

Institution **CIOT - ATT-CTA**  
Course **CTA APS Human Capital Taxes**

Answer-to-Question-\_1\_

**Draft Report on Tom Crip's UK Working Arrangement**

Prepared for Cable plc by F&C LLP on 5 May 2022

**1) INTRODUCTION**

This report considers the UK tax issues arising in relation to Tom Crip's working arrangement in the UK and will focus on the following areas:

- the PAYE obligations for Cable plc
- whether a direct employment with Cable plc or a secondment with Eirepipe Ltd would be preferable
- advice regarding the structure of Tom Crip's employment and benefits package
- advice regarding Tom Crip's prior UK working arrangement
- any other considerations.

In preparing this report, regard has been given to an email from Milly Coule dated 2 May 2022, an email from Tom Crip dated 1 May 2022 and the details provided by Doug O'Shear of Tom's current salary and benefits.

This report is based on the law at 5 May 2022. Please note that this report is prepared for Cable plc and no other person or

entity may rely on its contents.

## **2) EXECUTIVE SUMMARY**

- Tom has been UK resident since his arrival on 20 December 2020.
- Tom will need to file a 2020/21 UK tax return as soon as possible.
- Eirepipe Ltd will need to apply for overpaid Irish PRSI since 20 December 2020
- Eirepipe Ltd will need to voluntarily disclose the underpayment of UK NIC since 20 December 2020
- Tom should be seconded to the UK going forwards.
- A secondment and intercompany agreement should be drawn up.

## **3) UK RESIDENCE POSITION AND LIABILITY TO UK TAX**

### 2020/21

It is our understanding that since Tom's relocation to Ireland in 2018, other than weekend visits and a two week holiday to see his family, Tom resided outside of the UK until 20 December 2020 when a holiday turned into a permanent stay in the UK. We understand that Tom has lived and worked full-time in the UK since 20 December 2020 (albeit remotely for Eirepipe Ltd in Ireland).

In the UK, in order to determine how someone will be taxed, we look at their residency position. In order to do this, we use the

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Statutory Residency Test (SRT) which is essentially a flow chart of rules which allows us to determine whether someone will be considered resident or not resident in the UK for each tax year.

Based on the information provided, we note that Tom spent 106 days in the UK in the 2020/21 UK tax year (period 6 April 2020 - 5 April 2021). He will not have met any of the automatic overseas tests in the SRT, however given that he has been working in the UK since 20 December 2020, he will have met the automatic UK residence test. This is on the basis that he will have worked full-time in the UK for at least 365 days. Therefore, Tom will be considered UK tax resident for the 2020/21 UK tax year.

However, for individuals such as Tom who arrive in the UK part way through the year, it is possible to split the UK tax year into a period of residency and non-residency. In Tom's case, it is likely that we would be able to split the year under case 5 as he started full-time work in the UK. Therefore, Tom will be considered non-UK resident from 6 April 2020 - 19 Decemeber 2020 and UK resident from 20 December 2020 - 5 April 2021.

The implication of this is that when someone is considered UK resident, they are taxable in the UK on their worldwide income and gains, whereas when an individual is considered non-UK resident, they are only taxable in the UK on their UK sourced income and gains.

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The information from Doug O'Shear confirms that Tom was also considered Tax resident in Ireland until 31 Decemeber 2020. There will therefore be an overlap from 20 to 31 December 2020 when Tom was considered tax resident in both the UK and Ireland. However, as the UK has a double tax treaty with Ireland, it will not be the case that Tom is subject to tax on these days in both the UK and Ireland, only one of the countries will actually have the primary taxing right over this income.

In order to determine which country will have the primary taxing right over Tom's income during the period 20 to 31 December 2020, we have to look at the UK/Ireland Double Tax Treaty to see in which country Tom is considered to be 'Treaty Resident'. As Tom had a permanent home in Ireland during this period, under Article 4 of the Treaty, he will be considered treaty resident in Ireland. Therefore, Ireland willll have the primary taxing rights over Tom's income during this period a credit could be claimed for any potential taxes paid in the UK. We will discuss the practicalties of this in a later section. However, we would recommend that Irish tax advice is also sought on this issue.

#### 2021/22 and 2022/23

As Tom has been in the UK full-time since 20 December 2020, he will be considered UK tax resident for the full 2021/22 and 2022/23 UK tax year. As Tom wishes to remain in the UK permanently, it is likley that this will also be the case going

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forwards. Tom will therefore be taxable in the UK on his worldwide income and gains. However, as he ceased being Irish tax resident from 1 January 2021, he will not also have any liability in Ireland.

#### **4) PAYE POSITION**

We have established above that Tom has been UK resident since 20 December 2020 and liable to UK tax from this date. However, the question still remains as to how the UK tax should be paid. We will deal with this in 3 sections:

- 1) Tom's past liabilities since 20 December 2020
- 2) The go-forward position if Tom is seconded to the UK from Eirepipe Ltd
- 3) The go-forward position if Tom is placed on a local UK contract with Cable plc.

#### Past Position

From 20 December 2020 until now, we understand that Tom has remained on the Eirepipe Ltd payroll in Ireland and has been working remotely for Eirepipe Ltd from the UK. As Eirepipe's customers have historically been outside of the UK and Tom only started having discussions with UK based companies from 1 February 2022, it appears Tom's work in the UK would not have been for the benefit of the UK business. This is because none of

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the work that he would have been doing would have been for the clients of Cable plc which is a UK trading company with its clients in the UK. We also understand that there has been no agreement for Tom to provide services to Cable plc and there has been no payment to Eirepipe Ltd for Tom's services. As such, Cable plc would not have had a requirement to operate PAYE on Tom's UK workdays since 20 December 2020.

From 20 December 2020 to 31 March 2021, we understand that Eirepipe Ltd had no office in the UK and Tom was working from his parents' home. Therefore, for this period it is clear that Eirepipe Ltd would not have had a place of business in the UK and would therefore not have had a requirement to operate PAYE on Tom's earnings for this period.

Consequently, in order to pay over the taxes due, Tom will have had a requirement to file a 2020/21 UK self-assessment return, the deadline for which was the 31 January 2022. Although the deadline for submitting the tax return has passed, we are still in time for it to be submitted and therefore we would recommend that Tom submits a tax return for this year as soon as possible. Please kindly let us know whether you will require our assistance with preparing and submitting a 2020/21 UK tax return for Tom.

Please be advised that HMRC may levy late payment and late file penalties on the late submission of Tom's return and the late payment of tax. It is also likely that they will apply late

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payment interest. As the return is more than 6 months late, it is possible that Tom will be charged the initial £100 late filing penalty, a daily penalty of £900 for the next 90 days of being late and an additional penalty of £300 or 5% of the tax owed (whichever is higher). The penalty for late payment could be 5% of the tax due for being 30 days late and another 5% of the tax due for being more than 6 months late. Therefore, as previously mentioned, we would urge Tom to submit a 2020/21 UK tax return as soon as possible, especially to avoid any further penalties for being more than 12 months late.

Additionally, as Eirepipe Ltd have been operating Irish tax on Tom's income, this will need to be refunded. We would therefore recommend that Eirepipe Ltd seek the relevant Irish tax advice on this matter.

Remain Employed by Eirepipe Ltd on a secondment to the UK

If Tom is seconded to the UK on a more official basis than his previous remote working in the UK, Cable plc would be required to set up a shadow payroll for Tom in the UK to account for PAYE. A shadow payroll is a regular UK payroll for Tom to account for the UK tax without delivering pay to Tom in the UK.

As Tom would be responsible for his own taxes, Tom would need to reimburse Cable plc for the UK tax which need to be paid to HMRC. One option could be through a net deduction from Tom though his



Irish payroll and the amount withheld included in the recharge between Eirepipe Ltd and cable plc. Please kindly let us know whether you will require our assistance with structuring this.

#### Employed by Cable plc

If Tom is employed by Cable plc in the UK, as Tom will be living and working in the UK for the benefit of a UK employer, Cable plc will have an obligation to operate PAYE on all of Tom's earnings. Cable plc would need to operate a regular UK payroll and operate PAYE on 100% of Tom's earnings.

Cable plc would need to ask Tom to complete a started checklist so that he could be included on the payroll with the correct tax code.

Cable plc would also have a requirement to auto-enroll Tom in the occupational pension scheme, although Tom could choose to opt out if he wanted to. He would then need to be re-opted in every three years, although he could choose to opt out each time if he wished.

#### **5) SOCIAL SECURITY POSITION**

We understand that up until now, Tom has been subject to Irish PRSI and not UK National Insurance Contributions (NIC). Since Tom has been working 100% of his time in the UK since 20 December

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2020 and his children live in the UK, it is likely that he would be considered habitually resident in the UK and therefore should have been subject to UK NIC from this date.

From the 20 December 2020 until now, it would have been for Eirepipe Ltd to account for the UK NIC as the secondary contributor. We would therefore recommend that they seek their own tax advice on this matter as it is likely that a voluntary disclosure will need to be made to HMRC.

Going forwards, Cable plc will need to account for UK NIC for Tom. If Tom is permanently employed on a local contract in the UK this will need to be withheld through the regular UK payroll. However, if Tom is seconded to the UK, Cable plc will need to account for this in real-time through the shadow payroll that is being operated.

## **6) TOM'S EMPLOYMENT AND BENEFITS PACKAGE**

### Salary

If Tom is seconded to the UK, his salary will be funded by Eirepipe Ltd, whereas if he is moved to a UK contract, Cable plc will have to fund the salary. Therefore, it will be more beneficial and cheaper for Cable plc for Tom to be seconded to the UK.

### Bonuses

Bonuses are taxed based on the period that they relate to. Therefore, As Tom has worked in the UK since 20 Decemeber 2020, the portion of the bonuses that relate to these to workdays will be taxable in the uk and not in Ireland. If taxes have been paid in Ireland, these should be refunded.

If Tom is seconded to the UK, his bonuses will be funded by Eirepipe Ltd, whereas if he is moved to a UK contract, Cable plc will have to find the bonsues. Therefore, it will be more beneficial and cheaper for Cable plc for Tom to be seconded to the UK.

### Company Car and Medical Insurance

As Tom is redient in the UK, although this will not be taable in Ireland, this will be taxable in the UK. It would also be subject to class 1 A NIC. Therefore, it will be more beneficial and cheaper for Cable plc for Tom to be seconded to the UK so that Cable plc do not need to pay for the benefit or account for the class 1 A NIC.

The medical insurance will also be taxable in the UK and subject to class 1A NIC.

### Lunch Allowance

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The round-sum allowance would be fully taxable in the UK as employment income. Therefore, in order to avoid this, we would recommend that Tom provides receipts for his qualifying expenses instead so that these are exempt from UK tax.

However, if Tom is seconded to the UK, his expenses will be funded by Eirepipe Ltd, whereas if he is moved to a UK contract, Cable plc will have to fund the expenses. Therefore, it will be more beneficial and cheaper for Cable plc for Tom to be seconded to the UK.

#### Housing Allowance

The housing allowance would be fully taxable in the UK. However, we would recommend that this is restructured to take advantage of an £8,000 tax-free relocation exemption instead. Please let us know whether you require more information or our assistance with restructuring this.

#### Conclusion

Based on the comparison above, we would recommend that Tom should be seconded to the UK rather than being placed on a local UK employment contract. This is because it will result in savings on salary and will give the potential for tax savings on travel

expenses, although the position for national insurance will be the same.

## **7) OTHER CONSIDERATIONS**

### Senior Accounting Officer

Given the size of the Cable Plc business, we would recommend that the Senior Accounting Officer is made aware of Tom's employment so that they know what they need to do.

### Permanent Establishment Risk (PE)

A PE will be created by Eirepipe Ltd (giving rise to a UK corporation tax liability) if it has a place of business in the UK or if its employees carry out certain activities such as negotiating or concluding contracts. As Eirepipe rent office space in the UK for Tom and he is involved in negotiating contracts for Eirepip, it is possible that a PE has been created in the UK. We would therefore recommend that this is reviewed and further advice is sought.

### Secondment Agreement and Intercompany Agreements

Under a secondment arrangement, we would suggest that a formal contract is drawn up so that all parties are clear on how much

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and where Tom will be paid, including tax and social security details.

An inter-company agreement should also be established between cable plc and Eirepipe Ltd to ensure the terms of the secondment are clear so that any disputes are avoided. If you would like any support on drafting these agreements, please let us know.

#### **8) NEXT STEPS**

- Advice Tom that a 2020/21 UK tax return will need to be submitted.
- Set up a shadow payroll to account for the PAYE and NIC for Tom.
- Advice Eirepipe Ltd that a review of their past NIC obligations should be taken
- A further detailed review of the permanent establishment implications should be reviewed
- A secondment and intercompany agreement should be drawn up.
- Irish tax advice should be sought