

## [34.0.08] Repayment of tax where earnings not remitted

### Section 825B of the Taxes Consolidation Act 1997

*Reviewed June 2015*

**Note: This Section does not apply to new entrants for the tax year 2012 or any subsequent tax year**

#### 1. Introduction

Section 825B of the Taxes Consolidation Act (TCA) 1997 (inserted by Section 13 of Finance (No. 2) Act 2008) was designed to give income tax relief for a maximum of 5 years to individuals who were not Irish domiciled and who, before they came to the State, were living and working in a country with which Ireland had a double taxation agreement. The relief applied where the individual was sent by his or her foreign employer to work in Ireland for that employer or for an associated company of that employer and continued to be paid from abroad.

#### Year 2009

Tax relief is due to individuals who were not Irish domiciled and who, before they came to the State, had been living and working in a country that was not a party to the European Economic Area (EEA) agreement but with which Ireland had a double taxation agreement. The minimum time period that an individual must remain in Ireland was three years.

The European Economic Area consists of members of the EU together with Iceland, Liechtenstein and Norway (except for Svalbard). Switzerland is not a party to the EEA agreement.

#### Year 2010 & 2011

The scheme was extended to include EU and EEA nationals (other than Irish domiciled individuals) who came to live and work here in 2010 or 2011. The minimum time period that an individual must continue to work in Ireland was reduced from three years to one year (Section 10 Finance Act 2010).

#### 2012

The scheme did not apply to new entrants for the tax year 2012 and subsequent years. However, where an individual had first entitlement to relief under the section in 2009, 2010 or 2011, he/she continued to be entitled to make a claim as follows:

Year of first entitlement	2009	Relief continued for 2012, 2013
Year of first entitlement	2010	Relief continued for 2012, 2013, 2014
Year of first entitlement	2011	Relief continued for 2012, 2013, 2014, & 2015

## 2. Conditions for relief

For the purposes of the relief:

- (a) for the year 2010 and subsequent years, a ‘relevant employer’ means a company or an associated company that is incorporated, and is resident, in a country or jurisdiction with which the State has a double taxation agreement;
- (b) for the year 2009 a ‘relevant employer’ means a company or an associated company that is incorporated, and is resident, in a country or jurisdiction that is not a party to the EEA Agreement and with which the State has a double taxation agreement;
- (c) an “associated company”, in relation to a relevant employer, means a company which is that employer’s associated company within the meaning of Section 432 TCA 1997.

The conditions for the relief are as follows -

- (a) the claimant, prior to becoming resident in the State for tax purposes, must -
  - (i) where the claimant first becomes resident in the tax year 2010 or 2011, be a resident of, and resident in, a country or jurisdiction with which Ireland has a double taxation agreement;
  - (ii) where the claimant first becomes resident in the tax year 2009, be a resident of, and resident in, a country or jurisdiction that is not a party to the EEA Agreement and with which Ireland has a double taxation agreement;
  - (iii) have been employed in that country or jurisdiction by the same relevant employer that he or she is employed by in the State (for this purpose it is sufficient for the claimant to be employed in the State by an associated company of the foreign employer); and
  - (iv) have exercised the greater part of his or her employment in that country or jurisdiction.
- (b) whilst in the State, the claimant must work for the relevant employer (or an associated company of that employer) -
  - (i) where the claimant first becomes resident in the tax year 2010 or 2011, for a period of at least one year;
  - (ii) where the claimant first becomes resident in the tax year 2009, for a period of at least three years.
- (c) for the tax year of claim -

- (i) the claimant must be resident for tax purposes, but not domiciled, in the State;
- (ii) work for the relevant employer
- (iii) exercise the duties of the employment in the State; and
- (iv) continue to be paid from abroad.

### 3. The Relief

The relief relates to the emoluments of the employment that are within the charge to tax under Schedule E and subject to deductions at source under the PAYE system.

The legislation provides that qualifying claimants can have the tax on the income from the foreign employment for a tax year calculated by reference to **the greater of –**

- (a) an amount equal to €100,000 plus 50% of the emoluments of the employment for that year over that amount, and
- (b) the emoluments from that employment for that year remitted to the State (any PAYE deductions by the employer will be deemed to be a remittance).

However, where –

- (a) a claim for a tax year has already been processed based on the amount of emoluments remitted to the date of claim; and
- (b) further amounts of emoluments relating to that tax year are remitted after the claim for repayment had been submitted,

then the claim for repayment for that tax year must be re-examined to ensure that only the correct amount of tax was repaid and any amounts overpaid must be recouped. See Example in Paragraph 5 below.

**Note:** Under no circumstances should a claim for repayment of USC or PRSI be entertained as these are outside the scope of this provision.

### 4. The 3-year Rule for 2009

This is best explained by way of example:

Mr. Black was sent to work in the State by a relevant employer on 1 June 2008 for a period of 4 years. He may claim the relief for 2009 based on the assumption that he will be in the State for at least 3 years.

If Mr. Black claims the relief for 2009 and /or 2010 but leaves his employment with the relevant employer before 31 May 2011, he or she is obliged to return any refunds made within two months of the date of leaving the State.

A similar claw-back applies in respect of new entrants in 2010 or 2011 where the one-year rule is breached.

## 5. Example of the Relief

Ms. Brown qualifies for the relief for the 2009 tax year. Her emoluments from her employment for that year are:

Gross emoluments	€220,000
Less *tax* deducted under the PAYE system	<u>€ 53,200</u>
After tax income	€166,800
Actually remitted to the State in 2009	€ 50,000

\*Note any reference to tax extends to amounts deducted in respect of the Universal Social Charge and the Income Levy.\*

### *Stage 1 of the claim for the 2009 tax year.*

The full €220,000 was subject to tax under the PAYE system and the claim is to have the tax due recalculated by reference to the greater of the following income –

$$(a) [€100,000 + (50\% \times €120,000)] = €160,000$$

and

(b) Amount remitted	€50,000
PAYE tax paid	<u>€53,200</u> (deemed remitted)
Total	€103,200

Ms. Browne will now be assessed on the €160,000 instead of on the €220,000. This will result in a repayment of the tax deducted on the difference of €60,000.

### *Stage 2 of the claim for the 2009 tax year.*

In the 2011 tax year, Ms. Browne remitted to the State a further €80,000 of her 2009 emoluments. In this scenario, the tax liability for the 2009 tax year must be recalculated by reference to **the greater of** the following income –

$$(a) [€100,000 + (50\% \times €120,000)] = €160,000$$

and

$$(b) \text{ Amount remitted } €130,000$$



PAYE tax paid    € 53,200 (deemed remitted)  
 Total €183,200

The income tax assessment for the 2009 tax year is to be amended to assess €183,200 instead of the €160,000 previously assessed and a demand should issue for the tax due on the higher amount. The due date of payment for this tax for interest purposes can be taken to be the date on which the repayment was previously made.

**Note: An additional assessment may be made not later than 4 years from the end of the tax year in which the emoluments were remitted.**

## 6. Exclusions

The relief does not apply for any year where the income from the qualifying employment

- is subject to a claim for relief under the foreign earnings deduction (Section 823A TCA 1997);
- is subject to a claim for relief for Special Assignee Relief Programme (Section 825C TCA 1997) (SARP);
- is subject to a claim for relief in respect of Research & Development provisions (Section 472D TCA 1997).