Ireland:  
Finance Act 2012

The budget announcement for 2012 heralded a number of new reliefs for internationally mobile employees to attract key personnel to Ireland.

While the Finance Act sets out the parameters of these new reliefs, it also limits an existing relief which had been available since 1 January 2009 to certain foreign employees working in Ireland. The existing relief, Section 825B, which had partially reintroduced a limited remittance basis of taxation for certain foreign employees, is amended from 1 January 2012.

**Special Assignee Relief Program**

The new relief is also designed to encourage key personnel to relocate to Ireland. Unlike the relief in place for pre-2012 arrivals, the relief is not limited to either foreign employments or non-Irish domiciles. The relief is available for employees arriving between 2012 and 2014 and is available for five consecutive tax years.

The individual’s employer (or associated company) must be a resident in a country with which Ireland has a double taxation agreement or information exchange agreement. The individual must have been working for this employer (or associated company) outside of Ireland for the 12 months immediately prior to their arrival in Ireland.

The individual must work in Ireland for a minimum of 12 consecutive months from the date they take up residence in Ireland, and they must not have been a resident in Ireland in the five years prior to their arrival. Incidental duties exercised outside Ireland will be considered as work in Ireland.

The relief may only be claimed from the first year in which the individual is solely a resident in Ireland and not a resident elsewhere, provided that this corresponds to either the year of arrival or the following tax year.

In its basic form, the relief will allow a relevant amount of compensation, otherwise liable to tax in Ireland, to be excluded from tax. The amount of compensation that can be excluded from tax is valued at 30 percent of compensation between a lower threshold of €75,000 and an upper threshold of €500,000. Essentially, the maximum tax deduction will be €127,500 (i.e., €425,000 x 30 percent).

In determining whether an individual is entitled to the relief, the amount of basic compensation (i.e., excluding items such as benefit in kind (BIK), termination/ ex-gratia payments, bonus payments, stock/equity options, and other share-based remuneration) must exceed €75,000, which appears to be some form of skill benchmark.

The relief applies only for income tax, and does not apply for the Universal Social Charge or Pay Related Social Insurance.

On a positive note, relief can be obtained through the Pay As You Earn system rather than being claimed following the end of the year. Employees making a claim will, however, automatically become chargeable persons for the year of the claim, resulting in a tax filing obligation.

Employers will also have a requirement to report various details concerning claims made by employees to Revenue.

Finally, an employer will also be able to provide the cost of one return trip to the home country for the employee and family, as well as primary and/or post-primary school fees of up to €5,000 per annum per child free of tax.

Grandfathering provisions regarding the availability of Section 825B relief have been introduced that allows the relief to continue where individuals qualified in 2009, 2010, or 2011. Relief will continue until 31 December 2015 or a maximum of five years from the first such claim, whichever is the earlier.

**Deloitte’s view**

Overall, the new relief has to be seen as a positive step in attracting key personnel to Ireland.

The restriction on the number of work days that may be spent outside of Ireland may limit the appeal of this relief to individuals who perform core duties of employment abroad. The effect of residence status for U.S. citizens also warrants...
consideration, as they may not meet the conditions for relief. This is an unintentional complication that Revenue is looking at.

The Special Assignee Relief Program (SARP) may provide employers with opportunities for realizing cost savings in cases where assignees are tax equalized.

**Foreign Earnings Deduction**

The Finance Act reintroduces, in a limited form, the Foreign Earnings Deduction. A deduction will be available for employees working temporarily overseas in the BRICS countries (Brazil, Russia, India, China and South Africa).

In order to receive this deduction, the employee must spend at least 60 days working in a BRICS country in a tax year or in a continuous 12-month period. These "qualifying days" must form part of a period of at least four consecutive days spent in the BRICS country during which the individual is performing the duties of their employment.

A deduction is calculated based on the employment income (i.e., including share awards and share option income but excluding BIK, termination payments, and restrictive covenants) directly attributable to the foreign work days. The deduction is subject to a maximum claim of €35,000 and shall apply for the tax years 2012, 2013, and 2014.

Unlike SARP, the Foreign Earnings Deduction is claimed following the end of the relevant tax year when the annual return of income is submitted.

**Deloitte’s view**

This is a welcome support to individuals working in the export sector of the economy; however, the extent of the claims will need to be monitored to determine how effective the relief is.

**Relief for employees engaging in research and development (R&D) activities**

Subject to certain conditions, key employees will be able to claim a relief for R&D tax credits surrendered to them by their employer. The effect of this relief will be to reduce the income tax charged on their employment income by the amount of R&D tax credit surrendered to them. The relief can be claimed for the tax year following the accounting period to which the amount surrendered relates. However, the employee’s effective income tax rate on their total income, including that of their spouse or civil partner where relevant, cannot be reduced to less than 23 percent.

If the amount surrendered cannot be claimed in one year due to the 23 percent rate restriction, the excess can be carried forward and offset against the income tax charged on the employee’s emoluments in the next or future years. The relief can be carried forward until it is fully claimed or until the individual ceases to be an employee of the company which surrendered the R&D credit. The key employee must spend the majority of their time undertaking R&D activities in order to qualify for the relief.

**Deloitte’s view**

Although the above restrictions place some limitations on the scale of the benefit and the number of personnel who can avail, the potential reduction in income tax payments for an individual is an innovation for reward and recognition.

The relief is aimed at employees who are on local contracts with Irish companies and will not affect international assignees.

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