

PAYROLL EXEMPTIONS

Payroll Tax Deductions In Relation To Non-Irish Employments Exercised In Ireland

If an employee carries out the duties of a foreign employment in Ireland, the foreign employer is obliged to register and to operate the Irish Pay-As-You-Earn (PAYE) System on the income that is attributable to Irish duties. However, the Irish Tax Authorities will not require the foreign employer to operate the Irish PAYE system in certain circumstances.

1. SHORT-TERM BUSINESS VISITORS

1.1 *Not more than 30 days*

Where a non-resident employee performs in Ireland incidental duties and performs those incidental duties in Ireland 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. In this context a 'day' is any day in which any work is performed in Ireland

1.2 *Not more than 60 working days*

The Irish Tax Authorities will not require an employer to operate the Irish PAYE system where the following criteria are satisfied –

- a. the individual is resident in a country with which Ireland has a Double Taxation Agreement and is not resident in Ireland for tax purposes for the relevant tax year; and
- b. there is a genuine foreign office or employment; and
- c. the individual is not paid by, or on behalf of, an employer resident in Ireland; and
- d. the cost of the office or employment is not borne, directly or indirectly, by a permanent establishment in Ireland of the foreign employer; and
- e. the duties of that office or employment are performed in Ireland 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.

Note 1

As regards (c) above, the Irish Tax Authorities, in line with OECD guidance (commentary on Article 15 of the OECD Model Tax Convention on Income and on Capital), do not 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 Ireland.

2. DUAL PAYROLL WITHHOLDING

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

Where individuals of Treaty countries –

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

Note - A day during any part of which the employee is present in Ireland counts as a day of presence in Ireland for the purposes of computing the 183 day period

then, the Irish Tax Authorities will not require a foreign employer to operate the Irish PAYE system in respect of such individuals who have income attributable to the performance in Ireland of the duties of a foreign employment where the following conditions, in addition to those in listed at point 1.2 above (other than condition 'e'), are met.

The foreign employer must -

- a. be registered in Ireland as an employer for PAYE tax purposes; and
 - where there is an intermediary paying the employees of the foreign employer, supply details of the intermediary who is paying the employees; and
 - where there is a relevant person 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 Ireland the duties of the foreign employment, and are paid by a connected entity in Ireland 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 the name and address of that relevant person for whom the employees of the foreign employer are doing work in Ireland;
- b. maintain a record of the full name, latest Irish and overseas address, date of commencement and cessation of the individual, 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 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 Ireland 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 Ireland; and
- f. seek clearance in writing from the Irish Tax Authorities within 21 days after the date the assignee takes up duties in Ireland. Pending written clearance from the Irish Tax Authorities, 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 Ireland who is paying the emoluments on its behalf, the Irish Tax Authorities 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:

- *A certified copy of a 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

- *A statement from the relevant foreign tax jurisdiction.*

IMPORTANT

The social security position of the individual must also be considered as the payroll exemptions discussed above only apply to Irish payroll taxes, i.e. Income Tax (PAYE) and the Universal Social Charge (USC).

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