas pension schemes (and other pension-related issues) is available from the Pensions Manual on the Revenue website.

Chapter 8

8 Miscellaneous

8.1 Bonuses

This Tax and Duty Manual deals with employee payroll deductions in respect of **non-Irish** employments exercised in the State. This section sets out the tax treatment of bonuses which are paid under the terms of a **non-Irish** contract of employment and which may or may not have been earned in the State.

Bonuses are a very common form of compensation. They can be paid quarterly, bi-annually or annually. Some are once off, others are recurring. Some bonuses may also be deferred over a certain period. Others may be considered spot bonuses and paid on occasion of exceptional work results.

Ordinarily, companies will have a bonus pool which has been established on foot of company performance or annual results. At an individual level, bonuses are usually awarded based on individual performance as determined by the employee's annual review. This TDM deals with bonuses paid under these circumstances only.

For example, a company's bonus pool for 2021 may be determined on foot of 2020 annual company results. Bonuses may be paid to employees in 2021 but may be paid in respect of duties performed in 2020.

A question arises, therefore, as to how such bonuses are dealt with from a tax perspective.

Section 112(1) TCA 1997 states that "income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever therefrom, and shall be computed on the amount of such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment".

In preparation for PAYE Modernisation, Finance Act 2017 introduced changes to the basis of assessment for Schedule E as provided for by section 112 TCA 1997. The statutory basis of assessment for Schedule E income was aligned with the operation of PAYE. Therefore, for 2018 and subsequent years, emoluments to which PAYE applies are computed as the amounts received **in** the tax year and the earnings basis no longer applies. Certain transitional measures in relation to emoluments earned in 2017 and paid in 2018 were included as part of the Finance Act 2017 amendments to section 112 TCA 1997.

The general rule, therefore, is that emoluments are computed based on the amounts received in the year.

This amendment was introduced as historically, although PAYE applied on a paid basis, there was a technical charge to income tax on the source income on an earnings basis. In many domestic cases where the payment of emoluments

consisted of basic pay only, any difference in tax liability arising from the separate basis of assessment was likely to be negligible and generally no action was undertaken.

However, the position is slightly more complicated as regards international assignments, i.e. those individuals working in Ireland on a temporary basis and under the terms of a foreign employment contract. These are often referred to as "inbound assignees".

A bonus may be paid to an individual in his or her home location, while he or she is actually working in Ireland on an assignment. The bonus may have been paid to the assignee in respect of duties performed before his or her arrival in the State. Depending on the start date of the assignment and the period to which the bonus relates, it may be a year or two before a bonus being paid abroad is attributable to duties performed in the State. It is also likely that some of the bonus will be attributable to duties performed outside the State and not necessarily in the home location (i.e. where other foreign business visits have been made). Likewise, where a bonus is paid following the individual's departure from the State (i.e. following repatriation), all or part of that bonus may be referable to duties performed in the State.

As outlined above, section 112(3) TCA states that the income tax to be charged for the year of assessment in respect of emoluments to which PAYE applies is computed on the full amount of emoluments paid to the person in the year of assessment. Emoluments are defined in section 112(2) as anything assessable to income tax under Schedule E.

With effect from 1 January 2006, section 18 TCA 1997 states that earnings from a foreign possession **to the extent that they are attributable to duties performed in the State** are chargeable to tax under Schedule E. Such earnings would then fall into the category of emoluments for the purposes of section 112(2) TCA 1997. However, section 112(3) TCA 1997 states that income tax is to be computed on the amounts **paid** to the person in the year of assessment. In this way, income tax is computed on a paid basis notwithstanding that the underlying charge imposed by section 18 actually ringfences the charge to such amounts attributable to duties performed in the State.

Take, for example, a case whereby an individual is temporarily assigned to the State from a country with which Ireland has a DTA and where that individual is tax resident in both States. Taxing rights will be allocated between the home State and Ireland in accordance with Article 15 (also known as the Employment Article) of the relevant DTA. Article 15(1) will allocate the taxing right to the State *of* residence of the individual unless the duties are actually performed in the other State. Where duties are performed in that other State, the taxing right exists only so far as the duties are performed there. In our example, assuming that the individual remains treaty resident of the home country, Ireland's taxing right extends only so far as the income earned in the State. This is clearly different to the amounts paid while working in the State.

With regard to those inbound assignee cases, Revenue accept that the charge to Irish income tax with respect to bonuses should continue to be charged on an earnings basis.

As outlined above, the change in basis from earnings to paid did not apply to outbound assignees where a PAYE exclusion order was in place. Section 112(6)(b)(ii) TCA 1997 refers. Revenue's approach as outlined above as regards inbound assignees is therefore consistent with regard to the treatment applied to employees of Irish companies who are assigned abroad.

Example 8.1

Maria is employed by a company in Spain. She is temporarily assigned by her employer to the Irish parent company in Dublin for 3 years with effect from 1 January 2020. During the period of her assignment, she will perform the duties of her Spanish employment in Ireland. She will continue to be paid in Spain.

As a resident, but not domiciled individual, Maria is liable to Irish income tax on Irish source income and foreign income to the extent it is remitted.

Her Spanish employment income is therefore within the charge to Irish tax under Schedule E **to the extent it relates to duties performed here**. (The impact of the remittance basis is ignored for the purpose of this example). As Maria continues to be paid in Spain, the Irish company operates PAYE on behalf of the foreign employer.

In April 2020, Maria is paid a bonus which was awarded based on her performance in 2019 during which time she worked only in Spain. Although the bonus is paid during the period of the assignment, it has clearly been earned prior to her arrival. The bonus is therefore not considered an emolument for the purposes of section 112 TCA 1997. PAYE is not due in respect of this amount.

In May 2021, Maria is paid a bonus which was awarded based on her performance in 2020, during which time she worked only in Ireland. The bonus is therefore considered an emolument for the purposes of section 112 TCA 1997. PAYE should be operated at the date of payment. The bonus should be allocated to the correct tax year when Maria files an income tax return **where** an additional tax liability arises. Where no additional tax liability arises, Revenue will not seek to enforce a return being filed for this purpose as it is tax neutral event.

Maria's assignment ends on 31 December 2022. In May 2023, Maria is paid a bonus which was awarded based on her performance in 2022, during which time she worked only in Ireland. The bonus is therefore considered an emolument for the purposes of section 112 (TCA 1997). This bonus is likely to be considered a payment post cessation and the employer should follow the guidelines as regards the operation of PAYE in such cases. However, as the bonus was earned in 2022, it should be included on Maria's tax return for 2022. This will mean that a refund of tax paid in 2023 will need to be sought and a payment of tax due in respect of 2022 will need to be made. Both returns could be filed together in early 2024 and the amounts netted off. This treatment ensures that such payments are dealt with in line with OECD commentary on Article 15.

Further information on the Schedule E basis of assessment is available in Tax and Duty Manual Part 05-01-08.

8.2 Exchange rates

Where an employer has to convert a foreign currency into euro as part of the application of PAYE to the payment of emoluments, Revenue will accept the exchange rate at either:

(a) the date of calculation, in the employer's records, of the tax liability related to the payment, or

(b) the actual date of payment of emoluments,

provided the method chosen is used on a consistent basis and, where the rate at (a) above is used, the date of calculation of the tax liability is not later than the date of payment of the emolument.

Chapter 9

9 Temporary concessionary measures that applied in 2020 only

9.1 Overview

In response to the COVID-19 pandemic, Revenue published the following concessions with respect to the Irish tax treatment of foreign employments exercised in the State:

- Foreign employments - operation of PAYE
- PAYE dispensation applications
- Multi-state workers

This section explains these concessions.

All the concessions in this chapter ceased to apply on 31 December 2020.

9.2 Foreign employments - operation of PAYE

Revenue did not seek to enforce Irish payroll obligations for foreign employers in 2020 If the employee:

- was working for the employer prior to COVID-19 but relocated temporarily to the State during the pandemic, and
- still performs his or her duties while in the State.

This measure only provides for a temporary relaxation on the employer's obligation to operate PAYE. It does not provide any concession regarding the underlying income tax liability that the individual may have regarding either:

- the tax liability, or
- filing obligations.

This concessionary measure ceased to apply on 31 December 2020. From 1 January 2021 employers are required to operate PAYE on such employments in the usual manner.

9.3 PAYE dispensation applications

Given the unprecedented circumstances and the restrictions on travel because of COVID-19, Revenue did not strictly enforce the 30-day notification requirement for PAYE dispensations.

This concessionary measure ceased to apply on 31 December 2020. From 1 January 2021, it is expected that the normal 30-day notification timeframe will be adhered to. Exceptional cases may be notified to Revenue as required.

For more information on PAYE dispensation please see paragraph 4.5.

9.4 Multi-state workers

A foreign employer could continue to operate Irish payroll on the basis of a non-resident employee's established work pattern pre-COVID-19 where:

- the non-resident employee had been carrying out duties of a foreign employment partially in the State and partially in the foreign jurisdiction prior to COVID-19
- the foreign employer had applied payroll taxes in the State and the foreign jurisdiction based on the established work pattern prior to COVID-19
- the employee cannot return to the foreign jurisdiction as a result of the travel restrictions imposed by COVID-19
- the employee continues to carry out their duties of employment in the State.

The employee and the company were required to maintain a record of the facts and circumstances of the bona fide relevant presence in the State. Revenue may request these records to show that such a presence resulted from COVID-19 related travel restrictions.

This concessionary measure ceased to apply on 31 December 2020. From 1 January 2021 employers are required to operate PAYE on such employments in the usual manner.

Appendix A - Extract from Article 18 of Ireland-USA Double Taxation Agreement

Article 18 Pensions, Social Security, Annuities, Alimony and Child Support

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5. For the purposes of this Convention, where an individual who is a member of a pension plan that is established and recognized under the legislation of one of the Contracting States performs personal services in the other Contracting State, contributions paid by the individual to the plan during the period that he performs personal services in the other Contracting State shall be deductible in computing his taxable income in that State within the limits that would apply if the contributions were paid to a pension plan that is established and recognized under the legislation of that State, and any payments made to the plan by or on behalf of his employer during that period shall not be treated as part of the employee's taxable income and shall be allowed as a deduction in computing the profits of his employer in that other State. The provisions of this paragraph shall not apply unless:

(a) contributions by or on behalf of the individual to the plan (or to another similar plan for which this plan was substituted) were made immediately before he visited the other State;

(b) the individual has performed personal services in the other State for a cumulative period not exceeding five calendar years; and

(c) the competent authority of the other State has agreed that the pension plan generally corresponds to a pension plan recognized for tax purposes by that State.

The benefits granted under this paragraph shall not exceed the benefits that would be allowed by the other State to its residents for contributions to a pension plan recognized for tax purposes by that State.

6. Where, under paragraph 5, contributions to a foreign pension plan are deductible in computing an individual's taxable income in a Contracting State and, under the laws in force in that State, the individual is, in respect of income or gains, subject to tax by reference only to the amount thereof which is remitted to or received in that State, and not by reference to the full amount of such income or gains, then the deduction which would otherwise be allowed to the individual under paragraph 5 in respect of such contributions shall be reduced to an amount that bears the same proportion to such deduction as the amount remitted bears to the full amount of the income or gains of the individual that would be taxable in that State if the income or gains had not been taxable on the amount remitted only.

The full text of the Ireland -USA Agreement is available at: Double taxation treaties

Appendix B - Extract from Article 17A of Ireland-UK Double Taxation Agreement

Article 17A Pension Scheme Contributions

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(1) Subject to the conditions specified in paragraph (2) of this Article, where an employee ("the employee"), who is a member of a pension scheme which has been approved or is being considered for approval under the legislation of one of the Contracting States, exercises his employment in the other Contracting State:

(a) contributions paid by the employee to that scheme during the period that he exercises his employment in that other State shall be deductible in computing his taxable income in that State within the limits that would apply if the contributions were paid to a pension scheme which has been approved under the legislation of that State; and

(b) payments made to the scheme by or on behalf of his employer during that period:

(i) shall not be treated as part of the employee's taxable income, and

(ii) shall be allowed as a deduction in computing the profits of his employer, in that other State.

(2) The conditions specified in this paragraph are that:

(a) the employee is employed in the other Contracting State by the person who was his employer immediately before he began to exercise his employment in that State or by an associated employer of that employer;

(b) the employee was not a resident of that State immediately before he began to exercise his employment there;

(c) at the time that the contributions referred to in paragraph(1)(a) of this Article are paid, or the payments referred to in paragraph (1)(b) of this Article are made, to the scheme the employee has exercised his employment in that State for:

(i) less than ten years where he was a resident of the first-mentioned Contracting State immediately before he began to exercise his employment in the other Contracting State, or

(ii) less than five years in other cases.

(3) For the purposes of this Article:

(a) the term "a pension scheme" means a scheme established in relation to an employment in which the employee participates in order to secure retirement benefits;

(b) employers are associated if (directly or indirectly) one is controlled by the other or if both are controlled by a third person; and the term "control", in relation to a body corporate, means the power of a person to secure:

(i) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate, or

(ii) by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of the first-mentioned body corporate are conducted in accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets, or of more than one-half of the income, of the partnership.

***

The full text of the Ireland -UK Agreement is available at: Double taxation treaties

Appendix C - Migrant Member Relief

Chapter 17 of Revenue's Pensions Manual

Introduction

There is a statutory scheme of relief for contributions paid by an individual who comes to the State and who wishes to continue to contribute to a pre-existing "overseas pensions plan" in another EU Member State or the United Kingdom. The legislation involved is contained in Chapter 2B of Part 30 (Sections 787M – 787N) of the TCA 1997.

Relief is available for contributions paid on or after 1 January 2005 by a relevant migrant member who comes to the State and who wishes to continue to contribute to a pre-existing "qualifying overseas pension plan" concluded with a pension provider in another EU Member State or the United Kingdom.

Conditions

"Overseas pension plan" means a contract, an agreement, a series of agreements, a trust deed or other arrangement which is established in, or entered into under the law of the United Kingdom or a Member State of the European Communities, other than the State. It covers occupational pension schemes and personal pension schemes that a migrant worker might bring to the State whether he or she was employed or self-employed in the other EU Member State or the United Kingdom. It excludes any state social security scheme, i.e. a system of mandatory protection put in place to provide a minimum level of retirement income or other benefits.

"Qualifying overseas pension plan" means an overseas pension plan that:

- is established in good faith for the sole purpose of providing retirement benefits similar to those approved in the State,
- qualifies for tax relief on contributions under the law of the EU Member State in which it is established, or under the law of the United Kingdom, where the plan was established in the United Kingdom, and
- in relation to which the migrant member of the plan has irrevocably instructed the administrator of the plan to provide the Revenue Commissioners with any information that they may require in relation to the plan.

A “relevant migrant member” is an individual who:

- is a resident of the State,
- was a member of the plan on taking up residence in the State,
- was a resident of another EU Member State or a resident of the United Kingdom at the time he or she first became a member of the plan and was entitled to tax relief on contributions under the law of that Member State or the law of the United Kingdom,
- was resident outside of the State for a continuous period of three years immediately before becoming a resident of the State,
- is a national of an EU Member State or a citizen of the United Kingdom or, if not, was resident in an EU Member State or a resident of the United Kingdom (other than the State) immediately before becoming a resident of the State.

If an individual moves to Ireland from any other EU Member State or the United Kingdom with a pre-existing qualifying overseas pension plan, the Revenue Commissioners are not aware of anything that will prevent that individual from meeting the ‘relevant migrant member’ condition that he or she was entitled to tax relief on contributions to the plan under the law of that Member State or the law of the United Kingdom.

Where an individual does not satisfy the three-year test but all other conditions are met, section 787N(2) gives discretion to the Revenue Commissioners to treat an individual as a “relevant migrant member”, notwithstanding that the three-year test is not met. Such cases should be referred to the relevant local Revenue office.

Under the provisions of section 819 TCA 1997 an individual is resident in the State where he or she is present in the State:

- for 183 days or more in the year of assessment, or
- for 280 days or more in total in the year of assessment and the preceding year, or
- where he or she elects to be resident and must intend to be resident in the following year.

For the purposes of these tests the legislation specifies that–

- presence in the State for periods of 30 days or less in any year are to be ignored for the purposes of the 2-year residence test, and
- 'a day' is:
    - for 2008 and previous years, one on which the individual is present in the State at the end of the day, namely, at midnight, and
    - for 2009 and following years, one on which the individual is present in the State at any time during the day.

The term "resident" in the context of another EU Member State or the United Kingdom means:

- in the case of an EU Member State with which Ireland has a DTA* and the United Kingdom, that the individual is regarded as being a resident of that State under the relevant agreement,
- in any other case, that the individual is by virtue of the law of that State a resident of that State for the purposes of tax.

*At the time of writing, Ireland has a DTA with all EU Member States and the United Kingdom.

Relief for contributions

Where the conditions in relation to a "qualifying overseas pension plan" and "relevant migrant member" are met, relief may be granted in respect of any contributions paid. In order to claim relief the individual should complete part 1 of the Overseas Pension 1 form.

The plan administrator should complete part 2 of the form and provide a "certificate of contribution" setting out contributions made by the individual to the plan and, where relevant, any contributions made by his or her employer in the State. The completed form should be submitted to the individual's local Revenue office.

Tax relief is due at the individual's marginal rate of tax. In the case of an individual who is taxed under the PAYE system, the relief will be shown on the "Tax Credit Certificate" in the year of claim.

An individual who is taxed under the self-assessment system may claim the relief on his or her return of income and relief will appear on the notice of assessment for the particular year.

An employer is authorised to operate the "net pay arrangement" where contributions to a "qualifying overseas pension plan" are deducted from an individual's salary.

Relief is subject to the same age percentage limits and earnings limit as apply to contributions to approved pension plans in the State.

Appendix D - Overseas Pension Schemes

Chapter 17 of Revenue's Pensions Manual

17.5 Seconded Employees not covered by 17.3 or 17.4.

An employee who was a member of an Overseas Employers Scheme before being transferred to Ireland to work for an associated employer may remain in that scheme and get relief on his contributions against his Irish Tax provided that -

(i) The secondment is for a period of less than 10 years.

(ii) The scheme is a Trust Scheme.

(iii) The benefits to be provided by the Overseas Scheme are within Irish approvable limits.

Appendix E - Criteria & Guidelines on Permanent Establishment (PE)

Introduction

The profits of an enterprise of a country with which Ireland has a double taxation convention are generally taxable in the State only where the enterprise has a Permanent Establishment (PE) here. This note sets out the criteria for determining the existence of a PE and gives guidelines on how these criteria are applied in the construction industry.

Given the level of cross border business activity, particular reference is made to the Ireland - UK Double Taxation Convention. The text of Article 5 of the Ireland - UK Convention is given at the end of this Appendix.

Definition

Article 5(1) of the Ireland - UK Convention defines the term permanent establishment as being

> "a fixed place of business in which the business of the enterprise is wholly or partly carried on".

Article 3(1)(i) of the Convention provides that "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively

- An enterprise carried on by a resident of a Contracting State

and

- An enterprise carried on by a resident of the other Contracting State.

Article 5(2) of the Convention contains a list of examples of what is generally regarded as constituting a PE. However, the examples listed are PEs only where they fall within the terms of the definition in Article 5(1).

Article 5(3) of the Convention contains a list of examples of what is not regarded as constituting a PE.

Criteria to determine if a PE exists

Whether or not a PE exists is a question of fact. Each case must be considered on its own facts. Below are guidelines for determining whether a PE exists, i.e. whether there is "a fixed place of business in the State in which the business of the enterprise is wholly or partly carried on".

There must be a place of business

A place, though normally a particular portion of space, is to be read in the context of it being used to define “establishment”. The term “place of business”, therefore, means all the tangible assets used for carrying on the business. It covers any premises, facilities or installations used for carrying on the business, whether or not they are used exclusively for that purpose. Thus, a place of business may exist where no premises are available or required for carrying on the business of the enterprise and it simply has a certain amount of space at its disposal.

The place of business may be situated in the business facilities of another enterprise. It may be owned or rented by or be otherwise at the disposal of the business.

The place of business must be fixed

The place of business must be established at a certain place. In this regard it is necessary that a link exists between the place of business and a specific geographical point.

For equipment to constitute a PE, it must remain on a particular site but does not have to be fixed to the soil on which it stands. Where roads are being built, canals constructed, etc., and the activities performed at each particular spot are part of a single project, the project is regarded as a PE.

The place of business must have a certain degree of permanency. Mere business relations with enterprises or other customers in the contracting State do not give the requisite degree of permanency. Similarly, a place of business which is of a purely temporary nature cannot constitute a PE, e.g. a once-off stall at a trade exhibition. A place of business which is not of a purely temporary nature can be a PE even if, in practice, it exists only for a very short period of time -

- because of the special nature of the activity (e.g. a building site), or
- because, as a consequence of special circumstances (e.g. death of the taxpayer, investment failure), it was prematurely liquidated.

The business must be wholly or partly carried on in the fixed place of business

For a place of business to constitute a PE, the enterprise using it must carry on its business wholly or partly in it. The activity need not be of a productive character. Interruptions of operations encountered in the normal course of the business of an enterprise do not affect the permanence test, provided the business activities are resumed at the same place. Operations must be carried out on a regular basis. For example, a space in a marketplace could be a PE provided it is occupied regularly over a period.

Agents

Article 5(4) of the Ireland-UK Convention deals with dependent agents. A dependent agent of a UK enterprise who has, and habitually exercises in the State, an authority to conclude contracts in the name of the enterprise constitutes a PE in the State.

Dependent

The agent must be dependent on the enterprise he or she represents. He or she must not have independent status of the kind referred to in Article 5(6) (e.g. brokers, general commission agents). An agent who is bound to follow instructions relating to the business is dependent on the enterprise. Employees of an enterprise are always dependent agents. An agent must have power to bind the enterprise.

Authority to Conclude Contracts

The dependent agent must have authority to conclude contracts in the name of the enterprise he or she represents. Whether or not an agent has such authority is a question of fact and is normally decided against the background of the economic situation. If there are valid reasons for the enterprise to reserve its right to conclude contracts itself (e.g. where major contracts are involved), the agent may be considered not to have an authority to conclude contracts.

If the agent has authority to negotiate all elements of a contract in a way which is binding on the enterprise, the agent is regarded as exercising his or her authority in the State, even if formal signature of the contract is made by some other person outside the State. The authority could be restricted to specific lines of business within the enterprise's overall business activities. If this is the case, the profits attributable to the PE would be restricted to profits arising from business contracted by the agent. Direct transactions by the enterprise would be disregarded for the purposes of determining profits attributable to the PE.

Habitual Exercise

The agent must habitually exercise in the State his or her authority to conclude contracts in the name of the enterprise. There must be a certain degree of permanence. An agent would not constitute a PE on the basis of the conclusion of a single contract. The frequency with which an agent concludes contracts will amount to habitual exercise if it corresponds with what is normal in the line of business concerned. In cases of doubt, the continuity of the agent's exercise of authority should be measured by application of the same criteria as those applied under the general PE concept laid down in Article 5(1). It is not necessary that the continuous activity be exercised throughout by the same person. It is sufficient for the post of dependent agent to have been established.

Residence

It is not necessary that the agent must be resident in the State. It is considered that where the foreign enterprise is a sole trader or partnership, the sole trader or any of the partners would be an agent for this purpose. Thus, a Northern Ireland subcontractor who habitually concludes contracts in the State in the name of the enterprise constitutes a PE of the UK enterprise.

Construction Industry - Existence of a PE

Under Article 8 of the Ireland - UK Convention, the profits of a UK based enterprise are taxable in the State only if the enterprise carries on business in the State through a PE situated in the State. While all the general principles outlined earlier apply to the construction industry, particular difficulties arise in determining whether a PE is in existence in construction cases. This is especially so where the question to be determined is whether, in a particular case, a building site constitutes a PE. Given the high number of Northern Ireland based enterprises who carry out construction work in the State, Article 5 of the Ireland - UK Convention is regularly invoked to establish the existence or otherwise of a PE in the State. Article 5(1) (h) of the Convention provides that a building site or construction or installation project which lasts for more than six months constitutes a PE.

Mutual Agreement Procedure

Where a person has a PE in the State, he or she is taxable in the State on the profits attributable to the PE from the date the PE commences Under the Ireland - UK Convention, a UK resident with a PE in the State is entitled to credit in the UK for tax paid in the State in respect of profits attributable to the PE. If HMRC UK Inland Revenue rule that the person does not have a PE in this State, credit for Irish tax will not be allowed against the person's UK tax liability. In this event, the person should request a review under Article 24 of the Convention (i.e. mutual agreement). Under the terms of Article 24, the two authorities will endeavour to arrive at a mutual determination regarding the existence of a PE in the State. The request for such a review must be made within certain time limits but can be made to the Competent Authority in Ireland or in the UK.

Appendix F – Treatment pre 1 January 2020

The following sets out the context contained in Chapter 4 of the previous version of this TDM.

The following summarises the rules in place under Chapter 4 of the previous versions of this TDM with respect to availing of an exemption from the requirement to operate PAYE on the employment income of a temporary assignee. The rules outlined below are those contained in April 2018 and June 2020 versions of the TDM.

By way of background, the April 2018 version of the TDM explained a "multi-year" test, which involved an examination of a temporary assignee's presence in the State over a number of years, when examining the requirement to apply for dispensation from the requirement to operate the PAYE system. The June 2020 version of the TDM explained the simplified process that required each tax year to be considered on a standalone basis only and it also contained some updates with respect to Revenue's interpretation of Article 15(2) of the OECD model tax convention.

The main text of June 2020 and April 2018 versions, in that order, has been included below.

(A) Chapter 4: June 2020 version of TDM

Temporary Assignees - Release for employers from the obligation to operate the Irish PAYE system – Up to 31 December 2019

This TDM was updated in February 2019 and arrangements were set out for:

- Assignee having a presence in the State during one tax year;
- Assignee having a presence in the State for two consecutive tax years (e.g. 2019 and 2020); and
- Assignee having a presence in the State for more than two tax years.

With effect from 1 January 2020, the question of whether a dispensation from the operation of PAYE applies should be considered with respect to the assignees 2020 activity only. For those temporary assignees who arrived in 2019 as part of a recurring pattern, such cases should now be considered on an annual basis only.

Scenario 1 - Assignee having a presence in the State during one tax year

The previous version of the guidance confirmed **that where an assignee will only have a presence in the State during one tax year, the intention of the guidance in this scenario is to allow overseas employers in DTA countries to determine whether or not to operate PAYE, without the need for a written application to Revenue.**

Revenue will not require an employer to operate PAYE in respect of income attributable to duties exercised in the State where:

(a) the assignee exercises the duties in the State for not more than 60 workdays (either consecutively or cumulatively) in a tax year, and
(b) the assignee is not on the payroll of an Irish entity, and
(c) the assignee is resident in a DTA country and is not resident in the State for the relevant tax year.

Where these conditions are met, Revenue will accept that the assignee is taxable solely in his or her country of residence on the relevant employment income.

Any requests for a dispensation in respect of 2019 visits should be dealt with using these guidelines.

Where the temporary assignee is subsequently required to return to the State in 2020 or later years, the requirement to obtain a dispensation from the operation of PAYE should be determined in accordance with the latest version of this TDM. In this way, workdays spent in the State should be considered on a tax year basis without regard to previous years.

Scenario 2 - Assignee has a presence in the State during two consecutive tax years

The previous version of the guidance confirmed **that if an assignee will only have a presence in the State during two consecutive tax years, the intention of the guidance in this scenario is to allow overseas employers in DTA countries to determine whether or not to operate PAYE, without the need for a written application to Revenue.**

Revenue will not require an employer to operate PAYE in respect of income attributable to duties exercised in the State where:

(a) the assignee exercises the duties in the State for a total of not more than 60 workdays in two consecutive tax years, and
(b) the assignee is not on the payroll of an Irish entity, and
(c) the assignee is resident in a DTA country and is not resident in the State for the relevant tax years.

Where these conditions are met, Revenue will accept that the assignee is taxable solely in their country of residence on the relevant employment income.

In circumstances other than those set out in scenarios 1 and 2 above, there will be no automatic release from the obligation to operate PAYE. An application should be made to Revenue if a release is being sought.

It is therefore likely, that an application for a PAYE dispensation may have been submitted in respect of cases who were expected to spend more than 60 workdays in the State in 2019 and 2020 when considered together.

Where a dispensation was issued for 2019 and 2020, no further action is required.

However, where the dispensation was only issued for 2019, the question arises as to whether a dispensation is required for 2020. Employers may apply the updated rules in respect of 2020. In this way, employers will only need to contact Revenue to obtain a dispensation from the operation of PAYE where it is certain that the temporary assignee will spend more than 60 workdays in the State in 2020.

Where a temporary assignee spends no greater than 30 workdays in the State in 2020, no action is required.

Scenario 3 - Assignee has a presence in the State for periods in more than two tax years

Previous guidance confirmed **that Revenue would not automatically release an employer from the obligation to operate PAYE where the period in which the assignee is in the State for periods in more than two tax years.**

Where it was expected that an employee will spend 60 workdays or less in the State in any one tax year but will have short-term business visits to the State on a recurring annual basis over more than two tax years, an application should be made to be released from the obligation to operate PAYE. Where the terms of the Employment Article of the relevant DTA are satisfied, the employer should make the application in accordance with the requirements and procedures.

It is therefore likely that an application for a PAYE dispensation may have been submitted in respect of cases who were expected to spend 60 or less workdays in the State in 2019 but who would have short term business visits to the State on a recurring basis in future years.

In cases where a dispensation was only issued for 2019, employers may apply the updated rules for 2020. In this way, they will only need to contact Revenue to obtain a dispensation from the operation of PAYE where it is certain that a temporary assignee will spend more than 60 workdays in the State in 2020. 2021 and future years should be reviewed annually.

Where a temporary assignee spends no greater than 30 workdays in the State in 2020 and subsequent years no action is required.

Example 1 – Article 15(2)(a) refers to 183 days in a fiscal year

John is employed by a pharmaceutical company in the UK. He takes a number of business trips to the State as the parent company is located in the State. During 2020, he spends less than 60 days working in Ireland under the terms of his UK contract of employment.

Article 15(2) of the Ireland/UK DTA states that:

Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

As the conditions set out in Article 15(2) are met, John is taxable only in the UK on the income attributable to the Irish workdays.

Notwithstanding the above, there is a domestic charge to Irish income tax (through the PAYE system) on John's employment income. However, Revenue will not require an employer to operate PAYE in such cases and there is no requirement to seek written authorisation from Revenue in this regard.

Example 2 – Article 15(2)(a) refers to 183 days commencing or ending in the fiscal year concerned

Jane is employed by a pharmaceutical company in the US. She takes a number of business trips to the State as the parent company is located in the State. In December 2020, she commences a two-month short term assignment in the State. She will spend less than 60 days in Ireland in 2020. However, as her short-term assignment commences in 2020, it will straddle two Irish tax years i.e. 2020 and 2021.

As Jane is coming to Ireland from the US, Article 15(2) of the Ireland/US DTA determines whether Ireland or the US has taxing rights on this income.

Article 15(2) of the Ireland/US DTA states that:

Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

Article 15(2) of the Ireland/US DTA differs from the Ireland/UK treaty as outlined in the earlier example and refers to an individual spending greater than 183 days in Ireland in what is known as a "**rolling period**" which is essentially a period of greater than 183 days either beginning or ending in 2020. Therefore, in determining whether taxing rights remain only with the US, it is important to confirm that Jane will not spend greater than 183 days in Ireland in any twelve-month period commencing in December 2020.

As the conditions set out in Article 15(2) are met, Jane is taxable only in the US on the income attributable to the Irish workdays.

Notwithstanding the above, there is a domestic charge to Irish income tax (through the PAYE system) on Jane's employment income. However, Revenue will not require an employer to operate PAYE in such cases and there is no requirement to seek written authorisation from Revenue in this regard.

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

[…]

(B) Chapter 4: April 2018 version of TDM

4.1 General – Treatment Pre 1st January 2020

4.1.1 Background

When dealing with a temporary assignee who holds a non-Irish employment, two separate and distinct issues arise -

(a) the operation by an employer (and certain other persons – see paragraph 3.4) of the PAYE system of payroll deductions at source; and

(b) the relief from Irish tax due to the assignee under a double taxation agreement (DTA) between Ireland and another jurisdiction.

The fact that an assignee may be temporarily working in the State and relieved from the charge to Irish tax under the terms of a double taxation agreement does not mean that the employer need not operate the PAYE system on the assignee's income attributable to the performance in the State of the duties of that employment.

However, in certain circumstances, as provided for below, an employer (or certain other persons – see paragraph 3.4) will not be required to operate the Irish PAYE system in respect of temporary assignees.

4.1.2 The Irish PAYE System

It should be clearly understood that the Irish PAYE system is a system under which payroll deductions, including tax, are made at source and:

- where an employer is released from the obligation to operate the PAYE system under the terms of this Chapter, it does not necessarily follow that the temporary assignee has no tax liability in this State in respect of his or her employment income, and

- likewise, where an employer is not released from the obligation to operate the PAYE system under the terms of this Chapter, it does not necessarily follow that the temporary assignee has a tax liability in this State in respect of his or her employment income.

Release from the obligation to operate PAYE will generally be given where, based on information available at a point in time, the assignee will not have a liability to tax in the State. Even though Revenue may have released the employer from the obligation to operate PAYE, an assignee may, for example, become tax resident in the State or have a change to their employment contract such that an income tax charge subsequently arises on their employment income. Similarly, where PAYE has been applied, this does not necessarily mean that Treaty relief will be not be available.

However, the terms of this Chapter are focussed on ensuring that, as far as is practicable, the release from the obligation to operate the PAYE system is granted to employers in circumstances where the assignee will not have a tax liability in the State in respect of his or her employment income.

4.1.3 Overview of this Chapter

Jurisdiction	**Topic**	**Paragraph Ref**
DTA country	Assignee in the State for more than 60 workdays but less than 183 days	Paragraph 4.2
DTA country	Assignee in the State for not more than 60 workdays	Paragraph 4.3
DTA country	Application for release from the obligation to operate PAYE	Paragraph 4.4
Non DTA country	Assignee in the State for not more than 30 workdays	Paragraph 4.5

4.1.4 Meaning of 'day' and 'workday'

For the purposes of this Chapter;

- A 'day' in the State is a day during any part of which the employee is present in the State; and
- A 'workday' in the State is any day in which any work is performed in the State.

4.2 Simultaneous deductions under the Irish PAYE system and under a tax deduction system of another tax jurisdiction - DTA countries

4.2.1 Short term business visits to the State from DTA countries for more than 60 workdays but less than 183 days

Under the general double taxation agreement principles, where -

- an individual who is a tax resident of another jurisdiction is on temporary assignment in the State; and
- there is an obligation to make deductions at source from that individual's salary / wages under both the Irish PAYE system and a foreign tax deduction system simultaneously,

the obligation to grant relief in respect of such potential double deduction at source generally rests with the jurisdiction of which the individual is resident for tax purposes. More specific detail can be found in the terms of the appropriate treaty.

A list of the Double Taxation Agreements between Ireland and other jurisdictions is available on the Revenue website.

Where temporary assignees of Treaty countries-

1. are present in the State for a period or periods of more than 60 workdays but not exceeding in the aggregate 183 days in a year of assessment, and
2. suffer withholding taxes at source in the 'home' country on the income attributable to the performance of the duties of the foreign employment in the State,

then, an employer will not be required to operate the Irish PAYE system in respect of such temporary assignees where the following conditions are met:

(a) the assignee is resident in a country with which the State has a Double Taxation Agreement (DTA) and is not resident in the State for tax purposes for the relevant tax year; and,

(b) there is a genuine foreign office or employment; and

(c) the remuneration is paid by, or on behalf of, an employer who is not a resident of the State (see Note below), and

(d) the remuneration is not borne by a permanent establishment (see Appendix E) which the employer has in the State.

Once the employer is satisfied the conditions outlined above have been satisfied, the employer may apply to Revenue for a release from the obligation to operate PAYE. **An application should be made in accordance with the requirements and procedures set out in paragraph 4.4.**

Note

As regards condition (c) above, Revenue, in line with OECD guidance (commentary on Article 15 of the **OECD Model Tax Convention on Income and on Capital***)*, is not prepared to accept, for the purposes of granting a release from the obligation to operate the PAYE system, that **the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State** where the assignee is;

- working for an Irish employer where the duties performed by the assignee are an integral part of the business activities***** of the Irish employer, or
- replacing a member of staff of an Irish employer, or
- supplied and paid by an agency (or other entity) outside the State to work for an Irish employer.

***Integral part of the business activities**

While no one factor alone is conclusive, there are several factors that may indicate an assignee is performing duties for an Irish employer that are an integral part of that employer's business. Factors to consider include:

- who bears the responsibility or risk for the results produced by the assignee;
- who authorises, instructs or controls where, how and, or when the work is performed;
- who does the assignee report to or who is responsible for assessing performance;
- whether the role or duties performed by the assignee are more typical of the function(s) of the overseas employer or of the Irish entity.

Recharge of costs

The release from the obligation to operate the PAYE system will not be granted (i) simply because the remuneration is paid by a foreign employer and charged in the accounts of a foreign employer or (ii) where the remuneration is paid by a foreign employer and the cost is then recharged to an Irish employer.

When determining if remuneration is recharged by a foreign employer to an Irish entity, consideration should be given as to the relationship the fees charged bear to the remuneration, employment benefits and employment costs of the assignee. If the fee equals these costs or is a charge with a profit element computed as a percentage of that remuneration, this would be indicative that remuneration is directly recharged. However, if the fee charged bears a relation to the remuneration of the individual but is only one of many factors taken into account for what is really a contract for services between the foreign and Irish entities, this would indicate that the remuneration is not directly recharged.

4.2.2 Examples

The following examples set out an employer's obligations where an assignee who is resident in a DTA country carries out duties in the State for more than 60 workdays but less than 183 days. All the conditions of Article 15(2), Employments Article of the particular DTA must be met before an employer will be given, on application, a release from the obligation to operate PAYE.

Example 4.1

ABC UK are in the business of developing software programmes for various companies. Vincent is employed with them as a computer programmer. In 2018, ABC UK enter into a contract with XYZ Construction Ireland which needs to update their computer systems. ABC UK send Vincent to Ireland as part of the contract. The project will take about 120 days to complete in 2018.

Vincent is an employee of ABC UK, and his services, while in Ireland, form an integral part of the business activities of his UK employer. The services Vincent provides to XYZ Construction Ireland are provided on behalf of his UK employer. In this scenario,

- Vincent is in the State for less than 183 days in the year,
- ABC UK does not have a permanent establishment in Ireland which bears the cost of Vincent's remuneration, and
- the cost of Vincent's remuneration is not recharged by ABC UK to XYZ Construction Ireland.

In light of the above circumstances, relief under Article 15(2) of the UK-Ireland DTA applies. Therefore, subject to an application being made by ABC UK, Revenue will grant a release to ABC UK from the obligation to operate PAYE.

Example 4.2

PQR UK is the parent company of a group of companies. Five of the companies are resident in other EU states. PQR UK has developed a new computer system for the HR department and wants all the HR departments within the group to use it. Joan has worked on the development of the new system and is sent by PQR UK to the 5 other subsidiaries to implement the new system. PQR Ireland is one of the companies within the group. Joan will spend about 70 days in the State during a tax year training the local HR team.

Joan is an employee of PQR UK, and her services, while in Ireland, form an integral part of the business activities of her UK employer. In this scenario,

- Joan is in the State for less than 183 days in the year,
- PQR Ireland does not bear the cost of Joan's remuneration, and
- The cost of Joan's remuneration is not recharged by PQR UK to PQR Ireland.

In light of the above circumstances, relief under Article 15(2) of the UK/Ireland DTA applies. Therefore, subject to an application being made by PQR UK, Revenue will grant a release to PQR UK from the obligation to operate PAYE.

Example 4.3

VWX Ireland and VWX India are part of the same multinational group of companies that manufacture component parts for computers. VWX India assigns 10 staff to VWX Ireland, and while in Ireland they will be upskilled while manufacturing parts. The local Irish supervisor reviews the work output and assesses whether modifications or further work is required by the assignees. The assignees will be in Ireland for approximately 120 days. VWX India pays the assignees but recharges the cost of the employees' remuneration to VWX Ireland.

In this scenario, (i) the duties performed by the assignees are an integral part of the business activities of VWX Ireland (their services, while in Ireland, are rendered to the Irish company) and (ii) their remuneration is recharged to the Irish entity. Under both grounds, relief under Article 15(2) of the Ireland-India DTA does not apply and PAYE should be operated.

Example 4.4

STU Ireland is part of large chain of retail stores which is owned and operated by a multinational company. STU Ireland is short staffed in their stock room as their most experienced member of staff is on sick leave. He will not be due back to work for 5 months. STU Spain has sent David to take over in the stock room for the 5 months. David is tax resident in Spain.

In this scenario, David is replacing a member of staff in STU Ireland and the services performed by David are an integral part of the business activities of STU Ireland. On the making of a payment of emoluments to David, PAYE must be operated.

Example 4.5

GHI UK is an employment agency resident in the UK. The company is in the business of supplying employees for the craft trade. LMN Construction Ireland have a shortage of carpenters for a project they are working on. LMN Construction Ireland contracts GHI UK to engage a carpenter. John, a UK resident, is assigned to LNM Construction Ireland for 130 days.

The services provided by John are an integral part of the business activities of LMN Construction Ireland. On the making of a payment of emoluments to John, PAYE must be operated.

Example 4.6

JKL Germany is a company resident in Germany. It specialises in supplying lab technicians to other companies. MNO Ireland needs the temporary services of a lab technician for approximately 4 months, and JKL Germany agree to assign Nathalia to help MNO Ireland to complete their contract. While in Ireland, she is under the direct supervision of the senior lab technician of MNO Ireland. Nathalia is tax resident in Germany.

The services provided by Nathalia are an integral part of business activities of MNO Ireland. On the making of a payment of emoluments to Nathalia, PAYE must be operated.

Example 4.7

Brian is the Global Head of HR of a US multinational company and is employed and paid by the US company. As part of his role, he travels outside the US to visit the Group businesses for the US parent company, under the direction and control of his US employer. He travels to the State on an annual basis. He has no fixed schedule or pattern to his visits. However, he is never in the State for more than 183 days in a year. Brian is tax resident in the US and the cost of his remuneration is not recharged to any of the Group businesses.

Based on the above fact pattern, and subject to an application being made, Revenue will grant a release to the US multinational company from the obligation to operate PAYE.

Example 4.8

Kelly works for a UK multinational company. As part of her role, she travels to subsidiaries in various locations on a once off assignment to perform a compliance function on behalf of the UK parent company. She is assigned to the State on a once off basis for 90 workdays. When performing her duties, Kelly remains under the direction and supervision of her UK employer. She is on the UK payroll; she is tax resident in the UK and the cost of her remuneration is not recharged to any of the subsidiaries.

Based on the above fact pattern, and subject to an application being made, Revenue will grant a release to the UK multinational company from the obligation to operate PAYE.

4.3 Temporary Assignees from DTA countries

4.3.1 Short term business visits to the State not more than 60 workdays – Position from 1 January 2018

Under the terms of the **Employment** Article of Double Taxation Agreements (DTAs) between Ireland and other countries, the income attributable to the performance in the State of the duties of an employment may be relieved from the charge to Irish tax, and where this is the case, the tax deducted under PAYE may be refundable to the individual from whose income the tax was deducted.

However, in certain circumstances, an employer will not be required to operate PAYE where there is a DTA in place between this State and the country of residence of the employee and relief under the terms of the Employment Article applies.

Scenario 1 – Assignee has a presence in the State during one tax year

If an assignee will only have a presence in the State during one tax year, the intention of the guidance in this scenario is to allow overseas employers in DTA countries to determine whether or not to operate PAYE, without the need for a written application to Revenue.

Revenue will not require an employer to operate PAYE in respect of income attributable to duties exercised in the State where:

(d) the assignee exercises the duties in the State for not more than 60 workdays (either consecutively or cumulatively) in a tax year, and
(e) the assignee is not on the payroll of an Irish entity and,
(f) the assignee is resident in a DTA country and is not resident in the State for the relevant tax year.

Where these conditions are met, Revenue will accept without enquiry that the assignee is taxable solely in their country of residence on the relevant employment income.

Scenario 2 - Assignee has a presence in the State during two consecutive tax years

If an assignee will only have a presence in the State during two consecutive tax years, the intention of the guidance in this scenario is to allow overseas employers in DTA countries to determine whether or not to operate PAYE, without the need for a written application to Revenue.

Revenue will not require an employer to operate PAYE in respect of income attributable to duties exercised in the State where:

(d) the assignee exercises the duties in the State for a total of not more than 60 workdays in two consecutive tax years, and
(e) the assignee is not on the payroll of an Irish entity and,
(f) the assignee is resident in a DTA country and is not resident in the State for the relevant tax years.

Where these conditions are met, Revenue will accept without enquiry that the assignee is taxable solely in their country of residence on the relevant employment income.

In circumstances other than scenarios 1 and 2 above, there will be no automatic release from the obligation to operate PAYE. In such cases, an application should be made to Revenue in accordance with the requirements and procedures set out in paragraph 4.4.

Scenario 3 - Assignee has a presence in the State for more than two tax years

Revenue will not automatically release an employer from the obligation to operate PAYE where the period in which the assignee is in the State extends to more than two tax years.

If it is expected that an employee will spend 60 workdays or less in the State in any one tax year but will have short-term business visits to the State on a recurring annual basis over more than two tax years, an application should be made to be released from the obligation to operate PAYE. Where the terms of the Employment Article of the relevant DTA are satisfied, the employer should make the application in accordance with the requirements and procedures set out in paragraph 4.4.

4.3.3 Examples

The following examples set how Revenue will apply the 60-workday test for foreign assignees who are resident in a DTA country.

Scenario 1 - Assignee has a presence in the State during one tax year

Example 4.9

Shane is assigned by his Dutch employer to the State for 45 workdays in 2018. He is tax resident in the Netherlands and is not Irish tax resident. He is on the Dutch payroll and he is not expected to return to the State in a subsequent year for work purposes. Treaty relief applies in respect of his employment income.

His employer is not required to operate PAYE in respect of income attributable to his Irish workdays.

Example 4.10

Elaine is assigned to the State in March 2018 for 35 workdays. She returns to her country of residence (Germany) for a short holiday and returns again to the State to perform work duties for another 40 workdays from May to June 2018.

For the purposes of the 60-workday test, the period in the State need not be continuous. Elaine has a total of more than 60 workdays in the State in the tax year. The employer may apply for a release from the obligation to operate PAYE where an application is made in accordance with paragraph 4.4. Otherwise, PAYE should be operated on income attributable to the performance of duties in the State.

Example 4.11

Roman is assigned by his employer to carry out duties in the State for an Irish employer for a period of 35 days. While in the State Roman is on the Irish payroll.

As Roman is on the Irish payroll, PAYE must be operated from the date he commences exercising duties in the State.

Example 4.12

Bedrock Co, an Italian company, has its customer care centre located in the State and requires a manager to oversee the function. During 2018, the company assigns four different managers for separate periods of 50 workdays each to perform the same role i.e. as manager.

In this case, the actual assignment period as a whole for this role or function is 200 workdays in a year. As the total period is more than 60 workdays, the employer must make a written application in respect of each employee for a release from the obligation to operate PAYE.

Example 4.13

Hildah is tax resident in Botswana and is on the payroll of a Botswana company. She is assigned to work in the State in February 2018 for 55 days. As it is expected that she will not have a liability to Irish income tax under the Botswana - Ireland DTA and that she will spend no more than 60 workdays in the State during 2018, the employer does not operate PAYE on the Irish workdays. In October 2018 she is unexpectedly required to return to the State for a further 10 workdays.

The extra days spent working in the State have brought Hildah over 60 workdays in a tax year. As the additional workdays in October were genuinely unexpected, the company should, as soon as they become aware of the additional workdays, make an application to Revenue for a release from the obligation to operate PAYE.

Scenario 2 - Assignee has a presence in the State during two consecutive tax years

Example 4.14

Anna is assigned to carry out duties in the State for 59 workdays. She carries out duties for 40 workdays in 2018 and 19 workdays in 2019. Treaty relief applies in respect of her employment income.

As the total number of workdays over the two-year period is not more than 60 workdays, the employer is not required to operate PAYE in respect of income attributable to her Irish workdays.

Example 4.15

Terry works for ABC Co in the Czech Republic and is required to perform duties in the State for 20 days in Year 1. In Year 2, he ceases employment with ABC Co and commences a new and separate employment with Research Co, an unconnected company to ABC Co. His new employer requires him to perform duties in the State for 60 workdays in Year 2. Terry is resident in the Czech Republic, is not Irish tax resident and in not on the Irish payroll. Treaty relief applies in respect of his employment income.

As the duties in the State over the two tax years relate to separate, unconnected employments and the period does not exceed 60 workdays in a tax year, neither ABC Co nor Research Co need to operate PAYE in respect of income attributable to the Irish workdays.

Example 4.16

Jacques is a senior employee of a French multinational company who is assigned to carry out duties in the State for 40 workdays in Year 1 and 25 workdays in Year 2. He is not expected to return to the State in Year 3. While in the State he assists with the setting up of a new function in the State and imparting knowledge to the local team. He remains under the direction and control of the overseas employer. Treaty relief applies in respect of his employment income.

As the total of Jacques' workdays in the State exceed 60 workdays over two consecutive tax years, his employer will not automatically be released from the obligation to operate PAYE. Therefore, an application for a release from the obligation to operate PAYE will need to be made by the employer.

Scenario 3 - Assignee has a presence in the State for more than two tax years

Example 4.17

Catherine is the financial controller for an American company. Each year for five years she must carry out duties in the State in support of an Irish subsidiary for 10 workdays. Her duties in the State are related to the review of global practices, as implemented by the Irish company and advising the local team regarding any issues arising. She remains under the supervision and direction of her US employer. Treaty relief applies in respect of her employment income.

As this represents a work pattern over a period of more than two years, it will be necessary for the employer to apply to Revenue for a release from the obligation to operate PAYE. As the duties carried out by Catherine are in the nature of a global corporate role (as directed by the US company), a release from the obligation to operate PAYE will be given provided all relevant conditions are met.

Example 4.18

Joe is required by his employer to work in the State two days each month in Year 1 and Year 2 ("Period A"). After four years working in his home country, he is again asked by his employer to work a further 20 days in the State in Year 7 ("Period B").

As there has been a significant gap between Period A and Period B, each period will be treated separately for tax purposes. PAYE need not be operated in respect of income attributable to the Irish workdays in Period A or Period B.

4.3.1 Short term business visits to the State not more than 60 workdays - Position to 31 December 2017

Under the terms of the **Employment** Article of Double Taxation Agreements (DTAs) between Ireland and other countries, the income attributable to the performance in the State of the duties of an employment may be relieved from the charge to Irish tax and where this is the case the tax deducted under PAYE is refundable to the individual from whose income the tax was deducted.

In certain circumstances, Revenue will not require an employer to operate PAYE where, under the terms of a DTA, a taxing right on remuneration paid by the employer is not allocated to this State. Revenue are prepared to accept that employers need not operate PAYE on remuneration paid to an individual where -

(a) the individual is resident in a country with which the State has a Double Taxation Agreement and is not resident in the State for tax purposes for the relevant tax year; and,

(b) there is a genuine foreign office or employment; and

(c) the remuneration is paid by, or on behalf of, an employer who is not a resident of the State (see Note below), and

(d) the remuneration is not borne by a permanent establishment (see Appendix E) which the employer has in the State and,

(e) the duties of that office or employment are performed in the State for not more than 60 working days in total in a year of assessment and, in any event, for a continuous period of not more than 60 working days.

Note: As regards (c) above, Revenue, in line with OECD guidance (commentary on Article 15 of the **OECD Model Tax Convention on Income and on Capital***)*, is not prepared to accept, for the purposes of granting a release from the obligation to operate the PAYE system, that **the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State** where the individual is:

- working for an Irish employer where the duties performed by the individual are an integral part of the business activities of the Irish employer, or
- replacing a member of staff of an Irish employer, or
- supplied and paid by an agency (or other entity) outside the State to work for an Irish employer.

The release from the obligation to operate the PAYE system will not be granted (i) simply because the remuneration is paid by a foreign employer and charged in the accounts of a foreign employer or (ii) where the remuneration is paid by a foreign employer and the cost is then recharged to an Irish employer.

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

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4.4 Application for release from the obligation to operate PAYE

There are several requirements to be satisfied by a foreign employer when making an application for the release from the obligation to operate PAYE in respect of temporary assignees from DTA countries.

Note: An employer must apply to Revenue on time to be released from the obligation to operate PAYE. Revenue will not retrospectively issue an employer with such a release.

Requirement to register as an employer for PAYE

The foreign employer must register in the State as an employer for PAYE tax purposes.

Where there is an intermediary paying the assignee, the foreign employer must supply details of the intermediary who is paying the assignee. "Intermediary" is defined in section 985C TCA 1997 – see paragraph 3.4.1;

Where there is a relevant person, the foreign employer must supply details of the relevant person for whom the assignee is doing work in the State. "Relevant Person" is defined in section 985D TCA 1997 – see paragraph 3.4.2.

Revenue will not require the foreign employer to register for PAYE in the State where an assignee of the foreign employer is performing in the State the duties of the foreign employment, and

- is paid on behalf of the employer by a connected entity of the foreign employer in the State, or
- is paid by the foreign employer, and the connected local entity in agreement with the foreign employer has assumed responsibility for compliance with PAYE/PRSI obligations on behalf of the foreign employer.

An entity is connected in the sense that the entity is controlled by the foreign employer or visa versa, or both are under common control. In this scenario, the foreign employer must:

- supply the PAYE registered number of the connected entity;
- supply its own full name and address; and
- where there is a relevant person, supply the name and address of that relevant person for whom the assignee of the foreign employer is doing work in the State.

Where the foreign employer supplies the PAYE registered number of a connected entity in the State who is paying the emoluments on its behalf, Revenue may require evidence that the employment is a genuine foreign contract of employment, and that Treaty relief is due.

Other requirements

The foreign employer must:

(a) maintain a record of the individual's full name, latest Irish and overseas address, date of commencement and cessation of the employment, the location where the individual carries out the duties of the temporary assignment and the amount of earnings in respect of the temporary assignment; **and**

(b) sign a written acknowledgement that in all cases where liability is subsequently found to arise in respect of payments of emoluments to an assignee (e.g. because of a breach of any of the conditions), the employer will be liable under the relevant provisions of the Taxes Consolidation Act 1997 and the Income Tax (Employments) Regulations[1] to pay the tax that should have been deducted from those emoluments; **and**

[1] For tax year 2019 et seq., the relevant Regulations are the Income Tax (Employments) Regulations 2018 (S.I. No. 345 of 2018). For tax years up to and including 2018, the relevant Regulations were the Income Tax (Employments) (Consolidated) Regulations 2001 (S.I. No. 559 of 2001).

(c) supply evidence (see Note 1) of withholding tax in the foreign jurisdiction on the income attributable to the performance in the State of the duties of the foreign employment; **and**

(d) on request, supply a copy of the contract(s) relating to the assignee's engagement in the State or other relevant details (see Note 2); **and**

(e) seek approval in writing from Revenue within 30 days after the date the assignee takes up duties in the State (see Note 3). Pending written approval from Revenue, PAYE need not be operated for that year of assessment if all other conditions are met.

Note 1

The following will be regarded as acceptable evidence of withholding taxes in the foreign jurisdiction:

- a certified copy of payslip (must be certified by the employer or the independent auditor of the employer. In the case of a company, certification by a director or company secretary will be acceptable), or
- a statement from the relevant foreign tax jurisdiction.

Note 2

On request, the employer should provide documentation explaining the assignee's required presence in the State e.g. employment contract or assignment letter. The employer may also be requested to provide details of the assignee's role while in the State, assignment dates, work location, nature of work performed, reporting structure, etc.

Note 3

Prior to 1 January 2018, an application in writing was required within 21 days of an assignee's commencement of duties in the State. This period has been extended to 30 days with effect from 1 January 2018.

Revenue will not penalise an employer for failure to give timely notice where it was not expected or readily apparent that the individual will be present in the State for more than 60 workdays.

An application from a foreign employer may cover more than one employee. A new application will have to be made in respect of each year of assessment. Applications should be submitted to the relevant Revenue district dealing with the tax affairs of the company. Where the employer's tax affairs are dealt with by Large Cases Division (LCD), applications should be sent to largecasesdiv@revenue.ie.

Note 4

An employer may apply to Revenue and be granted a release from the obligation to operate PAYE. If, however, the application is subsequently rejected, the employer should operate PAYE from that point in time (i.e. following receipt of the Revenue notification that the application has not been approved). Revenue will not penalise employers where the original application is made in good faith.

The employer should include all income paid to the employee from the date an assignment commences including the income from the date PAYE is applied. The Revenue Payroll Notification will operate on a week 1 basis.

This will only apply where there is a clear expectation that the release will be granted. Where it is clear that the conditions set out in the Employment Article (generally Article 15) of the relevant double taxation agreement are unlikely to be met, the provisions of Chapter 4 of Part 42 of the Taxes Consolidation Act 1997 will apply.

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

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4.5 Short-term business visits to the State from non DTA countries of not more than 30 workdays

4.5.2 Position from 1 January 2018

Scenario 1 - Assignee has a presence in the State during one tax year

Where an assignee who is non-resident in the State and who is resident in a non-DTA country performs duties in the State for no more than 30 workdays in aggregate in a tax year, PAYE need not be operated in respect of income attributable to such duties.

Where an assignee exceeds a total of 30 workdays in the State within the tax year, then PAYE must be operated from commencement of the duties in the State.

Scenario 2 - Assignee has a presence in the State during two consecutive tax years

Where an assignee who is non-resident in the State and who is resident in a non-DTA country performs duties in the State for no more than 30 workdays in aggregate within two consecutive tax years, PAYE need not be operated in respect of income attributable to such duties.

Where an assignee exceeds a total of 30 workdays in the State over two consecutive tax years, then PAYE must be operated from commencement of the duties in the State.

Scenario 3 - Assignee has a presence in the State for more than two tax years

If an assignee from a non-DTA country will have short-term business visits to the State on a recurring annual basis over more than two tax years, PAYE should be operated from commencement of the duties in the State. This applies even if the assignee has 30 workdays or less in the State in any one tax year.

4.5.1 Examples

Example 4.19

Marie is tax resident in a non DTA country. She is assigned on a once-off basis by her overseas employer to carry out duties in the State for 29 workdays.

PAYE need not be operated in respect of income attributable to such duties.

Example 4.20

Kenneth is tax resident in a non DTA country. In 2018, he is required by his overseas employer to carry out duties in the State for 2 days every month. He is not expected to return to the State for work purposes after 2018.

As Kenneth will not have more than 30 workdays in the State (in a tax year or over two consecutive tax years), his employer is not required to operate PAYE.

Example 4.21

Adrianna is required by her employer to work 15 days in the State in both 2018 and 2019. She will not be required to work in the State after 2019.

As she will not have more than 30 workdays in the State in two consecutive tax years, her employer will not be required to operate PAYE.

Example 4.22

Javier works for a multinational company located in a non-DTA country. Each year for three years, he is required by his employer to work in the State for 25 workdays.

As Javier will be working in the State for more than two tax years, PAYE should be operated in respect of income attributable to his employment duties in the State.

4.5.2 Position up to 31 December 2017

Where a non-resident employee from a non-DTA country performs incidental duties in the State and performs those incidental duties for no more than 30 workdays in aggregate in a tax year, PAYE need not be deducted in respect of income attributable to such duties.

The practices and examples set out in this Manual should be relied upon only to the extent that the employment arrangements concerned are undertaken in good faith and for purposes other than tax avoidance.

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