

# GMS Flash Alert

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## Ireland – Updates to Tax and PAYE Withholdings for Non-Irish Employments

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

The updated guidance in Statement of Practice IT/3/07 released on 22 December 2016, will affect the ability of many foreign employers to claim tax relief for their business travellers who are working more than 30 days in Ireland in a tax year.<sup>1</sup>

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### WHY THIS MATTERS

The new policies and procedures 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.

The implication of Irish Revenue's new focus – on the role, the purpose, and degree of integration of the employee within the Irish business – and new interpretation of what constitutes Irish remuneration paid by an Irish resident employer, is that the foreign employee may no longer qualify for PAYE clearance.

Nonresident employers may wish to consider evaluating 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 policies and procedures.

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## Background: Rules Prior to Statement of Practice IT/3/07

A foreign employee working in Ireland is generally liable to Irish tax on foreign employment income related to Irish work-days.

Historically, a foreign employee may personally be exempt from Irish income tax if:

1. the employee is not Irish resident and performs less than 30 work-days in Ireland per annum; or
2. the employee is resident in a tax treaty location and meets the exemption conditions under the Employment Income Article of that tax treaty with Ireland.

The exemption conditions to be met are generally that:

- the employee is employed by a non-Irish resident employer;
- the remuneration is paid by a non-Irish resident employer;
- the employee has presence of less than 183 days in Ireland in the tax year;<sup>[1]</sup>
- the costs of the employee's remuneration is not borne by an Irish permanent establishment (PE)<sup>[2]</sup> or fixed base of the foreign employer.

Irish PAYE obligations are treated as separate to the final employee tax position, however Irish Revenue permitted the relaxation of PAYE obligations as follows:

No PAYE/No Reporting	No PAYE/No Reporting	Clearance from PAYE obligations
Under 30 Irish work-days p.a.	Up to 60 Irish work-days p.a.	Between 60 Irish work-days - 183 Irish days p.a. <sup>[3]</sup>
Not Irish resident	Not Irish resident Tax treaty resident outside Ireland	Not Irish resident Tax treaty resident outside Ireland
No application to Revenue	No application to Revenue	Application required to Revenue Subject to PAYE in home location
Relief under domestic tax	Meets tax treaty exemption rules	Meets tax treaty exemption rules

[1] Depending upon the tax treaty, the 183-day requirement may be in any 12-month period beginning or ending in the tax year

[2] Permanent establishment

[3] Please note distinction between Irish "work-days" and Irish "days"

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## KPMG NOTE

The aim of a PAYE clearance was to administratively mirror the fact that the employee may not ultimately be liable to Irish income tax on employment income as a result of meeting the conditions outlined under the Employment Income Article of a relevant tax treaty with Ireland.

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# Changes Outlined in the Statement of Practice

## Background

One of the primary conditions required for exemption under the Employment Income Article is that the individual be employed and paid by a non-Irish resident employer. This is interpreted differently by foreign tax jurisdictions, but historically, a 'foreign' employment for tax treaty exemption purposes would have been regarded as one where the employee was legally employed and physically paid by a non-Irish company, provided that company did not have a taxable corporate presence, such as a branch in Ireland.

## Foreign Employee's Remuneration Paid by Irish Resident Versus Nonresident Employer

The updated Statement of Practice provides that Irish Revenue will now deem the remuneration of a foreign employee to be paid by an Irish resident employer and to no longer meet the requirements of being paid by a nonresident employer in the following circumstances:

- The foreign employee is working for an Irish employer where the duties performed by the individual are an integral part of the business activities of the Irish employer;
- The foreign employee is replacing a member of staff of an Irish employer;
- The foreign employee is gaining experience working for an Irish employer;
- The foreign employee is supplied and paid by an agency (or other entity) outside the state to work for an Irish employer.

Irish Revenue has also indicated that whether or not costs are borne by the Irish business will not be a factor in determining whether the remuneration has been paid by a nonresident employer.

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## KPMG NOTE

Irish Revenue's interpretation of what constitutes remuneration paid by an Irish resident employer is extremely broad. When assessing entitlement to PAYE clearance, focus will now be placed on the role, the purpose, and degree of integration of the employee within the Irish business.

Irish Revenue indicates that this revised interpretation of the Employment Income Article provisions is in line with OECD commentary. It appears that this interpretation goes beyond the OECD guidelines in this area. In addition, OECD provisions do not currently form part of Irish tax law and therefore it is questionable whether Irish Revenue can apply this interpretation without a legislative change to Irish domestic rules.

The implication of the change is that foreign employees whose duties/role meet one of the examples above, will no longer qualify for PAYE clearance. Although not explicitly outlined, it would also appear that foreign employees working between 30 and 60 days in Ireland per annum (and previously outside any reporting/withholding obligations) could be within the scope of Irish PAYE once the role or duties performed meet the examples outlined by Irish Revenue.

While Irish Revenue emphasise that the interpretation relates to PAYE obligations, the final personal tax position for the foreign employee is not clear. If PAYE obligations now arise, entitlement to claim a PAYE refund under the Employment Income Article would now also appear in doubt. Aside from the additional administrative burden associated with operating an Irish payroll, the changes could lead to increased costs as well as cash-flow issues for employees and employers alike.

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## Areas for Clarification

There are a number of areas for clarification in relation to the update required as follows:

- Whether Irish Revenue has the ability to adopt the interpretation outlined under current Irish tax law.
  - Whether there is any change to the current treatment for employees who perform less than 60 work-days in Ireland per annum if replacing an Irish staff member or on work experience with the Irish employer.
  - In what instances is a PAYE clearance now available to a foreign employer?
  - What impact will there be on the entitlement to a refund of PAYE paid for foreign employees previously entitled to exemption under the terms of the Employment Income Article of a tax treaty?
  - Whether the approach outlined supports Ireland as a location of choice for international business and mobile talent, especially in light of Brexit and other global economic developments.
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## KPMG NOTE: The Upshot of this Development and Next Steps

There would now appear to be limited circumstances in which an Irish PAYE clearance will be granted to a foreign employer, once duties are performed for an Irish company. Nonresident employers (in conjunction with associated Irish businesses) should now review their current processes and employee demographics to determine that there are sufficient controls and procedures in place to manage Irish PAYE obligations.

The KPMG International member firm in Ireland is seeking clarification from the authorities on the issues identified and will be requesting withdrawal of the SOP as currently drafted. They will also be emphasising the need for a clear and commercial tax policy for mobile talent to be adopted in order to foster Ireland's ability to avail of all opportunities arising as a result of Brexit.

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## FOOTNOTE:

- 1 For the Revenue eBrief No. 102/16 dated 22 December 2016, see: <http://www.revenue.ie/en/practitioner/ebrief/2016/no-1022016.html>.

## RELATED RESOURCE

This article is excerpted, with permission from "Update to Irish PAYE Obligations: Employees of Non-Irish employers working in Ireland" (25 January 2017), a publication of the KPMG International member firm in Ireland.

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