



CBPES Tax  
Briefing  
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# Cross Border Workers & Cross Border Employers Current Issues

- New Government policy encourages remote working/working from home.
- Employers are struggling to recruit staff without offering remote working as an option.
- The current tax rules and the government policy are some ways at odds with each other particularly when income to crossborder employment.



# Foreign Employer Obligation to set up Payroll in ROI

## Normal Rule – ROI Payroll Required

- ROI Payroll must be run where entire duties are carried out in the ROI
- ROI payroll must be run where partial duties are carried out in the ROI subject to treaty exemption
- ROI resident employee of UK/NI employer recruited to work in ROI or allowed to work from home – ROI payroll required from the outset

## What is treaty exemption?

- UK/NI resident employee working for UK/NI resident employer posted to ROI
- 30 days – No payroll in ROI
- 60 days – No payroll in ROI but details to be supplied to Revenue and dispensation sought
- < 183 days – Registration required but no deduction and commitment from employer
- > 183 days – full ROI payroll

## 4.1.12 Summary of Position with effect 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 workdays 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.

# WFH Crossborder

- Commuting Crossborder Fulltime -100% payroll in Employer jurisdiction
- WFH across the border Fulltime – 100% of payroll in Employee jurisdiction of residency
- WFH across the border on a Hybrid Basis - Employer must run **Dual Payroll**
- EgNorthern employer ROI resident Employee
  - Run UK payroll in full , run shadow payroll for ROI duties
- EgROI resident Employer NI resident Employee
  - Run ROI payroll in full , run shadow payroll for UK duties
- Employer finances the shadow payroll taxes payable to HMRC/Revenue.
- A Real Time Tax Credit is claimed through the UK/ROI payroll for tax suffered on ROI/UK duties.
- The payroll split between UK and ROI based on **work pattern.**

# WFH Crossborder

Employee files tax return in country of residency and returns worldwide income. Takes credit for taxes suffered in country of residency and shadow payroll jurisdiction. Any refund due may be due to the employer. Complicated to unpick tax return (to calculate refund to employer) if jointly assessed with spouse.

BIK charge on interest free preferential loan to employee (loan which funded shadow payroll taxes) 13.5% interest rate in ROI 2.25% interest rate in NI

# WFH Crossborder – Government Jobs

- Civil Servants /Government Service Employees who WFH crossborder are not protected by Article 18 from dual payroll.
- Article 18 usually leaves the taxing rights in the jurisdiction of the employer unless the services are **rendered in** the jurisdiction where the employee is resident and the employee is a resident and national of that jurisdiction and didn't become resident just to render the services.
- That means that say a local authority worker resident in ROI and an Irish citizen but works for an NI local authority carrying out the duties of their employment and WFH in the ROI is taxed in the ROI.
- Viceversa a local authority worker resident in NI and a citizen of NI but works for an ROI local authority carrying out the duties of their employment and WFH in NI is taxed in the NI.
- How many Government Depts, Local Authorities, Educational Establishments are allowing WFH crossborder?

# Dual Payroll

- Payroll in small businesses shouldn't be so complicated that it has to be outsourced.
- Its not just WFH employees who are subject to dual payroll.
- The UK define a workday for the purposes of the statutory residence test as more than 3 hours of work a day in the UK . If there is a crossborder trip starting in the UK where less than 3 hours were spent in the UK it is still considered a UK workday.
- The ROI residence rules define “a day” as a day during any part of which an individual is present in the State but they define a workday is “a day during any part of which an individual performs work in the State”.
- Wouldn't it be “nice” if definitions of workday were the same.
- **Suggestion** : A 3 hour rule could eliminate large cohort of workers from dual payroll .



# Other Blocks to WFH Crossborder



As well as dual payroll what are the other excuses/blocks employers are putting up to WFH Crossborder?

Regulatory Issues, GDPR, Pension Access, Social Insurance, PE Risk

## What is PE Risk?

- MLI amendment to tax treaty in 2019 increased the PE risk for companies by widening the scope of what constitutes a Permanent Establishment (PE)
- Some overseas caselaw – Denmark case
- WFH Contract of Employment (depending on employee role and nature of business) could create a PE of the UK company in the ROI ie corporation tax exposure
- UK Company ROI branch – claim for foreign branch exemption – branch only taxed in ROI at 12.5%.
- ROI Company UK branch employee - No branch exemption under Irish rules
- So ROI company has exposure to 19%/25% tax on branch profits in UK

# Other Blocks to WFH Crossborder

- Minimise profits left in WFH jurisdiction legitimately by
- Restricting authority of WFH employees
- Setup an entity in WFH jurisdiction to employ the individuals and utilize
  - Posted worker 60 days rules
  - Transfer Pricing rules for intercompany charges.
- Example
- Irish Group Ltd has NI resident employees who want WFH fulltime or parttime
- Sets up NI subsidiary which employs the NI resident employees under UK contracts of employment – normal place of work NI.
- Can WFH full or parttime and can attend ROI office up to 60 days a year without ROI payroll requirements.
- Costs of NI subsidiary recharged to Irish Group Ltd under transfer pricing rules
- Beware other implications of shifting contracts crossborder

# Other Blocks to WFH Crossborder

Other jurisdictions have looked at Buffer Zones for employee tax rules.

Our own Article 18 Government Service of the DTA refer to individuals who

- *“(i) is a national of that State; or*
- *(ii) did not become a resident of that State solely for the purpose of rendering the services”*

**Suggestion:** What if we used some of this type of language to find a solution to the PE risk?

If NI or Border counties were a “Buffer Zone” for WFH employees.

So a WFH employee resident in NI employed by ROI employer is not considered to be carrying out duties in NI and therefore not creating a PE risk while WFH in the Buffer Zone if

- They are a national/citizen of NI and
- Did not become a resident of NI solely for the purposes of carrying out the duties.
- They just happened to live there.

# Impacts of Hybrid Working Crossborder



- **Income Protection policies** found to be unsuitable for incomes earned via two payrolls different jurisdictions.
- **Private Medical Insurance schemes** policies needing to be switched from one jurisdiction to the other.
- **Financial impacts on** loans from credit unions and banks linked to employment/payroll, and mortgage offers restricted by hybrid working and dual payrolls.
- **Redundancy** implications for workers moved to a payroll / new branch across the border.
- **Employment law** implications due to automatic changes to contracts with minimal or no consultation.



# Impacts of Hybrid Working Cross border

- Mortgage offer withdrawn when employee moved onto dual payroll
- Health Insurance as a an employee – dual payroll required policy changeover - preexisting conditions limit options

# Where's the Legislation and Guidance?

## ROI Revenue Manuals

- Part 42-04-65: PAYE - Employee payroll tax deductions in relation to non-Irish employments exercised in the State

## HMRC Manuals

- The CWG2 Employer Further Guide to PAYE and NIC
- <https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee82000>





# Cross/Trans Border Workers Relief ROI

## Normal Rule

Employee remains resident in ROI	Foreign employment,	Foreign taxes deducted	Commutes at least one a week
Employment lasts 3 months	Not proprietary directorships	No further tax or USC to pay in ROI(if that is the only income).	Doesn't facilitate the employee working from home in the ROI.
	Is much wider than ROI/UK it applies to all treaty countries.	Revenue and DOF of the impression that there are only circa 1700 crossborder workers because only 1700 claims for relief were made.	





## Other Issues

- Social Insurance – you pay it on the employment where the duties are carried out unless you are posted by the employer from one State to the other then you can continue to pay it in the home State.
- Access to Benefits – usually where you last worked.
- Access to Healthcare – Crossborder worker can access it in both States – so a change to the place of employment may change their access to healthcare.



# Questions

*Can a UK resident (NI) who is a company director of a company in ROI be paid a lump sum pension in ROI and have a private pension in NI.*

**The pension rules will depend on the scheme. 25% is the usual lump sum amount the first €200,000 of which is tax free in ROI and the rest taxed.**

**In NI worldwide income must be declared unless the remittance basis is being used,**

**The tax treaty Article 17 (for non government jobs) gives the taxing right to the UK country of residence of recipient**

# Questions



*Have problems setting up my profile for logging into hrmc account. As I don't have a UK passport when I select other ways to set this account up it directs me to technical support number to ring when I ring they tell me that due to changes on there systems they cannot set up my full account for access my tax info through the government gateway as I don't have a UK passport. So I will be unable to ever claim tax relief for anything?*

**Join the Club!**



# Questions

*Working in NI and paying tax in NI but living in ROI (Donegal) but also paying end of year tax to ROI government. Is it possible to claim pension in ROI?*

**No there is limited relief for pensions crossborder. It generally only applied to posted workers**



# Questions

*With regards pensions, as a cross border worker residing in NI, am I entitled to any public pension in the Republic? And can I avail of any services in ROI such as dental care?*

**If PRSI contributions are being made they**

**1. contribute toward an Irish State pension**

**2. You can get free dental examinations and a subsidised scale and polish once a year under the [Treatment Benefit Scheme](#).**



# Questions

*How do you recommend that we track working across border and how is this enforced?*

**As an employer it is your obligation to know where you employees are carrying out their duties and for how long. Each business is different in term of the types of records they keep.**

**Enforced on a HMRC or Revenue Audit**



# Questions

*Someone who resides in N. Ireland and is Self employed in Republic of Ireland. Do they have to submit Tax Returns on both sides?*

**Yes and no. If they are VAT registered or have a place of business in ROI, then yes 2 returns required.**

**If they have no place of business in ROI and are below the VAT threshold there, then 1 return to the UK may suffice. Depends on the type of business really.**



# Questions

*If someone has enough contributions for both state pensions North and south are they eligible for both?*

**Yes a bit of both**

**also what do they need to get Irish pension and is it pro rated based on years**

**10 years minimum contributions. Can be averaged over period since first contribution.**



# Questions

*As a Derry based company, we have cross border workers from Donegal. Has there been any update to the remote working situation where essentially employees who work from home in Republic of Ireland for us are liable to taxation in both states for those days?*

**Dual Payroll is required and employee must file ROI tax return  
Real Time tax credit for taxes suffered in other jurisdiction.**

**Shadow payroll taxed paid by employers are considered a loan to employee and a BIK charge arises**





# Questions

*If there has been no update, what advice are you giving to companies who have remote workers/a hybrid working policy such as us?*

**Some have set up a subsidising ROI and moved employees onto ROI contracts. Then they can be 100% on ROI payroll and can travel to NI up to 60 days without payroll implications,**

**NB – lots of other issues as discussed with changing contracts into ROI**



# Questions

*What is expected of an employer in regards to communicating the cross border tax to employees and what is best practice for this?*

**Each employees' circumstances will be different. They should be afforded the time to work out their own personal implications before moving to hybrid or remote working .**

**Orla can add to this**