KPMG

Special Assignee Relief Programme ("SARP")

Update for those arriving post 1 January 2019

The Special Assignee Relief Programme ("SARP") was introduced in Ireland from 1 January 2012. The programme was designed to encourage the relocation of key talent within organisations to Ireland, and is available for up to five consecutive tax years from first arrival. A number of conditions need to be satisfied for the relief to apply, and these are outlined below, together with practical guidance regarding the application of the relief. This note covers employees coming to Ireland between 2015 and 2022.

How does an employee qualify for the relief?

In order to qualify for SARP, the following conditions must be satisfied:

- The individual must be an employee of:
  a. company incorporated and tax resident in a country with which Ireland has a Double Taxation Agreement or an Exchange of Information Agreement (a "relevant employer").

  or

  b. an associated company of a relevant employer.
- The employee must have been employed by a relevant employer for 6 months prior to arriving in Ireland.
- The employee must <u>not</u> have been tax resident in Ireland for the 5 tax years preceding the year of arrival.
- The employee must arrive in Ireland to work in any of the tax years 2015 to 2022 (inclusive).
- The employee must be an Irish tax resident, although they may also be tax resident in another jurisdiction (if not Irish tax resident in the year of arrival relief may start from the following year).
- The employee must have a minimum base salary of €75,000 per annum.
- Whilst not specified in the regulations, in practice Revenue have required that applicants are tax registered in Ireland.

Importantly, within 90 days of the employee's arrival to Ireland, the employer must certify that all of the above conditions have been met in order for the relief to apply. This is achieved through the completion of the Form SARP 1A and submission by the employer to Irish Revenue's SARP unit.

How does the relief work?

The relief operates by providing a deduction for income tax purposes from remuneration based on the following formula:

(A-B) X 30%

(A) Total Remuneration

Whilst a qualifying condition for the relief to apply considers minimum base salary per annum, the relief itself applies to total remuneration i.e. allowances, benefits-in-kind, bonuses, equity awards, etc. Employee contributions to an Irish approved pension plan or a foreign pension plan eligible for tax relief are deductible from total remuneration before the relief is calculated. Likewise, remuneration eligible for double tax relief in Ireland must also be deducted from total remuneration before calculating any relief due.

From 1 January 2019, an earnings cap of €1m has been introduced – this will apply with immediate effect for individuals arriving on or after 1 January 2019. For SARP qualified employees who arrived before 31 December 2018, the introduction of this cap is delayed until 1 January 2020.

(B) €75,000

This annual threshold is pro-rated in years of arrival/departure.

Limitation of the relief

The relief applies to income tax only, and effectively means a 28% income tax rate on earnings above the relevant threshold in the tax year (i.e. 70% * 40%).

There is no relief from the Universal Social Charge "USC" or Irish Social Security "PRSI".

Example:

Patrick arrived in Ireland on 1 January 2019 and meets all the conditions to claim SARP relief. His base salary is €85,000, and he receives additional benefits in kind valued at €5,000.

A = €90,000

B = €75,000

SARP Deduction = (€90,000 - €75,000) = €15,000 @ 30% = €4,500

Patrick's marginal tax rate in Ireland is 40%, so the income tax saving is €1,800 (€4,500 * 40%). 8% USC and, if applicable 4% PRSI continues to apply to the income qualifying for the SARP deduction.

Other Benefits of SARP

Employees who qualify for SARP are also eligible to receive one tax-free home leave trip per annum for them and their family, and they can also have school fees paid by the employer tax-free, capped at €5,000 per annum for each child. These benefits are provided at the employer's discretion.

SARP relief can be claimed by the employee:

i) Through the year-end Tax Return

ii) Through payroll

In either case, the employee must have registered for SARP within 90 days of their arrival.

Reporting

Employer

An employer must submit an annual return by 23 February following the tax year, detailing the following information for all qualifying employees:

- PPS Number
- Nationality
- Prior country of residence
- Job title/role
- Remuneration information (including any reimbursed school fees/home leave trips)

In addition, the annual return must set out the increase in number of employees employed or retained as a result of the qualifying employees working in Ireland.

Employee

Employees who have registered for SARP must file a Tax Return by 31st October following the end of the tax year.

Practical challenges of obtaining SARP relief

In practice, we have encountered the following practical challenges when supporting SARP applications:

1. 90 Day Window

Revenue apply the 90 day application window strictly, so it is important that individuals who qualify for the relief (or potentially qualify for the relief – see Protective Claims) are identified and notified timely.

2. Income Threshold

The employee must have a minimum income level of €75,000 p.a. to qualify (i.e. base salary). This de-minimus cannot include bonuses, benefit in kinds or share options. This can make it difficult for certain employees to benefit from the relief, especially if their pay is variable or equity forms a large component.

3. Protective Claims

In some instances, it might not be known within the 90 day application period whether an individual will qualify for SARP relief e.g. it might be unclear from their travel pattern whether they will be considered tax resident of Ireland. In such cases, a protective claim is recommended, however, such applications are processed inconsistently by Revenue.

4. Direct New Hires

The SARP regime does not apply to new hires with no previous group employment history. This can impose practical difficulties where a company wishes to directly recruit key employees to develop its Irish business.

5. Refunds

In particular where SARP relief is claimed via the year-end Tax Return, a significant refund can be generated. Some employees have experienced significant delays with such refunds being processed and paid by Revenue.

In addition, a refund will only be released where the employer and employee returns are aligned – in some cases, the employees' position might not be finalised until the submission of their return on 31 October following the year of assessment, whilst the employer return needs to be submitted by 23rd February. It may therefore be necessary to amend the employer submission accordingly, which could have an impact on other employees claiming the relief.

6. Restricted Stock Units and Foreign Tax Credits

Where remuneration is eligible for a Foreign Tax Credit "FTC" in Ireland under a Double Taxation Agreement, SARP is not eligible on this element, even if the credit is not claimed. As well as creating reporting complexities to both the employer and employee, this could have a significant financial impact, particularly where the other jurisdiction has low income tax rates.

In particular we see this impact employees whose RSU's vest while Irish resident, but who primarily worked outside of Ireland during the vesting period. If an RSU vests whilst an employee is resident in Ireland, it may be fully taxable in Ireland. If the employee worked in another jurisdiction during the vesting period, then a portion of this award may be double taxed, with relief granted via a FTC on the Irish Tax Return. The availability of this FTC means that only the portion of the award that is primary taxable in Ireland is eligible for SARP relief.

Contact us

If you would like further information on the SARP regime, please contact a member of our Global Mobility team.

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