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Special Assignee Relief Programme

The introduction of the new Special Assignee Relief Programme (SARP) in 2012 represented a key piece of legislation in terms of an incentive to attract the necessary talent to underpin significant and strategic Foreign Direct Investment to Ireland and encourage growth in the economy.

However, since its introduction, a number of practical difficulties have now emerged concerning eligibility criteria for individuals & implementation challenges, which have adversely limited its application. Furthermore, many of our international clients are aware of similar reliefs available in competing jurisdictions which have the effect of lowering the overall tax burden substantially below that available under SARP. We have seen this impact on decisions when considering Ireland as a place to invest in and/or to send key personnel.

The main challenges encountered in the context of SARP include:

<u>Condition to be resident in Ireland and not resident elsewhere</u>

In order to claim relief a claimant must be resident in Ireland but not resident elsewhere. This condition effectively removes the availability of the relief for qualifying individuals in the year of arrival in Ireland. As a direct result, such individuals may not then qualify for the tax free travel costs and tuition fees which would otherwise be available in that year. Furthermore, complexity exists where an individual may be deemed resident in another jurisdiction based on their citizenship. Experience suggests that this condition is placing an unnecessary obstacle and adding a level of complexity which is undermining the attractiveness of the incentive.

Removal of the requirement that the claimant should not be tax resident elsewhere would therefore be desirable, such that once an individual becomes tax resident here, they would qualify for the relief from the commencement of their assignment. Any overseas taxation issues will in any event fall to be dealt with under the terms of the relevant Double Taxation Treaty as normal.

<u>New hire of talent excluded from SARP</u>

We have encountered instances where organisations did not have (or could not release) the necessary talent for their investment in Ireland and recruited the necessary individuals externally for key roles. Consequently, the condition requiring an individual to have been an employee of the foreign company (for a period of 12 months) prior to commencing an assignment to Ireland effectively precludes such personnel from claiming SARP. We have experienced this particularly in the context of key IT personnel (where talent is globally scarce) being recruited to drive a foreign company's investment into Ireland.

The removal of the prohibition on 'new hires' being eligible for the relief would facilitate organisations in attracting the specific key talent from outside the organisation which may be needed to drive the business forward. This would also be an added attraction for indigenous businesses striving for growth and seeking key talent with overseas experience.

<u>Relief thresholds</u>

In the context of sending key personnel on an international secondment, the normal employment costs for the organisation can multiply significantly. This simply reflects the additional costs associated with an international assignment such as local accommodation, travel, school fees, cost of living adjustments, relocation costs etc and the re-grossed tax costs associated with such packages.

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Unfortunately, with effective tax rates here of 52%, plus an employer PRSI cost of a further 11.75%, Ireland is considered a high cost location for international secondments. In this context, the current maximum threshold on which SARP relief is available is regarded as too restrictive. Indeed the thresholds introduced in 2012 mean that the extent of relief available under the new SARP rules is less attractive than that available under the old SARP rules. Furthermore, similar reliefs in key competing jurisdictions do not necessarily have a maximum relievable threshold (for example the Netherlands).

Absences in excess of 30 days

The nature of personnel at which this relief is targeted will generally see them in key international roles which may involve significant business travel outside Ireland. This is important in the context of ensuring that any Irish operation is deeply embedded into the global operations of the organisation. The current 30 day limitation on overseas workdays is a barrier to individuals who would otherwise qualify for the relief. In the context of the increasing need for business to operate cross borders, the current restriction is unrealistic and acts as a disincentive.

Relaxation of the 30 day rule to at least 80 days (which equates to less than 7 days per month) would be more realistic and unlikely to impact on the individual's Irish tax residence status.

SARP relieved income – subject to PRSI & Universal Social Charge

Income which qualifies for SARP relief is exempt from income tax. However, it remains liable to the Universal Social Charge (USC) and PRSI, the combined marginal rate of which for the employee is 11%, plus the additional employer PRSI cost of 11.75%. These residual tax costs can significantly reduce the overall benefit of the incentive and the two tier approach leads to further confusion to those considering the relative merits of the incentive.

Given that the SARP legislation already provides for full exemption from tax, USC & PRSI in respect of certain tuition fees and family flights, we would recommend that income relieved under the SARP provisions should also qualify for exemption from USC & PRSI. This would make the relief both more competitive internationally and attractive to senior key personnel considering Ireland as an assignment location.

SARP – Implementation through payroll

Many organisations have expressed an interest in having relief for SARP applied at source through payroll (as provided for under the legislation). However, this has proved particularly difficult in practice given the complexity of the qualifying conditions for the relief. Consideration should be given to simplifying the relief so that it can be practically applied through payroll.

Summary

It is welcome that a relief is available for key personnel seconded to Ireland. However, the relief as it currently stands makes it difficult to achieve its full potential due to the complexity and numerous conditions which, at times, fail to reflect the diversity of key personnel assignments to Ireland. Furthermore, given that Ireland is competing internationally for significant foreign direct investment, the competitiveness of SARP needs to be reviewed. By addressing the issues above, this should ensure that Ireland is perceived (from a tax, PRSI and USC perspective) as an attractive destination for key personnel, who are critical to driving future growth in the country.