

This feedback paper was submitted to Revenue as comments on a draft updated Form SARP 1A and SARP Manual provided to the Institute, in advance of a meeting with Revenue Personal Division and Revenue Legislation Services personnel on 28 April 2022 as part of the Institute's Branch Network engagement with Revenue Personal Division on SARP administration. For ease of reference, we have directed members below to the relevant sections in Revenue's updated [SARP Manual](#), published on 10 June 2022, which cover the issues we raised.



Feedback on the Draft SARP 1A Form and updated SARP Tax and Duty Manual (TDM)

11 April 2022

We have summarised the feedback we received from members relating to Revenue's administrative requirements for approval of SARP and the practical application of the legislative conditions, into common themes below, for ease of review and discussion.

1. Revenue's administrative requirements for approval of SARP

Provision of the PPSN

The Form SARP 1A states that all questions must be completed and that SARP approval will not issue if the form is submitted incomplete. Revenue further references (in Note 1) that the form can be submitted without the PPSN, although SARP approval will not be granted until it is supplied. The recognition on the form (and in the TDM) that the application can be made without the PPSN, to comply with the 90-day employer certification deadline, is helpful.

Many of our discussions to date have centred around difficulties in supplying a PPSN within the 90-day period and the subsequent interactions between practitioners and Revenue when the PPSN is provided after this timeframe. The updated text endeavours to provide some assurance where genuine difficulties arise. However, we believe it would be useful to further reference in Administration Note 1 of the Form (and in the TDM) that the absence of a PPSN will not, in itself, impact on whether an employee is eligible for SARP, where the conditions for the relief outlined in the legislation are met. However, approval for SARP will not issue until the PPSN is provided to Revenue.

We appreciate that a PPSN is important as evidence of an individual's identity in the Irish tax and social welfare system and to Revenue's internal systems. However, we would be concerned if SARP relief would be refused solely due to a delay that is outside of the control of the employer and given that the supply of a PPSN is not a statutory requirement to avail of SARP.

As outlined, difficulties in quickly supplying a PPSN arise for a number of reasons, for example:

- The responsibility to obtain a PPSN rests with the employee, who is dealing with the inherent challenges in relocating and moving to another jurisdiction. These challenges may delay when the PPSN application is submitted to the Department of Social Protection (DSP).
- While the employer can advise and encourage the employee to carry out the necessary steps to obtain a PPSN as soon as possible after their arrival, the timing of the PPSN application is outside of the employer's control.
- Delays in the DSP processing of PPSN applications continue and are unlikely to be resolved in the short-term due to the additional demands on the Department's resources, given the urgent need to provide displaced Ukrainians with PPSNs.

While the updated TDM and Form SARP 1A acknowledge that a PPSN could be supplied after the 90-day timeframe, due to extenuating circumstances, practitioners' feedback from interacting with Revenue suggests that delays can jeopardise a SARP claim. For example, practitioners have experienced instances of Revenue asking when the PPSN application was submitted. This would suggest that Revenue considers whether the application was made within a certain timeframe in determining whether to grant approval for SARP.

Also, instances have arisen where, for example, the PPSN was issued by post but overlooked by the employee. It was followed up three weeks later and was obtained and supplied to Revenue, but the relief was denied as the 90-days had expired.

In addition to the suggestion above in relation to Note 1 of the form, we would welcome clarification on Revenue's approach in practice:

- Does Revenue intend to seek information on the timing of the PPSN application or receipt of the PPSN? If so, what are the implications for approval of SARP relief?
- We would also welcome confirmation that a delay in processing a PPSN application by the DSP would not result in a refusal of approval for SARP.

Supply of employee's address

The SARP 1A requires details of an employee's address. An individual could be in Ireland for some time before they can provide a permanent address. In the absence of a permanent address, should a temporary address be provided or the company's address?

Employee registering the employment

We note Revenue's expectation that the employee will take the necessary steps to obtain a PPSN and register their employment with Revenue, as soon as possible after their arrival date. Registering the job is a task the employee must complete (where it is their first job in the State). An employer can certainly encourage the employee to act promptly in registering their job, but the timing of the registration is not within the employer's control.

Practitioners have noted Revenue correspondence stating that SARP relief will be rejected if the employment is not registered on a "timely basis," which would suggest that a time limit is applied in practice to the registration requirement.

- We would welcome confirmation of Revenue's approach to the timeline for registration of the employment.

- At a previous meeting, we discussed the possibility of Revenue writing to SARP employees to notify them about their obligations. Once the SARP 1A is provided with the employee's name and address, could Revenue consider writing to the employee if the job is not registered within a particular timeframe?

Revenue clarifications on issues the Institute raised on Revenue's administrative requirements for approval of SARP

Provision of the PPSN

Following the Institute's request to strengthen the Administrative Note to the Form SARP 1A to clarify that the absence of a PPSN from the form would not, in itself, compromise eligibility for SARP relief, additional wording is being added to the revised SARP 1A. It reflects that; *"If the relevant employee does not currently have a PPSN, then this application may be submitted without this information to ensure compliance with the 90 day employer certification deadline. Where the conditions of the SARP are met, the absence or the delay in processing of a PPSN will not, in itself impact on whether an employee is eligible for relief. Approval for SARP will not issue until the PPSN is provided to Revenue"*.

Section 5 of the updated SARP Manual, published on 10 June, notes that Revenue would expect the employee to take steps to obtain a PPSN as soon as possible. The employer should follow up with the employee to ensure that this number is provided to them as soon as it has been obtained. However, the Manual also clarifies that where the conditions of SARP are met, the absence or the delay in processing of a PPSN will not, in itself impact on whether an employee is eligible for relief. Approval for SARP will not issue, however, until the PPSN is provided to Revenue.

Supply of employee's address

At the meeting on SARP administration on 28 April with Institute Branch Representatives, Revenue noted that an address for the employee should be included on the form whenever possible even if it is a temporary address. Revenue may issue correspondence directly to the employee. If a temporary address is provided, Revenue should be updated with details of the employee's permanent address as soon as these details are available. It is not necessary to submit a new SARP 1A form to provide an update on the address details.

Employee registering the employment

Revenue has updated the Manual following our discussions about some Revenue correspondence which suggested that delays in registering an employment may result in a refusal of SARP relief. Section 5 of the Manual notes the importance of registering the employment as soon as possible to get the benefit of SARP. However, the Manual now clarifies that where the conditions of the SARP are met, the delay in registering the employment will not, in itself, impact on whether an employee is eligible for relief. Approval for SARP will not issue, however, until the employment is registered.

2. Practical application of the legislative conditions

The requirement to perform the employment duties for a minimum of 12 consecutive months from the date the duties were first performed in the State

The guidance notes that while there may be no restriction on the performance of duties outside of the State by the relevant employee, the relevant employee must perform some duties in the State for a minimum period of 12 consecutive months from the date he/she first performs those duties. We would consider that an employee is not expected to work 100% of their time in Ireland, for example, they may need to take business trips, attend conferences overseas etc. The guidance does not suggest that there is a restriction on incidental duties of employment performed outside the State.

Example 20 illustrates the 12 consecutive month requirement. In the example, if Peter had returned to work for a few days in Ireland in August 2021, before departing and subsequently returning in September 2021, would he have remained eligible for SARP?

The example suggests that he becomes ineligible for SARP because he has no Irish workdays in the month of August, but it is not explicit from the text. There is an onus on the employer to notify Revenue if the “12 consecutive months” requirement is not met. However, it would be difficult for an employer to track this requirement in practice, if it is the case during periods of absence, an employee must spend at least one workday each calendar month in the State.

We would expect that SARP relief would not be rejected in cases where the employee has protected leave (e.g., maternity leave/parental leave) and spends this time overseas during this 12-month period. However, we would welcome Revenue’s confirmation of the point and it would be useful to address this in the TDM.

Date of arrival in Ireland

It would be helpful to have some clarity regarding the impact of any Irish days in the 6-month period prior to arriving to perform the duties of the employment (whether in Ireland for work or otherwise).

For example, if an individual is visiting Ireland for a sports event within this 6-month period, we would assume that this would not impact their eligibility to claim SARP. However, if the employee has “incidental” workdays in Ireland, for example, due to business trips in the six months prior to arrival, would this impact on their eligibility?

There will be instances where employees may have commenced their employment but are in the middle of relocating and do not actually arrive in Ireland until some days later. In addition, some employees may holiday in Ireland to settle in before commencing their employment. If these situations are problematic, it would be useful to draw attention to the issue to provide clarity to practitioners.

Employee electing to be treated as tax resident

As previously discussed, an employee’s election to be tax resident for the year of arrival would seem more appropriate for inclusion on the employee’s income tax return, rather than on an employer certification form. An individual might elect for tax residence but not meet the residence conditions for that election in the subsequent tax year, due to unforeseen circumstances.

The election to be resident on the SARP 1A may be indicative of the employee's intention, with the final position being recognised when the Form 11 is filed. Guidance could usefully reflect that point. Ideally, an employee's election for residence would not be a requirement for the employer certification.

Revenue clarifications on issues the Institute raised on the practical application of the legislative conditions for SARP

Revenue's legislative interpretation of the 12-consecutive month rule

At the meeting, the Institute queried Revenue's interpretation of section 825C (2A) TCA 1997 that an individual must have workdays in the State in each of the 12-consecutive months from the date they first performed their duties in the State (as illustrated in Example 20 of the Manual) and the practical implications for individual SARP relief claims where an employee does not have some Irish workdays in each month. We requested a note of Revenue's legislative interpretation of the 12-consecutive months requirement that we could make available to Institute members. Revenue's legislative interpretation is available in the Appendix below, titled "SARP 12 Consecutive Months".

As outlined above, we raised the issue of absences for maternity/paternal leave during the 12-month period and queried Revenue's approach to SARP relief in these cases. Revenue does not propose to include guidance in response to the questions about protected leave absences during the 12-month period in the Manual. Revenue's expectation is that these cases would not arise very often, and such queries will be dealt with on a case by case basis.

Date of arrival in Ireland – clarification on the 6-month rule

Revenue has added a new section 4.1 to the updated SARP Manual published on 10 June 2022. This new section is titled "Presence in Ireland in the 6 month period prior to date of arrival". The section covers areas on which the Institute Branch Representatives had requested additional clarification, for example, where an individual visited the State for work or personal reasons during the 6-month period and also circumstances where an individual may start their SARP employment during the relocation process or may holiday in Ireland initially on their arrival.

Employee electing to be treated as tax resident

Institute Branch Representatives raised that there may be uncertainty at the time the SARP 1A Form is submitted as to whether an employee wishes to elect to be resident in the year of arrival or may qualify to make such an election. As such, the election on the SARP 1A Form can only be an indication of the employee's intention and position at a point in time. The Form 11 would be the appropriate form for the employee to make their election to be tax resident.

In section 9 of the Manual, Revenue has clarified that the employee can elect to be tax resident when filing their Income Tax Return Form 11. However, in that scenario, there will be an inevitable timing difference in the employee obtaining the SARP relief (as SARP relief on a real-time basis will not be available).

Appendix

Revenue Note on the application of the '12 consecutive month' requirement

Summary

For SARP, the employer is required to complete and submit the SARP 1A within (current timeframe) 90 days of the assignee's arrival in the State and indicate on the form if the assignee will be resident in Ireland.

Conditions

The assignee must be both resident in Ireland and a relevant employee. If the assignee fails to meet both of these requirements in either the year of arrival in the State or the following year, he or she will have failed to trigger their first entitlement within the required timeframe and will not be entitled to claim SARP at later stage, even if all other conditions are met.

In addition to being resident in Ireland, the assignee must also be a relevant employee as set out in subsection (2A), namely:

- a) for the whole six months prior to arrival in the State, the assignee must be a fulltime employee of a relevant employer and perform the duties of that employment outside the State;
- b) the assignee has come to Ireland at the request of his or her relevant employer to either i) perform, in the State, the duties of employment for that relevant employer, or ii) to take up employment in the State with an associated company and to perform the duties of employment for that company in the State;
- c) the assignee performs the duties outlined in b) above for a minimum period of 12 consecutive months from the date he or she first performs those duties in the State;
- d) the assignee was not resident in the State for any of the 5 tax years immediately prior to the year in which he or she first comes to Ireland to perform the duties referred to in b) above; and
- e) the relevant employer or associated company, as the case may be, certifies on the SARP 1A, within 90 days of the assignee's arrival in the State, that the conditions in a) – c) above have been met.

12 consecutive months

The above conditions should be considered together, rather than in isolation. The condition in c) requires the assignee to perform the duties of his or her assignment for a minimum period of 12 consecutive months from the date the assignee first performs those duties in Ireland. The duties of the assignment are the duties referred to in b) i.e. the duties of employment for either the relevant employer or associated company, which must be performed in the State. As noted, these conditions cannot be read in isolation.

There is therefore a clear requirement that the assignee must perform the duties of his or her SARP role in Ireland in each of the 12 months following the date the assignee first commences performing those duties in the State. Thus, if an assignee does not perform any employment duties in Ireland in any one of the individual months in this period he or she will fail to fulfil this requirement and will not trigger his or her first entitlement to the relief, notwithstanding the fact that the assignee may be resident in Ireland and meet all other conditions of the relief.

It is however recognised that the assignee may be required to leave Ireland on occasion for both business and personal reasons during both the initial 12-month period and over the course of the SARP assignment. Such departure(s) from the State will not in itself preclude an assignee from triggering his or her first entitlement to the relief or qualifying for the relief in a particular year. Where the assignee departs Ireland, due regard must be had to the

impact this departure may have on the assignee's residence status.

The legislative amendment in Finance Act 2014 provides flexibility in that no adjustment is required to the relevant thresholds where the assignee performs some of the duties of employment outside the State, be they incidental or non-incidental in nature. The amendment did not however change the overriding requirement that the assignee must come to Ireland, at the request of his or her relevant employer, to either perform the duties of employment for that relevant employer in Ireland or take up employment with an associated company in the State and perform the duties of that employment in Ireland, and to perform those duties for a consecutive period of 12 months.