Eures Cross Border Partnership in Conjunction with Tierney Tax Consultancy have compiled a booklet on the tax implications of cross border employee mobility. The purpose of the seminar and booklet is to inform and update cross border employers on the implications of staff taxation and labour laws. This area is one which causes many problems for employers in a cross border setting and in line with the aims of EURES we need to support these cross border employers.

This booklet will cover:

1. Tax Implications for Employers employing Cross Border Worker or having staff working on either side of the border.

2. Redundancy, pensions and social insurance in a cross border context.
Implications for Cross Border Employers

(a) ROI Resident Employee Taking up Employment in NI

What Taxes are deducted in the UK

In the UK the tax year runs from 6 April to 5 April. A personal allowance is deducted from gross income and then the tax rates and bands are applied to taxable income.

- Personal Allowance 2015/16 £10,600.
- Personal Allowance 2016/17 £11,000.

- Rates on income
  - 20% first £31,785 (2015/16) £32,000 (2016/17) - lower rate
  - 40% £31,786 (2015/16) £32,001 (2016/17) up to £150,000 - higher rate
  - 45% over £150,000 - additional rate

- Rates on dividends
  - 10% in lower tax band 2015/16  7.5% (2016/17)
  - 32.5% 2015/16 & 2016/17 (on gross dividend) in higher tax band (with 10% tax credit in 2015/16)
  - 37.5% 2015/16 (on gross dividend) in additional rate band 38.1% 2016/17 (with 10% tax credit in 2015/16)
In 2016/17 the first £5,000 of dividends received by individual taxpayers will be taxed at 0% which ever tax band the dividends fall into.

- **NIC Rates**

  Class 1  
  Employees  
  12% - £155 - £815 per week  
  2% - over £815 per week

  Employers  
  13.8% - over £156 per week

*Requirement to File a Tax Return*

ROI residents working in NI will be required to submit an annual Self Assessment return to the Irish Revenue Commissioners as they are in receipt of "foreign" income. The taxes deducted in the UK are available as a double tax credit against the ROI tax and USC on the same income.

*Cross Border Workers Relief (Transborder Relief)*

This relief is available to individuals who are resident in ROI but commute regularly to work in another country which has a double taxation treaty with ROI eg UK. The relief can be claimed as an alternative to the double taxation credit whichever is more favourable for the employee.

The relief effectively removes the earnings from a qualifying foreign employment from liability to ROI tax and USC where foreign tax has been paid on those earnings.
• Employment must be exercised wholly in a country with which the ROI has a Double Taxation Agreement.
• Employment must be held for a continuous period of at least 13 weeks in the tax year.
• Income from this employment must be subject to tax in the other country and this tax must actually have been paid to the relevant authorities and not be eligible for a refund.
• For every week the individual works abroad, he/she must be present in the ROI for at least one day in that week.
• The claim must be made in writing or can be included on an income tax self assessment return (Form 11) in ROI. Proof of the tax paid in the other jurisdiction will be required.
• The individuals tax liability is reduced to a "specified amount"

The "Specified Amount" is calculated as follows:

\[
\text{Total ROI Tax Liability} \times (\text{Income other than Foreign Employment Income} / \text{Total Income})
\]

This formulaic approach to giving relief means that the formula is skewed by any other income earned in the year eg investment income or spouses income under joint assessment with the result that full relief is not available unless the sole income in the year is the "foreign" employment. Spouses are often better off on separate assessment.

**Double Tax Treaty Relief for Certain Government Workers**

There is another relief available to certain government employees. The ROI UK tax treaty Article 18 deals with the taxation of salaries, wages and other similar remuneration of government officials.
Generally that income is only taxed in the state of employment and not in their home state. So the ROI resident would not be taxed in the ROI on the employment income from government service in the UK.

The question arises as to what is government service and whether all State funded employments are included. In order to qualify for relief the employee must be rendering services to the government or a local authority and must be discharging services of a governmental nature or employed in an educational institution which are paid by or wholly or mainly from funds provided by the State. HMRC in the UK have taken the view that teachers employed by local education boards in Northern Ireland are not governed by this Article. The Courts and the Revenue Commissioners in ROI have also taken views that nurses employed by a regional health board in NI and employees of the IDA and An Bord Trachtala in ROI were not covered by the article. So it is really down to the nature of the job. Those working for county councils would appear to be employed in local government administration whereas it could be argued that the Enterprise boards and similar bodies, although government funded, provide their services to business and not to government and could be viewed as more akin to the IDA and therefore not government service for this purpose.

(b) NI Resident Employee Taking up Employment in ROI

What Taxes are Deducted in ROI

In the ROI the tax year runs from 1 January to 31 December. A tax credit system applies. Tax rates and bands are applied to gross income and then tax credits are deducted. Joint assessment applies to married
couples and civil partners unless they elect for single or separate assessment. The statutory position is that unless the entire income of the spouse is taxable in ROI the married tax credit and joint assessment cannot be claimed by a non resident. However Tax Briefing 67 allows a couple to apply aggregation where they would have been better off under joint assessment. However it must be borne in mind that this will reduce the tax credit available for use against the UK tax payable on the same income.

• Rates on income

Tax

• 20% first €33,800 (Single) up to €67,600 (Married) - lower rate
• Balance at 40% - marginal rate

Universal Social Charge ("USC")

• 1% on first €12,012
• 3% on next €6,656
• 5.5% on next €51,376
• 8% on the balance

Capped at 3% for those aged 70 or over or holding a full ROI medical card.

• Personal Tax Credit 2016 €1,650 (Single) €3,300 (Married)
• Employee Tax Credit 2016 €1,650

More details on www.revenue.ie

• PRSI Rates

Class A Employees
• 4% on all earnings
• PRSI credit for those earning between €352 and €424 a week – max €12 a week

Employers
• 10.75% - on total earnings where they exceed €376 per week
• 8.5% - on total earnings where they do not exceed €376 per week

More details on www.welfare.ie

Requirement to File a Tax Return

NI/UK residents will be required to submit an annual Self Assessment return (Form SA100) to HMRC. The tax and USC deducted in ROI are available as a double tax credit against the UK tax on the same income.

There is no equivalent in the UK of Cross Border Workers Relief. If the UK tax liability exceeds the double tax credit available then the excess must be paid over to HMRC.
It is also important to note that taxes must be calculated under the UK rules so differences can arise where relief s have been claimed in ROI eg on termination payments.
1 (c). Employers Employing Cross Border Workers

ROI Employer Taking on NI Employee to work in ROI

- Employee needs PPS number - if they don't have one they must apply for one by contacting the local Social Protection Office. Proof of Identity and address will be needed. More details on www.welfare.ie.
- Employee must apply for tax credit certificate using Form 12A.
- Tax Credits available will depend on personal circumstances of employee.
- Employer will receive notice of tax credit - P2C - in the ROS Inbox. Until tax credits certificate is received emergency basis of taxation applies.
- More details on www.Revenue.ie

NI employer taking on ROI Employee to work in NI

- Employee needs an NI number - if they don't have one they must apply for one by contacting the local National Insurance Office to arrange an evidence of identity interview.
- Ring Local Social Welfare Office to apply for an NI number and they will arrange an interview for the applicant.
- Proof of identity and address and the reason for the application will be required by the interviewer.
• Form P46 will need to be filed online to apply for the correct tax code for the employee.

1 (d) The Tax Implications of Having Staff Working on Either Side of the Border

NI Employer taking on employees to carry out duties in ROI

• 60 day and 183 day rule - requirement to register as an ROI employer if the employee performs duties of employment in ROI exceeding 183 days in a tax year (ended 31 December).
• Register as an employer online on ROS or on paper Forms Prem Reg or TR1/TR2.

The 60 day and 183 day Rules

All employers are now obliged to operate Irish PAYE withholding tax in respect of payments made to any employees working in ROI. However, the Irish Revenue authorities will not require an employer to operate PAYE where the duties of the employment are performed in ROI for not more than 60 days in total in the tax year and the following criteria are satisfied:
• The employee is resident in a country with which ROI has a double-taxation agreement and is not resident in ROI for tax purposes for the relevant tax year;
• There is a genuine foreign employment;
• The employee is not paid by or on behalf of an employer resident in ROI;
• The cost of the employment is not borne by a permanent establishment in ROI of the foreign employer.
In addition, with effect from 1 January 2007, the ROI Revenue Commissioners will not require an employer to operate Irish PAYE in respect of temporary assignees that have income attributable to duties performed in Ireland under a foreign contract. A temporary assignee refers to someone who is present in Ireland for a period or periods exceeding 60 days but not exceeding 183 days a tax year.

The following criteria also must be satisfied:

- The employee is a tax resident of another jurisdiction with which ROI has a double-taxation agreement;
- The employee suffers withholding taxes at source in the home country on the income attributable to the duties exercised in ROI under the foreign employment;
- There are a number of other conditions which the foreign employer must also fulfil including applying to the Revenue for agreement not to operate PAYE in these circumstances and providing an undertaking to meet any tax liability which might ultimately arise.

**ROI Employer taking on employees to carry out duties in NI (or rest of UK)**

- 183 day rule - requirement to register as a UK employer if the employee performs duties of employment in NI /UK exceeding 183 days in a tax year (ended 5 April).
- If from the outset it is known that the employee will exceed 183 days on duties then employer registration must commence from the outset.
- Register as an employer online on [www.hmrc.gov.uk](http://www.hmrc.gov.uk).
• The UK operate a PAYE Real Time Information (RTI) system. Employers are required to provide online reports which will include details of the employees, the payments made to them and the deductions. This information has to be provided on or before each payday. There no equivalent of form P35 at the end of the tax year. Leniency afforded to employers in the introductory years of the RTI system is coming to an end and penalties are being imposed for late submissions.

2. Redundancy and Termination Payments:

2 (a) In general all payments made by Employers to Employees and directors regarding employment are treated as taxable pay for tax purposes and employers must operate PAYE in such payments. Lump sum payments on a redundancy or Retirement however qualify for special tax treatment and they may be exempt or partially exempt from tax.

ROI

A Redundancy or lump sum Retirement payment is exempt from tax if it is a statutory redundancy payment or it is a payment made on account of death, injury or disability.

Relief is available on your first Redundancy or Retirement payment as follows:

**Basic Exemption:**

The basic exemption of €10,160 plus €765 for each full year of service with the employer making the redundancy payment.

**Increased Exemption:**
The basic exemption of €10,160 plus €765 for each full year of service would be increased by a further €10,000 if you are not a member of an occupational pension scheme or if you irrevocably give up your right to receive a lump sum from the pension scheme and you have not made any claims in respect of a lump sum received in the previous 10 tax years.

**Standards Capital Superannuation Benefit - SCSB:**

Additional Relief based on the difference between the basic plus the increased exemption and the SCSB may also be claimed. This relief generally benefits those with high earnings and long service. SCSB is calculated by multiplying one fifteenth of the average annual pay for the last three years of service. 36 months, to the date of leaving by the number of complete years of service less any tax free lump sum entitlement from the Pension Scheme.

The formula for calculating the SCSB is:

\[ \frac{(A \times B)}{15} - C \]

- **A** is the average remuneration for the last 36 months service to date of termination
- **B** is the number of complete years of service
- **C** is the value of any tax free lump sum received or receivable under an approved pension scheme.

The tax free amount can be increased by qualifying foreign service. Foreign service involves temporary posting abroad from an ROI position of employment where time is spent in ROI both before and after the foreign service.

The total of exemptions and reliefs granted to an individual in respect of all exgratia lump sums cannot exceed €200,000. This maximum
figure of €200,000 includes the value of any amounts of relief previously granted to the claimant in respect of previous exgratia payments.

**UK**

In the UK Termination payments or any payment made directly or indirectly in consideration or in consequence of or otherwise in connection with the termination of an employment are taxable under ITEPA 2003 Section 401. There is however an exemption for the first £30,000 which is exempted by Section 406.

The UK exemption can be increased by qualifying Foreign Service Relief.

A period counts as foreign service where the earnings from the employment are not relevant earnings. Up to 5th April 2008 relevant earnings means earnings within Section 15 or Section 21 ITEPA 2003 as then enacted. So if the earnings fall within any other provision the period counts as foreign service. From 6th April 2008 relevant earnings means the employees ordinarily resident in the UK and the earnings are within Section 15 ITEPA 2003. So if any other situation applies to the earnings the period counts as foreign service. In a lot of cases the ROI earnings of a UK Resident and domiciled person will not qualify for foreign service relief.

**2 (b) Relief for Pension Contributions**

**UK**

You don't usually have to claim tax relief on pension contributions you get it automatically if either you are in a work place pension and your employer takes contributions out of your pay before deducting income tax or your pension provider claims tax relief for you at 20%
and adds it to your pension savings, this is called relief at source. You get Relief at source on all personal and Stakeholder pensions and some work place pensions.

You may be able to claim tax relief on pension contributions if you pay income tax at a rate above 20% and your pension provider claims the first 20% for your Relief at source, the pension scheme is not set up for automatic tax relief or somebody else pays into your pension If you pay tax at 40% you can claim relief on the extra 20% on your self assessment tax return. If you don't fill in a tax return you can call or write to HMRC to claim the extra relief. You can only claim tax relief on the extra 25% if you pay tax at 45% on your self assessment Tax Return. If your Pension Scheme isn't set up for automatic tax relief, you must claim the tax relief on your self assessment tax return.

ROI

In the ROI relief is available to an individual who contributes to a personal pension scheme. The tax relief is given at the marginal relief of tax. If it is a workplace pension then relief is usually given through the Payroll system. If it is a personal pension then relief can be claimed either on the self assessment income tax return or by contacting the local Revenue office. The maximum contributions to which relief can apply is based on the age of the contributor.

Under 30 years 15% of net relevant earnings.
30 - 39 years 20%,
40-49 years 25%,
50-54 years 30%
55-59 years 35% and
60 years and over 40%.

The limit on the earnings which may be taken into account is €115,000. There is also now a limit on the overall value of the fund which can be taxed relieved, this is called a Standard Fund Threshold.
The maximum fund threshold at the moment is €2 million. Any lump sum taken from a pension scheme can only be tax free up to a maximum of €200,000. Any lump sums taken above €200,000 up to €500,000 will be taxed at 20% and lump sums of over €500,000 will be taxed at the tax payer’s marginal rate.

In a cross border situation to get tax relief on pension contributions in the UK you have to satisfy certain conditions.

**Migrant Member Relief:**
This applies where you change residency to the UK but don't change employment. To qualify for this relief your pension scheme must be an overseas pension scheme that meets certain qualifying conditions. If you don't know if your scheme is a qualifying overseas pension scheme QOPS you should ask your pension scheme manager or financial advisor.

The following conditions must also apply, you must be living in the UK when you make the contributions or when they are made on your behalf.
You must have employment or trading income that is subject to UK Income Tax.
You must have told the Manager of the qualifying overseas pensions scheme that you intend to claim Migrant Member Relief.
You must have joined the scheme before you arrived in the UK and still be a member of the scheme when you arrived in the UK.
Your scheme Manager must tell you that they will give HMRC information about the amount of lifetime allowance used up by payments from your previous pot.
You are entitled to tax relief and pension contributions made by you or your employer either in the Country you are living in or were living in immediately before arriving in the UK or in any Country where you were living in the 10 years before you arrived in the UK. You can check whether your scheme is an Irish scheme registered with HMRC by checking out the list of pension schemes registered on the HMRC website.

**Double Taxation Relief:**
Generally double taxation agreements enable individuals to receive UK tax relief on contributions made by or for them as if the contribution to the overseas pension scheme were made to a UK Registered pension scheme. The conditions meant to be met by the individual can vary from Treaty to Treaty but may include the following:

The Individual was contributing to or was a member of the scheme before becoming an UK resident or before beginning employment in the UK.

The individual was not a resident of the UK immediately before beginning employment in the UK.

An individual is employed in the UK by the person who was their employer immediately before beginning employment in the UK.

The scheme is taxed recognised in the other Country i.e. ROI and the scheme is accepted by HMRC as corresponding to a UK tax recognised pension scheme.

As you can see both this relief and the Migrant Member Relief apply where you are changing residency.

Therefore if an individual is changing Residency to the UK and moving to a connected employer in the UK and the scheme he or she was contributing to is a QOPS then tax relief should be available in the UK for the contributions. If the individual was already resident in the UK staying with an employer in ROI then contributions to an overseas scheme are not tax deductible even under the Treaty.

Therefore the real danger area is where you are not changing residency but have always been resident in the UK but happen to work in and contribute to a pension scheme in a different country ROI.

2 (c) Social Contributions

If you are a cross border worker or work on both sides of the border and wish to claim social welfare benefits, the authorities will take into consideration all social insurance contributions you have paid. For example National Insurance contributions paid in Northern Ireland...
will be considered alongside any PRSI contributions paid in the South.

- If you have enough Irish social insurance contributions to get an Irish payment the DSP will pay it and also initiate, on your behalf, a claim in the other country you worked in.

- If you do not have enough social insurance contributions the DSP will request your social insurance record from the other country to help you qualify for an Irish social insurance payment and also initiate, on your behalf, a claim in the other country that you have worked.

This means you can get more than one payment; you can get an Irish payment and a payment from another country. However you should take advice before retirement as the mechanism for qualification isn’t straightforward and changes with time.
Rose Tierney

Contact Details:
Kilcorran House, Kilcorran, Selloo, Smithboro, Co Monaghan

Tel: +353 4757843
Fax: +353 4757792
Email: rose@tierneytax.ie
Website: www.tierneytax.ie
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