Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2022 edition

Part 34
Provisions Relating to the Residence of Individuals

December 2022

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Part 34 Provisions Relating to the Residence of Individuals

818 Interpretation (*Part 34*)

819 Residence

820 Ordinary residence

821 Application of *sections 17* and *18(1)* and *Chapter 1* of *Part 3*

822 Split year residence

823 Deduction for income earned outside the State

823A Deduction for income earned in certain foreign states

824 Appeals

825 Residence treatment of donors of gifts to the State

825A Reduction in income tax for certain income earned outside the State

825B Repayment of tax where earnings not remitted

825C Special Assignee Relief Programme (SARP)

PART 34
PROVISIONS RELATING TO THE RESIDENCE OF INDIVIDUALS

Overview

Part 34 sets out the rules of residence for individuals and a number of related issues. For taxation purposes, the general rule in this country and many others is that residents of a State are subject to taxation on income arising in the State as well as foreign source income, whereas non-residents are chargeable only on income arising in the State. Rules of residence (and ordinary residence) are, therefore, important in determining the extent to which Irish taxation can apply to the income and gains of individuals.

The rules contained in this Part apply for the purposes of the Tax Acts (that is, the Income Tax Acts and the Corporation Tax Acts), the Capital Gains Tax Acts and the Capital Acquisitions Tax Acts.

This Part also contains specific rules for determining residence and ordinary residence (***sections 819*** and ***820***). It provides for a charge to tax on foreign investment income on the basis of ordinary residence (***section 821***) and deems an individual to be resident for part of a year only in certain circumstances (***section 822***). It also contains relief for resident taxpayers working abroad (***sections 823*** and ***823A***) as well as an appeals provision (***section 824***). The Part also provides for a modification of the general rules relating to residence and ordinary residence in the case of donors of gifts to the State (***section 825***) where those gifts are made before 4 February 2010. The Part also provides for a reduction in income tax charged in certain circumstances, i.e. cross-border workers (***section 825A***) and for repayment of tax where earnings are not remitted (***section 825B***).

818 Interpretation (*Part 34*)

Summary

This section provides the interpretation for ***Part 34*** (other than ***section 825***).

Details

"the Acts" are the Tax Acts (that is, the Income Tax Acts and Corporation Tax Acts), the Capital Gains Tax Acts and the Capital Acquisitions Tax Consolidation Act 2003 (including any amendments to that Act) and any instrument under any of these Acts.

"authorised officer" is any officer of the Revenue Commissioners.

"present in the State" means the personal presence of an individual in the State.

"tax" is any tax payable under any provision of the Acts.

819 Residence

Summary

This section provides that an individual is resident in the State for a tax year if the individual is present in the State for 183 days or more in that year (135 days if the tax year is the short tax "year" 2001), or for 280 days or more in aggregate in that year and the preceding year (244 days if the short tax "year" 2001 is included).

Details

Tests of residence

The first and basic test is that a person is resident in any year in which they spend 183 days or more in the State. Where the time spent in the State in a year is less than 183 days (135 days in the case of the short tax "year" 2001), the second test comes into play. This is a 2 year test and involves taking account of a person's presence in the State in the preceding year also. Thus, a person who spends 280 days or more in the State over the 2 years is regarded as resident in the State for tax purposes in the latter year (244 days if the short tax "year" 2001 is included). ***(1)***

Minimum presence

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 (22 days in the case of the short tax "year" 2001). An individual who is present in the State for 280 days over 2 years is normally regarded as resident in the State in year 2. However, if the individual is present in the State for 30 days or less in year 2, he/she is regarded as non-resident in that year. Thus, a presence of 240 and 40 days over years 1 and 2, respectively, will mean an individual is resident in year 2 while a presence of 250 and 30 days over years 1 and 2, respectively, will mean non-residence in year 2. ***(2)***

Option to elect

An individual who would otherwise be non-resident can opt to be treated as resident for tax purposes, for example, in the year of his/her arrival in the State. The provision is conditional on the individual satisfying an authorised officer that he/she is not just in the State temporarily but is here with the clear intention of becoming a resident. ***(3)***

Presence for a day

For the tax year up to and including the 2008 tax year an individual is present in the State for a day if he/she is present in the State at the end of the day, namely, at midnight. For the year 2009 onwards an individual is present in the State for a day if he/she is present in the State at any time during that day. ***(4)***

820 Ordinary residence

Summary

This section deals with ordinary residence. Ordinary residence relates to a person's normal or habitual pattern of life and denotes residence in a place with some degree of continuity. Thus, a person could be non-resident for a year but still be ordinarily resident if the absence is temporary. Ordinary residence is a key concept for capital gains tax purposes as an individual who is resident or ordinarily resident in the State is liable for capital gains tax on disposals of all assets no matter where they are situated. The general position is that ordinary residence is built up following a number of years residence in the State. Likewise, it is shed at the end of a number of years during which a person has been non-resident in the State.

Details

Acquiring ordinary residence

Ordinary residence in the State is established after 3 consecutive years of being resident in the State. ***(1)***

Losing ordinary residence

Ordinary residence ceases after 3 consecutive years of being non-resident in the State. *(2)*

821 Application of *sections 17* and *18(1)* and *Chapter 1* of *Part 3*

This section creates an exception to the general rule that a non-resident is taxable only on Irish source income. It provides that a non-resident is subject to tax on foreign investment income of €3,810 or more in any tax year for which he/she is ordinarily resident in the State.

The section is constructed to treat individuals who are not resident but are ordinarily resident in the State as resident in the State for the purposes of charging tax on any profits, gains or investment income. This effectively brings all foreign income, profits or gains within the charge to tax. However, the section goes on to exclude income from a trade or profession which is entirely carried on outside the State. Also excluded is income from an office or employment the duties of which are, apart from incidental duties, exercised outside the State. Finally, the section does not apply to other income which does not exceed €3,810 in a tax year. Thus, a non-resident but ordinarily resident individual is subject to tax on foreign investment income of €3,810 or more received in a tax year.

822 Split year residence

The section provides for what is known as split year treatment. It is aimed at the foreign employment earnings of those persons who only spend part of a tax year in the State but who are, nevertheless, resident in the State in that year by reference to the rules of residence. It applies, therefore, to persons making a permanent move to or from the State during the course of a tax year. Thus, in the case of a person moving to the State, the treatment afforded by the section is only to apply where the person is likely to be resident in the State in the following year. Likewise, where a person is moving from the State, it is only to apply where the person will not be resident in the following year. Since these persons may be resident for the year of arrival or departure, they would consequently be taxable on any foreign earnings earned either before arrival in, or after departure from, the State. To ensure that this does not happen and to preserve previous administrative treatment, the section provides that in these cases residence is deemed to commence only on the date of arrival in the State or cease from the date of departure from the State. The effect of this is to attribute non-residence to that part of a tax year for which the person is not in the State. In this way the foreign earnings of residents arising in the part of the tax year for which they are treated as not being resident are not taxable.

823 Deduction for income earned outside the State

Summary

This section provided relief by way of a deduction against earnings in the case of Irish resident employees who worked overseas during a tax year. It did not, however, extend to civil and public servants, military personnel or employees of any State boards or bodies or to earnings in the UK.

The relief was aimed at those committed to working abroad for significant periods. Thus, to qualify, a person had to work abroad for at least 90 qualifying days in a tax year (67 days in the case of the short tax "year" 2001) or in a 12-month period, if it straddled 2 tax years. Each period of absence had to include a continuous period of at least 11 consecutive days.

The amount of the deduction was related to the time spent on employment abroad. Thus, broadly speaking, a person working abroad for 6 months could, after the deduction, be subject to tax only on half their annual earnings. The relief operated by way of a claim made

by the taxpayer after the end of the tax year. The aggregate deduction allowed in respect of any year of assessment could not exceed €31,750.

As a qualifying day could not arise after 31 December 2003, this relief effectively ceased in the tax year 2003.

Details

Definitions

"qualifying day" is one of at least 11 consecutive days ***on or before 31 December 2003*** spent outside the State and which taken as a whole were substantially devoted to the duties of an office or employment abroad. Thus, while it was not necessary to work at weekends or on public holidays spent abroad, other days spent abroad had to be devoted to work. Also, only those days on which a person was absent at the end of the day counted and no day could be counted more than once. ***(1)***

"relevant period" is effectively a 12-month period straddling 2 tax years.

"the specified amount" in relation to a particular office or employment is the amount of the deduction provided for in the section. This is calculated by taking a fraction of a person's earnings or earning plus any pension income for a tax year (E in the definition of the specified amount). The fraction is got by placing the number of qualifying days abroad over 365 (270 in the case of the short tax "year" 2001). The earnings base to which the fraction is applied explicitly excludes the following —

- amounts represented by general benefits-in-kind;
- the value of the benefit-in-kind in respect of a car;
- amounts in respect of preferential loans;
- severance payments;
- amounts in respect of restrictive covenants;
- amounts arising from the exercise of share options.

Also, the earnings on which the calculation is to be made must be net of superannuation contributions.

Application

The section applied to all directors and employees in the private sector. It also applied to those employed in the commercial semi-State sector. It did not, however, apply to the civil and public service, military personnel and the like. The relief was also confined to those working overseas other than in the UK. It also did not apply to those charged to tax on a remittance basis (***section 71(3)***) or to those who benefited from the relief of foreign earnings under the split-year treatment provided for in ***section 822***. ***(2)***

Exception for seafarers

Seafarers of the type who would qualify for the seafarers allowance (***section 472B***) are an exception to the general rule that visits to the UK did not count for the purposes of the foreign earnings deduction. Thus, where, in a period of at least 11 consecutive days absence from the State, a seafarer on a sea-going ship visited a port in the UK and also visited a port outside the State and the UK, the time spent in the UK port counted for the purposes of the foreign earnings deduction. Thus, the visit to the UK port could not have been a direct visit from a port in the State. It had to be part of a longer international voyage. ***(2A)***

Relief

A taxpayer is entitled to a deduction from earnings equivalent to the specified amount where he or she can establish that he or she has spent at least 90 qualifying days in a tax year (67 ***(3)***

days in the case of the short tax "year" 2001) or relevant period outside the State performing the duties of an office or employment. The deduction is given on foot of a claim from the taxpayer. Separate calculations of the foreign earnings deduction are necessary where an individual spent time abroad in the exercise of more than one employment in a year. Also, the specified amount or the deduction can never exceed the income from a particular employment. The need for separate calculations in cases of more than one employment in a year does not, however, affect an individual's right to amalgamate the qualifying days from those employments for the purposes of meeting the 90 (or 67) day rule. The maximum deduction allowed in respect of any year of assessment is €31,750.

Example

An individual spent 50 qualifying days working abroad for Company A early in the tax year 2002. Having changed employment in June of that year, the individual subsequently spent 80 qualifying days working abroad for Company B in the same tax year. Earnings for the year 2002 were as follows —

Salary from Company A: €5,000

Salary from Company B: €35,000

As the number of qualifying days was 130 and thus exceeded 90 for the year, the individual can claim the foreign earnings deduction as follows —

Employment with Company A

$$\frac{50}{365} \times €40,000 = €5,479$$

Employment with Company B

$$\frac{80}{365} \times €40,000 = €8,767$$

As the calculation in respect of the employment with Company A results in an amount that exceeds the income from that employment, the deduction is limited to the amount of the income, namely, €5,000.

The total deduction for the year is therefore €13,767.

Anti-avoidance

There is provision to ensure that claims for the relief relate to earnings only and to explicitly exclude the possibility that expenses paid or recouped by claimants might be added to earnings thus inflating the base for the calculation of the deduction. ***(4)***

823A Deduction for income earned in certain foreign states

Summary

This section provides for relief from taxation for the years of assessment 2012 to 2025 for individuals who are resident in the State but who spend significant amounts of time working in a 'relevant state' (see definitions below).

The relief does not apply to Universal Social Charge and PRSI.

Details

Definitions

"qualifying day" means a day the whole of which is spent in a relevant state for the purpose of the performance of the duties of a relevant office or employment. ***(1)***

For the years 2012 to 2014, a "qualifying day" must be one of at least four consecutive days, spent in a relevant state, substantially devoted to the performance of duties. No day will be counted more than once.

For the years 2015 to 2025, a "qualifying day" must be one of at least three consecutive days, spent in a relevant state, substantially devoted to the performance of duties. No day will be

counted more than once. Additionally, for the years 2015 to 2025, time spent travelling from Ireland to a relevant state, between relevant states or from a relevant state to Ireland is deemed to be time spent in a relevant state.

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

"relevant period" means, in relation to a year of assessment, a continuous period of 12 months part only of which is in the year of assessment;

"relevant state" means, with effect from 1 January 2012, Brazil, Russia, India, China or South Africa, and, with effect from 1 January 2013 includes Egypt, Algeria, Senegal, Tanzania, Kenya, Nigeria, Ghana and the Democratic Republic of the Congo and, with effect from 1 January 2015, includes Japan, Singapore, Korea, Saudi Arabia, the United Arab Emirates, Qatar, Bahrain, Indonesia, Vietnam, Thailand, Chile, Oman, Kuwait, Mexico and Malaysia, and with effect from 1 January 2017, includes Colombia and Pakistan.

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

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

where-

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

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

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

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

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

(d) any gratuitous lump sum termination payments,

(e) any payments under restrictive covenants,

and

F is the total number of days in the tax year that the individual held a relevant office or employment.

The relief applies to all directors and employees in the private sector and to those employed in the commercial semi-State sector. It does not apply to those working in the Civil and Public service. ***(2)(a)***

Non qualifying income

The relief is not available in respect of income from an office or employment which is chargeable to tax on the remittance basis or in respect of income to which: ***(2)(b)***

- ***section 472D*** applies (Research and Development credit),
- ***section 822*** applies (Split year treatment),

- ***section 825A*** applies (Transborder Workers' Relief), or
- ***section 825C*** applies (Special Assignee Relief Programme).

Relief is granted under this section on foot of a claim from a taxpayer who is resident in the State by providing a proportional tax deduction based on the number of qualifying days worked in relevant states. The maximum that can be deducted in any tax year is €35,000. ***(3)***

For the years 2012 to 2014, a claimant must have worked at least 60 qualifying days in a twelve-month period, part or all of which is in the tax year to which the claim relates. For the years 2015 to 2016, the qualifying days requirement in a continuous period of 12 months is reduced from 60 to 40. For the years 2017 to 2025 the qualifying days requirement in a continuous period of 12 months is reduced from 40 to 30.

Where an individual has more than one office or employment, the minimum number of qualifying days requirement can include qualifying days from all such offices or employments.

The amount of income, profits or gains arising to an individual from a relevant office or employment does not include amounts in respect of expenses paid to or recouped by the claimant. ***(4)***

Where an individual is entitled to relief for tax paid in a relevant state, the specified amount is reduced by an amount equal to the amount of income on which such tax was paid. ***(5)***

824 Appeals

This section provides that a person aggrieved by the decision of an authorised officer on a matter requiring the officer's approval can appeal the decision by giving notice in writing to that effect to the Appeal Commissioners. An appeal must be made within 2 months after the date of the notice of the decision. The appeal is heard and determined by the Appeal Commissioners in the manner provided for in Part 40A of the TCA 1997.

825 Residence treatment of donors of gifts to the State

This section modifies the criteria for determining residence for tax purposes in the case of persons resident outside the State who wish to make gifts of property to the State. It provides that in the tax year in which such a person leaves the State to become resident elsewhere, he/she will be not be regarded as ordinarily resident in the State from the date of departure. Also, the section ensures that "management visits", that is, visits for the purpose of advising on the management of the property which is the subject of a gift and which must be less than 182 days in the aggregate in a tax year are to be disregarded in determining for tax purposes questions of residence or ordinary residence. This treatment is, however, subject to the condition that the individual concerned is chargeable to tax in the country in which he/she is resident without any limitation on such charge. ***(1) & (2)***

This section ceases to have effect as respects a gift to the State made on or after 4 February 2010. ***(3)***

825A Reduction in income tax for certain income earned outside the State

Summary

The section provides income tax relief for individuals who are resident in the State but who work outside the State. It applies to those who commute on a daily or weekly basis to their place of work outside the State and who pay tax in the other country on the income from their employment. In particular, the relief applies to cross-border workers who commute

daily to work in Northern Ireland as well as others who travel to the UK and elsewhere to work, returning at weekends.

The relief effectively removes the earnings from a foreign employment from liability to Irish tax where foreign tax has been paid. In simple terms, the effect of the measure is to ensure that Irish tax only arises in such cases where the person has other income as well as income from a foreign employment.

Details

Definitions

"qualifying employment" is defined as an office or employment held outside the State in a country with which Ireland has a double taxation treaty and which is held for at least 13 weeks in a tax year. Excluded are all State employments, as are employments with any statutory bodies established in the State. ***(1)***

"the specified amount" provides the formula for the relief. Basically, the income tax payable for a tax year before credit is given for any foreign tax paid is reduced in the proportion that the total income excluding foreign employment income bears to the total income for the year.

Exclusions

The relief is not to apply in any case where the income is subject to the "remittance basis" of taxation. It is also not to apply to income which is subject to the "split year" treatment. This applies where a taxpayer in the year of arrival in, or departure from, the State is deemed resident for part of the year only and is thus already entitled to favourable tax treatment. The relief is not to apply to income payable by a company to one of its proprietary directors or to the spouse of one of its proprietary directors. Finally, relief is not available where an individual claims either the foreign earnings deduction or the seafarer's allowance in respect of income from a qualifying employment. ***(2) & (5)***

The relief

Subject to meeting certain conditions, a taxpayer may have his or her income tax liability for a particular tax year reduced to the specified amount where liability would otherwise exceed that amount. ***(3)***

One of the conditions is that the individual must have earnings from a qualifying employment. Another requires that the duties of the qualifying employment must be exercised wholly outside the State in a country with which Ireland has a double taxation agreement. Also, the income from that employment must be subject to tax in that country. It must not be exempt or relieved in any way and the tax must have actually been paid to the authorities. A final condition requires that for every week during which an individual works outside the State on a qualifying employment, he or she must return to the State for at least one day in that week.

In determining whether the duties of a qualifying employment are performed wholly outside the State, any duties performed in the State which are merely incidental to the performance of the duties outside the State, are regarded as performed outside the State. ***(4)***

No credit for foreign tax

Where a taxpayer is given relief under the section no credit is to be given for the foreign tax paid on the income of the qualifying employment. ***(6)***

Presence in State for a day

For years up to and including 2009 an individual is regarded as being present in the State for a day if he or she is present in the State **at the end of the day i.e. midnight.** ***(7)***

For 2010 and subsequent years an individual is regarded as being present in the State for a day if he or she is present in the State **at any time during the day.**

Income from the qualifying employment shall be deemed not to include any amount paid in respect of expenses incurred wholly, exclusively and necessarily in the performance of the duties of the qualifying employment. *(8)*

The following examples illustrate generally how the relief works —

Example 1

Single person resident in the State in 2010, employed in N.I. earning £20,000 sterling with Irish-source rental income of €5,000.

1. Pre-*section 825A* liability

	€	€
N.I. employment income (Stg £20,000)		27,272
Irish rental income		5,000
Total Income		32,272
Tax due €32,272 @ 20%		6,454
Less Single personal tax credit	1,830	
PAYE tax credit	1,830	
		(3,660)
Irish Tax Liability		2,794
Credit for UK tax paid (Stg £1,530)		(2,086)
Liability to Irish tax		708

2. Operation of *section 825A*

The specified amount =

$$\text{Irish tax liability} \times \frac{\text{Income other than NI employment income}}{\text{Total Income}}$$

$$\frac{€2,794 \text{ X } €5,000}{€32,272} = €433 \text{ (Specified Amount)}$$

Liability to Irish tax is reduced to the specified amount of €433.

3. Effect of *section 825A*

The taxpayer's Irish tax liability is reduced from €708 to the specified amount of €433 yielding a saving of €275.

Note If the taxpayer had no rental income, the specified amount would be zero.

Example 2

Married couple resident in the State in 2010 with both spouses earning. Spouse A is employed in the State

and earns €40,000. Spouse B is employed in N.I. and earns £20,000 sterling.

1. Pre-*section 825A* liability

		€
Income	Spouse A	40,000
	Spouse B (Stg £20,000)	27,272
Total Income		67,272
Tax	€67,272 @ 20% = €13,454	13,454
Less	Married tax credit: €3,660	
	PAYE tax credit: €3,660	(7,320)
Irish Tax Liability		6,134
Credit for UK tax paid (Stg £1,530)		(2,087)
Liability to Irish tax		4,047

2. Operation of *section 825A*

The specified amount =

$$\text{Irish tax liability} \times \frac{\text{Income other than NI employment income}}{\text{Total Income}}$$

$$\frac{€6,134 \times €40,000}{€67,272} = €3,647 \text{ (Specified Amount)}$$

Liability to Irish tax is reduced to the specified amount of €3,647.

3. Effect of *section 825A*

The couple's Irish tax liability is reduced from €4,047 to the specified amount of €3,647, a saving of €400.

825B Repayment of tax where earnings not remitted

Summary

This section is designed to give income tax relief to individuals who are not Irish domiciled and who, before they came to the State, were living and working in a country with which Ireland has a double taxation agreement. The relief applies where the individual is sent by his or her foreign employer to work in Ireland for that employer or for an associated company of that employer and continues to be paid from abroad. In order to make a claim under this section for the 2009 tax year, prior to coming to Ireland the individual must have been living and working in a country that was not a party to the European Economic Area agreement but with which Ireland had a double taxation agreement.

The section allows a "relevant employee" of a "relevant employer" to have his/her income

tax liability restricted to the liability on the greater of-

- the amount of "relevant emoluments" earned and remitted to the State, or
- €100,000 plus 50% of the "relevant emoluments" over €100,000.

This section applies for the tax years 2009 to 2012. However certain individuals can continue to claim relief up to the 2015 tax year (see below).

Details

Definitions

"associated company", in relation to a relevant employer, means a company which is that employers associated company within the meaning of ***section 432*** and which is incorporated and resident in a country or jurisdiction with which the State has a double taxation agreement. ***(1)***

For claims made relating to the 2009 tax year the associated company must have been resident in a country or jurisdiction which was not a party to the European Economic Area Agreement but with which the State had a double taxation agreement.

"EEA agreement" means the Agreement of the European Economic Area signed in Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993.

"emoluments" means anything assessable to income tax under Schedule E.

"relevant emoluments" means emoluments paid by a relevant employer (or an associated company of a relevant employer) to a relevant employee, the full amount of which are chargeable to income tax under Schedule E and have been subject to PAYE.

"relevant employee" means an individual who, for a tax year-

- is resident in the State for tax purposes, and
- is not domiciled in the State,

and who, prior to becoming resident in the State for tax purposes-

- was a resident of, and resident in, a country or jurisdiction with which the State has a double taxation agreement (for claims relating to the 2009 tax year the employee must have resided in a country or jurisdiction that was not a party to the European Economic Area agreement),
- was employed in that country or jurisdiction by the relevant employer or an associated company of the relevant employer who transferred/seconded the individual to Ireland for a period of at least one year (or in the case of claims relating to the 2009 tax year, for a period of at least three years), and the individual continues to be paid from abroad, and
- had exercised the greater part of his or her employment in that country or jurisdiction.

"relevant employer" means a company that is incorporated and resident in a country or jurisdiction with which the State has a double taxation agreement.

For claims relating to the 2009 tax year "relevant employer" means a company that is incorporated and resident in a country or jurisdiction that is not a party to the European Economic Area agreement but with which the State has a double taxation agreement.

"Revenue officer" means an officer of the Revenue Commissioners.

"tax year" means year of assessment.

This subsection amends the definition of "associated company", "relevant employee" and "relevant employer" as outlined above. It also states that with effect from 1 January 2010 the section applies to non-domiciled individuals who, on or after 1 January 2010, become resident in the State for tax purposes for the first time, and who exercise the duties of their ***(1A)***

employment in the State for the first time.

This section does not apply from the 2012 tax year and subsequent years except in the limited circumstances set out in ***subsection (1C)***. ***(1B)***

Notwithstanding that this section does not apply for the year 2012 onwards, relief will continue to be available to those who had an entitlement to relief in the years 2009 to 2011 as follows: ***(1C)***

- If an individual was first entitled to relief under this section for the 2009 tax year, s/he shall continue to be entitled to relief for the 2012 and 2013 tax years subject to all other conditions being satisfied.
- If an individual was first entitled to relief under this section for the 2010 tax year, s/he shall continue to be entitled to relief for the 2012, 2013 and 2014 tax years subject to all other conditions being satisfied.
- If an individual was first entitled to relief under this section for the 2011 tax year, s/he shall continue to be entitled to relief for the 2012, 2013, 2014 and 2015 tax years subject to all other conditions being satisfied.

Where an individual makes a claim for relief under this section, no relief will be given under the following sections: ***(1D)***

- Foreign Earnings Deduction (***section 823A***),
- Special Assignee Relief Programme (SARP) (***section 825C***),
- Research and Development relief (***section 472D***).

This section applies for the tax year 2009 and subsequent tax years, to individuals sent by their foreign employer to work in the State for that employer or for an associated company of that employer and who continue to be paid from abroad. ***(2)***

Where an individual becomes resident in Ireland for tax purposes and exercises the duties of their relevant employment in this State for a period of at least one year (or in the case of individuals who become resident in the State in the 2009 tax year, exercise their relevant employment in the State for a period of three years), then provided the individual continues to be paid from abroad, s/he can, after the end of the tax year, apply to have the tax on the income from the foreign employment reduced to the greater of the tax due on either-

(a) €100,000 plus 50% of the income of the employment over that amount, or

(b) the income from that employment remitted to the State (any tax deducted and not repaid by the employer via the PAYE system will be deemed to be a remittance).

The provisions will only apply if the appropriate tax under the PAYE system has first been deducted and remitted in respect of the income of the foreign employment.

The anti-avoidance provisions of ***section 72*** apply to this section. ***(3)***

Any tax deducted by the employer via the PAYE system will be deemed to be a remittance. ***(4)***

Where an individual makes a claim for repayment of tax under this section, and subsequently remits additional amounts of "relevant emoluments" to the State, s/he will be deemed to be liable to the tax on the emoluments from the date the tax was originally deducted from them under the PAYE system. In practice, the year of claim is readjusted to recoup any tax overpaid and the due date can be taken to be the date on which repayment was originally made. ***(5)(a)***

An additional assessment may be made not later than 4 years from the end of the tax year in which the emoluments were remitted. ***(5)(b)***

Where an individual makes a claim under this section and receives a repayment but fails to remain in the State for the required period of one year (or for individuals who first became resident in 2009, three years) then the individual will be required to repay the tax that was ***(6)***

refunded to him/her.

A Revenue officer may refuse a claim if s/he is not satisfied with the information provided. *(7)*

825C Special Assignee Relief Programme (SARP)

Summary

This section provides for income tax relief on a proportion of income earned by employees who are assigned to the State to work for a relevant employer, or an associated company. Prior to arrival in Ireland, each employee must have worked with a relevant employer for a minimum period of 6 months (12 months in the case of an employee who came to Ireland in the years 2012 to 2014).

Where certain conditions are satisfied, an employee can make a claim to have 30% of a portion of his or her income over €75,000 exempted from income tax depending on the year of arrival. For employees who arrive here in 2023 and subsequent tax years, this income threshold is €100,000.

For the years 2012, 2013, and 2014, an upper income limit applied such that the portion of income exempted from income tax was restricted to 30% of an employee's income between €75,000 and €500,000.

For the years 2015, 2016, 2017 and 2018 no upper threshold applied.

For the years 2019, and subsequent tax years, in the case of a relevant employee who first arrives in the State on or after 1 January 2019, to carry out employment duties, an upper income limit applies, such that the portion of income exempted from income tax is restricted to 30% of an employee's income between €75,000 and €1,000,000.

For the tax years 2020, and subsequent tax years, in the case of a relevant employee who first arrives in the State on or before 31 December 2018, an upper income limit applies, such that the portion of income exempted from income tax is restricted to 30% of an employee's income between €75,000 and €1,000,000.

For the tax years 2023, 2024 and 2025, in the case of a relevant employee who first arrives in the State on or after 1 January 2023, the portion of income exempted from income tax is restricted to 30% of an employee's income between €100,000 and €1,000,000.

The income relieved under this section is not exempt from USC or PRSI.

The relief can be claimed for a maximum period of five consecutive tax years and applies in the case of employees who are assigned to the State in any of the years from 2012 to 2025.

Details

Definitions *(1)*

"PPS Number" in relation to an individual means the individual's personal public service number.

"associated company", in relation to a relevant employer, means a company which is that employer's associated company within the meaning of ***section 432***.

"relevant employer" means a company that is incorporated, and tax resident in a country or jurisdiction with which the State has a double taxation agreement or a tax information exchange agreement.

"relevant employment" means an employment held by a relevant employee with a relevant employer.

"relevant income" in relation to a relevant employee and a tax year means income, profits or gains from an employment with a relevant employer or with an associated company, net of pension contributions and tax-deductible expenses and excluding the following:

- amounts represented by general benefits-in-kind,
- the value of the benefit-in-kind in respect of a car,
- amounts in respect of preferential loans,
- severance payments,
- amounts in respect of restrictive covenants,
- any bonus, commission or other similar payments, whether contractual or otherwise,
- amounts arising from the exercise of share options, and
- any form of share-based remuneration.

"Revenue officer" means an officer of the Revenue Commissioners.

"tax year", means a year of assessment for income tax purposes.

Relevant employee ***(2)&(2A) & (2AA)***

This subsection defines a "relevant employee" in the case of an individual who arrives in the State in any of the tax years 2012, 2013 or 2014. ***(2)(a)***

An individual who arrives in the State in 2012, 2013 or 2014 is a relevant employee if he or she:

- was a full-time employee of a relevant employer and exercised the duties of his or her employment with that relevant employer outside the State for the whole of the 12 months immediately prior to arrival in the State,
- arrives in the State at the request of his or her relevant employer to –
  - (I) perform the duties of his or her employment in the State for that relevant employer, or
  - (II) take up employment in the State with an associated company of the relevant employer,
- performs the duties of his or her employment in the State for that relevant employer or that associated company for a minimum period of 12 consecutive months from the date of his or her arrival in the State, and
- was not resident in the State for each of the 5 tax years immediately prior to the tax year in which he or she first arrives in the State for the purpose of performing the duties for the relevant employer or associated company.

For the tax years 2012, 2013 and 2014, any duties performed outside the State that are merely incidental to the performance of the duties in the State are treated as performed in the State. ***(2)(b)***

This subsection defines a 'relevant employee' in the case of an individual who arrives in the state in any of the tax years 2015 to 2022, as an individual who: ***(2)(A)***

- was a full-time employee of a relevant employer and exercised the duties of his or her employment with that relevant employer outside the State for the whole of the 6 months immediately prior to arrival in the State,
- arrives in the State at the request of his or her relevant employer to-
  - (i) perform the duties of his or her employment in the State for that relevant employer, or
  - (ii) take up employment in the State with an associated company and to perform duties in the State for that company,
- performs the duties of his or her employment for that relevant employer or that associated company for a minimum period of 12 consecutive months from the date of his or her arrival in the State,
- was not resident in the State for each of the 5 tax years immediately prior to the tax year in which he or she first arrives in the State for the purpose of performing the duties of his or her relevant employment or the duties of an employment with an associated company, and
- in respect of whom the employer certifies to the Revenue Commissioners, within **90** days (previously 30 days) from the date the employee arrives in the State to perform the duties of his or her employment for the relevant employer or the associated company, that all the conditions set out in subsection (2A)(a) to (2A)(c) are met.

Note: for the year 2015 and subsequent years there is no restriction on the performance of duties outside the State by the SARP employee. This is notwithstanding that the relevant employee may have arrived in the State in 2012, 2013 or 2014.

This subsection defines a 'relevant employee' in the case of an individual who arrives in the state in any of the tax years from 2023 to 2025, as an individual who: ***(2)(AA)***

- was a full-time employee of a relevant employer and exercised the duties of his or her employment with that relevant employer outside the State for the whole of the 6 months immediately prior to arrival in the State,
- arrives in the State at the request of his or her relevant employer to-
  - (i) perform the duties of his or her employment in the State for that relevant employer, or
  - *(ii)* take up employment in the State with an associated company and to perform duties in the State for that company,
- performs the duties of his or her employment for that relevant employer or that associated company for a minimum period of 12 consecutive months from the date of his or her arrival in the State,
- has been issued with a PPS number,
- was not resident in the State for each of the 5 tax years immediately prior to the tax year in which he or she first arrives in the State for the purpose of performing the duties of his or her relevant employment or the duties of an employment with an associated company,
- in respect of whom the employer certifies to the Revenue Commissioners, within **90** days from the date the employee arrives in the State to perform the duties of his or her

employment for the relevant employer or the associated company, that all the conditions set out in subsection (2AA)(a) to (2AA)(d) are met, and

- whose employer has complied with its requirements under (Regulation 17(2) of the Income Tax (Employments) Regulations 2018 (S.I. No. 345 of 2018)), which requires it to provide particulars of the assignee to the Revenue Commissioners.

Specified Amount ***(2B)***

This subsection contains the definition of "specified amount". "Specified amount" means an amount determined by the formula - ***(a)***

(A-B) x 30%

A is the amount of the relevant employee's income, profits or gains from his or her employment in the State with a relevant employer or associated company, excluding any amount that is not assessed to tax in the State, and net of any superannuation contributions and tax-deductible expenses. ***(b)***

Where an individual is entitled to relief for foreign tax that part of the income on which relief is claimed cannot be taken into account in calculating the specified amount.

Note: For the years 2012, 2013, and 2014, ***A*** is restricted to €500,000.

For the years 2019, and subsequent tax years, in the case of a relevant employee who first arrives in the State on or after 1 January 2019, ***A*** is restricted to €1,000,000.

For the years 2020, and subsequent tax years, in the case of a relevant employee who first arrives in the State on or before 31 December 2018, ***A*** is restricted to €1,000,000.

B is €75,000, or in the case of a relevant employee who arrives in the State in any of the tax years from 2023 to 2025, B is €100,000.

From the year 2015 and subsequent years, where an individual is employed in the State for less than a full tax year either in the year of arrival or year of departure, and has availed of SARP, the '***B'*** in the definition of specified amount is reduced proportionately. ***(c)***

The relief ***(3)***

Where for a tax year a relevant employee - ***(3)(a)***

- is resident in the State for tax purposes,
- performs the duties of his or her relevant employment or the duties of an employment with an associated company, and
- has relevant income from his or her relevant employer (or associated company) which is not less than €75,000 or the annual equivalent, or in the case of a relevant employee who arrives in the State in any of the tax years from 2023 to 2025, not less than €100,000, and

makes a claim for SARP, he or she shall be entitled to have a 'specified amount' of income, from his or her employment with a relevant employer (or associated company) disregarded for income tax purposes (but not USC or PRSI).

A relevant employee is entitled to SARP for 5 consecutive tax years commencing with the ***(3(c)***

tax year he or she is first entitled to claim the relief.

Year of first entitlement to claim ***(4)***

Employees who arrive into the State in 2012, 2013 or 2014

A relevant employee's first year of entitlement to relief under this section will, in general, be the year he or she arrives in the State to carry out the duties of employment. However, where a relevant employee who arrives in the State in the tax years 2012, 2013 or 2014 is either not tax resident in the State or is tax resident in the State and also tax resident elsewhere, that employee is first entitled to claim relief in the year following the year of arrival into the State to carry out the duties of the employment. This is provided that he or she is tax resident in the State in that following tax year and for the years 2012, 2013 and 2014, as appropriate, is not also resident elsewhere in those years.

However, an individual who arrives in the State in 2014 and who is not tax resident in the State in that year is, if tax resident in 2015, first entitled to relief in 2015 notwithstanding the fact that he or she may also be resident elsewhere in 2015.

Employees who arrive into the State in the tax 2015 to 2025

An employee who arrives in the State in the tax years 2015 to 2025, is entitled to SARP in the tax year he or she first arrives in the State to carry out the duties of the employment, provided he or she is resident in the State in that tax year. This is notwithstanding the fact that he or she may also be resident elsewhere.

If the employee is not resident in the State for the year of arrival, then that employee is first entitled to claim relief in the year following the year he or she first arrives in the State to carry out the duties of the employment provided he or she is tax resident in the State in that following tax year. This is notwithstanding the fact that he or she may also be resident elsewhere in that year.

Reduction of thresholds ***(5)***

For the tax years 2012, 2013 and 2014, where a relevant employee performs the duties of his or her employment in the State with the relevant employer (or associated company) for less than an entire tax year, the upper and lower thresholds (i.e. €500,000 and €75,000) and the amount of the relevant income are reduced proportionately. The apportionment for the tax years 2015 and subsequent years is provided for in subsection (2B)(c).

Travel costs and tuition fees ***(6)***

In any tax year in respect of which a relevant employee is entitled to make a claim for relief under this section, the payment or reimbursement of the following by the relevant employer (or associated company) will not be chargeable to tax:

- the reasonable costs associated with one return trip from the State for the relevant employee, his or her spouse or civil partner, and a child of the relevant employee or of the relevant employee's spouse or civil partner to:

  (i) the country of residence of the relevant employee prior to his or her arrival in the State,

  (ii) the country of residence of the relevant employee at the time of first employment by the relevant employer, or

(iii) the country in which the relevant employee or his or her spouse is a national, and

- the cost of school fees, not exceeding €5,000 per annum for each child of the relevant employee or for each child of his or her spouse or civil partner, paid to a school established in the State which has the approval of the Minister for Education and Skills for the purposes of providing primary or post-primary education to students.

Exceptions ***(7)***

Where an individual makes a claim under this section, no relief will be given in respect of the Foreign Earnings Deduction (***section 823A***), Cross Border Relief (***section 825A***), or Research & Development relief (***section 472D***).

In addition, the remittance basis does not apply to income from the employment where this section is claimed.

Chargeable person ***(8)***

Any individual making a claim under this section shall be required to file a return of income for the years of assessment to which the claim relates.

Application of PAYE system ***(9)***

Following an application, in such form as the Revenue Commissioners may require, by a relevant employer (or associated company), a Revenue Officer may confirm in writing to the relevant employer (or associated company) that no deduction of tax need be made under the PAYE system on the specified amount for a relevant employee.

Reporting requirements ***(10)***

Where for a tax year a relevant employer (or associated company), certifies that an employee is a relevant employee, the relevant employer or associated company must fully complete and deliver an annual return to the Revenue Commissioners, on or before 23 February following each tax year. This return includes information in respect of each employee including –

- name and PPS number,
- nationality,
- country in which the relevant employee worked for the relevant employer prior to his or her first arrival in the State to perform duties of the relevant employment,
- job title and brief description of the role of the relevant employee claiming SARP, and
- the amount of income, profits or gains in respect of which tax was not deducted in accordance with ***subsection (9)***.

In addition, the relevant employer (or associated company) must provide details of the increase in the number of employees, or details of the number of employees retained by the company as a result of the operation of the section together with the employer's 'registration number'.

Relief for foreign tax ***(11)***

For the tax years 2012, 2013 and 2014, where an individual is entitled to relief for foreign tax, that part of the income on which relief is claimed cannot be taken into account in calculating the "specified amount" – see subsection (2B). This restriction also applies for the

tax years 2015 and subsequent years as provided for in subsection (2B)(a).

Expenses ***(12)***

Income from the relevant employment shall be deemed not to include any amount paid in respect of expenses incurred in the performance of the duties of the relevant employment.