

## CHAPTER 17

### OVERSEAS EMPLOYERS, OVERSEAS EMPLOYEES and EMPLOYEES SECONDED from OVERSEAS

#### 17.1

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

#### Overseas Employer - Irish Scheme

#### 17.2

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

#### Employees Seconded from Overseas

#### 17.3

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

- be paid from abroad;
- benefit from employer contributions to their foreign pension fund; and
- continue to make personal contributions to a foreign pension scheme.

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

- (a) such charge is relieved under the terms of a double taxation agreement, or
- (b) where the provisions of section 778 TCA 1997 applies, i.e. where -
  - (i) the emoluments of the office or employment are not chargeable to tax here; or
  - (ii) the remittance basis of taxation applies to the emoluments of the office or employment; or
  - (iii) the employer pension contributions are made to:

- an approved scheme; or
- a statutory scheme; or
- a scheme set up by a Government outside the State for the benefit, or primarily for the benefit, of its employees.

**In bona fide cases, where:**

**(a) the employee -**

- (i) has been seconded by a foreign company to work in the State for that company or for a company which is connected to the foreign company;
- (ii) was, prior to coming to work in the State, employed outside the State for a period of not less than 18 months by the foreign company (or a foreign company connected to that company);
- (iii) is either not Irish-domiciled or, being an Irish citizen, is not ordinarily resident in the State at the time the pension contributions are made;
- (iv) had, prior to coming to work in the State, been making contributions to the foreign pension scheme referred to in (c) below for a period of not less than 18 months; and
- (v) is not resident in the State for a period of more than 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 Double Taxation Agreement (DTA);
- (ii) has, prior to the individual coming to work in the State, been making contributions to a foreign pension scheme on behalf of the employee for a period of not less than 18 months;
- (iii) the foreign pension scheme is a statutory scheme in a state or country mentioned in (b)(i) above, other than a state social security scheme, or is a scheme in respect of which tax relief is available in such a state or country; and
- (iv) both the employer and employee contributions comply with the rules of that foreign pension scheme, then Revenue will -
  - treat contributions made by the employer to the pension scheme, for the benefit of the employee, as not being taxable; and
  - allow relief for the pension contributions made directly by the employee (subject to the normal income percentage limits).

**Note** - Where an individual is resident in the State for 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 a period of five years.

## **Migrant Member Relief**

### **17.4**

Where contributions made by seconded individuals to foreign pension schemes do not qualify for relief as detailed above, relief may still be available if the contributions come within the scope of Migrant Member Relief (see **paragraph 17.10** below). Migrant Member Relief only applies to individuals coming to Ireland with pre-existing pension plans established in another EU Member State. Prior to the introduction of Migrant Member Relief secondees from the UK could avail of relief under the terms of the Protocol to the Ireland/UK DTA. The Protocol may still be of relevance to migrant workers of a UK employer coming to the State from a third (non-EU member) country.

## **Seconded Employees not covered by 17.3 or 17.4**

### **17.5**

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.

## **Overseas Employer - Irish Employee Transferred Abroad**

### **17.6**

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

The accrued benefits should remain in the approved scheme unless a special arrangement for the transfer of benefits is in operation.

## **Irish Employer - Overseas Employees**

### **17.7**

If an employee of an Irish employer is not assessable to Irish tax on his remuneration, or is assessable only on the "remittance" basis, no liability arises under section 777 TCA 1997. It is, therefore, not necessary for a retirement benefits scheme for such employees to conform to the conditions for approval if the employer is prepared to forego the tax reliefs available to an exempt approved scheme. A scheme exclusively for, or including employees working abroad *may*, however, be approved and enjoy the reliefs if the employer is resident in the State.



## 17.8

It follows from the preceding paragraph and from **paragraph 17.2** that a scheme, or a part of a scheme, approved cannot cater for employees working abroad for a non-resident employer. But there are two exceptions to this principle, viz.

- (a) Where employees are only on secondment from an Irish employer for a limited period and can be deemed to remain on his payroll.
- (b) Where employees are sent abroad, in circumstances which cannot be regarded as secondment, to serve with non-resident companies in a group, of which the parent company is resident in the State but the parent company retains control over the movements of the employees within the group i.e. remains in a position to recall them or to direct them elsewhere.

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

### **Relief for Contributions to EU Pension Plans**

#### 17.9

Revenue will approve occupational pension schemes provided to Irish employers and employees by pension providers based in other EU Member States provided the standard approval conditions are met. Section 21, Finance Act, 2005, introduced the concept of an "overseas pension scheme". To qualify for approval, and attaching tax reliefs, the overseas pension scheme must be operated or managed by an Institution for Occupational Retirement Provision, within the meaning of the EU Pensions Directive, and must be established in a Member State of the European Communities which has implemented the Directive in its national law.

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

### **Relief for Migrant Workers**

#### 17.10

##### **Introduction**

There is a statutory scheme of relief for contributions paid by an individual who comes to the State and who wishes to continue to contribute to a pre-existing

“overseas pensions plan” in another EU Member State. The legislation involved is contained in Chapter 2B of Part 30 (sections 787M – 787N) of the TCA 1997.

Relief is available for contributions paid on or after 1 January 2005 by a relevant migrant member who comes to the State and who wishes to continue to contribute to a pre-existing “qualifying overseas pension plan” concluded with a pension provider in another EU Member State.

### Conditions

“Overseas pension plan” means a contract, an agreement, a series of agreements, a trust deed or other arrangement which is established in, or entered into under the law of, a Member State of the European Communities, other than the State. It covers occupational pension schemes and personal pension schemes that a migrant worker might bring to the State whether he or she was employed or self-employed in the other EU Member State. It excludes any state social security scheme i.e. a system of mandatory protection put in place to provide a minimum level of retirement income or other benefits.

“Qualifying overseas pension plan” means an overseas pension plan that:

- is established in good faith for the sole purpose of providing retirement benefits similar to those approved in the State,
- qualifies for tax relief on contributions under the law of the EU Member State in which it is established, and
- in relation to which the migrant member of the plan has irrevocably instructed the administrator of the plan to provide the Revenue Commissioners with any information that they may require in relation to the plan.

A “relevant migrant member” is an individual who:

- is a resident of the State,
- was a member of the plan on taking up residence in the State,
- was a resident of another EU Member State at the time he or she first became a member of the plan and was entitled to tax relief on contributions under the law of that Member State,
- was resident outside of the State for a continuous period of three years immediately before becoming a resident of the State,
- is a national of an EU Member State or, if not, was resident in an EU Member State (other than the State) immediately before becoming a resident of the State.

If an individual moves to Ireland from any other EU Member State with a pre-existing qualifying overseas pension plan, the Revenue Commissioners are not aware of anything that will prevent that individual from meeting the ‘relevant

migrant member' condition that he or she was entitled to tax relief on contributions to the plan under the law of that Member State.

Where an individual does not satisfy the three-year test but all other conditions are met, section 787N(2) gives discretion to the Revenue Commissioners to treat an individual as a "relevant migrant member" notwithstanding that the three-year test is not met. Such cases should be referred to the relevant local Revenue Office.

Under the provisions of section 819 TCA 1997 an individual is resident in the State where he/she is present in the State:

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

For the purposes of these tests the legislation specifies that '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.

\* 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 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.<sup>1</sup>

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

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

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

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