Cross-border tax

Q ***Implications of living in Northern Ireland, but working in the republic.*** My client was born in the Irish Republic and her parents are Irish too. About 15 years ago she married and moved permanently to Northern Ireland. She continued to work in the republic from Monday to Friday travelling to and from work daily.

Her only source of income is the employment income from the republic and investment income. Some of the latter is paid gross and some net and both are a mixture of UK and Irish sources.

Given that she is resident and ordinarily resident in both countries and domiciled in the republic, in which country should she be assessed to tax? Under the double taxation agreement, I believe it is the UK, but I am now confused.

Can readers please advise what should be declared on an Irish tax return? Also can they advise on the relevant pay-related social insurance (PRSI) and universal social charge (USC) implications?

Should interest be paid gross in only one of these countries and, if so, which one?

I hope that *Taxation* readers can advise.

Query 18,690 – *Gael.*

A If the client is a dual UK and Irish resident, the starting position would be to look at the UK/Republic of Ireland tax treaty residency tie-breaker test. Gael does not mention whether the client's only home and spouse/immediate family are resident in Northern Ireland, but I have taken this to be the case from the comment that "she married and moved permanently to Northern Ireland".

Assuming the above applies, Article 4, para 2a of the tax treaty points to the client being UK resident because their home and vital interests are in Northern Ireland.

Establishing residence gives the basis for tax reporting in both countries. The UK will have a right to tax the client on their worldwide income, and the Republic of Ireland will have a right to tax the Irish sourced income only, subject to the restrictions imposed by the tax treaty or local Irish tax rules. Therefore, the Irish-sourced income is all that would be reported on the client's Irish tax return, together with applicable double tax relief claims.

The Irish tax authority will have the first taxing right to tax the client's employment income (assuming all the work is undertaken in the Republic of Ireland), as well as any Irish investment income. Article 11 of the treaty generally restricts Irish tax to 15% on Irish dividends and Ireland has no right to tax Irish interest because the UK has the sole taxing rights under Article 12.

Double tax relief will be available through the client's UK self-assessment tax return for the Irish tax suffered, up to the equivalent UK tax due on the income. Should the Irish tax due be lower than the equivalent for the UK, the excess will be due to the UK as a result of its right to tax the client's worldwide income.

If the Irish unremitted income is less than £2,000 and if the client has no other unremitted non-UK sources, she might be able to take advantage of the £2,000 threshold for UK non-domiciles. It should be noted that her domicile position would need to be determined first, and consideration needs to be given to Article 6 of the tax treaty on the limitation of relief in Ireland as a result of unremitting the Irish investment income in the UK.

The social security questions are governed by Regulation (EC) No 883/2004 on the coordination of social security systems because both the UK and Ireland are EU member states. Article 11, para 1 of the regulations states that a person shall be subject to the legislation of a single member state only. This is often referred to as "the principle of exclusiveness".

If an individual lives in one EU country, but works in another – known as "frontier workers" – Article 11 para 3a of the regulations requires the individual to pay social security contributions to the country where the work is being performed; here, the republic. There are some exemptions to this for specific employments and temporarily posted workers and further consideration may be needed.

The UK-sourced interest is being paid to a UK-resident individual, so should generally be net to the client subject to the exceptions for National Savings and Investment accounts and government gilts etc. The position in Ireland would need to be clarified locally, and on the basis that the client is non-Irish resident – *Scott Campbell, Francis Clark Tax Consultancy.*

A Under Article 4(2)(a) of the UK/Ireland double tax treaty, the client should be deemed resident in the UK because that is where she has a permanent home.

Article 15(1) gives Ireland taxation rights on the employment income as long as the employer is resident in Ireland (Art 15(2)(b)) or has a permanent establishment or fixed base in Ireland where the employment duties are carried out (Art 15(2)(c)).

Note that if they work for the Irish government, the employment income is taxable only in the republic (Art 18(1)(a)).

Interest received is taxable only in the UK (Art 12(1)). For interest received net of Irish tax, the client should submit to Ireland's Office of the Revenue Commissioners a tax repayment claim on form IC5 for each source of such income. (See: tinyurl.com/nl235r8.)

The forms must be certified by HMRC and accompanied by the original tax deduction certificates from each relevant financial institution. Any claim must be submitted within four years after the end of the calendar year in which the tax was deducted.

Going forward, the client should contact each financial institution in Ireland where tax is being deducted to put an exemption in place so that future interest payments are paid gross.

Under Art 11(1)(b), any dividends received from Irish companies may incur withholding tax at up to 15% of the gross amount of the dividends and HMRC's *Double Taxation Relief Manual* at DT9882 confirms that the rate applied is 15%. Any such tax is not repayable, but there is no further liability for Irish tax and there is a credit for double tax relief purposes against any UK tax on this income.

On the requirement for any tax returns in Ireland and determination of the Irish tax payable, it is advisable that professional advice is obtained. – *Putin.*

Editorial Note.
There is an extended version of Putin's reply on the *Taxation* website.