Expanding abroad? How the Foreign Earnings Deduction can benefit executives and companies

In 2012, the Foreign Earnings Deduction (FED) was reintroduced, providing tax relief to employees working in specified countries if certain conditions are met. Since 2012, the number of countries that qualify under the FED rules has expanded from five to 30 countries, providing a much welcome incentive for employees to work overseas in these jurisdictions at a time when Irish businesses are expanding abroad.

How do you qualify for the relief?
A deduction will be available for employees working temporarily overseas in the relevant countries. The deduction is subject to a maximum claim of €35,000 and shall apply for the tax years 2012 through to 2020.

In order to receive this deduction the employee must spend at least 30 days (40 days for 2015 & 2016) working in any of the relevant countries in a continuous 12 month period. The 12 month period does not need to fall within a single tax year. These qualifying days must form part of a period of at least three consecutive days spent working in any of the relevant countries. For FED claims prior to 2015, the number of consecutive days was four and the minimum number of days in a continuous 12 month period was 60 days.

Time spent travelling to/from a relevant country can be included for any claims from 2015.

The deduction does not apply to employees paid out of the public revenue of the state (e.g. civil servants, Gardaí and members of the defence forces or individuals employed with any board, authority or similar body established by or under statute).

What are the relevant countries?
For 2012, the relevant countries were Brazil, Russia, India, China and South Africa. This list was expanded in 2013 to include Egypt, Algeria, Senegal, Tanzania, Kenya, Nigeria, Ghana and the Democratic Republic of Congo. From 1 January 2015, the list also includes Japan, Singapore, South Korea, Saudi Arabia, the UAE, Qatar, Bahrain, Indonesia, Vietnam, Thailand, Chile, Oman, Kuwait, Mexico and Malaysia. Finance Act 2016 added Pakistan and Columbia to the list.

How is the deduction calculated?
The deduction is calculated based on the total amount of time spent working in any of the relevant countries and is calculated according to the following formula:

\[ D \times \frac{E}{F} \]

- \( D \) = the number of qualifying days in the tax year
- \( E \) = the employment income in the tax year (including share awards and share option income, but excluding certain benefits-in-kind, termination payments and restrictive covenants)
- \( F \) = the number of days in the tax year that the individual held the office or employment.

Example
An employee who is a tax resident in Ireland spends 120 qualifying days working in a relevant country. The employment income for the year amounts to €100,000. The FED is calculated as follows:

\[
\text{Specified amount} = \frac{(120 \times 100,000)}{365} = €32,877
\]

\[
\text{Total employment earnings} = €100,000
\]

\[
\text{Less deduction} = (€32,877) = €67,123
\]

\[
\text{Taxable income} = €67,123
\]

\[
\text{Tax savings at 40%} = €13,151
\]
Foreign Earnings Deduction

When and how do you claim the relief?
The deduction is claimed at the end of the tax year when making an annual return of income for that year.

In situations where an employee is assigned overseas under their employer’s assignment policies, it is possible that they will be tax equalised to Ireland. The employee’s stay-at-home tax position will be unchanged as a result of the assignment. The employer assumes responsibility for any additional taxes as a result of the assignment, including those in the overseas location, and benefits from any tax reliefs that may arise, such as the FED.

Employers should ensure that their tax equalisation policy is updated to reflect the fact that the savings from the FED will accrue to the company.

Restrictions on the relief
A deduction will not be claimable where another relief is claimed by the employee (e.g. split-year relief, Trans-border Relief, Special Assignee Relief Programme, R&D incentive and the limited-remittance basis that still exists). The FED will be restricted where double taxation relief is claimed in respect of employment income earned abroad. The FED will also be subject to the high earners’ restrictions on tax reliefs.

Recommended action
It is essential that all employees who may be in a position to claim this relief are recording and monitoring their days spent in any of the relevant countries. Consideration should also be given to ensuring that three consecutive days are spent in these countries, where feasible.

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- Implement tracking and control systems for their international employee movements
- Manage their cross-border tax and social security withholding obligations
- Develop strategies to manage and realise business value from their international mobile workforce

We can also assist your organisation with your tax equalisation policy review and amendment, and appropriate information for the communication and tracking of important information in order to claim this relief.

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