Overseas Employers, Overseas Employees and Employees Seconded from Overseas

Chapter 17

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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.

17.1 Overseas employer

In this Chapter, the term "overseas employer" means an employer who is not resident for tax purposes in the State and whose trading profits are, subject to any exemption due on residence grounds, liable to Irish tax only to the extent that they arise from a branch or agency in this country.

17.2 Overseas employer with an Irish pension scheme

A pension scheme established in the State by an overseas employer - for example, a scheme operating through a trust fund held by trustees resident in this country - can be approved if it relates wholly to persons employed in the State. If it does not relate exclusively to employees in the State, it will be regarded as being two separate schemes relating respectively to employees in the State and employees abroad. The scheme for employees in the State can be approved. If both schemes operate through a single trust fund and investments are not segregated, the proportion relating to the approved scheme and unapproved scheme will need to be calculated actuarially for the purpose of granting tax relief.

17.3 Employees seconded from outside Ireland

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

- be paid from abroad;
- benefit from employer contributions to their foreign pension fund; and
- continue to 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 Taxes Consolidation Act 1997 (TCA)), except where –

(a) such charge is relieved under the terms of a double taxation agreement, or

(b) where the provisions of section 778 TCA applies; that is, where –

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

(ii) the remittance basis of taxation applies to the emoluments of the office or employment (section 18(2) and section 71(3) TCA); 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.

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) had, prior to coming to work in the State, 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 five 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 Double Taxation Agreement (DTA);

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

(iii) 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

(iv) both the employer and employee contributions comply with the rules of that foreign pension scheme, then Revenue will -

  - treat contributions made by the employer to the pension scheme, for the benefit of the employee, as not being taxable; and
  - allow relief for the pension contributions made directly by the employee (subject to the normal income percentage limits).

Note – Where an individual is resident in the State for more than five 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 a period of five years.

17.4 Other relief for seconded individuals

Where contributions made by seconded individuals to foreign pension schemes do not qualify for relief as detailed above, relief may still be available if the contributions come within the scope of migrant member relief (see paragraph 17. 10 below). Migrant member relief only applies to individuals coming to Ireland with pre-existing pension plans established in another EU Member State.

Prior to the introduction of migrant member relief secondees from the UK could avail of relief under the terms of the Protocol to the Ireland/UK DTA. The Protocol may still be of relevance to migrant workers of a UK employer coming to the State from a third (non-EU member) country.

17.5 Other seconded employees

An employee who was a member of an overseas occupation pension scheme before being transferred to Ireland to work for an associated employer may remain in that scheme and get relief on her/his contributions against her/his Irish income tax liability provided that -

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

(ii) The scheme is a trust scheme.

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

17.6 Overseas employer whose Irish employee is transferred abroad

If an employee working in the State for an overseas employer, who is a member of a separate approved scheme of the type referred to in paragraph 17.2, is transferred to duties abroad, in circumstances such that her/his earnings cease to be chargeable in Ireland under Schedule E, no further benefits should accrue in the approved scheme. The accrued benefits should remain in the approved scheme unless a special arrangement for the transfer of benefits is in operation.

17.7 Overseas employees of an Irish employer

If an employee of an Irish employer is not assessable to Irish tax on her/his remuneration or is assessable to Irish only on the "remittance" basis – that is, only on the amount of the remuneration brought into or “remitted” to the State - no liability arises under section 777 TCA for payments by an employer to provide “relevant benefits” to that employee. It is, therefore, not necessary for a retirement benefits scheme for such employees to conform to the conditions for approval if the employer is prepared to forego the tax reliefs available to an exempt approved scheme. However, a pension scheme exclusively for employees working abroad, or which including employees working abroad, may be approved and enjoy the reliefs if the employer is resident in the State.

17.8 Employees working abroad for a non-resident employer

In general, an approved pension scheme, or a part of an approved scheme, cannot cater for employees working abroad for a non-resident employer. However, there are two exceptions to this principle:

(a) Where employees are on secondment from an Irish employer for a limited period, they can be deemed to remain on the payroll of the Irish employer.

(b) Where employees are sent abroad, in circumstances which cannot be regarded as secondment, to serve with non-resident companies in a group, of which the parent company is resident in the State but the parent company retains control over the movements of the employees within the group; that is, the Irish resident parent company remains in a position to recall the employees or to move them elsewhere.

Where either (a) or (b) applies, the employees concerned may remain, or become, members of the Irish employer's approved scheme, but all cases under (b) must first be referred to Revenue for consideration. The overseas company should, in either type of case, reimburse the Irish company for the employer's contributions under the scheme except where Revenue agree otherwise.

In certain situations, a non-resident employee may be permitted to remain in an Irish occupational pension scheme while working overseas (see paragraphs 17.7 and 17.8).

An employee who is seconded or transferred by their employer to work overseas and who returns to live and work in Ireland for the same employer may claim tax relief in respect of contributions they make to the employer’s pension scheme in respect of the year in which they return and any subsequent years in the normal manner.

Where an employee is not assessable to tax in Ireland in respect of their salary for the period of overseas employment, then tax relief is not due under the TCA for contributions they made to the scheme for that period. While a practice of taking credit for such contributions was operated in certain cases, there is no legislative basis for this.

Consequently, with effect from 6 June 2017, Revenue will not allow any such unrelieved pension contributions to be carried forward to the year in which an employee returns to Ireland and, as such, they cannot be claimed in that year or in any subsequent year.

17.9 Relief for contributions to EU pension schemes

Revenue will approve occupational pension schemes provided to Irish employers and employees by pension providers based in other EU Member States provided the standard approval conditions are met. These are defined as “overseas pension schemes” for the purposes of the occupational pension scheme provisions in Part 30 Chapter 1 TCA. To qualify for approval and associated tax reliefs, the overseas pension scheme must be operated or managed by an Institution for Occupational Retirement Provision, within the meaning of the EU Directive 2016/2341, and must be established in a Member State of the European Communities which has implemented the Directive in its national law.

It is now optional for the administrator of a scheme to appoint a person resident in the State to discharge all duties imposed under the Taxes Acts. Where the option is not exercised, the administrator must enter into a contract (governed solely by the laws of Ireland) with Revenue in relation to discharge of those duties.

17.10 Relief for migrant workers

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. The legislation is in Chapter 2B of Part 30 (sections 787M – 787N) TCA.

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.

An “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, 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. 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.

A “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, 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 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,
- 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, if not, was resident in an EU Member State (other than the State) immediately before becoming a resident of the State.

If an individual moves to Ireland from any other EU Member State 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.

Where an individual does not satisfy the three-year test but all other conditions are met, section 787N(2) TCA 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 Revenue Office dealing with the individual’s tax affairs.

Under the provisions of section 819 TCA, an individual is resident in the State where he/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 she or he elects to be resident and must intend to be resident in the following year.

For the purposes of these tests 'a day' is 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 means:

- in the case of an EU Member State with which Ireland has a DTA, 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.

Ireland has a DTA with all EU Member States

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 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 "Notice of Determination of Tax Credits and Standard Rate Cut-off Point" in the year of claim.[1]

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

[1] An individual may view his/her tax credits for the current tax year as well as for the four previous tax years on PAYE Services in myAccount. See www.revenue.ie for further information.