

Chapter 4 Temporary Assignees

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

4.1 General

4.1.1 Background

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

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

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

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

4.1.2 The Irish PAYE System

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

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

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

4.2 Temporary Assignees

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

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

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

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

Permanent Establishment See appendix E

Note (1) As regards (c) above, Revenue, in line with OECD guidance (commentary on Article 15 of the *OECD Model Tax Convention on Income and on Capital*), is not prepared to accept, for the purposes of granting a release from the obligation to operate the PAYE system, that *the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State* where the individual is;

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

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

Note (2) For the purposes of (e) above a 'working day' is any day in which any work is performed in the State.

4.2.2 Simultaneous deductions under the Irish PAYE system and under a tax deduction system of another tax jurisdiction.

Under the general double taxation agreement principles, where -

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

the obligation to grant relief in respect of such potential double deduction at source generally rests with the jurisdiction of which the individual is resident for tax purposes. More specific detail can be found in the terms of the appropriate treaty. A list of the Double Taxation Agreements between Ireland and other jurisdictions is on the Revenue website at. [Tax Treaties](#)

However, where temporary assignees of Treaty countries-

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

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

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

The foreign employer must

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

OR

- Where the employees of the foreign employer are performing in the State the duties of the foreign employment, and are paid by a connected entity in the State of the foreign employer (connected in the sense that the entity is controlled by the foreign employer or visa versa or both are under common control) on behalf of that employer **or** are paid by the foreign employer, and the connected local entity in agreement with the foreign employer has assumed responsibility for compliance

with PAYE/PRSI obligations on behalf of the foreign employer, then the foreign employer need not register as an employer but must supply:

- the PAYE registered number of the connected entity;
 - its own full name and address; and
 - where there is a relevant person (as defined in section 985D TCA 1997 – see paragraph 3.4.2) the name and address of that relevant person for whom the employees of the foreign employer are doing work in the State;
- (b) maintain a record of the individual's full name, latest Irish and overseas address, date of commencement and cessation of the employment, the location where the individual carries out the duties of the temporary assignment and the amount of earnings in respect of the temporary assignment; **and**
- (c) sign a written acknowledgement that in all cases where liability is subsequently found to arise in respect of payments of emoluments to assignees (e.g. because of a breach of any of the conditions) the employer will be liable under the relevant provisions of the Taxes Consolidation Act 1997 to pay the tax that should have been deducted from those emoluments; **and**
- (d) supply evidence (see Note B below) of withholding tax in the foreign jurisdiction on the income attributable to the performance in the State of the duties of the foreign employment; **and**
- (e) on request, supply a copy of the contract(s) relating to the employer's engagement in the State; **and**
- (f) seek clearance in writing from the Revenue Commissioners by the later of 21 days after the date the assignee takes up duties in the State, or 30 October 2007 - pending written clearance from Revenue, PAYE need not be operated if all other conditions are met.

Note A

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

Note B

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

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

or

- Statement from the relevant foreign tax jurisdiction.

Note C

An application for clearance from a foreign employer may cover more than one employee.

Note D

Applications should be submitted to

Office of the Revenue

Commissioners

IRDS Section

City Centre District

Áras Brugha

9/10 Upper O'Connell Street

Dublin 1

Tel: 00 353 1 8655000

Fax: 00 353 1 8749431

E-mail: cityreg@revenue.ie

4.2.3 Short-term business visits to the State of not more than 30 days

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

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

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