

Implications for Cross Border Employers & Workers

Rose Tierney

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Cross Border Employment

- What are the Issues?
 - Payroll – where to run it – which jurisdiction or both
 - Tax Returns –when or if you need to file and where
 - Remote Working – Working From Home – Flexible working - Impact on the above
 - Government Jobs – how are they affected?

Foreign Employer Obligation to set up Payroll in UK/NI

UK Payroll required

- UK payroll must be run by an ROI Employer when
 - entire duties are carried out in UK/NI
 - partial duties are carried out in UK /NI subject to the treaty exemption and temporary assignee rules
- UK/NI resident employee of ROI employer recruited to work in UK/NI or allowed to work from home

What are the treaty exemption and temporary assignee rules?

- ROI resident employee working for ROI resident employer **posted** to UK/NI
- 30 days – STBV – no payroll in UK
- < 60 days – STBV – no payroll in UK but details to be supplied to HMRC
- <150 days – No deduction under payroll - additional details supplied
- <183 days – Employee details supplied on an individual named basis but no deduction
- >183 days – full UK payroll

Foreign Employer Obligation to set up Payroll in ROI



ROI Payroll Required

- ROI Payroll must be run by a UK employer where
- entire duties are carried out in the ROI
- 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

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/paye-manual/pay82000>

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.

Tax Residence Tests ROI & UK

ROI

- 183 days – anytime during day in calendar year – resident for that year
- 280 days – anytime during day over 2 calendar years – resident in the 2nd year

UK

- 183 nights (midnight) in tax year (6 Apr – 5 Apr) – resident for that year
- Also other ties to the UK with less days – resident for that year

Tax Return Filing Obligations

- Where a person works on the opposite side of the border from where they live then they have a tax return filing obligation in their country of residency and should file that “foreign” income
- **NI resident files tax return with HMRC :**
- Showing income earned in ROI from 6 Apr – 5 Apr converted to Stg .
- In the Foreign Tax Credit Section take credit for the tax and USC suffered through the payroll in the ROI (converted to Stg)
- If the Uk tax calculation on the “foreign” income results in a liability the top up should be paid to HMRC. No tax refund can be obtained from HMRC if no tax has been paid to them.

Tax Return Filing Obligations

- ROI resident files tax return with Revenue Commissioners :
- Showing income earned in UK/NI ROI from 1 Jan – 31 Dec converted to Euro under Foreign Employment.
- Without Transborder Relief and in the Foreign Tax Credit Section take credit for the tax suffered through the payroll in the UK/NI (converted to Euro)
- OR
- With Transborder Relief
- Pay any top up due to Revenue Commissioners can be obtained from Revenue if no tax has been paid to them.

Cross/Trans Border Workers Relief ROI



- Employee remains resident in ROI
- Foreign employment,
- Foreign taxes deducted and not repayable
- Commutes at least one a week
- Employment lasts 3 months
- Not for 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 because of the commute condition duties must be carried out in other jurisdiction
- Is much wider than ROI/UK it applies to all treaty countries.
- Relief is reduced by other income and being jointly assessed with spouse
- Elect for separate treatment. Election cannot be backdated.

Cross Border Workers & Cross Border Employers

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

Dual Payroll Requirements

- If the NI employment is exercised wholly in the ROI
 - All of the income is chargeable to tax in the ROI and is within the PAYE system of deductions at source.
- If the NI employment is exercised partly in the ROI
 - The portion relating to the part exercised in ROI is chargeable to tax in the ROI and is within the PAYE system of deductions at source.
 - Apportionment means running dual payroll in NI and ROI.
 - A real time credit is available for the foreign tax but it's a cumbersome to administer.

The rules as they stand do not adequately deal with this on a practical level for small border businesses.

The rules on Crossborder employment

Employee or Employer **cannot** decide where payroll is operated-
Always based on where the duties are carried out.

Employee or Employer **cannot** “elect for employment to be taxed in home country”
No ability for employee or employer to “elect” to be taxed on payroll in home country.
Payroll is run where the duties are carried out and employee files tax return with
“foreign employment income” in country of residency.

Where payroll is run **is not based** on domicile or residence of the employee.
Tax residence of employee is only relevant for the treaty exemption and income tax
return filing.

Treaty Tax Relief on Certain Government Jobs

- Some government jobs are only taxed in the country of payment.
- Relief is provided by Article 18 of UK Ireland Tax Treaty.
- Not all jobs are covered – very grey area
- Covered –
- Paid by a contracting State, or a political subdivision or local authority thereof
- To an individual in respect services rendered to that State or subdivision or authority
- in the discharge of functions of a governmental nature

Treaty Tax Relief on Certain Government Jobs

ARTICLE 18 GOVERNMENT SERVICE

- (1) (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority, in the discharge of functions of a governmental nature, shall be taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State 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.

Treaty Tax Relief on Certain Government Jobs



- (2) (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority, in the discharge of functions of a governmental nature, shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
- (3) Paragraphs (1) and (2) of this Article shall respectively apply to salaries, wages and other similar remuneration of an individual employed in an educational institution and to any pension in respect of such employment of an individual formerly so employed, paid directly by, or wholly or mainly from funds provided by, a Contracting State or a political subdivision or a local authority thereof in the same way that they respectively apply to salaries, wages and other similar remuneration and to any pension, paid to an individual in respect of services rendered to that State or subdivision or authority, in the discharge of functions of a governmental nature.

Treaty Tax Relief on Certain Government Jobs

- Must be government funded
- Must be for services rendered to the State
- Which are governmental services or
- To employees of educational institutions wholly or mainly funded by the State

Treaty Tax Relief on Certain Government Jobs

- Impact for a crossborder worker is that they are only taxed on the salary in the country of payment
- eg NI resident working for local authority in ROI only taxed in ROI – no requirement to file UK tax return
- However what happens if they work from home in NI carrying out their duties for the ROI local authority ?

Treaty Tax Relief on Certain Government Jobs



(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State 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.

Treaty Tax Relief on Certain Government Jobs

- But the salary can be taxed in the Other Contracting State – NI
- if
- if the services are rendered in the other Contracting State ie NI
- And the individual is a resident of NI
- Who is a national of NI or
- Did not become a resident of NI solely for the purposes of rendering the services

Treaty Tax Relief on Certain Government Jobs

- So Article 18 doesn't stop NI taxing the salary if the duties are carried out in NI
- And vice versa
- Article 18 doesn't stop ROI taxing the NI government salary if the duties are carried out in the ROI
- So does that mean just filing a tax return or does a payroll need to be set up?
- Back to Article 15 of the treaty since relief doesn't apply for a crossborder worker who works from home on the opposite side of the border to the employer then a payroll is required

Treaty Tax Relief on Certain Government Jobs



- So Local authorities, government departments , educational establishments should all be reviewing their dual payroll responsibilities where they allow crossborder workers in their departments to work from home on the other side of the border.

The Proposal for Change

- It's a crossborder issue so both NI and ROI need to agree –a bilateral agreement.
- The rules we currently have to work with are global mobility rules.
- We need a recognition that border businesses do not fit well within the current rules. We need a set of “local mobility “ or “geographically appropriate” rules.
- We need also a revised or new relief for crossborder workers.
- Apparently as a first step a survey will be carried out by the ESRI to ascertain more accurate numbers of crossborder workers.
- Has anybody employer or employer or special interest group been contacted by the ESRI in respect of crossborder employment?

Other Issues affecting Employers and Employees

- Why is this relevant to cross border employment ? Because of the discriminatory recruitment practices like forcing individuals into corporate structures rather than taking them on payroll because of their tax residence.
- It shouldn't be a condition of the employment that you have to be tax resident or that you can only remote work in the same jurisdiction as the employer company.
- Fix the “faulty” foreign employer registration legislation – fix the discrimination.
- Leave the ROI and NI job markets open to residents on both sides of the border.

Questions?



- Contact Details:
- Rose Tierney - TTax – Tierney Tax
- Tel: +353 47 57843
- Email: rose@tierneytax.ie