



Revised Revenue guidelines

Foreign employees working in Ireland

Revenue have published revised guidance on the tax treatment of foreign employees working temporarily in Ireland.

The effect of the new guidance will limit the circumstances in which Revenue will release an employer from the obligation to operate Irish payroll withholding taxes (PAYE) in respect of foreign employees. This will result in uncertainty for employers in attempting to apply the revised Revenue guidance to their particular circumstances. It will also place a significant administrative and cash flow burden for those employers who are now required to operate PAYE in respect of short term business visitors who spend more than 30 days per annum in Ireland.

Background

Where a foreign employee works in Ireland on a temporary basis, Revenue practice has been to release an employer from the obligation to operate Irish PAYE, where certain conditions are met. In general, Revenue were prepared to accept that employers need not operate PAYE on remuneration paid to an individual where:

- the individual is resident in a country with which Ireland has a double taxation agreement and is not resident in Ireland for tax purposes for the relevant tax year;
- there is a genuine foreign office or employment;
- the remuneration is paid by, or on behalf of, an employer who is not a resident of the state;
- the remuneration is not borne by a “permanent establishment” which the employer has in the state; and
- the duties of that office or employment are performed in Ireland for no more than 60 working days in total, in a year of assessment and in any event, for a continuous period of less than 60 working days.

Revised guidance

Revenue have now published revised guidance adapting the economic-employer approach, in line with their interpretation of OECD guidance (commentary on Article 15 of the OECD model tax convention on income and capital).

The revised guidance outlines that Revenue are not prepared to accept, that for the purposes of granting a release from the obligation to operate the PAYE system, that the “remuneration is paid by, or on behalf of an employer who is not a resident of the other state” where the individual 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;
- replacing a member of staff of an Irish employer;
- gaining experience working for an Irish employer; and
- supplied and paid by an agency (or other entity) outside the state to work for an Irish employer.

Revenue have also stated that the release from the obligation to operate the PAYE system will not be granted simply because the remuneration is paid by a foreign employer and charged in the accounts of a foreign employer or where the remuneration is paid by a foreign employer and the cost is then re-charged to an Irish employer.

Interpretation

Revenue have to date applied the “legal/contractual employer” approach and this is the first time that Revenue have formally attempted to apply some of the principles of the “economic employer” approach that is applied in a number of other jurisdictions.

The economic employer approach means that the term “employer” should be considered in the broader sense and the context of the employment should be reviewed to determine which entity is the “economic employer” of the employee.

The recent revised guidance published by Revenue is Revenue’s interpretation of OECD guidance and it is important to note that there is currently no legislation in Ireland in this area.

We expect that the revised guidance will limit the circumstances in which employers can claim an exemption from the obligation to operate PAYE in Ireland for short term business visitors who work in Ireland for less than 60 days.

The revised guidance may also impact the circumstance in which Revenue will grant an exemption to release an employer from the obligation to operate withholding taxes for individuals, who have greater than 60 working days in Ireland, but less than 183 days.

We anticipate that the revised guidance could give rise to cases of withholding tax obligations in two jurisdictions, which would then require resolution under the relevant double tax treaty. Consequently, the revised guidance at a minimum will result in additional administrative requirements for companies.

However there is some ambiguity around the interpretation of the revised guidance and we expect further interaction between Revenue and tax practitioners on this issue. Submissions have already been made to the Department of Finance.

Employers will now need to carefully consider the impact of Revenue's updated guidance on their short term business visitors to Ireland on a case by case basis.

How Grant Thornton can help your business

We can help your business to consider the impact of Revenue's updated guidance on your short term business visitors to Ireland and offer our expert advice tailored to your business' circumstances.

Contact

Please contact a member of our team below for further information and discussion.

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