Overseas Employers, Overseas Employees and Employees Seconded from Overseas

Pensions Manual - Chapter 17

This manual should be read in conjunction with Chapter 1 and Chapter 2B, Part 30, Taxes Consolidation Act 1997.

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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 to work in the State

This paragraph relates to cases where an individual seconded to Ireland holds an overseas employment contract. 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.

Section 777 Taxes Consolidation Act 1997 (TCA) states that an employer contribution to a pension scheme for the benefit of an employee is a taxable emolument except where –

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

(b) where the provisions of section 778 TCA apply; 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

- the employer pension contributions are made to:
- an approved scheme;
- 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.

Example 1

An employee works for GlobalCorp, a French based company. The employee is assigned to work in Dublin from 1 May to 1 June. As the employee spends fewer than 60 days in Ireland, the income is not taxable in Ireland.

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, under either an Irish or a non-Irish employment contract;

(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 resident in the State for not more than five years;

and

(b) the foreign employer -

(i) is resident for tax purposes in an EU member state, the United Kingdom 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) has a foreign pension scheme which 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).

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 in Chapter 2B Part 30 TCA; see paragraph 17.10 below. Migrant member relief applies to individuals coming to Ireland with pre-existing pension plans established in another EU Member State or the United Kingdom.

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 Double Taxation Agreement. 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 their contributions against their 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.

This applies to both Irish and non-Irish employment contracts.

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 their 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.

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).

17.7 Overseas employees of an Irish employer

If an employee of an Irish employer is not assessable to Irish tax on their remuneration no liability arises under section 777 TCA for payments by an employer to provide “relevant benefits” to that employee.

A retirement benefits scheme for employees working outside the State is not required to conform to the conditions for approval in Chapter 1 Part 30 TCA 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 includes employees working abroad, may be approved and enjoy those 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. There are two exceptions:

a) where employees are on secondment from an Irish employer for not more than five years;

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. The overseas company should, in either type of case, reimburse the Irish company for the employer's contributions under the scheme except where Revenue agrees otherwise.

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.

17.9 Relief for contributions to EU and UK pension schemes

Revenue will approve occupational pension schemes provided to Irish employers and employees by pension providers based in other EU Member States or the United Kingdom provided the standard approval conditions are met. These are defined as "overseas pension schemes"[1] 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 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 also includes an overseas pension plan which is established in the United Kingdom and is subject to the supervisory and regulatory arrangements at least equivalent to those applied under EU Directive 2016/2341.[2]

The administrator of an overseas scheme may appoint a person resident in the State to discharge all duties imposed on the administrator (section 772(1)(c)(ii) TCA). Where such a person is not appointed, the administrator must enter into a contract (governed solely by the laws of Ireland) with Revenue in relation to discharge of those duties (section 772(1)(c)(i) TCA).

17.10 Relief for migrant workers

Chapter 2B Part 30 TCA (sections 787M and 787N) provides 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.

[1] As defined in section 770(1) TCA.

[2] Inserted by the Withdrawal of the United Kingdom from the European Union (Consequential Provisions Act 2020 and came into operation on 31 December 2020 by S.I. No. 723 of 2020.

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 under the law of the United Kingdom where the plan is established in the United Kingdom.

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 Ireland) or the United Kingdom. It covers occupational pension schemes and personal pension schemes that a migrant worker might bring to the State whether they were employed or self-employed in the other EU Member State or the United Kingdom. It excludes any state social security scheme, that is, 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, or under the law of the United Kingdom where the plan is 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 Revenue with any information that they may require in relation to the plan.

A "relevant migrant member[3]" 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 the United Kingdom at the time s/he first became a member of the plan and was entitled to tax relief on contributions under the law of that Member State or the United Kingdom,
- was resident outside of the State for a continuous period of three years immediately before becoming a resident of the State, however this requirement does not apply to contributions to a Pan-European Personal Pension Product (PEPP),

[3] Section 787M(1) TCA.

- is a national of an EU Member State or citizen of the United Kingdom, or
- if not, was resident in an EU Member State (other than the State) or a resident of the United Kingdom immediately before becoming a resident of the State.

Where an individual does not satisfy the three-year test but all other conditions are met, section 787N(2) TCA provides that Revenue may treat an individual as a "relevant migrant member". Such cases should be referred to the local Revenue office dealing with the individual's tax affairs.

If the individual has a Pan-European Pensions Product (PEPP) Revenue does not apply the three-year test where contributions are made by a 'relevant migrant member' to their last opened PEPP sub-account in another Member State, per paragraph (c) of the definition of "relevant migrant member" in section 787M(1) TCA. This allows an individual who becomes tax resident in Ireland, but for whom their PEPP provider does not offer a PEPP sub-account in Ireland, to claim tax relief on contributions to their last held sub-account.

Such claims should be made using the Migrant Member Relief claim form and submitted via MyAccount.

Residence for income tax purposes

Under section 819 TCA, an individual is resident in the State where they are 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 the individual elects to be resident and must intend to be resident in the following year.

For the purposes of the "280 day" test, an individual shall not be resident in a year of assessment if they are present in the State for fewer than 30 days in that 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 or the United Kingdom means:

- in the case of the United Kingdom or 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 and the United Kingdom. Where the individual is not regarded as being resident of the other State under the relevant DTA of another EU Member State or the United Kingdom, they may be deemed a resident of that State for the purposes of tax under relevant national law. 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 Migrant Member Relief claim 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 their employer in the State. The completed form should be submitted via MyAccount.

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.[4]

An individual who is taxed under the self-assessment system may claim the relief on their 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. Where tax relief is obtained under the net pay arrangement, individuals cannot make a further claim for tax relief on these contributions. Relief is subject to the same age percentage limits and earnings limit as apply to contributions to approved pension plans in the State.

[4] An individual may view their 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.