Update on the Irish tax relief available for outbound and inbound employees

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Ireland has become an important strategic base for many multinational companies. In an attempt to retain and encourage further foreign direct investment, the Irish tax legislation contains a number of provisions which aim to avoid tax becoming a barrier to Irish companies sending employees overseas to work for a foreign affiliate company and for foreign companies sending employees to work in their Irish operations.

This article aims to provide a useful guide regarding the tax relief available in Ireland in respect of outbound secondees and an update regarding the tax relief available for inbound secondees. More specifically, this article will look at the Foreign Earnings Deduction (FED) in detail and provide an update on the Special Assignee Relief Programme (SARP).

1. Foreign Earnings Deduction (FED)

FED is an income tax allowance available to Irish resident individuals[i] who temporarily carry out duties of their office or employment in certain countries. FED does not provide any relief from the universal social charge (USC) or Pay Related Social insurance (PRSI). Under current legislation, FED is available up to 2022.

1.1 Conditions to qualify for FED

Currently, to be able to make a claim for FED, an employee must have worked at least thirty "qualifying days" in a relevant office/employment.

A qualifying day is one of at least three consecutive days worked in a "relevant state" for the purpose of the performance of the duties of the office/employment. See Section 1.2 for list of relevant states for FED.

The time spent travelling is counted as a qualifying day if the employee travels from Ireland to a relevant state, from a relevant state to Ireland or from one relevant state to another. Saturdays, Sundays and public holidays can be counted as qualifying days in a relevant state.

The thirty-day requirement must be fulfilled in a tax year or in any continuous period of twelve months straddling two tax years.

Example 1 – number of qualifying days

Sandra worked 20 qualifying days in the period 1 March 2019 to 31 December 2019 and 15 qualifying days in the period 1 January 2020 to 29 February 2020.

Therefore, Sandra has 35 qualifying days in a 12 month period and so she may claim FED relief as follows:

- 2019 tax year: 20 days
- 2020 tax year: 15 days.

FED is not available to employees paid by the Irish State or employees employed with any public board/authority (i.e. public/civil servants). Also, FED is not available in respect of income from an office/employment which is chargeable on the remittance basis or in respect of income which qualifies for the research and development credit for key employees, split year treatment, cross-border relief or SARP.

As is noted above, the amount of any FED will depend on the number of qualifying days absence in either a tax year or a period of twelve months straddling two tax years. FED is claimed at the end of the tax year concerned. An individual wishing to claim FED must apply in writing to the Revenue Commissioners and include a statement from their employer stating the dates of departure and return to Ireland and the location(s) where the individual worked while abroad. The normal four-year time limits apply for making a claim apply to FED.

1.2 Relevant state for FED

The thirty relevant states for FED include:

Algeria	Indonesia	Republic of Korea
Bahrain	Japan	Russia
Brazil	Kenya	Saudi Arabia
Chile	Kuwait	Senegal
China	Malaysia	Singapore
Colombia	Mexico	South Africa
Democratic Republic of the Congo	Nigeria	Tanzania
Egypt	Oman	Thailand
Ghana	Pakistan	United Arab Emirates
India	Qatar	Vietnam

Example 2 – relevant state and number of qualifying days

John is the marketing manager of a rapidly expanding Irish company which is part of a multi-national group. John has worked for the company for the last three years. In an attempt to help the company gain access to the Middle Eastern market, John spent the following days in various countries promoting the company brand:

Date of departure	Date of return	Country
5 May 2019	18 May 19	Bahrain
15 Aug 2019	30 Aug 2019	Yemen
1 Oct 2019	18 Oct 2019	United Arab Emirates

John flew from Ireland on each trip and also retuned to Ireland at the end of each trip. How many qualifying days for FED does John have in 2019?

Country	Relevant state	Qualifying days
Bahrain	Yes	14
Yemen	No	
United Arab Emirates	Yes	18
Total qualifying days in 2019		**32**

1.3 Calculation of FED allowance

The amount of the allowance due is less than or equal to € 35,000 or the specified amount. The specified amount is calculated as follows:

$$\mathbf{D \times E / F}$$

Where:
D is the number of qualifying days worked in a relevant state during the tax year
E is all the income received from the employment in the tax year.

- **E** includes any taxable gain realised by share options less any qualifying pension contribution or premium.
- **E** excludes allowable expenses payments, benefits in kind (such as car preferential loans), ex-gratia termination and restrictive covenants payments.

F is the total number of days that the office/employment is held in the tax year.

As the maximum deduction in any tax year is capped at €35,000, the maximum annual tax saving is € 14,000. That is € 35,000 at 40% income tax.

Example 3 – FED calculation
Continuing the facts from Example 2, say John had an annual salary of € 110,000 in 2019 plus a benefit in kind in respect of a company car of € 6,500. What amount of FED can John claim in respect of 2019?

D is 32 days.

E is € 110,000 as BIKs are not included.

F is 365 days.

Therefore, FED is € 9,643 (32 x 110,000/365).

2. <u>Special Assignee Relief Programme (SARP)</u>

SARP is available to certain inbound secondees to Ireland. SARP provides for Irish income tax relief (but not USC or PRSI relief) on a proportion of the income earned by a relevant employee who is assigned by their employer to work in Ireland or is transferred to work in Ireland under an Irish employment contract. SARP applies to assignments to Ireland during any of the tax years 2012 to 2022.

Much of the content of the March 2015 article entitled 'Tax Relief for Inbound Employees Coming to work in Ireland'[ii] remains relevant today. However, there are some key differences in the SARP regime that applies for individuals who arrived in Ireland from 2012 to 2014 inclusive, compared to those who arrived/will arrive in Ireland from 2015 to 2022 inclusive. Outlined below are some of the key legislative updates since the March 2015 article on SARP.

2.1 Who can avail of SARP?

SARP can only apply to a **relevant employee.** A relevant employee is defined as an individual who:

- was/is a full-time employee of a relevant employer and exercised the duties of his/her employment with that relevant employer outside Ireland for the whole of the **six months** immediately prior to arrival in Ireland. ***Previously, this time limit was twelve months for individuals who arrived in Ireland in 2012 to 2014***.

- arrives in Ireland in any of the tax years 2012 to 2022 at the request of his/her relevant employer to
  - perform the duties of his/her employment in Ireland for that relevant employer, or
  - take up employment in Ireland with an associated company of the relevant employer;
- performs the duties of his/her employment in Ireland for that relevant employer (or that associated company) for a minimum period of twelve consecutive months from the date of arrival in Ireland. This twelve-month time limit applies from 2012 to 2022. However, ***for tax years 2012 to 2014 inclusive, any duties performed outside of Ireland that are merely incidental to the performance of the duties in Ireland are treated as performed in Ireland***, and
- was not tax resident in Ireland for the five tax years immediately preceding the tax year in which he/she first arrives in Ireland for the purpose of performing those duties. This five-year time limit applies from 2012 to 2022.

To be able to claim income tax relief under SARP, the relevant employee must for the tax year:

- be resident in Ireland for tax purposes and not resident elsewhere;
- perform the duties of his/her employment with a relevant employer (or associated company) in Ireland, and
- have relevant income from his/her relevant employer (or associated company) which is not less than € 75,000 excluding all bonuses, commissions or other similar payments, benefits, or share based remuneration.

The relief can be claimed for a maximum period of 5 consecutive tax years.

2.2 Calculation of SARP relief available

Where a relevant employee satisfies the necessary conditions he/she will be entitled to have a specified amount of income from his/her relevant employment disregarded for income tax purposes.

The tax relief is granted by way of calculating the "specified amount" and relieving that specified amount from the charge to income tax. The specified amount is determined by the following formula: (A-B) x 30% where:

A the amount of the relevant employee's income, profits or gains from his/her employment in Ireland with a relevant employer or associated company, excluding expenses and amounts not assessed to tax in Ireland and net of any superannuation contributions. In addition where the relevant employee is entitled to double taxation relief in relation to part of the income, profits or gains from the employment, that part of the income is also excluded from 'A'.

- For tax years 2019 to 2022 and the employee arrives on or after 1 January 2019, **A is limited to €1,000,000**. If the employee has arrived on or before 31 December 2018, A is only limited to €1,000,000 in respect of 2020 and future years.
- ***For the years 2012 to 2014, where this amount exceeds € 500,000, 'A' is capped at € 500,000 (the "upper threshold"). This € 500,000 ceiling was removed in 2015 to 2018.***

B is €75,000

[i] For guidance on Irish tax residence status, please see Paula Byrne's article entitled 'Tax Residency Rules (and the Spice Girls), January 2019. Available at https://www.cpaireland.ie/Current-Students/Study-Support/Professional-2/Advanced-Taxation/Relevant-Articles

[ii] Scott McAteer, C & McAteer N (2015) *Tax Relief for Inbound Employees Coming to work in Ireland*. CPA Ireland. Available at https://www.cpaireland.ie/Current-Students/Study-Support/Professional-2/Advanced-Taxation/Relevant-Articles