Please note that SP-IT/3/07 has been superseded by TDM 42-04-65

Income Tax
Statement of Practice
SP - IT/3/07

Pay As You Earn (PAYE) system

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

Revised December 2016
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Chapter 1

Introduction

1.1 The Revenue Commissioners
The tax system in Ireland is under the care and management of the Revenue Commissioners (who are sometimes known as ‘Revenue’).

1.2 Employee Payroll Tax Deductions

1.2.1 The Pay As You Earn (PAYE) and Universal Social Charge (USC) systems
The PAYE and 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 the Revenue Commissioners 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 relevant persons (see Chapter 3) -
(a) deduct the relevant amounts of income tax and USC due from the employees; and
(b) remit such amounts deducted to the Revenue Commissioners.

For further information on the operation of the PAYE system, see: Revenue’s Employers Guide to PAYE - available on Revenue’s website www.revenue.ie

Note - 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)] and the Health Contribution (abolished w.e.f. 1 January 2011) are due, such contributions are also collected under the PAYE system – see Chapter 6.

1.2.2 Position prior to 31 December 2005 as regards non-Irish sourced employment income and the PAYE system
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 1.3 below).

1.2.3 Position with effect from 1 January 2006 as regards non-Irish sourced employment income and the PAYE system
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 deductions 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 deductions at source.

### 1.3 The Remittance Basis of Taxation

#### 1.3.1 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/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 year of assessment.

### 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.

### The remittance basis and UK sourced Income

Up to 1 January 2008, by virtue of Section 73 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 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 1.3.3 – 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 [ebrief 47/2010](#).

#### 1.3.2 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, as outlined in paragraph 1.3.1 above, that the
employee was either not Irish domiciled or, being an Irish citizen, was not ordinarily resident in the State).

1.3.3 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, as outlined in paragraph 1.3.1 above, 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).

1.3.4 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.
Chapter 2

Employers - Registration for PAYE system purposes

Employees - Obtaining a PPS Number and notifying the Revenue Commissioners of their employment

2.1 Employers

2.1.1 Registration for PAYE system purposes

It is necessary for employers (or certain other persons – see Chapter 3) to register with the Revenue Commissioners 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 or TR2. In the case of non-resident persons (individuals, partnerships and companies), the Form TR1 or TR2, as appropriate, should be submitted to:

Office of the Revenue Commissioners
IRDS Section
City Centre District
Áras Brugha
9/10 Upper O'Connell Street
Dublin 1

Tel: 00 353 1 8655000
Fax: 00 353 1 8749431
E-mail: cityreg@revenue.ie

2.1.2 Failing to register with the Revenue Commissioners

Where an employer pays income which is within the scope of the PAYE system but fails to register for that purpose, the Revenue Commissioners 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 known as the Personal Public Service number and more commonly known as a PPS number. The Department of Social Protection allocates PPS numbers to individuals. Further information is available on www.welfare.ie and Frequently Asked Questions can be accessed on https://www.welfare.ie/en/Pages/Personal-Public-Service-Number-PPS-Number-Frequently-Asked.aspx.

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

Once an employee has obtained his/her PPS number, he/she can apply to the Revenue Commissioners 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 tax and USC.
An employee can obtain a TCC by registering his/her new job online through the Jobs and Pensions service which is available in myAccount. First time employees in Ireland must use this service to register his/her job details with Revenue.

Further details on registering for myAccount and the Jobs and Pensions service can be obtained on www.revenue.ie.
Chapter 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 deductions 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 some duties of a foreign employment inside and 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 deductions at source).

**Example**

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 Ireland except for every fourth week when the duties of his employment are performed outside the State.
<table>
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<th>Income to which the PAYE payroll deduction system applies</th>
<th>Note</th>
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<td>Fortnight 1 €4,000</td>
<td>As this income is attributable to duties exercised in the State</td>
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<tr>
<td>Fortnight 2 €2,000</td>
<td>As only €2,000 is attributable to duties performed in the State.</td>
</tr>
<tr>
<td>Fortnight 3 €4,000</td>
<td>As this income is attributable to duties exercised in the State</td>
</tr>
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This method of apportionment would continue throughout the year.

**Note** – John, depending on his personal circumstances, may have an income tax liability on the remaining €2,000 not taxed at source under PAYE.

### 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 deductions 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**

Mary is employed under a foreign contract of employment with ABC Ltd. She performs the duties of her employment in Ireland on the premises of CDE Ltd. CDE Ltd agrees to pay Mary’s income. CDE Ltd. 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 Ltd fails to do so, ABC Ltd 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 the PAYE system on emoluments attributable to the work done in the State by the employee for the ‘relevant person’,

then, the ‘relevant person’ must operate the PAYE system.
**Example**

Patrick is an employee of a non-Irish company, FGH Ltd, employed under a foreign contract of employment. For 2012, he is assigned to work in Ireland for JKL Ltd. However, FGH Ltd fails to operate the Irish PAYE system in respect of Patrick’s income attributable to his work here.

In this instance, JKL Ltd 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

This section applies in the case of individuals exercising duties under a foreign contract of employment partly in the State.

As previously stated in paragraph 3.1 above, 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 attributable to the performance in the State of the duties of that employment that is within the scope of the PAYE system of deductions 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 PAYE system. An application from the employer must include such information as is available and is relevant to the giving of the direction.

Where a direction is given by an officer of the Revenue Commissioners under this section, 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 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 A**

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 the Revenue Commissioners.

Example B

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 the Revenue Commissioners.

NB – 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 C

Alan is an employee of a non-Irish company employed under a foreign contract of employment. He has a regular pattern of three work days within the State and two work days 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 the Revenue Commissioners.

Example D

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 C (three work days in the State, two work days 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 the Revenue Commissioners.

Example E

Liza is an employee of a non-Irish company employed under a foreign contract of employment. 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 the Revenue Commissioners.

Example F

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 work days 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 the Revenue Commissioners.

**Example where an employer should apply for a direction**

**Example G**

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**

RST Ltd has entered into an agreement with XYZ Ltd to the effect that employees of XYZ Ltd will work in the State for RST Ltd. If it is likely that XYZ Ltd will not apply the PAYE system to the income it pays its employees, then the Revenue Commissioners may issue a direction to RST Ltd 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.)
Chapter 4
Temporary Assignees

Release for employers from the obligation to operate the Irish PAYE system

4.1 General

4.1.1 Background

When dealing with temporary assignees who hold non-Irish employments, two separate and distinct issues arise:

(a) the operation by employers (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 employees under a double taxation agreement between Ireland and another jurisdiction.

The fact that an employee 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 employee's income attributable to the performance in the State of the duties of that employment.

However, the Revenue Commissioners do not require an employer (or certain other persons – see paragraph 3.4) to operate the Irish PAYE system in respect of temporary assignees as described in paragraph 4.2 below.

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

- 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.

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 employee will not have a tax liability in the State in respect of his or her employment income.
4.2 Temporary Assignees

4.2.1 Short term business visits to the State – not more than 60 working days

Under the terms of the Employments 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, and

(d) the remuneration is not borne by a *permanent establishment* 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.

*Permanent Establishment* See appendix E

Note (1) 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

- gaining experience working for an Irish employer, or

- supplied and paid by an agency (or other entity) outside the State to work for an Irish employer

Also, 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 re-charged to an Irish employer.

Note (2) For the purposes of (e) above a ‘working day’ is any day in which any work is performed in the State.
4.2.2 Simultaneous deductions under the Irish PAYE system and under a tax deduction system of another tax jurisdiction.

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 on the Revenue website at. Tax Treaties

However, where temporary assignees of Treaty countries-

1. are present in the State for a period or periods 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, with effect from 1 January 2007, the Revenue Commissioners will not require an employer (or certain other persons - see paragraph 3.4) to operate the Irish PAYE system in respect of such temporary assignees who have income attributable to the performance in the State of the duties of a foreign employment where the following conditions, in addition to those in paragraph 4.2.1 above (other than condition (e)), are met.

Note- For the purposes of rule 1 above, a day during any part of which, the employee is present in the State counts as a day of presence in the State for the purposes of computing the 183 day period.

The foreign employer must

(a) register in the State as an employer for PAYE tax purposes; and

- where there is an intermediary (as defined in section 985C TCA 1997 – see paragraph 3.4.1) paying the employees of the foreign employer, supply details of the intermediary who is paying the employees; and
- where there is a relevant person (as defined in section 985D TCA 1997 – see paragraph 3.4.2) supply details of the relevant person for whom the employees of the foreign employer are doing work in the State.

OR

- Where the employees of the foreign employer are performing in the State the duties of the foreign employment, and are paid by a connected entity in the State of the foreign employer (connected in the sense that the entity is controlled by the foreign employer or visa versa or both are under common control) on behalf of that employer or are 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, then the foreign employer need not register as an employer but must supply:

- the PAYE registered number of the connected entity;
- its own full name and address; and
- where there is a relevant person (as defined in section 985D TCA 1997 – see paragraph 3.4.2) the name and address of that relevant person for whom the employees of the foreign employer are doing work in the State;

(b) 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

(c) sign a written acknowledgement that in all cases where liability is subsequently found to arise in respect of payments of emoluments to assignees (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 to pay the tax that should have been deducted from those emoluments; and

(d) supply evidence (see Note B below) 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

(e) on request, supply a copy of the contract(s) relating to the employer’s engagement in the State; and

(f) seek clearance in writing from the Revenue Commissioners by the later of 21 days after the date the assignee takes up duties in the State, or 30 October 2007 - pending written clearance from Revenue, PAYE need not be operated if all other conditions are met.

Note A

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.

Note B

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

- Certified copy of payslip. (Must be certified by the employer or the independent auditor of the employer. In the case of companies certification by a director or company secretary will be acceptable.)

or

- Statement from the relevant foreign tax jurisdiction.
**Note C**
An application for clearance from a foreign employer may cover more than one employee.

**Note D**
Applications should be submitted to

- Office of the Revenue Commissioners
- IRDS Section
- City Centre District
- Áras Brugha
- 9/10 Upper O’Connell Street
- Dublin 1

**4.2.3 Short-term business visits to the State of not more than 30 days**
Where a non-resident employee performs in the State incidental duties and performs those incidental duties in the State for no more than 30 days in aggregate in a tax year, PAYE need not be deducted in respect of income attributable to such duties.

**Note-** In this context a ‘day’ is any day in which any work is performed in the State.

The practices set out in this Statement 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.
Chapter 5

Internationally Mobile Employees / Tax Equalisation

5.1 Overview
In many instances, internationally mobile employees enter into either a tax equalisation arrangement or a tax protection arrangement with their employer when they are seconded, transferred or assigned to work in another jurisdiction.

This Chapter outlines the employer PAYE obligations where such an arrangement exists.

5.2 Tax equalisation / Tax protection / Hypothetical Tax

A tax equalisation arrangement may take various forms and, in general refers to an arrangement between an employer and an employee to provide that the employee is no better or no worse off than if he/she had not relocated.

A tax protection arrangement generally refers to an arrangement between an employer and an employee to provide that the employee is no worse off than if he/she had not relocated.

Hypothetical tax is an estimate of the tax that the employee would have paid had he/she not relocated (this is sometimes known as the hypothetical 'home tax'). The purpose of a hypothetical tax calculation is to determine the employee’s after tax position had he/she not relocated as this is very often used as the 'base' for determining the gross pay for tax purposes in the new country where the employee is based.

Note – The detail of a tax equalisation or tax protection arrangement is a matter for the employee and his/her employer.

5.3 Methods to give effect to tax equalisation

The income attributable to the performance of the duties of a non-Irish employment in the State is chargeable to tax under Schedule E and accordingly the appropriate deductions must be made under the PAYE system. Any method of calculation used by an employer must satisfy this requirement.

Income means emoluments (i.e. anything chargeable to tax under Schedule E) and includes any bonus, commission benefit or perquisite, etc. and any tax paid by an employer on behalf of an employee attributable to the performance of the duties in the State. Where an employer pays tax on behalf of an employee under a tax equalisation arrangement, the net take home pay should be regrossed for the purposes of calculating the tax due under the PAYE system.

Example A

Joe is a US national. His gross salary in 2013 is €100,000. His salary after US tax in that year is €75,000. He is transferred to Ireland with effect from 1 January 2014. His employer has agreed that he will receive
take home pay of €86,888 in 2014. If Joe is single and qualifies for the single person’s standard rate band, single person’s tax credit and the PAYE tax credit, his gross salary in 2014 will be €130,000 in order that he receives net take home pay of €86,888, as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross salary</td>
<td>130,000</td>
</tr>
<tr>
<td>Tax</td>
<td>32,800 @ 20% 6,560</td>
</tr>
<tr>
<td>97,200 @ 41% 39,852</td>
<td></td>
</tr>
<tr>
<td>Tax before credits</td>
<td>46,412</td>
</tr>
<tr>
<td>Credits Single</td>
<td>1,650</td>
</tr>
<tr>
<td>PAYE</td>
<td>1,650 3,300</td>
</tr>
<tr>
<td>Tax after credits</td>
<td>43,112</td>
</tr>
<tr>
<td>Net salary</td>
<td>86,888</td>
</tr>
</tbody>
</table>

**Example B**

If Joe qualifies for the married person’s one income standard rate tax band, the married persons’ tax credit and the PAYE tax credit, his gross salary in 2014 will be €124,000 in order that he receives net take home pay of €86,888, as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>€</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross salary</td>
<td>124,000</td>
</tr>
<tr>
<td>Tax</td>
<td>41,800 @ 20% 8,360</td>
</tr>
<tr>
<td>82,200 @ 41% 33,702</td>
<td></td>
</tr>
<tr>
<td>Tax before credits</td>
<td>42,062</td>
</tr>
<tr>
<td>Credits Married</td>
<td>3,300</td>
</tr>
<tr>
<td>PAYE</td>
<td>1,650 4,950</td>
</tr>
<tr>
<td>Tax after credits</td>
<td>37,112</td>
</tr>
<tr>
<td>Net salary</td>
<td>86,888</td>
</tr>
</tbody>
</table>

**Example C**

If Joe works in Ireland three days every week, three-fifths of his income from his foreign contract of employment is taxable under Schedule E in Ireland and within the scope of the PAYE system. The balance of Joe’s employment income is chargeable to tax under Schedule D and the remittance basis may be available in certain circumstances – see paragraph 1.3 of Chapter 1. If, his employer agrees he will receive take home pay in 2014 of €85,200, he will receive three fifths of his take home pay (€85,200 x 3/5 = €51,120) in respect of the duties exercised in the State of his foreign contract of employment. If Joe qualifies for the single person’s standard rate tax band, the single person’s tax credit and the PAYE tax credit, the gross pay for the duties of his foreign employment will be €69,376 to ensure he receives take home pay in respect of the Irish duties of €51,120, as follows:
Gross salary  
€ 69376

Tax  
32800 @ 20% 6560
36576 @ 41% 14996

Tax before credits  
21556

Credits  
Single 1650
PAYE 1650

Tax after credits  
18256

Net salary  
51120

If, as above, Joe exercises the duties of his foreign contract of employment in Ireland for three days a week, but qualifies for the married person’s one income standard rate tax band, married person’s tax credit and PAYE tax credit, the gross pay in respect of the duties of his foreign employment exercised here will be €63,377 in order that he receives take home pay of €51120, as follows:

Gross salary  
€ 63377

Tax  
41800 @ 20% 8360
21577 @ 41% 8847

Tax before credits  
17207

Credits  
Married 3300
PAYE 1650

Tax after credits  
12256

Net salary  
51120

NB – The above examples are for illustrative purposes only. The figures have been rounded to the nearest Euro, and no account has been taken for USC due. We have assumed that the individual has a US certificate of coverage, which exempts this income from PRSI (see Chapter 6).

5.4 Refunds of Tax

In some instances, a tax equalisation arrangement between an employee and his/her employer may contain an agreement that the employee will reimburse certain refunds of tax to the employer. Such an arrangement is a matter for the employer and the employee.
Chapter 6

Social Security - Pay Related Social Insurance (PRSI) / Health Contributions

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.

6.2 Collection of PRSI
Whilst 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
Office of the Revenue Commissioners
Sarsfield House
Limerick
Ireland

Tel: 00 353 1 61 488000
E-mail: cg@revenue.ie

Note- For those employees who are liable to PRSI in the State and who are not on the PAYE system, PRSI is payable through the Special Collection System, Department of Social Protection, Waterford. Contact details are in paragraph 6.5 below.

6.3 EU Regulations / Bilateral Agreements / Reciprocal Arrangements
EU Regulations 883/2004 and 987/2009 set out the rules governing liability to PRSI/ National Insurance/Social Security in the case of EU nationals and non-EU nationals legally resident in the territory of EEA and EFTA Member States, working in other EU jurisdictions. Essentially, the rules provide that contributions by, or in respect of, these workers are not paid in more than one jurisdiction simultaneously. In addition, the State has a number of bilateral agreements governing liability to PRSI/National Insurance/ Social Security with several non-EU countries. These bilateral agreements provide that contributions are paid in one jurisdiction only, the main purpose to protect the pension rights of person who have paid social insurance contributions in Ireland and have reckonable periods in the other country.

6.4 Deduction of PRSI
In the absence of an A1 Portable Document, certificate of coverage or a PRSI exemption certificate from the Department of Social Protection, employers are required to make PRSI deductions and should note that PRSI is payable from the 1st day of insurable employment for duties performed in the State. In cases of doubt, employers should contact the Department of Social Protection. See paragraph 6.5 for contact details.
6.5 **Contacting the Department of Social Protection**  
The Department of Social Protection contact point for foreign employers and PRSI queries is –

Special Collections Unit  
Department of Social Protection  
Government Buildings  
Cork Road  
Waterford  
Phone: 00 353 51 356019  
00 353 51 356016  
Fax: 00 353 51 8778383  
E-mail: e101spc@welfare.ie

6.6 **Health Contribution (abolished with effect from 1st January 2011)**

### 6.6.1 Deduction of the Health Contribution where the employer qualifies for release from the obligation to operate PAYE

Where, in accordance with Chapter 4, an employer qualifies for release from the obligation to operate the Irish PAYE system in respect of emoluments paid to temporary assignees, health contributions need not be deducted from such emoluments.

### 6.6.2 Deduction of the Health Contribution in other cases

#### US Certificate of Coverage


#### Other Social Security agreements

Pursuant to EU Regulations 883/2004 and 987/2009, persons temporarily posted to Ireland by their employer but who continue to be subject to the Social Security legislation of another EEA Member State (as evidenced by A1 Portable Document or S1 Portable Document) are exempted from the payment of Health Contribution for the duration of the posting in Ireland. In addition, Ireland has Social Security agreements with Australia, Canada, Japan, New Zealand, Quebec, Republic of Korea and United Kingdom (Isle of Man and the Channel Islands). While these agreements cover PRSI, none of them covers the Health Contribution. Accordingly, the employer is obliged to deduct the Health Contribution in respect of emoluments paid to temporary assignees unless:

- paragraph 6.6.1 applies; or
- the employee holds a US Certificate of Coverage; or
- the employee holds an A1 or S1 Portable Document.

**Note:** The Health Contribution only applies up to and including the tax year 2010.
Chapter 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;
- 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 DTA, or

(b) where 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 or Article 17A of the Ireland/UK DTA. 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. See Appendices A and b for further information.
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) 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 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) 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;

(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 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.

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.

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.


### 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 – [www.revenue.ie](http://www.revenue.ie) or from:

Financial Services (Pensions)  
Large Cases Division  
Office of the Revenue Commissioners  
Ballaugh House,
Chapter 8

Miscellaneous

8.1 Bonuses

In general, where, in a year of assessment –

(a) an individual is in receipt of income from a foreign employment within
the charge to tax in the State (either on the full amount earned or,
under the remittance basis, on the amount remitted to the State); and

(b) a bona fide bonus in respect of that employment, which was earned in
a year of assessment in which that income was not chargeable to tax
in the State under Schedule E, but is paid in a year of assessment in
which the individual is in receipt of income from that employment
which is chargeable to tax under Schedule E,

such bonus is not within the scope of the PAYE system. Where
appropriate, the remittance basis of taxation may apply to the bonus.

However, given the scope for re-characterising income for a current year
as a bonus for the previous year, Revenue may investigate the
circumstances surrounding the payment of the bonus, with a view to
establishing its bona fides.

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.

8.3 Foreign Service Relief - termination of employment

Full or partial Foreign Service Relief ceased to be available in respect of all
ex-gratia payments made on or after 27 March 2013, on the passing of
Finance Act 2013. The partial relief allowed as part of the Standard
Capital Superannuation Benefit calculations was also ceased from the
same date.

For payments made prior to 27 March 2013, foreign service relief is
available to the extent that an office or employment was exercised outside
the State and in accordance with section 201(4) TCA 1997.

Accordingly, as respects services provided with effect from 1 January 2006
and prior to 27 March 2013:
(i) the performance of duties of a foreign office or foreign employment in the State is not foreign service, and

(ii) the performance of duties of a foreign office or a foreign employment outside the State by a person not domiciled in the State is foreign service.

Note: With regards to (ii) above, for years up to and including the year ended 31 December 2009 foreign service extended to individuals who, being a citizen of Ireland, were not ordinarily resident in the State.

Foreign Service Relief and UK employments

For years up to and including 31 December 2007, regardless of whether an individual was non-ordinarily resident or not domiciled, foreign service relief did not extend to duties performed in the UK. However, for the year 2008 and subsequent years, an individual who is not domiciled in the State and performs the duties of a foreign office or foreign employment in the UK qualifies for the relief.

For the years 2008 and 2009, foreign service relief also extended to an individual who performed duties of a foreign office or foreign employment in the UK and, being an Irish citizen, was not ordinarily resident in the State.

Note: For further information on the treatment of UK income prior to 2008 see e-brief 47/2010.

8.4 Permanent Establishment

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

8.5 Employee Share Options

All aspects on the tax treatment of share options are covered by Statement of Practice IT/1/07.
Appendix A

Extract from Article 18 of Ireland-USA Double Taxation Agreement

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

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 online at Tax Treaties.
Appendix B

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

ARTICLE 17A PENSION SCHEME CONTRIBUTIONS

***

(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 online at Tax Treaties
Migrant Member Relief

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. 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.

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, 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.

“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) 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/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/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:

  1. 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
  2. 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 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.

*At the time of writing, Ireland has a DTA with all EU Member States.
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 Overseas Pension 1 form available at – www.revenue.ie

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 his/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

[Extract from Chapter 17 of Revenue 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.
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
- 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 it exists in practice only for a very short period of time because of
  - the special nature of the activity (e.g. a building site), or
  - 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 market place 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 here.

Dependent
The agent must be dependent on the enterprise he/she represents. He/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/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/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/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 here through a PE situated here. 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.

**Meat Industry - Existence of a PE**
Where a contractor provides services in a meat factory, the factory premises can constitute a PE where the requirements mentioned above under the heading “Criteria to Determine if a PE exists” are satisfied.

**Mutual Agreement Procedure**
Where a person has a PE in the State, he/she is taxable here on the profits attributable to the PE. 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 the 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 persons 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 arrive at a mutual determination regarding the
existence of a PE in the State. The request for such a review should be made to the Revenue Authority of the State in which the person is resident.

**ARTICLE 5 OF THE IRELAND/UK CONVENTION**

**Article 5 Permanent Establishment**

(1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially:

   (a) a place of management;
   
   (b) a branch;
   
   (c) an office;
   
   (d) a factory;
   
   (e) a workshop;
   
   (f) a mine, oil well, quarry or other place of extraction of natural resources;
   
   (g) an installation or structure used for the exploration of natural resources;
   
   (h) a building site or construction or installation project which lasts for more than six months;

(3) The term "permanent establishment" shall not be deemed to include:

   (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
   
   (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
   
   (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
   
   (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
   
   (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of independent status to whom the provisions of paragraph (6) of this Article apply - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(5) A person carrying on activities offshore in a Contracting State in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that Contracting State shall be deemed to be carrying on a business through a permanent establishment in that Contracting State.

(6) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.