

IRISH TAX ON UK SOURCE INCOME

Residence

The receipt of income by an Irish resident individual from a source in the UK will have implications under both Irish and UK tax law. The source could, for example, be rent from a UK property, dividends from a UK company, UK savings income, UK employment income etc.

Under Irish Tax Law, a person who is resident in Ireland and is Irish domiciled is subject to Irish Income Tax on his or her entire world wide income. A non-domiciled resident is liable only on Income remitted into Ireland.

An individual is regarded as resident in Ireland for a particular tax year (which is the calendar year) if he is present in the State for a total of 183 days or more or if at any one time or several times in the year and the previous year, taken together, for a period of 280 days or more. He is not regarded as resident for any tax year in which he spends a period of 30 days or less in the State.

If a person is not regarded as resident under the 183 or 280 day tests for a particular year, he may elect to be resident for that year provided he satisfies the Revenue that he is in the State with the intention that he will be resident in the following year of assessment. It is not possible to elect to be non resident.

Domicile

Domicile refers to an individual's long term home. An individual is initially and usually domiciled where he was born. Domicile will only change if there is an intention to live on a permanent basis in another country. Therefore, an individual who comes to Ireland in adulthood, may not be domiciled if he has an intention to leave Ireland in the future.

An individual who is resident but not domiciled in Ireland is liable to Irish income tax on his income arising in Ireland and on his foreign employment income to the extent that he performs the duties of his employment in Ireland. Any foreign non-employment income is only liable to Irish tax to the extent that the income is remitted (sent) to Ireland. Income for a person in this position arising in the UK was liable to Irish tax in full up to 31 December 2007.

The Finance Act 2008 deems UK source income to be foreign income so that it is now only taxed for a non-domiciled person if remitted into Ireland. Equivalent changes were made in the UK in 2008. Therefore, the commonly found situation of a UK domiciled Irish resident individual, who is resident in Ireland will only be liable to Irish income tax on foreign income (including UK rent to the extent that it is remitted to Ireland).

The remittance basis of taxation applies also to the non-Irish, income of an individual who is a citizen of Ireland but who is not ordinarily resident in Ireland. (e.g. an Irish citizen who has been living abroad and returns to Ireland but has not become ordinarily resident).

Ordinary Residence

An individual is ordinarily resident for Irish tax purposes, after he has been resident for three consecutive years. He ceases to be ordinarily resident only when he has been non-resident for three consecutive years.

The income of an individual who is not resident but is ordinarily resident is taxable on the same basis as a resident (i.e. all worldwide income) with the exception of income from a trade or profession no part of which is carried on in Ireland, an employment all of the duties of which are performed outside Ireland and other non-Irish sources which do not exceed €3,810 in the year. When income exceeding €3,810 the full amount of that other income will be taxable and not just the excess.

An individual who is not resident and not ordinarily resident in Ireland is, in general, liable to Irish income tax only on income arising in Ireland. In addition a non resident

individual is generally not entitled to personal tax credits and reliefs. He is liable to tax at the standard rate and the higher rate.

Calculating and Paying Irish Tax on UK Income

Unless an individual's income tax is fully accounted for through deduction at source, such as PAYE, the individual must make a self assessment return to the Irish Revenue in respect of all his or her income in a tax year (which is now the same as a calendar year) by 31st October the following year. There is generally an obligation to pay preliminary tax based on past year income.

The rules for calculating any Irish Income Tax liability on foreign income are the same as the rules applying in Ireland in relation to the same type of income. Although the rules are the same, the income is categorised as foreign source income, and this has certain consequences including in particular that certain allowances which may be available to offsetting against rental income may not be available

Strictly speaking, losses from foreign source income are not permitted to be rolled forward. However, the Revenue allow by concession a loss to be carried forward and set against future subject to certain limitations.

Irish Income Tax is always assessed in Euros. Monies received are converted into Euro, shortly after receipt. The actual amount when converted into euro is the figure to take. If the items are numerous a translation of the foreign currency amount at an average rate will be allowed.

Double Taxation Relief

Double Taxation Relief should be claimed in Ireland on income taxed in the UK. This should be done in the tax return.

The rules in regard to Double Taxation are intricate. The Irish UK / Taxation Treaty provides for credit for any UK tax payable on the income against corresponding Irish Tax. This is because, where the income is situated in the UK, it has primary taxing rights.

The manner in which the credit is calculated is not based on comparison of actual tax payable but looks at the effective rate of tax payable in both countries. The credit is calculated on the basis of the effective rate of tax. The net effect (broadly speaking) is that tax is payable at the higher of the two countries rates. See our separate notes on Double Taxation Relief.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.