

# Ireland - Updates PAYE Withholding for Short Term Business Visitors



Irish Revenue recently updated its much awaited guidance on the operation of PAYE for short-term business visitors (STBVs), who are performing the duties of their overseas employment in Ireland.

## Why this matters

The updated guidance released on 17 April 2018 clarifies the Irish Revenue's stance on STBVs, as outlined in GMS Flash Alert 2017-029. As discussed in that Flash Alert, the Revenue position created a lot of uncertainty and affected many foreign employers seeking to claim a clearance from operating Irish PAYE for their employees.

The new guidance will increase compliance responsibilities on employers and add to both the costs and administration related to managing overseas employees coming to Ireland on a short term basis. Employers will still be required to make an application for PAYE clearance from Revenue to relieve the obligation to operate Irish payroll withholding taxes for their STBVs who are working on a one off project for more than 60 workdays in Ireland in a tax year. In addition, from 1 January 2018, Revenue have introduced more onerous requirements for STBVs in Ireland who are present over two consecutive tax years or have a regular work pattern in Ireland. Foreign employees spending a small amounts of days working here year after year may now have a PAYE obligation in Ireland. These new rules are explained further below.

The implication of Irish Revenue's focus on the role, the purpose, and degree of integration of the employee within the Irish business is that foreign employees even with short stays in Ireland may no longer automatically qualify for exemption from operating Irish PAYE. In particular, employers with employees who have a regular annual pattern of work in Ireland will have to make an application for PAYE clearance from Irish Revenue. Depending on the work they are doing and if the Irish company is benefiting from it, an Irish PAYE obligation may arise where none existed previously. Further, there has been a material reduction in the level of incidental duties that an employee from a non-tax treaty location can perform in Ireland annually.

Foreign employers (and Irish employers receiving these foreign employees) will have to evaluate their current processes and employee demographics to establish that they are appropriately managing their Irish PAYE obligations in light of the tax administration's new guidelines.



### 1. **Visitors to Ireland from Double Tax Agreement (DTA) countries for more than 60 workdays, but less than 183 Days (workdays or otherwise) in a tax year**

If a foreign employee is tax resident in a DTA country and suffers payroll withholding taxes in their home country, an application to relax the obligation to withhold payroll taxes in Ireland can be made (known as a 'PAYE Clearance application'), provided that the treaty conditions as set out in the employment income article (usually Article 15(2)) of the relevant DTA are met.

One of the conditions of the DTA is that the employee is employed and paid by a non Irish resident employer. However, if the role being performed by the foreign employee in Ireland is regarded as 'integral' to the Irish company, then Revenue will not grant PAYE Clearance as they deem the foreign employee to be economically employed in Ireland. In the updated guidance, "integral" is not explicitly defined, however, a number of factors (and example scenarios) are provided in considering whether a foreign employee is integral to the Irish company's operations, such as:

- Who bears the risk/responsibility for the results produced by the foreign employee?
- Who authorises, instructs or controls when, how and/or where and how the work is performed?
- Who does the foreign employee report to while working in Ireland; and
- Whether the role or duties performed by the foreign employee are more typical of the function(s) of the foreign employer or the Irish company.

As outlined in the 2016 Irish Revenue guidance (December 2016), PAYE Clearance will also not be granted in the following scenarios:

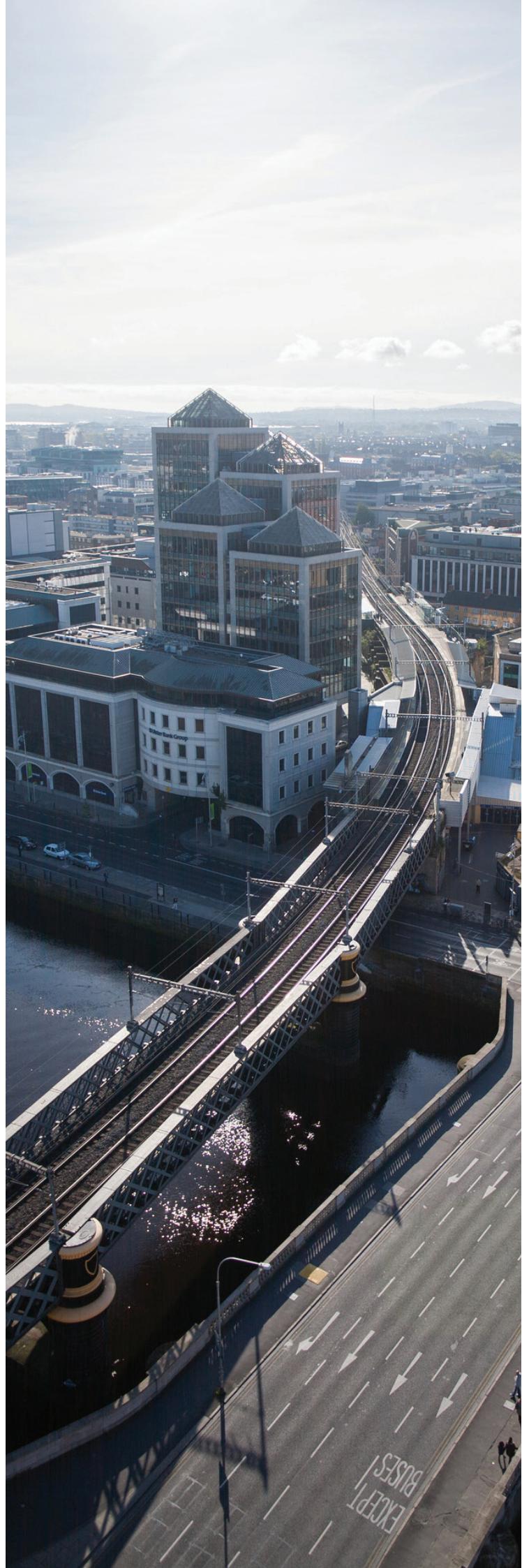
- Where the foreign employee is gaining experience in Ireland
- Where the foreign employee is replacing an Irish member of staff
- Where the foreign employee is supplied by an agency (or other company) outside the state to work for an Irish company.

The 2018 updated guidance has removed the automatic denial of a PAYE clearance if the individual is coming to Ireland to "gain experience". Clarification is required on what type of work experience will qualify e.g. classroom training experience only or if productive work experience like hands on training on the production floor is permitted.

The Irish Revenue has stated in the updated guidance that whether the costs are borne by the Irish business will not be a factor in determining whether the remuneration has been paid by a non-resident employer.

## KPMG opinion

This 'economic employer' test will make it very difficult for Irish headquartered companies to contend that the work performed by a foreign group employee is not integral to the business of the Irish company, given the ultimate decision making of the Group will be completed in Ireland. By contrast, the 2018 guidance provides an example where a Group Head of HR remains under the direction and control of a US parent company, and so can remain in Ireland for up to 183 days without an Irish PAYE exposure arising. This is not a level playing field for Irish business and ultimately it may make some Irish businesses consider where to locate their headquarters.



## 2. Short Term Business visitors to Ireland from DTA countries for up to 60 workdays

Effective 1 January 2018, when reviewing STBs who may have up to 60 workdays in Ireland, employers will need to consider whether the STBs will have a presence in Ireland in one tax year, two consecutive tax years or more than two consecutive tax years.

Presence in Ireland for 1 tax year	Presence in Ireland for 2 consecutive tax years	Present in Ireland for multiple tax years
No PAYE if less than 60 workdays in the tax year	No PAYE if less than 60 workdays over the 2 years in aggregate	No PAYE if duties not integral to Irish business but no automatic exemption.
Must not be on an Irish payroll and be employed and paid by foreign employer	Must not be on an Irish payroll; Must be employed and paid by foreign employer	Must not be on an Irish payroll; Must be employed and paid by foreign employer
Not Irish tax resident	Not Irish tax resident	Not Irish tax resident
PAYE clearance application not required	No application to Revenue if less than 60 workdays over the 2 years, application for clearance required if more than 60 workdays in aggregate over the 2 years	Application to Revenue required, even if less than 60 workdays in any one tax year. PAYE may be due from Year 1 if duties considered integral to Irish company

### KPMG opinion

Irish Revenue will grant an exemption “without question” for one off assignments to Ireland of less than 60 workdays which is good news for project workers who come to Ireland. In reality though, the majority of employees that travel to Ireland will do so on a recurring basis (especially those that travel from Northern Ireland). This will create a greater burden on employers in making an application for clearance for each employee travelling to work in Ireland who has a continuing pattern of travel.

### 3. Short Term Business Visitors to Ireland from non-DTA countries for no more than 30 workdays

In the past, if a STBV coming from a non-DTA country had less than 30 Irish workdays in a tax year, then Irish payroll withholding taxes did not need to be operated.

With effect from 1 January 2018, employers will need to consider whether the STBVs will have a presence in Ireland in one tax year, two consecutive tax years and more than two tax years in order to assess the Irish payroll taxes withholding requirements.

Presence in Ireland for 1 tax year	Presence in Ireland for 2 consecutive tax years	Present in Ireland for multiple tax years
No PAYE if less than 30 workdays in the tax year	No PAYE if less than 30 workdays over the 2 years in aggregate. If more than 30 workdays in aggregate over the 2 tax years, PAYE should be operated from when the STBV first arrives in Ireland	PAYE to be operated, even if less than 30 workdays in each tax year STBV is present in Ireland

## KPMG opinion

If a person is coming to Ireland year after year, from a non-DTA country, in theory PAYE will need to be operated from Day 1. This is completely unpractical and is at odds with existing provisions relating to non-resident employees of Irish employers who currently can go to work overseas but return for incidental duties of less than 30 workdays in Ireland per tax year, without creating a PAYE tax exposure in Ireland.

## Administration matters

A distinction has been made between PAYE obligations of the employer and the final personal tax return position of the foreign employee. This leaves the possibility of reclaiming PAYE withheld, from Irish Revenue on completion of a personal tax return if the employee meets the income tax exemption conditions in the relevant Double Tax Agreement. However, the ability to secure the refund is not clear and will only become apparent in the coming months once employees have more dialogue with their tax offices. In addition, if the amounts of PAYE are minor e.g. where a person has a small number of recurring visits per year, the costs of compliance in operating a shadow payroll

and completing a tax return for the employee may even outweigh the PAYE withheld.

The application of this guidance and the introduction of PAYE Real Time Reporting from 2019 leaves little room for employees to not operate PAYE where there is any doubt as to the regularity of the work pattern of the foreign employee.

If a PAYE clearance is required it must be applied for within 30 days of arrival to Ireland which is a minor relaxation from the previous 21 day limit.

## Contact us

For additional information or assistance, please contact your usual Global Mobility Services professional or one of the following professionals with the KPMG International member firm in Ireland:



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