

**34-00-06****Trans Border Workers****Section 825A TCA 1997****Reviewed June 2017****Contents**

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## 1. Introduction

This instruction gives details of the relief contained in Section 825A TCA 1997 for individuals who are resident in the State but who commute to their place of work outside the State.

## 2. Reduction in income tax for certain income earned outside the State

Section 825A TCA 1997 is designed to give income tax relief to individuals who are resident in the State but who work outside the State. It applies to individuals who commute daily or weekly to their place of work outside the State and who pay tax in the other country on the income from their employment. By far the largest category to benefit from this relief are cross-border workers who commute daily to work in Northern Ireland. Individuals who travel to the UK and elsewhere to work, returning at weekends, also benefit. The relief applies not only to cross-border workers but also to trans-border workers.

The relief effectively removes the earnings from a qualifying foreign employment from liability to Irish tax where foreign tax has been paid on those earnings. In simple terms, the effect of the measure is that Irish tax will only arise where the individual has income other than income from a foreign employment.

## 3. The relief - Section 825A (3)

Subject to meeting certain **conditions**, an individual may have his or her income tax liability for a particular tax year reduced to the **specified amount** where liability would otherwise exceed that amount.

### Specified Amount

The specified amount is the income tax which would be payable for a tax year, before credit for any foreign tax paid, reduced in the proportion that the total income excluding income from a qualifying employment bears to the total income. This can be expressed by way of the following formula:

$$\text{Total tax liability under Irish rules} \times \frac{\text{Income other than foreign employment income}}{\text{Total Income}}$$

**Note** - Where relief is granted under *Section 825A*, no credit is given for the foreign tax paid on the income of the qualifying employment.

### Conditions

The conditions are:

- The individual must have earnings from a qualifying employment;
- The duties of the qualifying employment must be exercised wholly outside the State in a country with which Ireland has a Double Taxation Agreement (In determining whether the duties of a qualifying employment are performed wholly outside the State, any duties performed in the State which are merely incidental to the performance of the duties outside the State, are regarded as performed outside the State.);
- The income from that employment must be subject to tax in the other country and must not be exempt or relieved from tax in that country;
- The foreign tax due on the income must have actually been paid to the relevant authorities and must not be repaid or be eligible to be repaid;
- For every week during which the individual works outside the State in a qualifying employment, he or she must be present in the State for at least one day in that week;
- For 2010 and subsequent tax years, an individual is regarded as being present in the State for a day if he or she is present in the State **at any time during the day.**
- For tax years up to and including 2009 an individual is regarded as being present in the State for a day if he or she is present in the State **at the end of the day i.e. midnight**

## 4. Qualifying employment

A qualifying employment is defined as an office or employment held outside the State in a country with which Ireland has a Double Taxation Agreement and which is held for a continuous period of at least 13 weeks in a tax year. The definition includes an office of director of a company which would be within the charge to corporation tax if it were resident in the State, and which carries on a trade or profession [see section 5 below regarding exclusions for proprietary directors]. Excluded from the definition are all State employments as are employments with any statutory bodies established in the State.

## 5. Exclusions - Section 825A (2) and 825A (5) TCA 1997

The relief does not apply where the income from the qualifying employment:

- is subject to the 'remittance basis' of taxation [Section 71 (3) TCA 1997];
- is subject to the 'split year' treatment (Section 822 TCA 1997) (*Split year treatment applies where a taxpayer in the year of arrival, or departure from the State, is deemed resident for part of the year only, and is thus already entitled to favourable tax treatment.*);
- is income paid by a company to one of its proprietary directors or to the spouse/civil partner of one of its proprietary directors;
- is subject to a claim for relief under the foreign earnings deduction provisions (Section 823A TCA 1997);
- is subject to a claim for relief in respect of the seafarer's allowance (Section 472B TCA 1997).

## 6. Foreign Income is still assessable

The effect of the section is to reduce the amount of tax payable in respect of the individual's total income to the specified amount. It is important to note that the income from the foreign employment remains assessable and that the legal obligation to return such income on the annual return of income remains. Income from a foreign employment is assessable under Case III Schedule D and, therefore, the provisions of self-assessment, including the payment of sufficient Preliminary Tax to avoid interest charges, apply.

## 7. Tax bills may still arise

Married couples/civil partners, one of whom has income from a qualifying employment and the other has income assessable in the State under PAYE, may decide to allocate the full married personal tax credit/civil partner tax credit and double rate bands against the income of the spouse/civil partner with Irish income. In that case, the amount of tax deducted under the PAYE system on the Irish income may fall substantially short of the couple's ultimate liability (the specified amount) even taking account of the relief. In such cases, a substantial tax liability may arise.

## 8. Universal Social Charge

The Universal Social Charge (USC) does not apply to the part of the income to which Section 825A applies i.e. the earnings from a qualifying foreign employment.

## 9. Examples

The following examples illustrate generally how the relief works. Example 2B, in particular, illustrates the effects of allocating the full married person's personal tax credits/civil partner tax credits and rate bands against the income of the spouse/civil partner subject to tax under the Irish PAYE system.

Where the only other source of income is income subject to PAYE, such tax liabilities can be avoided by allocating only the single tax credits and single rate bands against the income of the spouse/civil partner with the Irish income.

### Example 1

Single person resident in the State in 2016, employed in Northern Ireland earning £20,000 sterling with Irish rental income of €5,000.

#### Pre-Section 825A liability

N.I. employment income	(Stg £20,000)	€23,360
Irish rental income		<u>€ 5,000</u>
Total Income		€28,360
Taxable @ 20%		€ 5,672
Tax Credits		
Personal	€1,650	
PAYE	<u>€1,650</u>	
	€3,300	<u>€ 3,300</u>
Irish tax liability		€ 2,372
Credit for UK tax paid (Stg £1,530)		<u>€ 1,787</u>
Tax Due		€ 585

#### Operation of 825A

The specified amount is -

$$\text{Irish tax liability} \times \frac{\text{Income other than NI employment income}}{\text{Total Income}}$$

$$\frac{€2,372 \times €5,000}{€28,360} = €418 \text{ (specified amount)}$$

**Effect of Section 825A**

The taxpayer's Irish tax liability is reduced from €2,372 to the specified amount of €418 yielding a saving of €1,954

**Note**

- If the taxpayer had no rental income, the specified amount would be zero.
- To avoid interest charges, a Preliminary Tax payment, if based on the 90% rule, of €376 is required ( $€418 \times 90\% = €376$ ).

**Example 2**

Married couple/civil partners resident in the State in 2016 with both spouses/civil partners earning. Individual A is employed in the State and earns €40,000. Individual B is employed in Northern Ireland and earns £20,000 sterling.

**Pre-Section 825A liability**

Income Individual A		€40,000
Individual B (Stg£20,000)		<u>€23,360</u>
Total Income		€63,360
Tax 63,360 @ 20%		€12,672
Married Persons/ Civil Partner Credit	€3,300	
PAYE Credit x 2	<u>€3,300</u>	<u>€ 6,600</u>
Irish tax liability		€ 6,072
(Credit for UK tax paid)		<u>€1,787</u>
Tax due		€4,285

**Operation of Section 825A**

The specified amount is -

Irish tax liability X Income other than N.I. Employment Income  
Total Income

$$\frac{€6,072 \times €40,000}{€63,360} = €3,833 \text{ (Specified amount)}$$

The couple's Irish tax liability is reduced from €6,072 to the specified amount of €3,833 yielding a saving of €2,239

**Note:****Section 825A may not rule out a tax bill**

In cases where a couple decides to use the full married personal tax credit/civil partner tax credit and double rate bands in the calculation of the tax of the spouse/civil partner with the Irish income, the specified amount will exceed the amount of Irish tax deducted through the PAYE system, from the spouse/civil partner with the Irish income, during the year. In such cases, Irish liability will only be discharged on the payment of a further amount of tax to bring the total tax for the year up to the specified amount. Example 2B illustrates the position.

**Example 2A**

Assume individual A uses the single personal tax credit and rate bands for the purposes of paying PAYE on the Irish income of €40,000.

Income Individual A	€40,000
Tax €33,800 @ 20%	€6,760
€ 6,200 @ 40%	€2,480
	€ 9,240
Credits	
Single Persons Credit	€1,650
PAYE Credit	<u>€1,650</u>
	€3,300
	<u>€ 3,300</u>
Liability to Irish tax/Paid PAYE	€ 5,940

In this case, the tax of €5,940 paid under the PAYE system exceeds the specified amount of €3,833 giving the individual an entitlement to a refund of €2,107. In these circumstances, a payment of Preliminary Tax would not be necessary for 2016.

**Example 2B**

Assume individual A uses the married personal tax credit/civil partner tax credit and rate bands for the purpose of paying PAYE on the Irish income of €40,000.

Income individual A	€40,000
Tax €40,000 @ 20%	€ 8,000
Credits	
Married Persons Credit/ Civil partner Credit	€3,300
PAYE Tax Credit	<u>€1,650</u>
	€4,950
	<u>€ 4,950</u>
Liability to Irish tax/Paid PAYE	€ 3,050

In this case, the tax of €3,050 paid under the PAYE system falls short of the specified amount of €3,833 leaving a net liability of €783 to be made up. In these circumstances, a payment of Preliminary Tax of €3,449 (assuming the 90% rule applies) is necessary.