

Pay As You Earn (PAYE) system

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

Part 42-04-65

Document last updated February 2019



Table of Contents

1	Introduction	6
1.1	Employee Payroll Tax Deductions.....	6
1.1.1	The PAYE and USC systems	6
1.1.2	PAYE position prior to 31 December 2005 as regards non-Irish sourced employment income	6
1.1.3	PAYE position with effect from 1 January 2006 as regards non-Irish sourced employment income	7
1.2	The Remittance Basis of Taxation.....	7
1.2.1	Remittance Basis of Taxation - General	7
1.2.2	Irish citizens resident but not ordinarily resident in the State.....	7
1.2.3	The remittance basis and UK sourced Income	7
1.2.4	Remittance Basis of Taxation - Impact on employment income up to 31 December 2005	8
1.2.5	Remittance Basis of Taxation - Impact on employment income with effect from 1 January 2006	8
1.2.6	Remittance Basis of Taxation - Mixed Funds Accounts	8
1.3	Basis of assessment	9
Chapter 2	10
2	Registration.....	10
2.1	Employers	10
2.1.1	Registration for PAYE system purposes	10
2.1.2	Failing to register with Revenue.....	10
2.2	Employees	10
2.2.1	Obtaining a Personal Public Service number (PPS number).....	10
2.2.2	Applying to Revenue for a determination of tax credits and cut-off point	10
Chapter 3	11
3	Application of the PAYE system to non-Irish sourced employment income.....	11

3.1	Statutory position with effect from 1 January 2006.....	11
3.2	What happens if a non-Irish employment is exercised wholly in the State?.....	11
3.3	What happens if a non-Irish employment is exercised partially in the State and partially outside the State?	11
3.4	PAYE provisions	12
3.4.1	Section 985C - PAYE: Payment by an intermediary.....	12
3.4.2	Section 985D - PAYE: employee of a non-resident employer	13
3.4.3	Section 985E - PAYE: employment not wholly exercised in the State.....	13
3.4.4	Directions under section 985E(3) TCA 1997	14
3.4.5	Section 985F – PAYE: mobile workforce.....	16
3.5	Operation of PAYE from 1 January 2019	16
Chapter 4	18
4	Temporary Assignees - Release for employers from the obligation to operate the Irish PAYE system	18
4.1	General	18
4.1.1	Background	18
4.1.2	The Irish PAYE System	18
4.1.3	Overview of this Chapter.....	19
4.1.4	Meaning of ‘day’ and ‘workday’	19
4.2	Simultaneous deductions under the Irish PAYE system and under a tax deduction system of another tax jurisdiction - DTA countries.....	20
4.2.1	Short term business visits to the State from DTA countries for more than 60 workdays but less than 183 days	20
4.2.2	Examples	22
4.3	Temporary Assignees from DTA countries	25
4.3.1	Short term business visits to the State not more than 60 workdays – Position from 1 January 2018	25
4.3.2	Examples	27

4.3.3 Short term business visits to the State not more than 60 workdays - Position to 31 December 2017.....	30
4.4 Application for release from the obligation to operate PAYE	32
4.5 Short-term business visits to the State from non DTA countries of not more than 30 workdays	36
4.5.1 Position from 1 January 2018.....	36
4.5.2 Examples	36
4.5.3 Position up to 31 December 2017.....	37
Chapter 5.....	38
5 Internationally Mobile Employees and Tax Equalisation	38
5.1 Overview.....	38
5.2 Tax Treatment of additional remuneration given to achieve tax equalisation .	38
5.3 Refunds of Tax	40
Chapter 6.....	41
6 Social Security - Pay Related Social Insurance (PRSI) - Health Contributions	41
6.1 Overview.....	41
6.2 Contact Details.....	41
6.3 EU Regulations - Bilateral Agreements - Reciprocal Arrangements	42
6.4 Deduction of PRSI	42
Chapter 7.....	43
7 Pension Contributions.....	43
7.1 Background	43
7.2 Relief under Double Taxation Agreements.....	43
7.3 Migrant Member Relief	44
7.4 Contributions to overseas pension schemes.....	44
7.5 Revenue Pensions Manual – Chapter 17	45
7.6 Limits	45

7.7 Further information	46
Chapter 8.....	47
8 Miscellaneous	47
8.1 Bonuses	47
8.2 Exchange rates.....	47
8.3 Foreign Service Relief - termination of employment.....	48
8.4 Permanent Establishment	48
Appendix A - Extract from Article 18 of Ireland-USA Double Taxation Agreement	49
Appendix B - Extract from Article 17A of Ireland-UK Double Taxation Agreement	50
Appendix C - Migrant Member Relief	52
Appendix D - Overseas Pension Schemes	55
Appendix E - Criteria & Guidelines on Permanent Establishment (PE)	56

Chapter 1

1 Introduction

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

1.1 Employee Payroll Tax Deductions

1.1.1 The PAYE and USC systems

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

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

- (a) deduct the appropriate amounts of income tax and USC due from the employees; and
- (b) remit such amounts deducted to Revenue.

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

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

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

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

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

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

1.1.3 PAYE position with effect from 1 January 2006 as regards non-Irish sourced employment income

With effect from 1 January 2006 –

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

1.2 The Remittance Basis of Taxation

1.2.1 Remittance Basis of Taxation - General

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

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

1.2.2 Irish citizens resident but not ordinarily resident in the State

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

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

1.2.3 The remittance basis and UK sourced Income

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

However, following the enactment of Section 18 of Finance Act 2008, with effect from 1 January 2008, the remittance basis may apply to UK source income arising after that date. However, as outlined in [paragraph 1.2.5](#) – foreign (including UK) employment income attributable to the performance of the duties of an employment in the State is chargeable to tax under Schedule E.

For further information on UK income and the remittance basis of taxation see: Tax and Duty Manual [Part 05-01-21a](#).

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

Up to 31 December 2005, the income from a non-Irish sourced employment, where chargeable to tax in the State, was chargeable under Case III of Schedule D and qualified for the remittance basis of taxation (assuming, of course, that the employee was either not Irish domiciled or, being an Irish citizen, was not ordinarily resident in the State).

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

With effect from 1 January 2006 –

- (a) the income of a non-Irish sourced employment attributable to the performance **in** the State of the duties of that employment no longer qualifies for the remittance basis of taxation as it is now chargeable to income tax under what is known as Schedule E [and is within the scope of the PAYE system of deductions at source] whether or not remitted to the State;
- (b) the income of a non-Irish sourced employment attributable to the performance **outside** the State of the duties of that employment remains, where chargeable to tax in the State, chargeable under Case III of Schedule D and qualifies for the remittance basis of taxation (assuming, of course, that the employee was not Irish domiciled or, for the years up to 31 December 2009 being an Irish citizen, was not ordinarily resident in the State).

1.2.6 Remittance Basis of Taxation - Mixed Funds Accounts

Mixed capital and income accounts

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

Mixed income accounts

A mixed income account is an account containing

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

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

1.3 Basis of assessment

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

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

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

Chapter 2

2 Registration

Employers must register for PAYE system purposes.

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

2.1 Employers

2.1.1 Registration for PAYE system purposes

It is necessary for employers (or certain other persons – see [paragraph 3.4](#)) to register with Revenue for the purposes of the PAYE system.

To register for PAYE purposes, the employer (or certain other persons - see [paragraph 3.4](#)) must complete Form [TR1](#) or [TR2](#).

2.1.2 Failing to register with Revenue

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

2.2 Employees

2.2.1 Obtaining a Personal Public Service number (PPS number)

The identification number for individuals for many State services in Ireland is the Personal Public Service number, more commonly known as a PPS number. The Department of Employment Affairs and Social Protection allocates PPS numbers to individuals. Further information is available on the DEASP [website](#), including [Frequently Asked Questions](#).

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

Once an employee has obtained his/her PPS number, he or she can apply to Revenue for a Tax Credit Certificate (TCC). A TCC gives a breakdown of an employee's tax credits and rate bands for income tax and Universal Social Charge (USC). This ensures that the employee pays the correct amount of income tax and USC. An employee can obtain a TCC by registering his or her new job online through the Jobs and Pensions service which is available in myAccount. A first-time employee in Ireland must use this service to register his or her job details with Revenue.

Further details on registering for [myAccount](#) and the [Jobs and Pensions](#) service are available on the Revenue website.

Chapter 3

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

3.1 Statutory position with effect from 1 January 2006

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

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

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

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

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

Note – See [Chapter 6](#) regarding Social Security contributions.

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

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

Example 3.1

John is an employee of a non-Irish company employed under a foreign contract of employment under which he earns €4,000 per fortnight. He performs the duties of his employment mainly in Ireland except for every fourth week when the duties of his employment are performed outside the State.

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

This method of apportionment would continue throughout the year.

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

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

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

Example 3.2

Mary is employed under a foreign contract of employment with ABC Co. She performs the duties of her employment in Ireland on the premises of CDE Co. CDE Co agrees to pay Mary's income. CDE Co must apply PAYE to so much of Mary's income as is attributable to the performance in the State of the duties of the foreign employment. However, if CDE Co fails to do so, ABC Co must account to Revenue for the PAYE deductions.

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

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

Under section 985D, where -

- (a) an employee of a non-resident employer works for a person (the 'relevant person') in the State; and
- (b) the non-resident employer or an intermediary of the employer or of the "relevant person" fails to operate 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 3.3

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

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

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

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

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

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

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

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

3.4.4 Directions under section 985E(3) TCA 1997

A direction need not be sought -

- (a) where there is certainty as to the portion of the employment income assessable to income tax under Schedule E and to which PAYE should be applied (for example, where an individual works in the State under a set work pattern or is assigned into the State for a predetermined period of time); or
- (b) where, in respect of the income of temporary assignees, the obligation to operate PAYE is relieved in accordance with the criteria described in [Chapter 4](#).

Examples where an employer need not apply for a direction

Example 3.4

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

Example 3.5

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

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

Example 3.6

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

Example 3.7

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

Example 3.8

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

Example 3.9

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

Example where an employer should apply for a direction

Example 3.10

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

3.4.5 Section 985F – PAYE: mobile workforce

This section applies where-

- (a) it appears to the Revenue Commissioners that a person (the 'relevant person') has entered into, or is likely to enter into, a contract to engage employees of another person (the 'contractor'); and
- (b) it is likely that the income paid by or on behalf of the 'contractor', being the real employer, will not be subject to the operation of the PAYE system by the 'contractor'.

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

Example 3.11

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

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

3.5 Operation of PAYE from 1 January 2019

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

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

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

Example 3.12

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

Chapter 4

4 Temporary Assignees - Release for employers from the obligation to operate the Irish PAYE system

4.1 General

4.1.1 Background

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

- (a) the operation by an employer (and certain other persons – see [paragraph 3.4](#)) of the PAYE system of payroll deductions at source; and
- (b) the relief from Irish tax due to the assignee under a double taxation agreement (DTA) between Ireland and another jurisdiction.

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

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

4.1.2 The Irish PAYE System

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

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

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

been applied, this does not necessarily mean that Treaty relief will be not be available.

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

4.1.3 Overview of this Chapter

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

4.1.4 Meaning of 'day' and 'workday'

For the purposes of this Chapter;

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

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

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

Under the general double taxation agreement principles, where -

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

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

A list of the [Double Taxation Agreements](#) between Ireland and other jurisdictions is available on the Revenue website.

Where temporary assignees of Treaty countries-

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

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

- (a) the assignee is resident in a country with which the State has a Double Taxation Agreement (DTA) and is not resident in the State for tax purposes for the relevant tax year; and,
- (b) there is a genuine foreign office or employment; and
- (c) the remuneration is paid by, or on behalf of, an employer who is not a resident of the State (see Note below), and
- (d) the remuneration is not borne by a permanent establishment (see [Appendix E](#)) which the employer has in the State.

Once the employer is satisfied the conditions outlined above have been satisfied, the employer may apply to Revenue for a release from the obligation to operate PAYE.

An application should be made in accordance with the requirements and procedures set out in [paragraph 4.4](#).

Note

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

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

***Integral part of the business activities**

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

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

Recharge of costs

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

When determining if remuneration is recharged by a foreign employer to an Irish entity, consideration should be given as to the relationship the fees charged bear to the remuneration, employment benefits and employment costs of the assignee. If the fee equals these costs, or is a charge with a profit element computed as a

percentage of that remuneration, this would be indicative that remuneration is directly recharged. However, if the fee charged bears a relation to the remuneration of the individual but is only one of many factors taken into account for what is really a contract for services between the foreign and Irish entities, this would indicate that the remuneration is not directly recharged.

4.2.2 Examples

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

Example 4.1

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

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

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

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

Example 4.2

PQR UK is the parent company of a group of companies. Five of the companies are resident in other EU states. PQR UK has developed a new computer system for the HR department and wants all the HR departments within the group to use it. Joan has worked on the development of the new system and is sent by PQR UK to the 5 other subsidiaries to implement the new system. PQR Ireland is one of the

companies within the group. Joan will spend about 70 days in the State during a tax year training the local HR team.

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

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

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

Example 4.3

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

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

Example 4.4

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

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

Example 4.5

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

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

Example 4.6

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

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

Example 4.7

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

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

Example 4.8

Kelly works for a UK multinational company. As part of her role, she travels to subsidiaries in various locations on a once off assignment to perform a compliance function on behalf of the UK parent company. She is assigned to the State on a once

off basis for 90 workdays. When performing her duties, Kelly remains under the direction and supervision of her UK employer. She is on the UK payroll, she is tax resident in the UK and the cost of her remuneration is not recharged to any of the subsidiaries.

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

4.3 Temporary Assignees from DTA countries

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3.2 Examples

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

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

Example 4.9

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

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

Example 4.10

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

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

Example 4.11

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

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

Example 4.12

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

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

Example 4.13

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

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

Scenario 2 - Assignee has a presence in the State during two consecutive tax years**Example 4.14**

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

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

Example 4.15

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

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

Example 4.16

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

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

Scenario 3 - Assignee has a presence in the State for more than two tax years**Example 4.17**

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

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

Example 4.18

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

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

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

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

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

- (a) the individual is resident in a country with which the State has a Double Taxation Agreement and is not resident in the State for tax purposes for the relevant tax year; and,
- (b) there is a genuine foreign office or employment; and
- (c) the remuneration is paid by, or on behalf of, an employer who is not a resident of the State (see Note below), and
- (d) the remuneration is not borne by a permanent establishment (see [Appendix E](#)) which the employer has in the State and,
- (e) the duties of that office or employment are performed in the State for not more than 60 working days in total in a year of assessment and, in any event, for a continuous period of not more than 60 working days.

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

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

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

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

[...]

4.4 Application for release from the obligation to operate PAYE

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

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

Requirement to register as an employer for PAYE

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

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

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

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

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

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

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

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

Other requirements

The foreign employer must:

- (a) maintain a record of the individual's full name, latest Irish and overseas address, date of commencement and cessation of the employment, the location where the individual carries out the duties of the temporary assignment and the amount of earnings in respect of the temporary assignment; **and**
- (b) sign a written acknowledgement that in all cases where liability is subsequently found to arise in respect of payments of emoluments to an assignee (e.g. because of a breach of any of the conditions), the employer will be liable under the relevant provisions of the Taxes Consolidation Act 1997 and the Income Tax (Employments) Regulations¹ to pay the tax that should have been deducted from those emoluments; **and**
- (c) supply evidence (see Note 1) of withholding tax in the foreign jurisdiction on the income attributable to the performance in the State of the duties of the foreign employment; **and**
- (d) on request, supply a copy of the contract(s) relating to the assignee's engagement in the State or other relevant details (see Note 2); **and**
- (e) seek approval in writing from Revenue within 30 days after the date the assignee takes up duties in the State (see Note 3). Pending written approval from Revenue, PAYE need not be operated for that year of assessment if all other conditions are met.

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

Note 1

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

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

Note 2

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

Note 3

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

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

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

Note 4

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

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

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

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

[...]

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

4.5.1 Position from 1 January 2018

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

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

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

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

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

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

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

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

4.5.2 Examples

Example 4.19

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

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

Example 4.20

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

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

Example 4.21

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

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

Example 4.22

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

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

4.5.3 Position up to 31 December 2017

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

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

Chapter 5

5 Internationally Mobile Employees and Tax Equalisation

5.1 Overview

In many instances, internationally mobile employees enter into a tax equalisation or other similar arrangement with their employer when they are seconded, transferred or assigned to work in another jurisdiction. The detail of any such arrangement is a matter between the employee and his or her employer.

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

5.2 Tax Treatment of additional remuneration given to achieve 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 re-grossed for the purposes of calculating the tax due under the PAYE system.

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

Example 5.1

Joe is a US national. His gross salary in 2017 is €100,000. His salary after US tax in that year is €75,000. He is transferred to Ireland with effect from 1 January 2018. His employer has agreed that he will receive take home pay of €75,010 in 2018. 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 2018 will be €108,000 in order that he receives net take home pay of €75,010, as follows:

					€
Gross salary					108,000
Tax		34,550	@ 20%	6,910	
		73,450	@ 40%	<u>29,380</u>	
Tax before credits				36,290	
Credits	Single	1,650			
	PAYE	1,650		3,300	
Tax after credits					<u>32,990</u>
Net salary					75,010

Example 5.2

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 2018 will be €102,250 in order that he receives net take home pay of €75,010, as follows:

					€
Gross salary					102,250
Tax		43,550	@ 20%	8,710	
		58,700	@ 40%	<u>23,480</u>	
Tax before credits				32,190	
Credits	Married	3,300			
	PAYE	1,650		4,950	
Tax after credits					<u>27,240</u>
Net salary					75,010

Example 5.3

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 1.2](#) of Chapter 1.

If his employer agrees he will receive take home pay in 2018 of €75,000, he will receive three fifths of his take home pay ($€75,000 \times 3/5 = €45,000$) 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 €57,983 to ensure he receives take home pay in respect of the Irish duties of €45,000, as follows:

Gross salary					€ 57,983
Tax		34,550	@ 20%	6,910	
		23,433	@ 40%	<u>9,373</u>	
Tax before credits				16,283	
Credits	Single	1,650			
	PAYE	1,650		3,300	
Tax after credits					<u>12,983</u>
Net salary					45,000

Example 5.4

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 €52,233 in order that he receives take home pay of €45,000, as follows:

Gross salary					€ 52,233
Tax		43,550	@ 20%	8,710	
		8,683	@ 40%	<u>3,473</u>	
Tax before credits				12,183	
Credits	Married	3,300			
	PAYE	1,650		4,950	
Tax after credits					<u>7,233</u>
Net salary					45,000

5.3 Refunds of Tax

In some instances, a tax equalisation arrangement between an employee and his or her employer may contain an agreement that the employee will reimburse certain refunds of tax to the employer. Any such agreement is a matter between the employer and the employee.

Chapter 6

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 Employment Affairs and Social Protection](#).

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

6.2 Contact Details

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

Collector General's Division
Sarsfield House
Francis Street
Limerick
Ireland
V94 R972
Phone: 01 738 36 63
E-mail: Please use the secure MyEnquiries service available in myAccount or ROS.

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 Employment Affairs and Social Protection, Waterford. Contact details for foreign employers and PRSI queries are as follows:

Special Collections Section
Department of Employment Affairs and Social Protection
Cork Road
Waterford
Phone: 1890 690 690 (from Ireland only)
+353 1 4715898 (outside Ireland)
E-mail: [Special Collections Online Enquiry](#)

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 or National Insurance or 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 Employment Affairs and 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 Employment Affairs and Social Protection.

Chapter 7

7 Pension Contributions

7.1 Background

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

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

make personal contributions to a foreign pension scheme.

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

- (a) such charge is relieved under the terms of a Double Taxation Agreement (DTA), or
- (b) 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 (see [Appendix A](#)) or Article 17A of the Ireland/UK DTA (see [Appendix B](#)). Where

these provisions apply, contributions made by or on behalf of the individual's employer are not treated as part of the individual's taxable income.

7.3 Migrant Member Relief

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

7.4 Contributions to overseas pension schemes

Revenue will—

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

in bona fide cases, where:

(a) the employee -

- (i) has been seconded by a foreign company to work in the State for that company or for a company which is connected to the foreign company;
- (ii) was, prior to coming to work in the State, employed outside the State for a period of not less than 18 months by the foreign company (or a foreign company connected to that company);
- (iii) is either not Irish-domiciled or, being an Irish citizen, is not ordinarily resident in the State at the time the pension contributions are made;
- (iv) 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 of the Pensions Manual applies, contributions made by or on behalf of the individual's employer are chargeable to tax as emoluments of the employment. Relief will be granted to seconded individuals for such 'employer' contributions. However, the overall relief available in respect of the aggregate of employer contributions and employee contributions will be confined to the limits referred to in chapter 3.2 of the Pensions Manual.

The [Pensions Manual](#) is available on the Revenue website.

7.6 Limits

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

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

the purposes of giving tax relief. The earnings limit is set at €115,000 for 2011 and subsequent years.

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

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

7.7 Further information

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

Chapter 8

8 Miscellaneous

8.1 Bonuses

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 (on the full amount earned or received, 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, and is liable to tax in the jurisdiction in which it was earned, 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.

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

8.2 Exchange rates

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

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

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

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 (SCSB) 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: Tax and Duty Manual [Part 05-01-21a](#).

8.4 Permanent Establishment

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

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 at: [Double taxation 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 -USA Agreement is available at: [Double taxation treaties](#)

Appendix C - 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 or she is present in the State:

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

For the purposes of these tests the legislation specifies that—

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

The term “resident” in the context of another EU Member State 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 the [Overseas Pension 1](#) form.

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

Tax relief is due at the individual’s marginal rate of tax. In the case of an individual who is taxed under the PAYE system the relief will be shown on the “Notice of Determination of Tax Credits and Standard Rate Cut-off Point” in the year of claim.

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

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

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

Appendix D - Overseas Pension Schemes

[Chapter 17](#) of Revenue's Pensions Manual

17.5 Seconded Employees not covered by 17.3 or 17.4.

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

- (i) The secondment is for a period of less than 10 years.
- (ii) The scheme is a Trust Scheme.
- (iii) The benefits to be provided by the Overseas Scheme are within Irish approvable limits.

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

Introduction

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

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

Definition

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

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

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

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

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

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

Criteria to determine if a PE exists

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

There must be a place of business

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

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

The place of business must be fixed

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

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

The place of business must have a certain degree of permanency. Mere business relations with enterprises or other customers in the contracting State do not give the requisite degree of permanency. Similarly, a place of business which is of a purely temporary nature cannot constitute a PE, e.g. a once-off stall at a trade exhibition. A place of business which is not of a purely temporary nature can be a PE even if 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 or she represents. He or she must not have independent status of the kind referred to in Article 5(6) (e.g. brokers, general commission agents). An agent who is bound to follow instructions relating to the business is dependent on the enterprise. Employees of an enterprise are always dependent agents. An agent must have power to bind the enterprise.

Authority to Conclude Contracts

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

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

Habitual Exercise

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

Residence

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

Construction Industry - Existence of a PE

Under Article 8 of the Ireland - UK Convention, the profits of a UK based enterprise are taxable in the State only if the enterprise carries on business 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 or 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 person's UK tax liability. In this event, the person should request a review under Article 24 of the Convention (i.e. mutual agreement). Under the terms of Article 24, the two authorities will 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.

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

[...]

A more recent version of this manual is available.