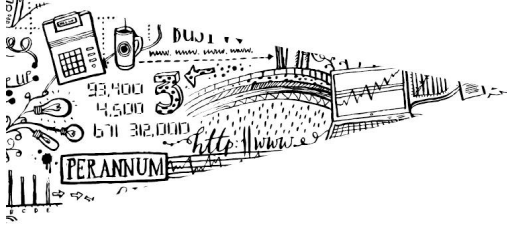


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Tax alert Ireland

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Universal Social Charge (and Income Levy) for Non Resident Employees and Assignees to Ireland

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The Revenue Commissioners issued a number of guidance notes (eBriefs) over the holiday period dealing with the Universal Social Charge (USC) and Income Levy as they apply to certain non-Irish tax resident employees and those employees working on temporary assignment in Ireland.

Application of the USC to Non Irish Tax Resident Employees Who Remain on Irish Payroll

Since the introduction of the Income Levy in 2009 and the subsequent USC legislation, the Irish Revenue's stated view was that an exemption from the USC/Income Levy was only due to individuals who exercised all of their duties in a country with which Ireland has a double taxation agreement (DTA). As a result, employees based in non DTA countries who remained on an Irish payroll were subject to the income levy and its replacement, the Universal Social Charge.

We in Ernst & Young disagreed with this view from the outset, on the basis that it sought to impose a charge on income that was otherwise outside the scope of Irish income tax.

The recent guidance issued by Revenue (eBrief No. 82/2011) now confirms that in **all** cases where the employer holds a PAYE exclusion order (i.e. a notice from Revenue confirming that income tax withholding does not apply) for an employee who;

- Is not resident in Ireland for Irish tax purposes, and
- Who exercises all of their duties abroad

No deductions should be made in respect of the USC. Previously this treatment had only applied in respect of employees resident in countries with which Ireland has a Double Taxation Agreement.

Action Required:

1 Jan 2012 onwards - Where an employer holds a PAYE Exclusion Order, it is no longer necessary to withhold the USC. The appropriate adjustment should be made to payroll.

2011 and prior years - Employees should be advised to make an application for a refund where the USC or Income Levy was deducted, in circumstances where their employment income fell out of the charge to Irish income tax as outlined above.

In the case of international assignees who were subject to tax equalisation policies and who paid USC or Income Levy on the basis of the previous Revenue guidance, an adjustment may also be required to hypothetical tax deducted to give effect to the change.

International Assignees to Ireland - Application of the USC and Income Levy

Under EU legislation an employee who is sent by his or her employer in another EU country (or Iceland, Liechtenstein, Norway or Switzerland) to work in Ireland for a period of up to 24 months remains subject to the social security legislation of their home State. The period of coverage can be extended for up to five years. Such 'posted workers' are entitled to the same social security benefits as apply in their home State. In order to reflect this entitlement, posted workers are entitled to apply for a Medical Card in Ireland which grants them full entitlement to all State provided medical services, without having to satisfy the means test which normally applies. This entitlement is evidenced by the issue of a Form S1 (previously Form E106) by the home country social security authority.

Entitlement to a Medical Card also affects liability for the USC and, for the years prior to 2011, the Income Levy, as follows;

- 2011 and subsequent years: The maximum rate of USC payable is limited to 4% (normally 7%)
- 2009 and 2010: Full exemption from the Income Levy applies.

The Irish Revenue Commissioners had previously disputed the entitlement of posted workers to the exemptions/reduced rates referred to above. The guidance set out in Revenue's eBrief No. 81/2011 now however confirms that provided a posted employee holds an A1 certificate (previously an E101 certificate) or an S1 certificate (previously an E106 certificate) that these forms will be accepted as evidence of entitlement to a full medical card for the purposes of determining the rate of USC to be charged for the years from 1 Jan 2011, and for exemption from the Income Levy for prior years.

Action required:

1 Jan 2012 onwards - Where a posted employee holds an A1 or S1 certificate, the reduced rate of USC should be applied.

2011 - Where the higher rate of USC was applied, employees should be advised to make an application for a refund. Where the employees were subject to tax equalisation, refunds may also be due.

2010 and 2009 - Where the Income Levy was deducted; employees should be advised to make an application for a refund. Where the employees were subject to tax equalisation, refunds may also be due.

Comment:

Overall, the changes outlined above will help to reduce the cost both of sending international assignees to work in Ireland and of maintaining international payrolls in Ireland, and are to be welcomed.

These changes arise from representations made by Ernst & Young over an extended period. We are therefore well placed to advise on claims for refunds arising as a result of these changes and would be pleased to assist with any questions or to assist with any refund claims that you or your company may have.

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