CROSS BORDER PARTNERSHIP
Employment Services

CBPES Tax Breakfast Implications for Cross Border Employers & Workers

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Tax
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Cross Border Workers & Cross Border Employers Current Issues

- Remote Work and WFH have been the biggest disrupters to Employment Law and Taxes of the past decade
- Government policy in both jurisdictions has raced ahead of tax rules and research into the policy implications only taking place now
- Employers are struggling to recruit staff without offering remote working as an option – but now we are seeing restriction on what remote means.
- Employees need to take care and advice when switched onto opposite jurisdiction payroll or dual payrolls – lots of fallout.

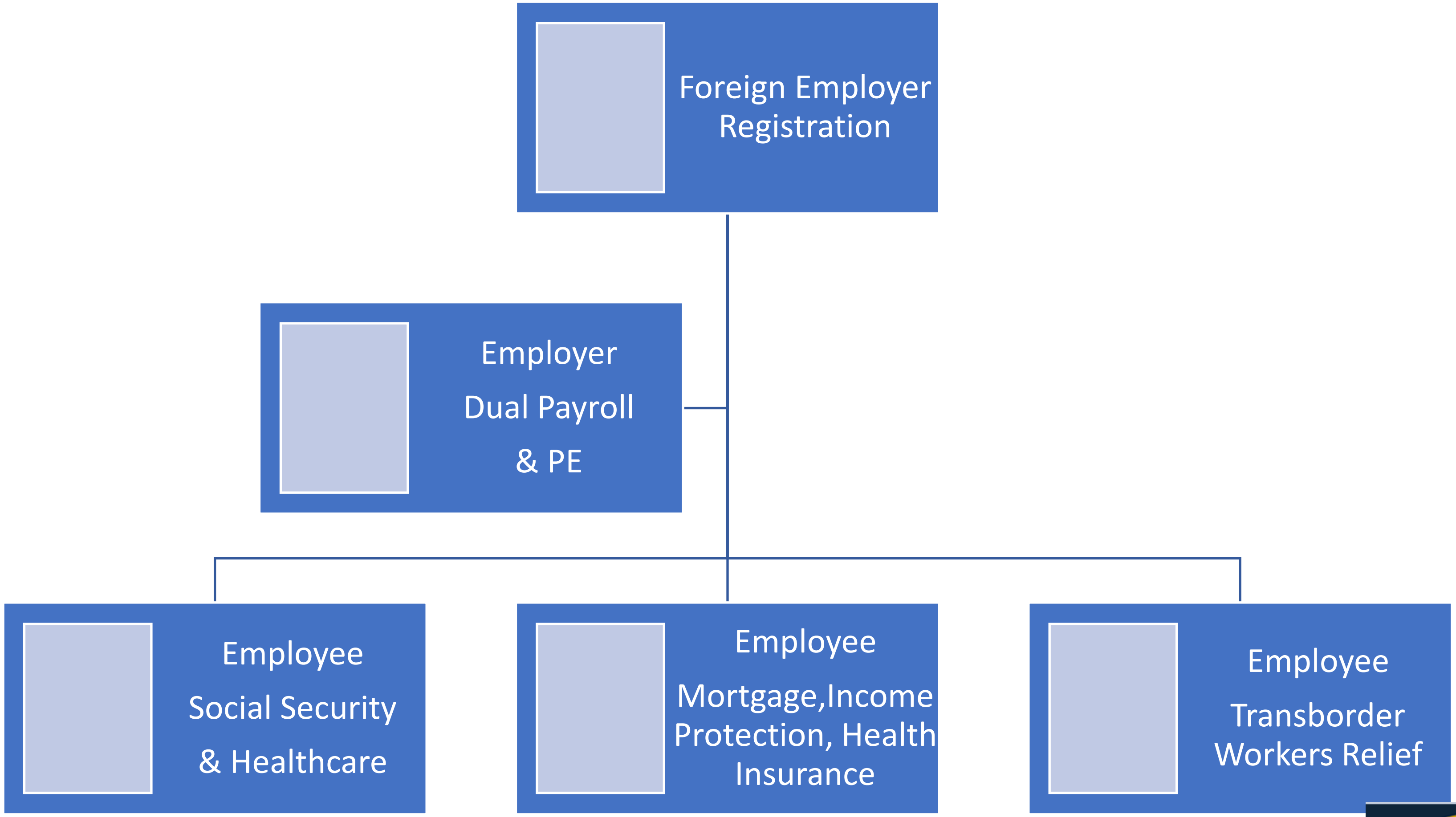
Core Issues and Knock on Effects

- There are main core issues which have a knock on effect of creating other issues

- 1. <u>**Foreign Employer Registration Requirement**</u> – where the employer is obliged to register a payroll on the opposite side of the border

- 2. <u>**Pension Crossborder Tax Rules**</u> – where neither employer nor employee is getting tax relief and employees are unsure of tax on drawdown

Core Issues –
Foreign Employer Registration



Core Issues-
Pensions Crossborder Tax Rules

- Pensions Crossborder Tax Rules
  - Employer Tax Relief Crossborder
  - Employee Tax Relief Crossborder
  - Employee Taxation on Drawdown
  - Employee State Pension

WFH Crossborder

- Commuting Crossborder Fulltime -100% payroll in Employer jurisdiction
- WFH across the border Fulltime – 100% of payroll in Employee jurisdiction of residency
- WFH across the border on a Hybrid Basis - Employer must run **<u>Dual Payroll</u>**
- Eg Northern employer ROI resident Employee
  - Run UK payroll in full , run shadow payroll for ROI duties
- Eg ROI resident Employer NI resident Employee
  - Run ROI payroll in full , run shadow payroll for UK duties

WFH Crossborder

- The payroll is split between UK and ROI based on **work pattern.**
- **The more variable or irregular the work pattern the more difficult this is.**
- Employees net take home pay is affected unless a realtime double tax credit is claimed.
- A Real Time Tax Credit can be claimed through the UK/ROI payroll for tax suffered on ROI/UK duties but approval required from HMRC or Irish Revenue **<u>and not available to non residents</u>.**

WFH Crossborder

- Where no realtime tax credit is available Employer can finance the shadow payroll taxes payable to HMRC/Revenue.
- This creates a loan to employee BIK charge on the employee Tax & NIC (NI) or Tax & USC & PRSI (ROI)
- At the year end the employee files a tax return in Home jurisdiction declaring worldwide income. Takes credit for taxes suffered in country of residency and shadow payroll jurisdiction. Claims refund.
- **<u>This refund is due to the employer as they funded the taxes.</u>**
- Complicated to unpick tax return (to calculate refund to employer) if jointly assessed with spouse. Employees find it very intrusive.

WFH Crossborder

- Revenue and HMRC charge Benefit in Kind (BIK) tax on loan to employee which funded the taxes
- BIK charge on interest free preferential loan to employee (loan which funded shadow payroll taxes)
- 13.5% interest rate in ROI
- 2.25% interest rate in NI

WFH Crossborder – Government Jobs

- Civil Servants /Government Service Employees who WFH crossborder are not protected by Article 18 from dual payroll.
- Article 18 usually leaves the taxing rights in the jurisdiction of the employer unless
    - the services are **<u>rendered in</u>** the jurisdiction where the employee is resident and
    - the employee is a resident and national of that jurisdiction and
    - didn’t become resident just to render the services.

WFH Crossborder – Government Jobs

- Eg Daniel works for Louth Co Council and is resident in Newry but WFH some days in NI . The carrying out of duties in NI pushes him out of ROI payroll and into NI payroll . Employer should be running NI payroll and Daniel needs to file a tax return with HMRC
- Sheila works for Newry, Mourne & Down District Council and lives in Dundalk. She WFH 2 days a week. The carrying out of duties in ROI pushes her out of NI payroll and into ROI payroll . The portion of her duties that she carried out from home is not covered by Article 18 . Employer should be running ROI payroll and Sheila needs to file a tax return with Revenue .
- How many Government Depts, Local Authorities, Educational Establishments are allowing WFH crossborder?

Dual Payroll

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- Payroll in small businesses shouldn’t be so complicated that it has to be outsourced.
- Its not just WFH employees who are subject to dual payroll.
- The UK define a workday for the purposes of the statutory residence test as the place where the substantial duties are carried out usually taken as more than 3 hours of work a day in the UK .
- The ROI residence rules define “a day” as a day during any part of which an individual is present in the State but
- ROI define a “workday” as “a day during any part of which an individual performs work in the State”.
- That means a workers can be taxed in both jurisdictions on the same days pay.

Cross/Trans Border Workers Relief ROI

- Employee remains resident in ROI
- Foreign employment,
- Foreign taxes deducted
- Commutes at least one a week
- Employment lasts 3 months
- Not proprietary directorships
- No further tax or USC to pay in ROI(if that is the only income).
- DOES NOT APPLY TO WFH DUTIES IN ROI

Cross/Trans Border Workers Relief ROI

- Is much wider than ROI/UK it applies to all treaty countries.
- Only 1700 – 1900 claims for relief were made. Low compliance.
- Extremely valuable relief. Lots more cross border borders would be entitled. A loss of this relief would be deterimental to many thousands of workers.

Other Blocks to WFH Crossborder

- As well as dual payroll what are the other excuses/blocks employers are putting up to WFH Crossborder?
- Regulatory Issues, GDPR, Pension Access, Social Insurance, PE Risk

- **<u>What is PE Risk?</u>**
- MLI amendment to tax treaty in 2019 increased the PE risk for companies by widening the scope of what constitutes a Permanent Establishment (PE)
- Some overseas caselaw – Denmark case

Other Blocks to WFH Crossborder

- WFH Contract of Employment (depending on employee role and nature of business) could create a PE of the UK company in the ROI ie corporation tax exposure. Where there are several employees working from home - bigger risk
- UK Company ROI branch – claim for foreign branch exemption – branch only taxed in ROI at 12.5%.
- ROI Company UK branch tax exposure 19%/25% tax on branch profits in UK

Impacts of Hybrid Working Crossborder

- **Income Protection policies** found to be unsuitable for incomes earned via two payrolls different jurisdictions.
- **Private Medical Insurance schemes** policies needing to be switched from one jurisdiction to the other.
- **Financial impacts on** loans from credit unions and banks linked to employment/payroll, and mortgage offers restricted by hybrid working and dual payrolls.
- **Redundancy** implications for workers moved to a payroll / new branch across the border.
- **Employment law** implications due to automatic changes to contracts with minimal or no consultation.

Impacts of Hybrid Working Crossborder

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- Mortgage offer withdrawn when employee moved onto dual payroll
- Health Insurance as an employee – dual payroll required policy changeover - preexisting conditions limit options

Where's the Legislation and Guidance?

- **ROI Revenue Manuals**
- Part 42-04-65: PAYE - Employee payroll tax deductions in relation to non-Irish employments exercised in the State

- **HMRC Manuals**
- The CWG2 Employer Further Guide to PAYE and NIC
- https://www.gov.uk/hmrc-internal-manuals/paye-manual/paye82000

Other Issues

- Social Insurance – you pay it on the employment where the duties are carried out unless you are posted by the employer from one State to the other then you can continue to pay it in the home State – apply for A1 online.
- When 25% of duties are carried out in home State full social security responsibility shifts to home State
- Access to Benefits – usually where you last worked but if on dual payroll apply in country of residency.
- Access to Healthcare – Crossborder worker can access it in both States – so a change to the place of employment may change their access to healthcare.

Topping up UK State Pension Contribution

- Gap Period from 2006 – 2016 can be filled in with voluntary contributions.
- From 6 April 2024, the class 2 NIC charge will be abolished but only for those who would previously have been required to pay it.
- Therefore, those that were voluntarily paying class 2 NICs will still be required to pay the charge if they want to treat the tax year as a qualifying tax year for the state pension.
- The good news for individuals in this category is that the rate will not be increased in April 2024, and will remain at its current rate of £3.45 per week.

Example Cara

- Cara works for a financial services company in ROI. She is living in NI. She will only have to attend the office of the employer in ROI once a month for 1 to 2 days a week and can work the rest of the time remotely from home.
- The employer will allow her to work remotely but will not run dual payroll . They offered to only run the days in ROI through the ROI payroll and pay her the rest Gross and let her look after the taxes on the rest herself.
- Is this the correct way to deal with this?

Example Cara

- If the employer has absolutely no presence in the UK other than Cara working from home then they are not as an employer required to operate a payroll.
- Cara can use a direct payment scheme to return the NIC and file a self assessment return with HMRC.
- If however they have other employees WFH in NI then they need to review whether they have an establishment (PE) and the need to operate payroll in NI.
- Dual payroll may be required.
- NIC will be payable in NI on full duties as > 25% of duties in NI

Questions

- ***The Person***
- *66 year old residing in Northern Ireland.*
- *Employee and Director of two separate limited companies (one in Northern Ireland and one in ROI).*
- *Paid National insurance in the UK for 40 years and Employee PRSI in ROI for 20 years (no employer contributions).*
- *Currently in receipt the full UK state pension.*
  - ***Question 1***
- *Is there an entitlement to receive a state pension in ROI as well as the NI state pension (as 20 years S1 employee contributions paid in ROI)?*

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Questions

- ***<u>Question 2 (in relation to same person in Question 1)</u>***
- *If not awarded a ROI state pension, do they have to continue to pay employee S1 contributions in ROI (even though they are 66)?*
- *Apparently had they turned 66 prior to 01 January 2024 they would have been moved to Class M (no further PRSI contributions)*
- *https://www.gov.ie/en/publication/70400-changes-to-pay-related-social-insurance-prsi/*
- *Is this correct? (seems very unfair unless this person is entitled to the state pension in ROI......)*

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Questions

- 2.
- The option to defer claiming your Irish state pension is not affected by you claiming your UK pension. In other words you can be receiving your UK state pension and continue to pay PRSI in Ireland after your 66th birthday in order to qualify or enhance qualification to an Irish State pension. To pay PRSI after age 66 you must notify Welfare's pension section in Sligo that you will be deferring your claim.

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Questions

- Answer from Brendan

- You cannot pay compulsory social insurance in two countries on concurrent employment/ self employment (EU and Post Brexit rules).
- One of them is invalid (in the absence of working details it’s impossible to adjudicate). My gut feeling is that no Irish PRSI should ever have been paid! The Irish Class S can be refunded for the 4 years 2020-2023 by completing and remitting PRSIREF2 form and accordingly there would be no PRSI liability either pre or post 66th birthday

Questions?

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