Non-Irish Employments Exercised in the State
Payroll and Income Tax Implications

by James Bradley

The environment in Ireland has become increasingly onerous and complicated in relation to employment tax and payroll compliance. The area of payroll compliance is especially difficult to apply and is even more in the spotlight now in light of UK companies requiring some of their employees to perform their duties in Ireland. Whilst this is a broader issue, in light of Brexit, it has been brought more into focus from a UK perspective.

This article will focus on the taxation of foreign employees working in Ireland and the obligation of their non-Irish employers to register for payroll taxes and process the salaries of the foreign employees through the Irish payroll system. New rules have been introduced and affect all foreign employees working in Ireland since 1 January 2020.

Taxation of Temporary Assignees

The first thing that needs to be established is whether Ireland has a Double Tax Agreement ("DTA") with the foreign employee's country of origin. This is necessary to determine which country has taxing rights on the foreign employment income. Although it is a foreign source of income, part of this income has been earned in Ireland. The DTA in place between the country in which the individual is a resident of and the State will determine each country's taxing rights in relation to the income arising in respect of duties performed in the State.

Article 15(1) of the Ireland /UK DTA says that remuneration received by a resident of one Contracting State shall only be taxed in that Contracting State unless the employment is exercised in the other State.

Article 15(2) states that:

"...remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a. the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days and

b. the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c. the remuneration is not borne by a permanent establishment which the employer has in the other State."

Paragraph B is intended to ensure that there is a genuine foreign office of employment and the employee continues to be paid by that foreign employer.

Paragraph C aims to avoid the source taxation of short-term business visits or short-term assignments to the extent that the employment income is not allowed as a deductible expense in the State of source because the employer is not taxable in that State as it is neither a resident of that State nor has a permanent establishment in that State. Therefore, where the foreign employing entity has a permanent establishment in the State, and the costs of the business trip or short-term assignment are borne by the permanent establishment in the State, this condition cannot be met.

Where the conditions of Article 15(2) are met, sole taxing rights are granted to the State of residence of the individual. It is important to consider how a DTA interacts with the domestic legislative position.

A DTA cannot impose a charge to tax in Ireland. In order for Ireland to be able to charge tax arising from a taxing right under a DTA, such a charge must also be provided for under domestic legislation. Income from foreign employments which is attributable to the performance of duties in the State is within the charge to tax under Schedule E. It follows that such income is considered "emoluments" and is within the scope of the PAYE system of deductions at source. There is clearly a difference between those taxing rights afforded by a DTA and the charge imposed by domestic legislation.

Notwithstanding the above, such income is within the charge to tax under Schedule E and within the scope of the PAYE system of deductions at source. However, in such cases, with effect from 1 January 2020, Revenue will not enforce the operation of PAYE in cases where 60 or less workdays are spent in the State in a tax year. Each year should be considered on a standalone basis.

"The environment in Ireland has become increasingly onerous and complicated in relation to employment tax and payroll compliance"

The following chart outlines the employer's obligation to register for PAYE and PRSI from 1 January 2020:

Category	DTA countries	Non-DTA countries
Less than 30 workdays in the tax year	No PAYE Obligation	No PAYE Obligation
Between 30 and 60 days in the tax year	No PAYE Obligation	PAYE Obligation
More than 60 workdays but less than 183 days present in the tax year:	PAYE Obligation in the absence of a PAYE Dispensation	PAYE Obligation
More than 183 days present in the tax year	PAYE Obligation	PAYE Obligation

*Where PAYE applies – the obligation to deduct arises from day one.

An individual who spends more than 60 workdays but less than 183workdays in Ireland in a calendar year:

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 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 and – See Below

d. the remuneration is not borne by a permanent establishment which the employer has in the State.

Non-Resident Employer:

Revenue, in line with OECD guidance 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.

Example

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.

Therefore, subject to an application being made by ABC UK, Revenue will grant a release to ABC UK from the obligation to operate PAYE.

As it can be seen from the above the whole area of Non-Irish Employments exercised in the State is equally complex for the foreign employee and the foreign employer and practitioners need to take great care that the respective legislation in relation to these Non-Irish Employments are applied appropriately.

James Bradley
Chartered Tax Advisor and Chartered Accountant