

Undertaking Employment Duties in Ireland

Irish Taxation Considerations

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Non-Residents undertaking employment duties in Ireland

Non-Irish residents are generally liable to Irish income tax only in respect of Irish source income. Foreign employment income referable to the exercise of duties in Ireland is regarded as Irish source for this purpose. Therefore in the case of income from a foreign employment, non-residents are only liable to Irish tax to the extent that the earnings are for duties carried out in Ireland. This is subject to the provisions of an applicable Double Taxation Agreement.

Resident / Non-domiciled individuals undertaking employment duties in Ireland

Individuals who are Irish resident but not Irish domiciled (which includes the majority of those coming to Ireland to work on secondment) are normally liable to Irish income tax on Irish source income. Again foreign employment income referable to the exercise of duties in Ireland is regarded as Irish source for this purpose. They are also liable to Irish income tax on non-Irish sourced income to the extent that the non-Irish source income is remitted (i.e. physically brought into) to Ireland. This is known as the remittance basis of taxation.

Operation of payroll taxes in Ireland - PAYE

The Pay As You Earn (PAYE) system is used by employers for deducting and remitting to Irish Revenue the Irish income tax due on the employee's remuneration. Irish tax legislation provides that where an employee of a non-resident employer undertakes their employment duties in Ireland then the non-resident employer is required to register for and operate Irish payroll taxes.

As a general rule employment income attributable to the performance of employment duties in Ireland is within the scope of the Irish PAYE system. If the employment is exercised wholly in Ireland all of the income is chargeable to tax in Ireland and is within the PAYE system. If the non-Irish employment is exercised partially in Ireland and partially outside the State it is necessary to determine the portion of income attributable to the performance in Ireland of the duties of that employment (subject to PAYE). This is the case regardless of whether the employing entity is resident in Ireland, whether the employee's salary is paid from an Irish bank account or whether they are subject to payroll deductions in another jurisdiction.

The fact that an employee may be temporarily working in Ireland and relieved from the charge to Irish income tax under the terms of a relevant double taxation agreement does not automatically mean that the non-resident employer need not operate Irish PAYE on the employee's income referable to Irish duties. Irish Revenue does not require an employer to operate Irish PAYE if the following criteria are satisfied:

1. The individual is resident in a country with which Ireland has a Double Taxation Agreement and is not resident in Ireland for tax purposes in the relevant year.
2. There is a genuine foreign office or employment.
3. The individual is not paid by, or on behalf of, an employer resident in Ireland
4. The cost of the office or employment is not borne, directly or indirectly, by a permanent establishment in Ireland of the foreign employer.

5. The duties of that office or employment are performed in Ireland for not more than 60 working days in the year of assessment, and in any event for a continuous period of not more than 60 days.

Alternatively where temporary assignees of Treaty countries satisfy 1 – 4 above and are:

- > present in Ireland for a period not exceeding 183 days in the year of assessment; and
- > suffer withholding taxes at source in their home country on the income attributable to the performance of the duties of the employment in Ireland

then Irish Revenue will not require an employer to operate the Irish PAYE system in respect of the temporary assignee, provided certain administrative requirements are met which include registering as an employer for PAYE purposes in Ireland and providing proof of withholding tax at source in the foreign country.

Advance clearance from Irish Revenue is required where the employee is working in Ireland for more than 60 days (but less than 183 days). In the absence of advance Revenue approval, Irish PAYE should be operated by the non-resident employer.

Interaction with Double taxation agreements

As set out above, just because a non-resident will not be subject to Irish income tax by virtue of an applicable double taxation agreement does not mean that the non-resident employer can ignore Irish PAYE. In the absence of an advance approval from Irish Revenue not to operate Irish PAYE (referred to above) the non-resident employer is required to operate Irish PAYE and the non-resident employee is then required to seek a refund of the Irish tax at the end of the tax year by filing an income tax return in Ireland.

Social Security / PRSI

Where a foreign employee comes to Ireland to undertake their employment duties then social security needs to be considered in addition to income tax. A person working in Ireland may be liable to pay Irish social security/ Pay Related Social Insurance ('PRSI') on their earnings. PRSI is normally paid under the PAYE system. This is the case notwithstanding that the individual may be contributing to the social security system of their home jurisdiction.

There are a number of special rules that govern where an employee undertaking their duties in more than one EU State should make their social security contributions. Under EU provisions EU citizens sent to work temporarily in Ireland may be entitled to seek a formal clearance from the social security department in their home jurisdiction in order to remain within the social security system of their home jurisdiction for a period of time. However specific clearance is required in advance as in the absence of same Irish social security should be operated on the income referable to the Irish duties.

Other Tax Considerations

> Remittance Basis of Taxation

As set out above where a non-domiciled individual becomes tax resident in Ireland but remains employed by a non-resident employer, Irish PAYE is required to be operated on the employment income referable to the duties undertaken in Ireland. In relation to the portion of his employment income referable to his duties undertaken outside Ireland this is not within the charge to PAYE. This does not however mean that it is outside the scope of Irish tax. Such employment income is regarded as foreign source income and if it (or any other foreign source income) is remitted to Ireland then it is subject to Irish income tax, albeit under self assessment rules.

> Permanent Establishment (PE) & Corporation Tax

A company that is not tax resident in Ireland can still be subject to Irish corporation tax if it has a PE in Ireland. It is important to note that the non-Irish company does not necessarily need to rent or own a property in Ireland to create a PE and a PE can arise where the non-resident entity has a space at its disposal in Ireland through which it carries on its business e.g. the premises of a client in which its employees undertake their duties. As a rule of thumb the longer the time spent working in Ireland at a client's premises the increased chance that an Irish PE will be created.

Where an Irish PE is established then only the profits attributable to the Irish PE are subject to Irish corporation tax. The rate of Irish corporation tax on most forms of trading profits is 12.5%. The profits may also be subject to tax in the non-resident company's home jurisdiction. Provided, however that the non-resident company is located in a jurisdiction with which Ireland has a double taxation agreement then double tax relief should be available in the home jurisdiction. As Ireland's rate of corporation tax is low by international standards having an Irish PE generally does not give rise to an incremental corporation tax charge.

Contact Us

To discuss these in further detail, please contact:



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