This feedback was submitted to Revenue on 8 October 2024 in response to a procedural note circulated by Revenue on 26 September 2024 following practitioners' queries at the TALC Direct/Capital Taxes Sub-committee. Revenue responded to this feedback provided by the Institute on 18 October 2024. Revenue's written replies are denoted in red font below.

Feedback on Split Year Residence Procedural Note circulated by Revenue to the Direct/Capital Taxes Sub-committee on 26 September 2024

8 October 2024

We have included specific comments on the text of the Split Year Residence Procedural Note. In addition, we would make the following general comments regarding the authorisation requirement for Split Year Residence (in section 822 TCA 1997).

General comments

The legislative provision (underpinned by section 822(1)) requiring an individual to notify Revenue of a Split Year Residence (SYR) claim in the year of assessment of arrival/departure is onerous. This is particularly the case for inbound individuals who are not familiar with the Irish tax system and/or those who arrive close to the end of the year. Newly arrived individuals need time to settle into Ireland, make appropriate enquiries about their tax obligations to be able to comply and engage a tax adviser, which may be difficult for individuals who arrive towards the year end during the peak tax compliance season. Individuals who have not engaged a tax adviser may not even be aware that a SYR option exists, to be able to research information online and make the appropriate notification by the end of their year of arrival.

Similarly, outbound individuals who are familiar with the Irish tax system would naturally assume that their tax affairs can be fully dealt with through the filing of a tax return after the year end. Consequently, the required in-year notification to Revenue may easily be overlooked. As we have outlined previously to Revenue, a tax adviser may not even be aware that their client has moved abroad until they contact the client about their annual tax return as the 31 October/mid-November income tax filing deadline approaches.

Moving abroad is a significant undertaking and obtaining tax advice about exposure to Irish tax on their new foreign salary would not be at the forefront of a taxpayer's priorities in the year of departure, in particular, as claims for relief are normally dealt with through the self-assessment system when an income tax return is filed. Claiming the relief in the return would also remove the duplication in dealing with correspondence for the employee and Revenue where, for example, the exceptional case provisions in paragraph 3.1 apply.

Individuals who are not in receipt of professional tax advice in the year of arrival/departure are potentially disadvantaged as they may be unaware of the SYR option in time to submit a valid claim.

As outlined in the Procedural Note, treaty relief may be available when moving to a country with which Ireland has entered into a Double Tax Agreement (DTA). However, this is a more complex consideration given relief depends on the terms of each DTA, and thus more costly for taxpayers in obtaining advice to prepare their tax returns. In addition, missing out on the in-year notification disadvantages individuals moving to a country with which Ireland does not have a DTA.

Effective Date

Based on the RLS responses in February 2024 to our submission on members' experiences of Split Year Residence claims, Revenue does not accept that there has been a change in Revenue practice regarding claims. Revenue comment: This issue was addressed in our response to the ITI on 29 February 2024 (see attached).

We note, however, that the procedure for the authorisation process has only now been made available in this Procedural Note. Clarity has been sought repeatedly on the in-year notification procedure since the June 2024 meeting of the TALC Collections Sub-committee. This followed Revenue's reference at the Direct/Capital Taxes Sub-committee meeting in April that guidance on satisfying the 'notice of intention test' would be provided. In the interim, taxpayers and agents submitting in-year notifications had received differing responses from Revenue personnel via MyEnquiries. We would therefore consider it reasonable to include an effective date on guidance of 1 January 2024 as information on the authorisation process was not available in earlier years. Revenue comment: We do not agree with this statement.

As far as Revenue understood from the TALC meetings, the purpose of the guidance note was to clear up confusion on the part of practitioners as to how the split year authorisation process made in year may be fulfilled and also to streamline the Revenue processing of the authorisation claims.

As outlined in the clarification issued in February 2024, the TDM and Revenue website was (and is) very clear about the need to apply in year. It is unclear how the guidance note could be interpreted to be the first time that the procedure for the authorisation process has "only now been made available by Revenue". The legislative requirement to "satisfy an authorised officer" would necessarily involve a taxpayer outlining the circumstances to Revenue as to why split year treatment is available and this can be done through ordinary channels of communication with Revenue (via MyEnquiries or sending a letter to the Revenue office of the taxpayer). This is confirmed by the following webpage:

https://www.revenue.ie/en/life-events-and-personal-circumstances/moving-to-or-from-ireland/leaving-ireland/split-year-treatment-in-your-year-of-departure.aspx

In line with the wording of section 822, which there is no ambiguity about, Revenue is not in a position to allow for something that is not provided for in legislation, i.e., claims for split year treatment for years prior to 2024/2025 where the in-year notification requirement was not satisfied during those years. This confirmation that the requested treatment is not allowable is fully in line with the legislation, the relevant guidance and the Revenue position on this matter as previously outlined. While the Institute may not agree with the Revenue position on this matter, this is the final Revenue position, and we trust this is clear.

In the past, where practices had built up over time that did not fully align with the legislation Revenue has adopted a prospective approach in some circumstances. For example, in its approach to the calculation of SARP relief in tax equalisation cases, Revenue acknowledged the different approaches that had been adopted by employers and confirmed that the correct methodology must followed by employers with effect from 1 January 2024. There was no requirement for the relevant employer or associated company to re-calculate and report the prior year employment income in accordance with the correct methodology.

Income Tax Return completion

We note that the Form 12 includes a specific field to complete in order to claim SYR. However, there is no similar field on the Form 11 tax return. In our view, this anomaly should be addressed to support compliance with the claims process documented in the Procedural Note. Revenue comment: This is noted and is subject to development.

Comments on the contents of the Procedural Note titled, Split Year Residence

Inbound employees (year of arrival cases)- Paragraph 1.1 Authorisation process
An individual is required to register their employment where it is their first employment in the State (as outlined on the Revenue website). This is effected by the individual registering for myAccount and registering the job through the 'Jobs and Pensions' function. The registration of second and subsequent jobs is the responsibility of the employer through a request for a Revenue Payroll Notification (RPN) or by making a payroll submission, as detailed on myAccount. However, the text of the Procedural Note references that '*an individual who comes to Ireland to take up employment'* is required to register their employment on myAccount. We think that the text should clarify that this registration requirement applies to an individual's first employment in the State. Revenue comment: The note has been updated accordingly.

A non-resident individual who previously worked in the State may access myAccount to obtain their Tax Credit Certificate and may wish to elect to be resident via MyAccount. We would like to clarify whether the online process to elect to be resident through the myAccount portal is available to such individuals? Otherwise, they will need to make the notification through the second option listed i.e. via MyEnquiries. Revenue comment: This should be done via MyEnquiries.

We understand that where a tax agent is providing tax support to a company and its employees in respect of the employees moving to Ireland that bulk applications (i.e. for more than one employee) can be made by the agent on behalf of the employees through MyEnquiries.

We understand that Revenue's online systems do not display a record of when an election to be tax resident is made by a taxpayer. A notification or confirmation visible to tax agents so they can confirm elections made by clients would be useful. We can pursue potential for this development with ROS personnel at the TALC Collections Sub-committee. Revenue comment: Noted.

Paragraph 1.2 Claim for a tax refund

The paragraph notes that if the individual has not followed the authorisation process for the year of arrival, then SYR is not due for the year and the full employment income of the individual (Irish and foreign-sourced) is chargeable to Irish income tax. This point assumes that the individual has elected to be tax resident (or is otherwise tax resident) in Ireland for the year of arrival and disregards the DTA position outlined in paragraph 3.2 of the note. A cross-reference to paragraph 3.2 would be helpful in this paragraph.

Outbound employees (year of departure cases) – paragraph 2.2. Claim for a tax refund

Similar to paragraph 1.2, the text notes that if the individual has not followed the authorisation process for the year of departure, SYR is not due and their full employment income (Irish and foreign sourced) is chargeable to Irish tax. (Noting subsequently the position for non-domiciled individuals).

If an individual is leaving Ireland to move to a country with which Ireland has a DTA, Ireland's right to tax employment income post-departure may be limited under the Employment Article

of a DTA as noted in paragraph 3.2. Therefore, it would be useful to include a cross-reference to paragraph 3.2.

Typographical errors

We spotted a small number of typographical errors, as below:

- Insert ‘year’ in point 2 of the introductory text between ‘the’ and ‘of’ i.e. ‘for the year of arrival/departure’.
- Replace ‘this’ year with ‘the current’ year in the third sentence of paragraph 1.1 (with reference to the taxpayer electing to be tax resident for ‘this year’ on the portal).
- Replace ‘to’ State with ‘the’ in the third sentence of paragraph 3.2.

Revenue comment: The cross-references to DTA relief (paragraph 3.2) have been included in paragraphs 1.2 and 2.2, while the typographical errors have been amended.

This technical query paper was submitted to Revenue on 16 November 2023 in follow up to a Branch Network Meeting with Revenue's Personal Division on 3 October 2023. Revenue responded to the queries raised by the Institute on 29 February 2024. Revenue's written replies are denoted in red font below.

Split Year Treatment - Background and feedback on practitioners' experiences of Revenue's revised approach to claims

16 November 2023

At the Personal Division Branch Network Meeting, we discussed Revenue's changed approach to claims for Split Year Treatment (section 822 TCA 1997) and how this change was implemented and communicated. You requested a note with further feedback on the issues raised for consideration by Revenue.

As outlined at the meeting, feedback from members indicates that it had been a long-standing practice that claims for Split Year Treatment (STY) (made through a notification to Revenue) were submitted at the same time as the income tax return for the year of departure or arrival of the claimant (i.e. after the end of the tax year). Up to recently, Revenue did not query this approach and claims were processed in the normal manner with the tax return. In many cases, a practitioner would only become aware after the year end, that a client had moved or been assigned overseas by their employer (or had arrived in Ireland) during the prior year. Therefore, qualification for SYT could only be considered and a claim made, after the end of the tax year. Equally, claims for relief in respect of a tax year are generally made with the income tax return for that tax year.

Based on members' feedback, the approach noted above was adopted since the introduction of SYT in Finance Act 1994. However, earlier this year, we began to receive feedback that Revenue was questioning SYT claims and insisting that claims must be made during the year of departure/arrival to be valid (e.g. 'in-year' claims) and claims submitted with the tax return were being denied.

RLS reply

Section 822 Taxes Consolidation Act 1997 (TCA) provides that a claim for Split Year Treatment (SYT) is to be made during the year of assessment in which an individual arrives in or departs from the State. The guidance provided in Tax and Duty Manual Part 34-00-01 *Provisions Relating to Residency of Individuals* (the TDM) is clear on this point and it reflects this statutory requirement. It should also be noted that historical Revenue guidance on SYT (Tax Briefing 17 (link)) also reflects the requirement that the relief must be claimed in the year of departure/arrival and makes no reference to any practice allowing any deviation from this.

Revenue is not aware of any practice to allow a claim that is not in accordance with the legislation and published guidelines. It would appear that the "practice" referred to relates to cases where taxpayers have received tax refunds on foot of SYT claims being made through a self-assessment tax return for the year of departure/arrival, in cases where the claim was not actually made in the year of departure/arrival.

It would appear that, in some cases, the returns were submitted with a notification and in other cases without a notification from the taxpayer/agent that SYT is being claimed and refunds issued to the taxpayer. Regardless of whether or not a notification was submitted, such claims for SYT that are made outside the year of departure / arrival are not allowable as per section 822.

While the refunds which issued arose from the submission of the self-assessed income tax returns (either Form 11 or Form 12), this does not constitute a Revenue practice and does not prevent the returns concerned being selected for a compliance intervention in the normal manner by Revenue at a later date.

Engagement at TALC

In June 2023 at the Direct/Capital Taxes Sub-committee, the Minutes of which are available here, practitioners queried if SYT is not claimed in the year of departure or arrival whether it is the case that the relief cannot be claimed when the individual files their tax return in the following year (and queried the time limits for SYT claims i.e. whether the four-year time limit applied).

Revenue advised that section 822 TCA 1997 is clear and that SYT must be claimed by the end of the year in which that the individual arrives in or leaves the State, as the case may be. Accordingly, the normal four-year time limit would not apply to a claim for SYT under Section 825(2) TCA 1997. Revenue further noted that, post departure from Ireland, an individual may be able to claim a measure of relief under the relevant Double Taxation Agreement between Ireland and the other country. At the meeting, Revenue referred practitioners to Paragraph 5 of the Tax and Duty Manual (TDM), titled *Provisions Relating to Residence of Individuals* Part 34-00-01 which relates to SYT.

When responding, Revenue did not expand on the issue, for example, noting it was reviewing claims or had identified instances where taxpayers were not adhering to the timeline set in legislation when making SYT claims.

Feedback from members on Revenue's changed approach had not been received by the Institute in advance of the June meeting and therefore, another TALC body tabled the questions at the meeting.

RLS reply

At the June 2023 meeting, Revenue responded to specific queries on the timing requirements for the claim, as requested, and confirmed that claims for the relief must be made "in-year". As mentioned above, there is no Revenue practice to allow a claim that is not in accordance with the legislation and there is no change in the Revenue approach. The minutes reflect that Revenue responded to the queries that were raised by the practitioners and confirmed the position.

We reviewed the latest version of Part 34-00-01 (dated August 2023). However, the content of the TDM on SYT had not been altered to reflect a change in approach or a renewed emphasis on submitting claims during the year of departure/arrival. Example 4 notes the notification '..*should be done during the year of departure/arrival*'. However, the example or other text in the TDM does not make it clear that failure to make a claim 'in-year' will result in the claim being refused.

To our recollection, issues with the timing of SYT claims have never been raised at TALC or any other fora before June 2023 or highlighted by Revenue as an issue where taxpayers should be cognisant of the fact a claim must be made in-year.

While the legislation has not changed, it is clear to the Institute from feedback that Revenue practice regarding SYT has changed. At a minimum, we believe the TDM should have been updated to communicate the absolute necessity of making the claim in the year of departure or arrival. Considering this is a significant unsignalled change in practice, a prospective date should have been applied to this clarification.

RLS reply

Section 822 TCA provides that a claim for SYT is required to be made during the year of assessment in which an individual arrives in or departs the State. There has never been a Revenue practice to allow claims that are not in accordance with the legislation and the guidance provided in the TDM is clear on this point and consequently, a change to this aspect of the guidance was and is not necessary. The ITI will be aware that Revenue intends to review the TDM on residency in its entirety in 2024, so consideration will be given to updating the section on SYT in the same away as the other sections in the TDM, which will include guidance on the process for claiming the relief in the year of arrival/departure.

We note the following comment above:

However, the example or other text in the TDM does not make it clear that failure to make a claim 'in-year' will result in the claim being refused.

The word "should" in paragraph 5 of the TDM is clear in imposing an obligation to apply for SYT in the tax year of arrival to or departure from the State –

"*To qualify for SYT, an individual must satisfy an Authorised Officer that he or she fulfils the requirements as regards intended residence for the following tax year. This **should** be done during the year of departure/arrival"* [emphasis added].

In addition, all TDMs must be read in conjunction with the relevant legislative provision. In this case, section 822 is clear in relation to the requirement to apply for the relief "in-year".

Feedback from members on individual cases

We sought feedback from members of their experiences with individual SYT claims. Given some SYT claims have been successful, and refunds made, we decided it would be better to identify any patterns in Revenue's approach to claims rather than seeking consent to share details of a taxpayer's case who would be concerned that this could result in withdrawal of their relief.

Broadly, we sought information from members on:

- whether all SYT claims made from a certain month/date were refused or Revenue only refused claims for particular tax years; and
- whether there was different treatment between or within divisions e.g., where some claims were permitted and others denied in cases submitted after the end of the tax year.

We had received feedback that a new MyEnquiry heading was added for submitting claims but we could not pinpoint the date when this occurred. Members reported being made aware of the MyEnquiry heading by Revenue when dealing with a specific case.

Based on the feedback, the change in approach began in early 2022 with the processing of 2021 tax returns and has impacted returns filed from that point onwards. Cases initially brought to our attention related to individuals who left Ireland in 2022. On submitting the

2022 Form 11 and sending a SYT claim via MyEnquiries, the practitioners were informed that the claims were refused as they were not made in the year of departure.

The majority of cases where claims were refused, were dealt with by Personal Division, including the Self-Assessed Business Taxes Branch. However, we understand inconsistencies have arisen where, for example, the Self-Assessed Business Taxes Branch approved claims for some but not all cases where the relief was claimed. Within Personal Division, instances arose where different caseworkers adopted different approaches according to the feedback. For example, a substantial refund based on SYT was processed by one caseworker, yet another caseworker dealing with cases where smaller refunds are due is refusing to issue the refunds on the basis that a notification was not made in-year.

We also received feedback on a case dealt with by Business Division (Service to Support Compliance) where a SYT claim was refused. It related to an employee who left Ireland in August 2021 and a 2021 tax return was submitted to Revenue to claim SYT on 22 August 2022. The practitioner subsequently followed up with Revenue on the refund on 31 January 2023. Revenue sought some further information in respect of the claim and on 27 August 2023, the practitioner received a message from Revenue via MyEnquiries noting that in order to apply for SYT, Revenue must be notified in the year of departure. The message further noted that as the claim is for the year 2021, it was too late to apply. This was the first mention of the timing of the claim being problematic in this case. (The member has confirmed that the Enquiry ID can be provided if useful in identifying and examining the case).

RLS reply

As the ITI will be aware, Revenue routinely adds new headings to our *MyEnquiries* platform to enable the enquiry to be routed to the appropriate section in Revenue for response in a timely manner. Whether or not there is or was a specific “drop-down” for SYT is irrelevant in terms of the obligation to claim the relief in-year.

It appears that substantial refunds relating to SYT claims have issued in cases where it was not claimed by taxpayers in the year of departure/arrival, but was claimed in a tax return for the year. The fact that the refunds which issued arose from the submission of self-assessed returns (either Form 11 or Form 12) does not constitute a Revenue practice and does not prevent the returns concerned being selected for a compliance intervention in the normal manner by Revenue at a later date. In addition, if in limited cases where the claim was made on a return and not “in-year”, and such a claim was processed by a Revenue official following a verification check of the refund claim, this does not create any precedent or practice and does not mean Revenue have ever accepted that SYT can be claimed in this manner.

On a related point, we also received feedback about cases where the notification was made in-year, but the individual’s departure date was earlier than their cessation date on the payroll. In such circumstances, the tax returns should reflect the employment income paid up to the departure date. However, where the tax returns are completed to reflect this income, this can give rise to resistance from Revenue and delays in processing returns as the employment income per the return does not match the employment income reported up to the cessation date on payroll.

RLS reply

This is noted.

Our concerns and suggestions

1. Revenue's revised approach to SYT represented a significant change in long-standing practice that was not communicated in advance nor subsequently to tax practitioners or taxpayers via a TDM. Most practitioners only discovered that a claim would be considered out of time when the relief was refused. Given the significant change in established practice, we believe a prospective date should be applied to the new approach. At a minimum, claims currently in the system should be processed considering the feedback indicates that taxpayers in similar circumstances have been treated differently.

   RLS reply

   There has never been a Revenue practice to allow claims that are not made in accordance with the legislation. The guidance provided in TDM is clear on the requirement to make an "in-year" claim for SYT and this guidance corresponds with section 822 TCA 1997. We are unaware of any historical Revenue guidance / publications indicating that a claim for SYT may be claimed by an individual in a tax return submission for the year of arrival/departure, without initially satisfying an authorised officer, in the year of arrival/departure, that the individual satisfies the statutory requirements.

   It should also be noted that where a claim for SYT is denied, because it hasn't been made in accordance with section 822, a tax refund may issue if relief is due to the taxpayer under the terms of a DTA.

2. We think there should be greater emphasis on the critical nature of the timing of SYT claims in the TDM and on the dedicated SYT webpage. We are concerned that taxpayers and some practitioners may remain unaware of the requirement to claim relief during the year of departure/arrival. While Double Tax Agreements (DTA) may alleviate double taxation to some degree, this will be dependent on the specific terms of the Employment Article in the relevant DTA and whether a DTA is in place.

   RLS reply

   Revenue provides detailed information on SYT in the relevant webpage and TDM. Reviewing this material, it is clear that an obligation arises on a taxpayer or on agent acting on his/her behalf to apply for SYT in the tax year of arrival to or departure from the State. In addition, the legislation is very clear and it is section 822 that provides for how the position is ultimately determined.

   If SYT is not available, then relief from double taxation may be claimed under the terms of the relevant DTA, if applicable.

3. Cases will arise where the date of departure is earlier than the employee's cessation date on the payroll. We would suggest Revenue could include details in the TDM on the information required in such circumstances to aid compliance and whether, for example, any note should accompany the income tax return to make Revenue aware of the circumstances upfront.

   RLS reply

   This is noted.