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Special Assignee Relief Programme ("SARP")

Update for those arriving post 1 January 2023

The Special Assignee Relief Programme ("SARP") was introduced in Ireland from 1 January 2012. The programme was designed to encourage the relocation of key talent within organisations to Ireland, and is available for up to five consecutive tax years from first arrival. A number of conditions need to be satisfied for the relief to apply, and these are outlined below, together with practical guidance regarding the application of the relief. This note covers employees coming to Ireland between 2023 and 2025.

How does an employee qualify for the relief?

In order to qualify for SARP, the following conditions must be satisfied:

- The individual must be an employee of:

  a. company incorporated and tax resident in a country with which Ireland has a Double Taxation Agreement or an Exchange of Information Agreement (a "relevant employer").

  or

  b. an associated company of a relevant employer.

- The employee must have been employed by a relevant employer for 6 months prior to arriving in Ireland. The guidance has been updated to confirm that:
  - an employee can have up to five working days in total in Ireland during this 6 month period (i.e. a maximum of five working days in Ireland pre-arrival under their foreign contract of employment)
  - where the employee has moved onto an Irish contract of employment, but their arrival to Ireland is delayed (i.e. as a consequence of travel restrictions or otherwise), the employee may only have five non-Irish workdays pre-arrival
  - there is no limit on non-workdays in Ireland during this six-month period (i.e., for holiday/look-see trips), provided all other conditions are met.
- The employee must <u>not</u> have been tax resident in Ireland for the 5 tax years preceding the year of arrival.
- The employee must arrive in Ireland to work in any of the tax years 2023 to 2025 (inclusive).
- The employee must be an Irish tax resident, although they may also be tax resident in another jurisdiction (if not Irish tax resident in the year of arrival, relief may start from the following year).
- The employee must have "relevant income" of €100,000 per annum (previously this was €75,000 per annum). Further information regarding "relevant income" can be found below.
- SARP applicants must have a PPS number "PPSN" issued to them. Previously, there was no statutory requirement to have a PPSN at the time of applying.
- The employee must perform duties in the State for at least 12 consecutive months from the date of arrival in the State. Revenue have recently clarified that this provision mandates that employees must have at least 1 Irish workday each month in the first 12 months. SARP eligible employees should consider this when making travel arrangements in their first year in Ireland to avoid having SARP relief withdrawn.

Within 90 days of the employee's arrival to Ireland, the employer must certify that all of the above conditions have been met in order for the relief to apply. This is achieved through the completion of the Form SARP 1A and submission by the employer to Irish Revenue's SARP unit. Employers must now also ensure that employees' are captured on the Irish payroll/shadow payroll within 90 days of the employees arrival.

How does the relief work?

The relief operates by providing a deduction for income tax purposes from remuneration based on the following formula:

(A-B) X 30%

(A) Qualifying Remuneration

Whilst a qualifying condition for the relief to apply considers an employee's "relevant income" per annum, the relief itself applies to total remuneration i.e. it includes other income such as benefits-in-kind, equity awards, bonuses etc. Employee contributions to an Irish approved pension plan or a foreign pension plan eligible for tax relief are deductible from total remuneration before the relief is calculated. Likewise, remuneration eligible for double tax relief in Ireland must also be deducted from total remuneration before calculating any relief due.

Since January 2019, an earnings cap of €1m has been in effect.

(B) €100,000 (prior to 1 January 2023, this was €75,000)

This annual threshold is pro-rated in years of arrival/departure.

Limitation of the relief

The relief applies to income tax only, and effectively means a 28% income tax rate on earnings above the relevant threshold in the tax year (i.e. 70% * 40%).

There is no relief from the Universal Social Charge "USC" or Irish Social Security "PRSI".

Example:

Patrick arrived in Ireland on 1 January 2023 and meets all the conditions to claim SARP relief. His base salary is €115,000, and he receives additional benefits in kind valued at €5,000.

A = €120,000

B = €100,000

SARP Deduction = (€120,000 - €100,000) = €20,000 @ 30% = €6,000. Patrick's marginal tax rate in Ireland is 40%, so the income tax saving is €2,400 (€6,000 * 40%). 8% USC and, if applicable 4% PRSI continues to apply to the income qualifying for the SARP deduction.

Other Benefits of SARP

Employees who qualify for SARP are also eligible to receive one tax-free home leave trip per annum for them and their family, and school fees paid by the employer, capped at €5,000 per annum for each child can be tax-free.

SARP relief can be claimed by the employee:

i) Through the year-end Tax Return

ii) Through payroll

Reporting

Employer

An employer must submit an annual return by 23 February following the tax year, detailing the following information for all qualifying employees:

- PPS Number
- Nationality
- Prior country of residence
- Job title/role
- Remuneration information (including any reimbursed school fees/home leave trips)

In addition, the annual return must set out the increase in number of employees employed or retained as a result of the qualifying employees working in Ireland. Revenue have recently noted that an amended Employer SARP return is not required by the employer after the Form 11 (i.e. Irish Tax Return) has been filed.

Employee

Employees who have registered for SARP must file a Tax Return by 31st October following the end of the tax year.

Practical challenges of obtaining SARP relief

In practice, we have encountered the following practical challenges when supporting SARP applications:

1. Employment Registration

The employee should register their employment with Revenue before applying for SARP. Whilst not an eligibility condition, Revenue expect this step to have been completed before they will process applications.

2. 90 Day Window

Revenue apply the 90 day application window strictly, so it is important that individuals who qualify for the relief (or potentially qualify for the relief – see Protective Claims) are identified and notified timely. The Finance Bill 2022 confirms that from 1 January 2023, it is a statutory requirement that employees have a PPS number when making their application. As such, SARP eligible employees should submit their PPSN application as soon as possible and should begin the process prior to their arrival to Ireland to ensure this condition is met (PPSN applications can take up to 8 weeks). Revenue will unlikely offer any flexibility in respect of this condition and there is a risk that SARP applications will be rejected where a PPSN is not obtained within the 90 day window.

3. Income Threshold

The employee must have a minimum income level of €100,000 p.a. to qualify from 1 January 2023 (known as "relevant income"). Prior to 31 December 2022 the minimum income level was €75,000 p.a. to qualify. This change will mean that fewer people will qualify for SARP from 1 January 2023.

Relevant income is predominantly comprised of base salary, but can also include other cash payments provided they are not "incentive payments" (i.e. bonuses, commission etc.). Examples of emoluments that could be included when determining relevant income include a car allowance, flexible benefit allowance, cost of living allowance and overtime.

4. Protective Claims

In some instances, it might not be known within the 90 day application period whether an individual will qualify for SARP relief e.g. it might be unclear from their travel pattern whether they will be considered tax resident of Ireland, or whether their relevant income will exceed €100,000 within the 5 year period. In such cases, a protective claim is recommended and Revenue have recently acknowledged that such protective claims will be processed.

5. Direct New Hires

The SARP regime does not apply to new hires with no previous group employment history. This can impose practical difficulties where a company wishes to directly recruit key employees to develop its Irish business.

6. Refunds

In particular where SARP relief is claimed via the year-end Tax Return, a significant refund can be generated. Some employees have experienced significant delays with such refunds being processed and paid by Revenue.

In the past, such delays were often a consequence of the Employer SARP return and the Form 11 not aligning - submitting an amended Employer SARP return was unavoidable. However, the recent update to the guidance suggests that such updates to the Employer SARP return will no longer be required, which should expedite the refund process.

7. Restricted Stock Units and Foreign Tax Credits

Where remuneration is eligible for a Foreign Tax Credit "FTC" in Ireland under a Double Taxation Agreement, SARP is not eligible on this element, even if the credit is not claimed. As well as creating reporting complexities to both the employer and employee, this could have a significant financial impact, particularly where the other jurisdiction has low income tax rates.

In particular we see this impact employees whose RSU's vest while Irish resident, but who primarily worked outside of Ireland during the vesting period. If an RSU vests whilst an employee is resident in Ireland, it may be fully taxable in Ireland. If the employee worked in another jurisdiction during the vesting period, then a portion of this award may be double taxed, with relief granted via a FTC on the Irish Tax Return. The availability of this FTC means that only the portion of the award that is primary taxable in Ireland is eligible for SARP relief.

8. Six Month Rule

The five-day thresholds referred to above are recent additions to the SARP guidance. Whilst the introduction of these thresholds helps to remove ambiguity, five-days is quite a low threshold in both instances, so will need to be considered/monitored.

In particular, where an employee is transferring to an Irish group company, it is important that the their arrival date should closely align with the start date of their Irish contract. Where any delay with their arrival to Ireland is more than 5 working days, the start date of the Irish contract should also be pushed back accordingly. This close alignment between the arrival date and contract start date is also important from a PAYE compliance perspective.

9. Grossing-up

Revenue have recently provided updated guidance regarding the interaction between SARP and grossing-up (e.g. in the case an employee is tax equalised in Ireland). Prior to 1 January 2024, SARP relief could be considered as part of the gross-up calculation.

However, from 1 January 2024, updated Revenue guidance stipulates that SARP relief should not be factored into the initial gross-up calculation, and the relief should instead be calculated based on the re-grossed income. This updated methodology reduces the benefit of the relief for those impacted.

Contact us

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