

Tax Treatment of Flight Crew Members

Part 05-05-29

This document should be read in conjunction with section 127B of the Taxes Consolidation Act 1997

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1. Introduction

Section 16 Finance Act 2011 inserted section 127B into the Taxes Consolidation Act 1997. The section provides for the taxation under Schedule E (and, therefore, within the scope of the PAYE system) of employment income arising to a flight crew member in respect of an employment exercised aboard an aircraft operated in international traffic where the place of effective management of the enterprise operating the aircraft is in this State.

2. Background

Some double taxation agreements (DTAs) grant sole taxing rights on the income of flight crew (including non-resident flight crew) operating in international traffic to the jurisdiction or country where the enterprise operating the aircraft has its place of effective management.

To give effect to a 'taxing right' granted under a double taxation agreement, a charge to tax must be found in domestic tax legislation. Prior to 2011, where a relevant DTA granted such a "taxing right", no domestic legislation existed to bring such cases within the charge to Irish tax. Section 16 Finance Act 2011 introduced such a charge by inserting section 127B into the Taxes Consolidation Act 1997. Section 127B provides for taxation under Schedule E (and, therefore, within the scope of the PAYE system). Section 127B TCA 1997 was introduced to align the Irish tax treatment of flight crew with paragraph 3 of the Employment Article (Article 15) the OECD's Model Tax Convention on Income and on Capital.

DTAs are usually (but not always) modelled on the OECD Model Tax Convention on Income and on Capital. The OECD Model Treaty is updated regularly, with the most recent version being issued in November 2017. The newly updated introduction to Model Treaty confirms that member countries when concluding new conventions or revising bilateral conventions should conform to the Model Convention as interpreted by the commentaries thereon and having regard to the reservations contained therein. The 2017 update contained certain amendments which are relevant for the purposes of this TDM. For example, the definition of 'international traffic' as set out in Article 3 of the Model Treaty has been widened to preserve for the State of the enterprise, the right to tax domestic traffic as well as international traffic between third States. As a result of this amendment to the definition of 'international traffic', the November 2017 update also updated paragraph 3 of Article 15 which has the effect of granting taxing rights in respect of an employment exercised aboard an aircraft operated in international traffic, to the State of residence of the taxpayer.

From an Irish tax perspective, the actual relieving provisions will continue to be determined by the particular DTA in force.

3. Members of flight crews - Position up to 31 December 2010

3.1 Residence position and liability to Irish income tax

The liability to Irish tax on the income arising to flight crew is dependent on their residence and domicile status. The following sets out a table of liability based on residence and domicile status.

Resident	Ordinarily Resident	Domiciled	Income liable to Irish income tax
Yes	Yes/No	Yes	Worldwide income
Yes	Yes/No	No	Irish source income (e.g. income from a foreign employment exercised in Ireland) and Foreign income to the extent it is remitted
No	Yes	Yes	Worldwide income with the exception of income from: <ul style="list-style-type: none"> • A trade or profession no part of which is carried on in Ireland; • An office or employment all duties of which are performed outside Ireland; • Other foreign sources <€3,810
No	Yes	No	Irish source income and foreign income to the extent it is remitted to Ireland. Income from the following sources is not liable to Irish income tax, even if remitted: <ul style="list-style-type: none"> • A trade or profession no part of which is carried on in Ireland; • An office or employment all duties of which are performed outside Ireland; • Other foreign sources <€3,810
No	No	Yes/No	Irish source income

3.2 Irish resident individuals

Irish tax resident and domiciled flight crew are chargeable to tax on their worldwide income subject to any DTA relieving provisions.

Irish tax resident but not domiciled flight crew are liable to Irish tax on their Irish source income (e.g. income from employment exercised in Ireland) together with foreign income to the extent it is remitted to Ireland.

Prior to 1 January 2010, the remittance basis also applied to individuals domiciled in Ireland but not ordinarily resident here.

3.3 Non-resident individuals

Flight crew who are not resident and not domiciled are chargeable to Irish tax on their Irish source income (e.g. income from employment exercised in Ireland). This is subject to the usual DTA relieving provisions which are outlined at [3.4](#). If also considered ordinarily resident in the State, they may also be subject to tax on remittances as outlined in [3.1](#) above.

Flight crew who are not resident but are domiciled in Ireland are chargeable to Irish tax on their Irish source income (e.g. income from employment exercised in Ireland). If also considered ordinarily resident in the State, they may also be subject to tax on other types of income as outlined in [3.1](#) above.

3.4 Relief for Double Taxation

In general, the country in which an individual is considered a resident *of* (if a jurisdiction with which Ireland holds a DTA) will grant relief for any element of double taxation.

Additionally, most double taxation agreements provide that the remuneration will be taxable solely in the country of residence where:

- the individual is not present in the State for a period or periods exceeding 183 days in the fiscal year;
- the remuneration is not paid by or on behalf of an employer resident in this State; and
- the remuneration is not borne by a permanent establishment which the employer has in this State.

Note – In each particular case, it is important to examine the relevant DTA as the terms of such agreements can vary.

4. Members of flight crews - Position from 1 January 2011

4.1 Irish resident individuals

The extent to which Irish resident flight crew are liable to Irish income tax depends on whether they are domiciled in Ireland.

Irish resident and domiciled flight crew are chargeable to tax on their worldwide income subject to any DTA relieving provisions.

Irish resident but not domiciled flight crew are liable to tax on their Irish source income (e.g. income from employment exercised in Ireland) together with foreign income to the extent it is remitted.

Following the introduction of Section 127B TCA 1997, flight crew are also liable to Irish income tax on income arising from an employment exercised aboard an aircraft operated in international traffic where the place of effective management of the enterprise operating the aircraft is in the State. Such income is within the charge to tax under Schedule E and therefore within the scope of the PAYE system.

4.2 Non-resident individuals

An individual who is not resident and not ordinarily resident in Ireland is, in general, liable to Irish income tax only on income arising in Ireland.

As outlined at [4.1](#), following the introduction of Section 127B, non-resident flight crew are also liable to Irish income tax on income arising from an employment exercised aboard an aircraft operated in international traffic where the place of effective management of the enterprise operating the aircraft is in the State. Such income is within the charge to tax under Schedule E and therefore within the scope of the PAYE system.

Section 127B TCA 1997 applies notwithstanding that the individual may not perform any duties of employment in the State and may not be tax resident here.

4.3 Relief for Double Taxation

Whether the charge imposed by Section 127B is relieved from Irish tax depends firstly on whether there is a DTA in place between the State and the country in which the individual is a resident.

Where the Employment Article of the relevant DTA contains a paragraph specifically dealing with income arising to flight crew the position as outlined in [4.3.1](#), [4.3.2](#) or [4.3.3](#) will apply.

Where the Employment Article of the relevant DTA does not contain a paragraph specific to flight crew, the charge to income tax in Ireland may be relieved under paragraph 1 or 2 of the relevant DTA. See [Example 7](#).

Where no DTA is in place, the position is set out at [4.2.4](#).

4.3.1 DTA grants sole taxing rights to Ireland

Where the relevant DTA grants sole taxing rights to the State in respect of income from an employment exercised aboard an aircraft operated in international traffic where the place of effective management of the enterprise operating the aircraft is in this State, the charge to Irish tax is not relieved.

In this instance, flight crew are chargeable to income tax under Schedule E and will pay their taxes through the PAYE system.

On the basis that the DTA has granted sole taxing rights to Ireland, this income should not be subject to tax in the other country. A double taxation situation does not therefore arise.

4.3.2 DTA grants sole taxing rights to country of residence

Where the relevant DTA grants sole taxing rights in respect of income from an employment exercised aboard an aircraft in international traffic to the state of residence of the flight crew member, then the charge to Irish tax may be relieved.

In this instance, flight crew are chargeable to income tax under Schedule E (to the extent their employment income relates to international traffic) and will pay their taxes through the PAYE system.

Such flight crew will file an Irish tax return following the end of the tax year in which a claim for relief under the terms of the particular DTA will be made. In this case, a refund of Irish taxes will be claimed when the individual's Irish tax return is filed.

On the basis that Ireland has relieved this income from the charge to Irish tax a double tax situation does not arise.

4.3.3 DTA does not grant sole taxing rights to either country

Where the relevant DTA does not grant sole taxing rights to either country, then each country may consider that such income is within the charge to tax. In such cases, the DTA would generally state that remuneration for personal services performed aboard an aircraft in international traffic *may* be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

In this instance, flight crew are chargeable to Irish income tax under Schedule E (to the extent their employment income relates to international traffic) and will pay their taxes through the PAYE system.

Such flight crew will claim relief from double taxation in the country in which they are considered *a resident of* under the terms of the relevant DTA. Relief will be provided to the individual there by either exempting the income from tax or by allowing a credit for Irish taxes paid.

4.3.4 No DTA in place

Where a DTA is not in place between Ireland and the country in which the flight crew member is a resident *of* or where a flight crew member is not resident in any state, the charge to Irish tax imposed by Section 127B TCA 1997 is not relieved.

5. Other matters

1. 5.1 Non-residents and Tax Credits and Reliefs

Section 1032 TCA 1997 outlines a non-resident's entitlement to allowances, deductions, reliefs and tax credits - see Tax and Duty Manual [45.1.1](#) on the Revenue website.

As regards the personal tax credits, Tax and Duty Manual [44.1.1](#) on the Revenue Website deals with the taxation of married couples/civil partners and, in particular, the credits that are due where aggregation of the income of husband and wife/civil partners where one or both spouses/partners are not tax resident in the State.

6. Universal Social Charge (USC)

A non-resident individual who has income within the charge to tax by virtue of section 127B is also liable to the USC on such income. There is an exemption threshold below which USC is not chargeable. These thresholds are as follows:

2015	2016	2017	2018
€12,012	€13,000	€13,000	€13,000

However, when the threshold is exceeded, all of an individual's income is chargeable to the USC. The rates of USC are:

2015	Rate
First €12,012	1.5%
Next €5,564	3.5%
Next €52,468	7%
Balance	8%

2016	Rate
First €12,012	1%
Next €6,656	3%
Next €51,376	5.5%
Balance	8%

2017	Rate
First €12,012	0.5%
Next €6,760	2.5%
Next €51,272	5%
Balance	8%

2018	Rate
First €12,012	0.5%
Next €7,360	2%
Next €50,672	4.75%
Balance	8%

An individual aged 70 years and/or and an individual who is entitled to a full medical card in Ireland under Irish/ EU legislation is generally chargeable to the USC at a maximum rate of 3%. Where the individual's income exceeds €60,000, the standard rates of USC apply.

Revenue will accept forms A1 (formerly E101) in the case of social security coverage and S1 (formerly E106) in the case of healthcare coverage that are obtained from the relevant public bodies in the original Member State as evidence of entitlement to a full medical card for the purpose of determining the rate at which the USC is to be

charged. Further information on the USC can be found in the Tax and Duty Manual [Part 18D-00-01](#) on the Revenue website.

7. Contributions to foreign pension schemes

Individuals brought into the charge to Irish tax by virtue of section 127B TCA 1997 may be members of, and contribute to, a pension scheme in their country of residence.

With effect from 1 January 2011, relief will be available in respect of contributions made directly by such a non-resident individual into a foreign pension scheme where:

- (a) the non-resident employee
 - (i) has income within the charge to tax by virtue only of section 127B;
 - (ii) is making contributions to the foreign pension scheme referred to in (c) below; and
- (b) the employer
 - (i) is resident for tax purposes in an EU Member State or in a country with which the State has a DTA;
 - (ii) is making contributions to the foreign pension scheme on behalf of the employee; and
- (c) the foreign pension scheme is a statutory scheme in a State or country mentioned in (b)(i) above, other than a State Social Security scheme, or is a scheme in respect of which tax relief is available in such a State or country; and
- (d) both the employer and employee contributions comply with the rules of that foreign pension scheme.

Revenue will also treat contributions made by the employer to the pension scheme, for the benefit of the employee, as not being taxable.

Note: Relief will be granted on the employee's pension contribution to the foreign scheme to the extent that relief would have been granted in the State if the contribution had been made to an Irish pension scheme. The normal age related income percentage limits on contributions, fund threshold and aggregate earnings cap apply.

8. Emergency or incidental flights

Income arising to an employee engaged in emergency or incidental flights may be disregarded for the purposes of the operation of PAYE/USC where the employment income of such an employee with that employer is not otherwise within the charge to tax by virtue of section 127B TCA 1997. Emergency or incidental flights in this context should be taken to mean no more than 5 return flights in any tax year.

Appendix 1

Examples (for 2011 and subsequent years)

Example 1

Seán is tax resident and domiciled in Ireland. He has a foreign employment which is exercised aboard an aircraft which operates between Ireland and France (international traffic). The enterprise that operates the aircraft has its place of effective management in this State.

As Seán is tax resident and domiciled in Ireland, he is chargeable to Irish income tax on his worldwide income regardless of where the duties of his employment are exercised.

As the enterprise which operates the aircraft on which he performs his employment duties has its place of effective management in the State, Section 127B brings such income within the charge to tax under Schedule E and the PAYE system of deductions at source.

Article 12(3) of the Ireland/France DTA does not grant sole taxing rights to either Ireland or France. This paragraph confirms that Ireland (i.e. the state in which the place of effective management of the enterprise is situated) *may* tax this income. As outlined above, Ireland may only tax this income on the basis that a domestic provision exists in Irish legislation. As Section 127B introduced a charge to tax in Ireland in such circumstances, Seán's employment income is not relieved from the charge to Irish tax and it remains chargeable to tax under Schedule E and within the scope of the PAYE system.

Where Seán is also subject to French income taxes, a double taxation situation will arise. Where Seán is considered a resident of Ireland for the purposes of the Ireland/France DTA and his income is not relieved from the charge to tax in France, Ireland will grant relief for such double taxation by way of a credit for French tax suffered in accordance with Article 21 of the Ireland/France DTA.

Example 2

Maria is tax resident in France. She exercises the duties of her French employment aboard an aircraft which operates between France and Germany (international traffic). The enterprise that operates the aircraft has its place of effective management in this State.

As the enterprise has its place of effective management in the State, Section 127B brings such income within the charge to tax under Schedule E and the PAYE system of deductions at source.

Article 12(3) of the Ireland/France DTA does not grant sole taxing rights to either Ireland or France. This paragraph confirms that Ireland (i.e. the state in which the place of effective management of the enterprise is situated) *may* tax this income. As outlined above, Ireland may only tax this income on the basis that a domestic provision exists in Irish legislation. As Section 127B introduced a charge to tax in Ireland in such circumstances, Maria's employment income is not relieved from the charge to Irish tax and it remains chargeable to tax under Schedule E and within the scope of the PAYE system.

As Maria may have also suffered French tax on her employment income, a double taxation situation may arise. On the assumption that Maria is considered a resident *of* France for the purposes of the Ireland/France DTA, France will grant relief for such double taxation under the terms of Article 21 of the DTA.

Example 3

Joe is not tax resident under the domestic tax laws of any state. He exercises a foreign employment aboard an aircraft that operates within both international traffic and foreign domestic traffic. The enterprise that operates the aircraft has its place of effective management in this State.

As the enterprise has its place of effective management in the State, Section 127B brings such income to the extent it relates to international traffic, within the charge to tax under Schedule E and the PAYE system of deductions at source.

The portion of Joe's income arising in respect of his employment exercised aboard the aircraft in foreign domestic traffic is not within the charge to Irish tax.

Example 4

Karl is tax resident and domiciled in Germany. He exercises the duties of his German employment aboard an aircraft that operates between Frankfurt and Berlin (domestic traffic). The enterprise that operates the aircraft has its place of effective management in this State.

As Karl works aboard this aircraft in foreign domestic traffic only, his German employment income is not within the charge to Irish tax imposed by Section 127B TCA 1997.

As he is neither resident nor domiciled in Ireland, Karl's foreign employment income is not within the charge to Irish tax.

Example 5

Elena is tax resident and domiciled in Brazil. She exercises the duties of her Brazilian employment aboard an aircraft that operates between Brazil and Argentina

(international traffic). The enterprise that operates the aircraft has its place of effective management in this State.

As the enterprise has its place of effective management in the State, Section 127B brings such income within the charge to tax under Schedule E and the PAYE system of deductions at source.

As a DTA is not in place between Ireland and Brazil, the charge to tax in Ireland cannot be relieved here.

Any question concerning relief for double taxation suffered is a matter for the tax authorities in Brazil.

Example 6

Leo is also tax resident and domiciled in Brazil. He exercises the duties of his Brazilian employment aboard an aircraft that operates between Brasília and São Paulo (domestic traffic). The enterprise that operates the aircraft has its place of effective management in this State.

As Leo works aboard this aircraft in foreign domestic traffic only, his Brazilian employment income is not within the charge to Irish tax imposed by Section 127B TCA 1997.

Example 7

Tim is tax resident and domiciled in the UK. He is employed in the UK and exercises the duties of his employment aboard an aircraft which operates between the UK and Ireland (international traffic) and between London and Manchester (domestic traffic). The enterprise that operates the aircraft has its place of effective management in this State.

As the enterprise has its place of effective management in the State, Section 127B brings such income to the extent it relates to international traffic, within the charge to tax under Schedule E and the PAYE system of deductions at source.

The portion of Tim's income arising in respect of his employment exercised aboard the aircraft in foreign domestic traffic is not within the charge to Irish tax.

As Tim is resident and domiciled in the UK, it is likely that his UK employment income will be subjected to income tax in the UK. A double taxation situation is therefore likely to arise.

As Article 15 of the Ireland/UK DTA does not contain a paragraph specific to flight crew neither Ireland nor the UK is granted sole taxing rights in respect of this income. In this case any double taxation arising may firstly be dealt with under the terms of the Paragraphs 1 and 2 of Article 15 of the Ireland/UK DTA. In determining

whether such income may be relieved under paragraph 1 and 2 of Article 15, consideration need only be given to such income arising in respect of duties performed in the State (calculated by reference to 'landing days' in the State).

To the extent that Tim's income is not entirely relieved from the charge to Irish tax by Article 15, a double taxation situation may arise. On the assumption that Tim is considered a resident of the UK for the purposes of the Ireland/UK DTA, the UK will grant relief for such double taxation under the terms of Article 21 of the Ireland/UK DTA.