Taxation of Polish and Irish Pensions by the Polish Revenue Administration

At some point in time many Polish nationals living and working in Ireland will be eligible to apply for an Irish State Pension. An Irish State pension can be either Contributory or Non-contributory *(Emerytura Składkowa lub Nieskładkowa)*. As a citizen of the European Union, a Polish national may have accumulated rights to apply for more than one pension due to his/her work in more than one European State.[1] This article outlines the issues of the limbo period caused by the difference between the retirement age in Ireland and Poland, and the issue of taxation of both pensions.

Before proceeding, the age of retirement in each country needs to be outlined. In Poland the earliest retirement age as of 2020 is 65 years for men and 60 years for women. This age bracket is applicable to any applicant born after the 31st December 1948.[2] The current retirement age for men and women in Ireland is 66 (the proposed new retirement age in Ireland of 67 (2021) was deferred by the State, probably delaying the proposed age of 68 which was previously set for 2028).[3] Such a difference in retirement age becomes an issue when a Polish national wishes to retire while still working and residing in Ireland. For the purpose of this article let us use the current retirement age of 66 for men in Ireland, and the retirement age for men in Poland, 65. An applicant should keep in mind that the law in Poland may change, and there might be no need to work an extra year (or more) in Ireland to claim two pensions.

In Poland, when an applicant turns 60 (women) or 65 (men) years of age, the Social Insurance Institution *(Zakład Ubezpieczeń Społecznych)*, commonly known as ZUS, deems an applicant eligible for a Polish pension. However, if an applicant is working in Ireland, the following issues arise:

(a) An applicant is unable to retire in Ireland as s/he will not qualify for an Irish pension due to not reaching the required age.

(b) Taxation of the Irish income (while claiming a Polish pension).

In light of the above-mentioned issues, an applicant faces the dilemma between being fully retired in Poland but ending up in limbo for a period of 12 months in Ireland – in short, eligible to retire in Poland but not eligible to retire in Ireland. In this situation the best option is to apply for a pension in Poland and when one is approved (for the years worked in Poland only), it should be put on hold and remain unclaimed for a period of 12 months (to allow an applicant to reach the age of 66). Such an arrangement is currently possible to reach with ZUS *(Zakład Ubezpieczeń Społecznych)*. Then, three months before his/her 66th birthday, an applicant should make an application for the Irish State Pension.[4] Unfortunately, at the moment, the limbo period for women is five years according to the 2020 law. An application for an Irish pension must include details of the applicant's past employment in Poland. This will require the applicant to have his/her documents in order prior to making an application (e.g., translated Birth Certificate plus the original; translated Marriage Certificate plus the original; translated and original Certificates of Employment *(Świadectwa Pracy)* from Poland, etc.). It must be noted here that the Irish authorities will contact the Polish authorities before approving the Irish pension. This exchange of information is governed by international agreements. An applicant will receive a letter to his/her address in Ireland from both Polish and Irish authorities. If everything goes well, an applicant will – in many cases – receive two pensions: a pension for his/her work in Poland and a pension for his/her work in Ireland.

When an Irish pension is approved, along with the already approved Polish one, an applicant is left with a second obstacle, namely the dilemma of taxation. Poland and Ireland have a Double Taxation Treaty (DTT) *(Umowa o unikaniu podwójnego opodatkowania)* which is available in English [5] and Polish.[6] An applicant should be aware that the Polish authorities may offer 'assistance' to handle an applicant's Irish money regarding the transfer of the euro currency to the applicant's Polish bank account – this should be avoided at all costs. It is recommended to keep any Irish payments away from the Polish authorities. Preferably, the Irish pension should be sent to the Irish bank account and the Polish pension should be sent to the Polish bank account.

Tax residency: it is important to mention here that the Polish pension will be taxed.[7] The amounts may vary between, for example 15% and 18% or higher.[8] Practical problems regarding double taxation have been also addressed by the Polish Financial Ombudsman in 2012 *(Rzecznik Finansowy)*.[9] Therefore, if a Polish national chooses to be taxed under the Polish tax system, s/he will be taxed on both pensions. This means that ZUS will convert the euro currency to Polish złoty and tax this amount – the tax will be substantial taking into consideration the average 1:4 exchange rate. However, the Irish tax system may be of some assistance here by way of using the DTT. The Revenue currently operates the following categories of tax residency in Ireland:

domicile, resident and ordinarily resident. An applicant's Irish citizenship, if acquired, may be beneficial if s/he plans to reside between Ireland and Poland.

At this stage, an applicant should seek professional advice on tax matters and calculations – for instance, would it be financially advantageous to pay all taxes in Ireland? It is important to remember that a basic Irish pension is not taxed in Ireland and only additional income would be taxable. Taking into consideration the average exchange rate of the Polish złoty to euro (4:1), the tax on the Polish pension in Ireland should be lower than the tax on the Irish pension in Poland. Therefore, using Article 4 (or any other relevant articles) of the Treaty, an applicant should communicate through the medium of writing to ZUS and/or to the relevant office of the National Revenue Administration in Poland *(Urząd Skarbowy)* that s/he is domiciled (or resident and ordinarily resident) in Ireland and is choosing to be fully tax compliant in Ireland by nominating Ireland as the primary place of residence. This means that an applicant will be taxed on his/her worldwide income (for the purpose of this article both pensions) by the Revenue only and not by the Polish Revenue Administration.

It is important that an applicant contacts his/her ZUS office in Poland prior to making an application for the Polish pension to discuss his/her situation.[10] Unfortunately, it is not possible to predict the exact details of taxation, rules/regulations, etc. applicable to Polish pensions. This is due to the uncertain political situation in Poland regarding quite frequent and rapid amendments of various laws. An applicant should also gather any necessary original documents (including certified translations) required by the Irish authorities in advance. Any person eligible to apply for an Irish pension should familiarise oneself with the application process well is advance. An applicant is also advised to ensure that s/he is eligible to be taxed in Ireland under the Revenue guidelines.[11] It is worth mentioning that the Irish tax system allows, for example, to be tax resident in Ireland while spending a minimum of 183 days per year in Ireland, and also to be tax resident in Ireland for a period of three years after leaving Ireland.[12] The Revenue also offers joint or separate spousal tax assessments for applicants.

In summary, if a Polish national accumulates 520 full-rate PRSI (Pay Related Social Insurance) contributions (10 years' contributions) in Ireland, then s/he would qualify for a minimum State pension. Various pension rates depend on additional contributions.[13] In addition to the Irish pension, s/he would be in receipt of a Polish pension (applicable for the purpose of this article). This person has a choice to elect either a Polish or an Irish tax residency. By electing the Irish one, s/he would financially benefit from taxation of both pensions in comparison with another person who elects a Polish tax residency where a different tax regime is applicable and both pensions would be taxable on a higher rate along with an unsympathetic currency exchange rate. Both factors significantly decrease the net value of both pensions. Also, it might be possible to retire in Ireland at the age of 65 if certain conditions are satisfied.[14] Potential applicants are advised to contact their local office of the Department of Social Protection (DSP). If one qualifies for retirement at that age, it might allow an applicant to also retire in Poland at the same time.

Finally, it is advised that any potential applicants familiarise themselves with the Treaty (in which various Articles may be applicable to different groups of people, circumstances, etc.), and residency requirements to maximise their financial benefits. It is paramount to remember that if a Polish national leaves Ireland, his/her tax residency would have to be re-declared, either in Poland or Ireland, after spending three years outside Ireland. In this situation, the applicant could return to Ireland (to continue his/her tax compliance) or become tax compliant in Poland. However, it is possible to enquire with the Revenue in Ireland regarding a possible option of being taxed in Ireland depending on the personal circumstances of that individual. It is advisable to consider different taxation options of two incomes in Ireland and/or Poland after the expiry of the three year-tax Irish residency while residing outside Ireland.

It is worth mentioning that a married person can accumulate higher tax credits and reduce their tax bill in Ireland, e.g.: personal tax credit and age tax credit (when reaching 65).[15] Personal tax credit for a married person is higher than one applicable to a single person but is subjected to the residency requirement. This tax interpretation was upheld by the High Court in *McConnellogue v. Fennessy.*[16] Before making any tax decisions, a knowledgeable tax advisor should be consulted with a view of discussing various options.

The information contained in this article is correct at the time of going to press and is subject to change.

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[1] Europa.eu, 'State pensions abroad'<https://europa.eu/youreurope/citizens/work/retire-abroad/state-pensions-abroad/index_en.htm> accessed 21 June 2022

[2] Zus.pl, 'Emerytura w powszechnym wieku emerytalnym dla osób, które urodziły się po 31 grudnia 1948 r.' <https://www.zus.pl/swiadczenia/emerytury/emerytura-dla-osob-urodzonych-po-31-grudnia-1948/emerytura-w-wieku-powszechnym> accessed 21 June 2022

[3] Pension Authority.ie, 'State pensions' <https://www.pensionsauthority.ie/en/lifecycle/state_pensions/state_pension_age/> accessed 21 June 2022

[4] Gov.ie, 'State Pension (Contributory)' <https://www.gov.ie/en/service/e6f908-state-pension-contributory/?> accessed 21 June 2022

[5] Revenue.ie, 'Double Taxation Treaty between Ireland and Poland' <https://www.revenue.ie/en/tax-professionals/documents/double-taxation-treaties/p/poland.pdf> accessed 21 June 2022

[6] Isap.sejm.gov.pl, 'Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Irlandii w sprawie unikania podwójnego opodatkowania i zapobiegania uchylaniu się od opodatkowania w zakresie podatków od dochodu, sporządzona w Madrycie dnia 13 listopada 1995 r.' <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU19960290129/O/D19960129.pdf> accessed 21 June 2022

[7] Art. 9-11 Ustawy z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych (Dz. U. z 2000 r. nr 14, poz. 176 z późn. zm.) <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20000140176/U/D20000176Lj.pdf> accessed 21 June 2022

[8] Podatki.ie, 'Emerytura z Irlandii w Polsce, a podatek' <http://podatki.ie/2012/09/emerytura-z-irlandii-w-polsce-podatek.html> accessed 21 June 2022

[9] Mariusz Pogoński, 'Obowiązki banku jako płatnika podatku z tytułu wypłaty emerytur i rent zagranicznych – problemy praktyczne' (Rozprawy Ubezpieczeniowe nr 13 (2/2012), str. 44-55); online version: <https://ru.rf.gov.pl/wp-content/uploads/2017/05/RU_13.pdf> accessed 21 June 2022

[10] Powroty.gov.pl, 'Emerytury' <https://powroty.gov.pl/emerytury-8374> accessed 21 June 2022

[11] Revenue.ie, 'How to know if you are resident for tax purposes' <https://www.revenue.ie/en/jobs-and-pensions/tax-residence/how-to-know-if-you-are-ordinarily-resident-for-tax-purposes.aspx> accessed 21 June 2022

[12] Ibid.

[13] Assets.gov.ie 'Social Protection Rates of Pay' <https://assets.gov.ie/11117/6beb1ad2f51346f4ad6f27db1c473e59.pdf> accessed 21 June 2022; and Citizens Information.ie 'State Pension (Contributory)' <https://www.citizensinformation.ie/en/social_welfare/social_welfare_payments/older_and_retired_people/state_pension_contributory.html> accessed 21 June 2022

[14] Gov.ie 'New Benefit Payment for 65 Year Olds Now Available' <https://www.gov.ie/en/press-release/5d70a-new-benefit-payment-for-65-year-olds-now-available/> accessed 21 June 2022

[15] Revenue.ie. 'Age Tax Credit' <https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/health-and-age/age-tax-credit/index.aspx> accessed 21 June 2022

[16] [1995] ITR 133.