



Temporary assignees to Ireland

New Revenue guidance

Background

Where a non-resident individual who holds a non-Irish employment works temporarily in Ireland for a local entity, Irish PAYE implications can arise for either the foreign employer or the local entity.

Revenue guidance on this area has existed since 2007. Despite the 2007 guidance being largely sensible and well understood, the area could be problematic in practice.

The 2007 guidance was updated in December 2016 to incorporate certain OECD commentary (which is not reflected in Irish law). This updated guidance caused a lot of practical difficulties and uncertainty for employers, including making it almost impossible to obtain an exemption from the requirement to operate PAYE where an employee spent more than 30 workdays in Ireland in a tax year. Since December 2016, Revenue have engaged with stakeholders, which has now resulted in revised guidance issuing in April 2018. While aspects of the new guidance are not as practical as

the earlier guidance, Revenue's overall explanation of their position is clearly set out.

Temporary assignees up to 60/30 workdays per year

The first item to consider is where the individual is tax resident, specifically if the individual is tax resident in a country with which Ireland has a Double Taxation Agreement (DTA) or in a country with which we do not have a DTA (referred to as non-DTA countries). This is important, as separate thresholds apply depending on the country of residence.

The position for a non-resident employee under the new guidance is summarised in the table below:

Presence in the State during:	Resident in a DTA country		Resident in a non-DTA country	
	Number of workdays in Ireland:	Payroll treatment	Number of workdays in Ireland:	Payroll treatment
One tax year	Up to 60 workdays in the tax year	No payroll obligation, but consideration will need to be given to where the employee will return to Ireland in a subsequent year	Up to 30 workdays in the tax year	No payroll obligation, but consideration will need to be given to where the employee will return to Ireland in a subsequent year
One tax year	61 workdays or more	See "Certain DTA visitors to Ireland" section below	31 workdays or more	Irish PAYE must be operated on income earned while working in Ireland
Two consecutive tax years	Up to 60 workdays across two consecutive tax years	No payroll obligation, but consideration will need to be given to where the employee will return to Ireland in a subsequent year	Up to 30 workdays across two consecutive tax years	No payroll obligation, but consideration will need to be given to where the employee will return to Ireland in a subsequent year
Two consecutive tax years	61 workdays or more across two consecutive tax years	See "Certain DTA visitors to Ireland" section below	31 workdays or more across two consecutive tax years	Irish PAYE must be operated on income earned while working in Ireland
More than two tax years	No threshold applies	See "Ongoing presence" section below	No threshold applies	PAYE must be opera

Where earnings of a temporary assignee are to be subject to PAYE based on the above criteria, PAYE should apply to income referable to the Irish workdays.

Certain DTA visitors to Ireland

Where a temporary assignee exercises the duties of employment in Ireland for more than 60 workdays, either in one tax year or cumulatively over two tax years, there is no automatic release from the obligation to withhold Irish PAYE. However, where certain conditions are satisfied, an employer may apply to Revenue for a release from the obligation to operate Irish payroll. The conditions are as follows:

1. the assignee is resident in a country with which the State has a DTA and is not resident in the State for tax purposes; and,
2. there is a genuine foreign office or employment; and
3. the remuneration is paid by, or on behalf of, an employer who is not a resident of the State (see below), and
4. the remuneration is not borne by a permanent establishment which the foreign employer has in the State.

For the purposes of (3) above, Revenue will not accept that this condition is met where the individual is:

- working for an Irish employer where the duties performed by the assignee are an integral part of the business activities (see below) 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.

The new guidance contains comments as to what Revenue mean by "an integral part of the business activities". This needs to be considered on a case by case basis. 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; and
- 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.

This is not an exhaustive list, so it remains to be seen how this will work in practice. Revenue have included a number of examples in the guidance.

Ongoing presence

Another new aspect of the revised guidance is the concept that individuals who have an ongoing requirement to return to Ireland over a number of years will not qualify for an automatic exemption from PAYE, regardless of the number of days spent in the State in a particular year.

For example, if an individual is required to be in Ireland to attend quarterly meetings each year for a total of 4 workdays per year, the individual will not qualify for an automatic exemption from the obligation to withhold PAYE under the current guidance. Instead, the employer may apply for an exemption from the requirement to withhold PAYE in the normal manner. The guidance notes indicate that such an exemption (if granted) would be valid for a single tax year only, so annual applications would be required.

Rotational assignees

Furthermore, the guidance indicates that where a role is filled in Ireland by a series of different individuals on a rotational basis (the example used is in respect of 4 individuals spending consecutive periods of 50 workdays each in Ireland working in the same role), the payroll withholding position should be considered in respect of that role as a whole, i.e. inclusive of all 200 workdays.

We would also point out that these rules are likely to have a significant impact in particular on businesses that operate on an "all-Ireland" basis, as there are likely to be a large number of employees required to work north and south of the border each year. The Irish PAYE position will need to be considered on a case-by-case basis.

Applications for release from the obligation to operate PAYE.

The guidance increases the time limit in which the application should be made from 21 days to 30 days.

In general, applications will not be approved retrospectively. However, the guidance also states that employers will not be penalised where it was not expected or readily apparent that a particular individual would have more than 60 workdays in Ireland.

Interaction with treaty relief

The new guidance acknowledges that the application (or non-application) of PAYE withholding does not impact on an individual's income tax position, which will depend on individual circumstances and the relevant DTA provisions.

Deloitte's view

The updated guidance provides an element of clarity around Revenue's position in relation to Short Term Business Visitors to Ireland. However, the guidance is more of a case of one-step forward and two steps back. The guidance as it stands is broadly unworkable for employers in a practical sense.

The "watering down" of the long-standing practice of treating not more than 30 workdays as being incidental and exempt is disappointing, particularly given that it brings the spectre of employers having to operate PAYE on individuals with just 1 workday in Ireland. Likewise, the removal of the exemption for up to 60 workdays in one tax year for residents of DTA countries through the introduction of multi-year tracking requirements is extreme in nature. At a time when we are looking to attract business as a result of Brexit, this approach is unhelpful.

Non-Irish employers should now review all temporary assignments to Ireland to ensure the correct payroll treatment is being applied as this new guidance applies with effect from 1 January 2018.

This tightening of the Irish tax rules emphasises the need for international employers to have robust tracking systems and processes in place in order to identify cases that might fall within the Irish PAYE net – especially those who may regularly return to Ireland.

These recent changes need to also be reviewed in the context of PAYE Modernisation, which will require real time payroll reporting from 1 January 2019. While special arrangements for globally mobile employees are not anticipated, it would make sense for the new system to include features which facilitate the smooth operation of PAYE in these cases.

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