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To: boconnell@indecon.ie

12 July 2019

Dear Sir

Re: Review of the Special Assignee Relief Programme (SARP)

The Irish Tax Institute welcomes the opportunity to contribute to the Review of the Special Assignee Relief Programme (SARP). The Institute fully supports the objectives of SARP to attract highly skilled and internationally mobile executives to Ireland to support business expansion, job creation and the resulting economic benefits to the State.

SARP has been an important component in Ireland's competitive Foreign Direct Investment (FDI) offering since its introduction in Budget 2012. It has delivered on its objective to attract individuals with advanced skills and leadership experience, by reducing the cost of assigning these individuals to Irish-based operations.

The number of individuals claiming SARP has increased significantly since its introduction, which demonstrates its success in attracting key multinational employees to work in Ireland. The programme is benefiting a broad range of sectors, with assignees across a range of sectors of the economy, for example, IT, financial services, pharmaceutical and medical, consumer and industrial products and services.

According to the latest statistics, SARP has directly resulted in an increase of 793 jobs, generating a very significant tax contribution to the Exchequer. The broader role of SARP in competing for FDI internationally was recognised in the 2014 review of the relief.

The spill over from increased FDI and the roll-out of projects into the Irish economy continues to contribute to payroll yields, capital projects, research and innovation and the transfer of skills to Irish operations. FDI has increased to an all-time high, with the highest number ever employed in the multinational sector.

At this critical juncture, Ireland faces many competitive pressures for top talent. This is exacerbated by challenges posed by the UK's withdrawal from the European Union, as other jurisdictions with similar assignee reliefs, are actively competing for existing UK business. In

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addition, Ireland needs to be prepared for a potential policy shift in the UK post-Brexit, as that jurisdiction attempts to enhance its ability to attract and retain global investment.

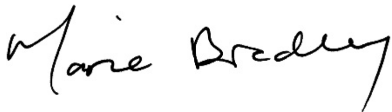
Overarching all of this, changes to the international tax framework have increased the focus on where multinationals locate their value-added activities and key decision-makers in support of their substantive operations. This transforming environment presents both opportunities and potential threats to Ireland as an attractive location for FDI.

In fact, SARP has been used effectively by many multinationals to attract the necessary senior management from parent locations, like the US, to Ireland. It has helped to support and sustain substance in Ireland, by ensuring that profits attributable to the Irish operations are correctly aligned with value creation in Ireland. SARP has a pivotal role to play in preserving and maintaining the high level of corporation tax receipts that are currently being generated from increased profitability of the FDI sector in Ireland, as a result of the implementation of BEPS measures in Ireland and internationally.

We have set out at Appendix 1, six key recommendations on SARP, to ensure it continues to deliver its policy objective of attracting highly skilled and internationally mobile talent to Ireland to support business expansion. Attracting talent to Ireland is and will continue to be crucial to the future growth of the economy and therefore, SARP should be retained and extended beyond 2020.

Please contact Anne Gunnell at agunnell@taxinstitute.ie or on (01) 6631750 if you wish to discuss matters raised in this submission.

Yours truly



Marie Bradley
Institute President

Appendix 1

Institute Recommendations on SARP

1. **Extend SARP beyond 2020 and provide early certainty to business on the extension**

   SARP is a critical element of Ireland's competitive offering and therefore, it is vital that it is retained and extended to assignments commencing after 31 December 2020. An early commitment to extending SARP is essential, as businesses need to be able to plan with certainty, so that they can acquire the relevant skillset or leadership experience required to deliver projects on time and within budget.

   Large projects and operational expansions are planned a year or more in advance of their implementation. Crucial decisions are being made now on projects scheduled for 2021 and beyond. Businesses are examining their options across a number of jurisdictions. Certainty on the cost of obtaining the required expertise and the reliefs available to reduce these costs, are factors in the decision-making process. Uncertainty on the direction of tax policy can impact on business decisions and potentially risk the opportunity loss of a key project to a competitor jurisdiction.

   Early certainty is even more important now, as Ireland competes for post-Brexit UK investment, with jurisdictions with very attractive assignee relief regimes, such as The Netherlands and Luxembourg.

   Institute Recommendation: We recommend that SARP is retained and extended beyond 2020. An early commitment to extend the relief should be given, as businesses are making decisions now on investment projects scheduled for 2021 and beyond.

2. **Remove the 90-day notification requirement as a qualifying condition to claim SARP**

   Tax legislation requires an employer to notify Revenue of an employee claiming SARP within 90 days of that employee's arrival in Ireland to perform his/her employment duties. In a welcome move, Finance Act 2018 extended the notification period from 30 days to 90 days. However, it remains a short timeframe, given the multiple practical issues that a new assignee must address upon his/her arrival in Ireland.

   Often, the new assignee is taking over a senior role in the company, organising housing and schools for their children and in addition, he/she must obtain a Personal Public Service (PPS) number and register this number with Revenue. All of this takes time, and in such circumstances, the SARP notification (Form SARP 1A) can be inadvertently overlooked or delayed.

   Frequently, the submitted application may be incomplete because of a delay in obtaining a PPS number. There is likely to be a significant increase in applications for PPS numbers over the months ahead, as a result of the requirements of the Central Register of Beneficial Ownership of Companies and Trusts, which will undoubtedly draw further on the resources of the Department of Employment Affairs and Social Protection.

If the employer fails to submit the SARP 1A to Revenue within the requisite timeframe, this can result in the refusal of the SARP relief to an employee, who would otherwise meet the qualifying conditions. We believe that the application of a rule, which makes a relief dependent on the actions of a third party (the employer), is at odds with the basic principle that a relief is personal to the individual and ultimately must be claimed on the individual's statutory income tax return. There is no obligation on the individual to claim SARP relief during the year, via payroll. Like any other relief, SARP can be (and in many cases, is) claimed by way of a refund at the end of the tax year.

Refusing the relief on the basis that the employer has not submitted the notice within 90 days can result in what is, in effect, a financial 'penalty' that is entirely disproportionate. For example, where an individual is earning €500,000 per annum, the effective penalty would be as much as €255,000 in total over 5 years, for something that may effectively be outside of their control.

We understand from Revenue that the purpose of the early notification is to gather information for statistical purposes. However, there is a separate statutory requirement obliging employers to provide detailed information on SARP employees and relief claims, on a SARP Employer Return, which is submitted after the end of the tax year. In addition, it may not be apparent within 90 days that the employee will in fact qualify for or claim SARP. For example, the employee may not meet the tax residency requirement, or their circumstances may change. As such, the value of the information provided at this point is limited.

The notification period does not enhance the operation of the relief and it can in fact operate to deny relief in circumstances, which would not be consistent with the underlying policy objective.

We would recommend removing the notification period from the legislation or, at a minimum, removing it from the part of the legislation that defines a 'relevant employee'. This would ensure that the automatic 'penalty' for the employee referred to above, arising from an employer failing to lodge the notice within 90 days of arrival, would not arise.

Institute Recommendation: The 90-day notification requirement should be removed as a qualifying condition to claim SARP or, at a minimum, it should be removed from the part of the legislation that defines a 'relevant employee'. This would ensure that the automatic 'penalty' for an employee, because of an employer failing to lodge the notice within 90 days of arrival would not arise.

3. Align the employer SARP reporting deadline with the income tax return deadline

To claim SARP, an employer and employee must comply with several reporting requirements, as set out in the table below.

Requirement	Deadline
The employer must notify Revenue of a SARP employee on the SARP 1A to provide and certify information on the employee and the employment	Within 90 day of the employee's arrival to perform employment duties

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The employer must submit a SARP Employer Return, detailing all employees who availed of SARP for the tax year and the amount of relief claimed (whether claimed, via the payroll or claimed on the income tax return).	By 23 February following the tax year
The SARP employee must submit a Form 11 income tax return. Where SARP has not been claimed via the payroll, it is claimed on the tax return for the relevant year.	By 31 October (for paper filers) or mid-November following the tax year

We have outlined above the administrative difficulties associated with the 90-day SARP notification period. The deadline to submit the SARP Employer Return can also present challenges.

The employer is required to provide information on their SARP employees and the quantum of the relief claimed, before the relief may have been claimed on the income tax return, at a time when it may be unclear whether the relief will, in fact, be claimed. For example, the income tax return date for the 2018 tax year is 31 October/ 12 November 2019, yet the SARP Employer Return is due by 23 February 2019 (more than 8 months in advance of the income tax return due date).

For a number of reasons, it may not be possible to determine whether a SARP claim will be made or the quantum of the claim at such an early stage in the year. For example, the employee may also potentially qualify for another relief, such as, the Foreign Earnings Deduction (FED) or the remittance basis on employment income and may choose to utilise such other reliefs, instead of SARP.

In addition, it may not be possible to determine whether an employee actually qualifies for SARP until their tax position in their home country is determined, due to the interaction of the SARP rules with the home country position. Also, there may be a change in personal circumstances or an unexpected delay in the secondment, which subsequently permits the relief to be claimed. These matters will only be identified when the employee's Irish and home country tax returns are prepared.

Generally, such returns are prepared in late Summer or in the Autumn; at the same time when the US position and tax return, for example, is finalised. In contrast with the timing under SARP, many other employer statutory returns are required to be submitted to Revenue shortly after the end of the tax year, such as those relating to the granting of share options or similar rights to employees. In those situations, the employer has the necessary information after the end of the tax year to complete the returns, as the granting of the options or shares is under their control.

Consideration should be given to aligning the due date for the SARP Employer Return with the due date for submitting the income tax return deadline. This would enhance the reliability and accuracy of the data provided on the SARP Employer Return.

Institute Recommendation: Consideration should be given to aligning the due date for the SARP Employer Return with the due date for submitting the income tax return deadline, which would enhance the reliability and accuracy of the data provided on the SARP Employer Return.

4. **Consider extending SARP to "new hires"**

In order to qualify for SARP, an individual must have been employed by the company overseas for at least six months immediately before arriving in Ireland. The policy rationale for this condition at the time SARP was introduced was to address concerns that extending the relief to "new hires" could cause job displacement in the Irish labour market, by making it less costly for an employer to hire a foreign-based individual, compared to an Irish-based individual.

However, Ireland is now almost at full employment and there are significant skill shortages in a number of key sectors. Companies may need to hire talent from outside the organisation to establish and support their Irish operations. The Irish economy and labour market are small, so it is often necessary to recruit talent from abroad for certain key or specialised roles.

We believe it is timely to consider whether the exclusion of "new hires" from SARP in all circumstances is appropriate, given the alteration in economic conditions and the pronounced skills shortages in certain sectors. If concerns persist regarding the impact of broadening the entry requirement on Irish jobs, consideration could be given to allowing "new hires" to qualify for SARP in sectors experiencing the most pronounced skill shortages. These skills gaps could be identified with input from the Expert Group on Future Skills Needs.

Combining a skills requirement with a minimum salary level, could also be considered to address any concerns regarding job displacement. For example, in the Netherlands there is a lower threshold for individuals with specific expertise and for younger science Master graduates.

Institute Recommendation: We believe it is timely to consider whether the exclusion of "new hires" from SARP in all circumstances is appropriate, given the alteration in current economic conditions in Ireland and the pronounced skills shortages in certain sectors.

5. **Consider extending SARP beyond five years in limited circumstances**

Five years is often not long enough for companies seeking to build substantive business operations in Ireland. Some projects will not be concluded in five years, due to their scale and complexity. The continued involvement and assistance of the SARP assignee may be required until the project is concluded.

However, SARP relief can only be claimed for five years. As a result, the employee will be subject to a much higher effective tax rate on cessation of SARP relief in the sixth and subsequent years. This increases the business cost of retaining that employee until the project concludes.

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Consideration should be given to extending SARP relief beyond five years or extending the relief on a graduated basis. An extension could be limited to certain circumstances, for example, linked to the conclusion of a specific critical business project to expand the Irish operation or where it would be difficult to recruit a local replacement for the role.

Institute Recommendation: Consideration should be given to extending SARP relief beyond five years in limited circumstances. Such an extension of the relief could be graduated and linked to the conclusion of a specific critical business project to expand the Irish operation or where it would be difficult to recruit a local replacement for the role.

6. Continue to review Ireland's SARP regime to ensure it remains competitive internationally

Ireland must remain vigilant to the fact that the global talent pool is in short supply and competition for highly skilled individuals is intensifying every year. Ireland is competing with the US, Singapore, Hong Kong and many other countries for this talent. Attracting key executives with the leadership skills and experience to drive new business projects to boost business expansion is critical. The choice to locate one or two key decision-makers in Ireland can 'make or break' the success and future growth of Irish operations. Locating decision-makers in Ireland is essential to support real substance and sustainable activity in Ireland.

Conducting a regular review of Ireland's SARP regime is important to establish how it compares with similar offerings in other jurisdictions. SARP must be at least comparable to competitor offerings (if not better).

We have included at Appendix 2, a summary of the features of some equivalent assignee regimes in the EU. As illustrated, the nature of the relief, the qualifying conditions and administrative requirements vary from country to country and so, a clear front-runner is not readily identifiable.

However, an ongoing focus on assessing Ireland's programme relative to other jurisdictions and to developments in tax policy internationally is vital, to ensure the Irish regime remains competitive internationally

Institute Recommendation: Ireland's SARP regime should be regularly reviewed and assessed, to ensure it remains competitive internationally.

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Appendix 2

High-level Analysis of Assignee Tax Reliefs in five EU Countries

	Ireland	**The Netherlands**	**Luxembourg**	**Belgium**	**Spain**
Tax Relief	30% of total remuneration between €75,000 and €1,000,000	30% of total remuneration (no maximum income cap for relief)	Tax deduction for certain expenses e.g. relocation costs, rent/utilities, trip to home county, school fees, rent/utilities, tax equalisation costs, lump sum for recurring expenses (capped)	Non-taxable allowance up to an annual ceiling of €11,250 (€29,750 if assigned to a recognised research centre or regional/global headquarters). Also, relief on portion of income related to foreign duties.	24% tax rate on employment income up to €600,000. Excess taxed at the marginal tax rate (45%)
Duration	5 years	5 years (from 1 January 2019)	5 years	10 years maximum (by concession)	Year of residence and 5 subsequent years
Expertise	"Relevant employee" defined in legislation, includes minimum basic salary requirement (€75,000)	Specific expertise, which is scarce or unavailable in Dutch labour market, includes salary threshold	Seniority test for intra-group assignees Direct recruits must have in-depth specialism in sector or profession where local resources are scarce	Specific knowledge or to occupy a senior position with a significant job content	Assignment derived from employment contract (excluding professional sportspersons) or from acquiring a directorship of a Spanish entity (restrictions on share-holder directors)
Assigned from	Associated foreign company (in DTA country only)	Associated foreign company or directly recruited from abroad	Associated foreign company or directly recruited from abroad	Associated foreign company or directly recruited from abroad	Associated foreign company or directly recruited from abroad
Tax residency requirement	Irish	N/A	Luxembourg	N/A	Spanish
Tax-free expenses	One annual trip to home country, and school fees -capped at €5,000 per child (Certain relocation expenses can be paid to assignees without deduction of tax, separately to SARP[1])	School fees	As above	Relocation costs and school fees	Relocation costs

Source: Guidance material on international assignee regimes from Deloitte, EY, KPMG, and PwC.

[1] Revenue Tax and Duty Manual, Removal and Relocation Expenses