GMS Flash Alert

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Ireland – Update on SARP Guidance from Revenue

On 10 June 2022, the Irish Revenue updated the Tax and Duty Manual in respect of the Special Assignee Relief Programme ("SARP").[1] These updates were a result of a significant period of consultation, and the purpose of these updates is to remove the ambiguity that previously existed in some instances. The eBrief/updated manual can be found here.

We summarise the changes in this *GMS Flash Alert*.

WHY THIS MATTERS

SARP was introduced in Ireland from 1 January 2012, as a mechanism to encourage the relocation of key talent within organisations to Ireland. Where the conditions have been met, the relief has the effect of reducing a qualifying employee's marginal income tax rate from 40 percent to 28 percent, i.e., a 12-percent saving on employment income exceeding EUR 75,000, and up to EUR 1 million. The applicability of SARP can therefore often be decisive in encouraging the relocation of senior employees to Ireland. Given the significant benefits, it is important that the qualifying criteria are clear – the purpose of the consultation was to reduce any ambiguity, some of which has come to the fore as a consequence of the COVID-19 pandemic.

Inclusion of Section 4.1 - Clarity Regarding Six-Month Rule

For SARP to apply, the employee must be in full-time employment with a "relevant employer"[2] for the whole of the six-month period immediately preceding his/her arrival 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 six-month period (i.e., a maximum of five working days in Ireland pre-arrival under his/her foreign contract of employment)

- where the employee has moved onto an Irish contract of employment, but his/her arrival in Ireland is delayed (i.e., as a consequence of travel restrictions or otherwise), the employee may only have five non-Irish work-days pre-arrival;

- there is no limit on non-work-days in Ireland during this six-month period (i.e., for holiday/look-see trips), provided all other conditions are met.

KPMG NOTE

Removing ambiguity is beneficial for all, however, the inclusion of the five-day thresholds could impact the eligibility for some, and thus will need to be monitored.

In the case of point 1, five days is a low threshold, and employees may be unaware that a two-week business trip to Ireland in the lead-up to their assignment could inadvertently jeopardise their eligibility to avail of SARP relief.

In the case of point 2, again, five days is a low threshold, particularly where the delay is driven by immigration (such delays can delay arrival for weeks/months). As such, it is very important that the start date of the Irish contract aligns very closely with the employee's arrival date, and that any delayed arrival is no more than five working days. This close alignment between arrival date and contract start date is also important from a PAYE compliance perspective.

Update of Table in Section 4/Inclusion of Example 20 – Clarity Regarding 12-Month Rule

Section 825C(2A)(c) confirms that an employee must perform duties in Ireland for a period of 12 consecutive months from the date he or she first performed duties in the state.

Until recently, this provision has been somewhat open to interpretation. However, the updated guidance confirms that the employee must perform employment duties in each of the 12 consecutive months following the arrival date, i.e., at least one Irish work-day per month, for each of the first 12 months. If this condition is not met, then SARP will not apply.

KPMG NOTE

While this condition is not problematic in most instances, with a lot of employers moving to more flexible working arrangements as a consequence of COVID-19 (including provisions for remote working overseas), care should be taken to help ensure this condition is not inadvertently breached.

Inclusion of Section 5 – Administrative Requirements

In the past, SARP applications have been rejected where an employee does not have a Personal Public Service Number "PPSN," or where the employee has not registered his or her employment with Revenue. While it is beneficial that both these steps are completed, it was noted to Revenue that neither step was in fact a legislative requirement of SARP.

Revenue has therefore updated the guidance to confirm this, e.g., “the absence or the delay in processing of a PPSN, will not in itself impact on whether an employee is eligible for relief.”[3]

KPMG NOTE

While this clarification is welcome, we would note, however, that it is still beneficial to complete these steps as a priority – SARP applications will not be processed/issued until they have been. This issue was particularly prevalent during the height of the COVID-19 pandemic, when there were significant delays with the processing of PPSNs. In our experience, the new online PPSN application process has addressed this issue for many.

Update to Section 7 – Calculation of Relief

Section 7 has been updated to reinforce the position that SARP relief cannot be claimed on income which is also eligible for foreign tax credit relief, and that this needs to be factored into the SARP calculation.

Update to Section 15.3 – Annual Reporting Requirement

Section 15.3 has been updated to confirm that an amended “Employer Return SARP Return” is not required by the employer after the employees have claimed SARP Relief on their Form 11.

KPMG NOTE

Updating an Employer SARP Return following the submission of a Form 11 (i.e., Irish Tax Return) has generally been at the request of Revenue, so time will tell whether this ceases to be a requirement. In the event that the “Gross income from the employment” figure per the Form 11 differs to what was included on the SARP Employer Return (e.g., as a consequence of tax equalisation), then we expect that the refund will not be processed until the two returns align.

More broadly, we also note that as it stands, SARP relief only applies to employees first arriving to perform duties in the country by 31 December 2022 – it remains uncertain whether it will be extended beyond this period.

For further details regarding SARP relief, including the conditions, please refer to our updated flyer which can be found here. Alternatively, please reach out to your KPMG in Ireland contact for further information.

FOOTNOTES:

1 Revenue, “Special Assignee Relief Programme (SARP): Part 34-00-10”.

2 A “relevant employer” is a company incorporated and tax resident in a country with which Ireland has a Double Taxation Agreement or an Exchange of Information Agreement.

3 Revenue, “Special Assignee Relief Programme (SARP): Part 34-00-10”.

Contact us

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