



PAYE Dispensation: Short-term business visitors in Ireland for more than two consecutive years

Introduction

In April 2018, Revenue issued revised guidance on the operation of PAYE on the employment income of non-resident individuals in Ireland on business visits in TDM 42-04-65 *PAYE: Employee payroll tax deductions in relation to non-Irish employments exercised in the State*. This guidance applies retrospectively from 1 January 2018. The TDM introduced a “multi-year” test, which would appear to require employers to apply for PAYE dispensations for all individuals with non-Irish employments, who spend workdays in Ireland each year, over more than two consecutive years, with no threshold on the number of days spent in any year.

Practitioners raised concerns at TALC meetings in 2018. During those meetings, Revenue advised that as the new guidance only applied from tax year 2018 onwards, applications for this category of employee would not be required until 2020 (i.e. on the basis that the third year cannot arise before 2020 at the earliest). It was also determined at that time that Main TALC would defer resolving the issue until 2019, to allow the other rules in that TDM to become established.

In our view, the provisions as drafted are problematic and could be unworkable in practice for both employers and the Revenue. For example;

- To mitigate the risk of an Irish PAYE exposure for 2020 onwards, the most practical approach for a company would be to make an application for a dispensation in respect of every employee who could potentially have any business travel into Ireland. This could amount to thousands of applications which could result in a significant cost and administrative burden for businesses and for Revenue.
- Some businesses will have to consider whether to limit or prevent business trips to Ireland for 2020 and future years. This would have an unquantifiable cost in terms of the impact on the transfer of skills and knowledge, onsite access to specialist staff and industrial relations.

We have set out at Appendix 1 several live scenarios that we believe will arise if the rules are not clarified further in advance of 2020, which highlight our concerns. While these examples illustrate the practicalities for larger businesses, the same issues will arise for the SME sector on a smaller scale.

Recommendation

We recommend that a yearly threshold should be applied in each tax year. To the extent that an individual has no more than 30 workdays in Ireland in any tax year, we believe those workdays should be discounted for PAYE purposes. This would be consistent with the well-established incidental duties threshold of 30 days in TCA 1997 for other purposes (e.g. split year relief for Irish employees assigned to roles outside of Ireland). This pragmatic approach would also be consistent with the ongoing focus on making it easier to do business in Ireland.

Conclusion

The treatment of individuals on business visits in Ireland is an important issue for many Irish and international companies with operations here. Clarity on the above point is needed well in advance of 1 January 2020, to avoid the administrative burden that would otherwise arise for all concerned. We would welcome the opportunity to meet with Revenue to discuss these matters in more detail.

Appendix 1

Scenario 1 - Irish PLC with operations in the UK

An Irish plc with 2,000 employees in Ireland, also has significant operations in the UK (approximately 500 UK employees). Several of the UK employees have adhoc business trips to Ireland in 2018 and expect to have similar trips in 2019. If any of these employees spend any workday in Ireland in 2020, a formal PAYE dispensation application is required.

The most practical approach for the employer to ensure they are fully compliant with the Irish rules (and to avoid any risk that a UK employee may trigger Irish PAYE on adhoc visits), is to submit applications for PAYE dispensation to the Irish Revenue in respect of all 500 UK employees. This will create a huge administrative burden for Revenue (and the employer) in terms of the volume of applications to be submitted and processed.

Scenario 2 - UK Bank Brexit related move to Ireland

With the onset of Brexit many companies in the financial services sector have looked to Ireland as a location for operations. Employees from the UK have travelled to Ireland for business meetings and exploratory visits in 2018 and 2019 to help decide to invest further in Ireland. In most instances, these visits would be approximately 10 days in duration each year. If any of these employees come to Ireland in 2020, the UK entity must register them with the Irish Revenue under this TDM.

The prudent approach for the employer, to ensure compliance with the TDM, is to submit a PAYE dispensation application for any individual they expect will have any travel to Ireland (even just one day). However, there is an unquantifiable cost if the company instead decides to prevent these people travelling to Ireland in 2020, to avoid any potential difficulty and thereby limit the opportunity for these organisations to invest further in this country.

Scenario 3 – Irish PLC with global operations

An Irish Plc which operates globally holds various internal conferences and meetings in Ireland for different business segments, for example, a conference for the global finance team of 2 to 3 days duration each year. Members of the global teams travel to Ireland each year for this conference. On the basis that these foreign employees will spend 2 to 3 days in Ireland in 2020 (having been here for similar periods in prior years), a formal dispensation application would appear to be required.

To ensure the employer is fully compliant with the Irish rules, the most practical approach for the company would be to make an application for a PAYE dispensation to the Irish Revenue in respect of all foreign employees, who could attend these conferences, as the attendees will not be known at 1 January each year. This would likely encompass hundreds of employees. This would create a huge administrative burden for the business and Revenue given the volume of applications to be submitted and processed.

Scenario 4 – Fortune 100 company with its European Headquarters in Ireland

A Fortune 100 company employing over 33,000 people globally has its European Headquarters in Ireland. The company has an extensive global mobility programme, tracking long-term and short-term assignments into Ireland and fully meets its Irish tax obligations. In addition to individuals on assignments, there is also a large cohort of business travelers both from within Europe and globally, who travel into Ireland on an irregular basis for business meetings year-on-

year. The number of days spent annually in Ireland on an individual basis is not significant. It is unlikely that any of these individuals will trigger an Irish tax obligation, as they meet the conditions to qualify for relief under the relevant Double Tax Treaty. As such, a PAYE dispensation should be available for these individuals.

To mitigate the risk of an Irish PAYE exposure, the most practical approach for a company would be to make an application for a dispensation in respect of every employee who could potentially have any business travel into Ireland. This could amount to thousands of applications which would need to be processed by Revenue. Allowing the company to self-determine that PAYE is not applicable, where a certain annual de minimis threshold has not been exceeded, would reduce the need for such administration.

Scenario 5 – Global business with a major Irish plant serving international markets

The company has its primary manufacturing base in Ireland which serves its global business, but it is headquartered outside of Ireland. The nature of the business requires that many overseas employees come to Ireland for business trips of short duration.

Given the scale of the company's operations in Ireland, keeping track of all business travelers (including travellers present for very short periods annually) presents a major logistical challenge. In view of the potential risk, the business has communicated to its affected employees that based on their 2018 and 2019 Irish workdays to date, they should ensure that any further 2019 Irish workdays are kept to a minimum, and that they have no Irish workdays from 2020 onwards. This has significant implications for the Irish operations, business and the employees. The business has already received considerable negative reaction from affected employees.