

PAYE Modernisation Project  
Revenue Commissioners  
Bishop's Square  
Redmond's Hill  
Dublin 2

12 December 2016

Ref:SC/POB

*CC To: payemodernisation@revenue.ie.*

Consultation on PAYE Modernisation

Dear Sir/Madam,

Ernst and Young tax, as advisors to many of Ireland's leading indigenous and multinational companies, as well as a significant employer in its own right, welcomes the consultation paper on PAYE Modernisation and the opportunity to contribute to a 'Best in Class' payroll tax system which will serve all its users long into the future. Our comments below reflect both our own views and feedback received from clients.

## **1. Background**

The PAYE system has served the State well since its introduction in 1961 and currently accounts for c.25% of total tax revenues. It is familiar, reasonably well understood by the general public and efficient as a collection mechanism. Given the central importance of the PAYE system to the State, to employers and to employees, any significant changes to the system must, we believe, be approached carefully and with a clear understanding of the benefits that will arise from such changes and the associated costs.

There have already been significant changes to the PAYE system in recent years, all of which have increased the burden on employers i.e.

- 2004 PAYE extended to benefits in kind
- 2006 PAYE extended to foreign employments
- 2011 PAYE extended to share based remuneration
- 2011 Introduction of USC
- 2013 Local Property Tax collection via the PAYE system
- 2013 Taxation of social welfare Maternity Benefit through the PAYE system.

The experience of implementation has varied, however the successful introduction of PAYE on benefits in kind stands out as model for the implementation of these projects. This was undoubtedly a result of the extended consultation period which preceded it, the interaction between Revenue, agents and employers, and the level of information made available in advance of the roll out of the new system. It is fair to say that the successful introduction of these and other significant changes was attributable to, and would not have

been possible without the high level of cooperation given by employers and their agents. We believe that useful lessons can be drawn from these experiences for the PAYE Modernisation project.

It is also fair to say that each of the above developments has resulted in additional complexity, risk and cost for employers in meeting their obligations under the PAYE system. Our experience in PAYE audits has been that even minor errors are treated as blameworthy and subject to penalties and interest, with the balance of obligations often being tilted unfavourably towards the employer.

Modernisation of the PAYE system has the potential to offer many benefits and improvements, however we strongly believe that the benefits should be shared equally and that the significant role played by employers in the administration of the PAYE system is acknowledged rather than penalised.

## **2. Reimagining the PAYE System**

The published consultation paper states that the objective of PAYE Modernisation is that;

*"Revenue, employers and employees will have the most accurate, up to date information relating to pay and tax deductions."*

This will ensure that;

*"... the right tax deduction is made at the right time from the right employees and, employers pay over the correct tax deduction and contribution for every employee"*

As a starting point, it would be fair to ask to what extent is the present system either delivering or failing to deliver on these objectives? Overall experience, feedback and published data such as the Revenue Commissioners Annual Report would suggest that the current PAYE system largely delivers on these objectives. However, different stakeholders have different interests. Under the present system, Revenue effectively operates on a one year time lag, pending the filing of Form P35 post year end. The level of data provided in the monthly P30, essentially the aggregate sum of the month's remittances, provides little opportunity for meaningful data analysis at anything below a macro level. Revenue would therefore stand to benefit from having 'real time' information.

Since employers generate the payroll data on which PAYE is calculated, they are most likely in possession of the most accurate and up to date information as things stand. Their interaction with Revenue mostly consists of monthly returns, the receipt of new employee data and tax credit certificates and occasional interaction with the local tax office around specific issues or cases. The ROS system is efficient in providing and sharing employee PAYE data between Revenue and employers. While some improvements could be made to the system in this respect, it would seem that employers would benefit most from any changes that reduced the overall level of work, time and resultant cost given over to operating PAYE. The elimination of certain routine tasks, such as the preparation and submission of the Forms P30 and P35 would therefore be welcome, provided however that the time, cost and effort involved in getting to that point is not excessive and that the benefits are commensurate with the outcome.

The priority for employees would typically be to ensure that they are only paying as much tax as is correctly due, and that where some intervention is needed to adjust current tax payments, that this happens as quickly as possible so that excess deductions are avoided. This scenario most commonly arises in the

context of the commencement or change of an employment, or where some additional relief or credit is claimed. Employees should not spend long periods on the emergency or temporary ('Week One') basis, nor in waiting for changes to be made to their tax credits. In particular, the need for post year-end review and repayment should, in our view, be reduced to the minimum level possible. In such a system, refunds outside the PAYE system would or should be largely eliminated, other than in cases where legislation mandates post year end refunds. Any requirement to make repayments other than in such cases would indicate a breakdown in some part of the PAYE system. The present system also has some limitations in atypical cases such as concurrent multiple employment where the allocation or reallocation of credits and rate bands during the year may give rise to PAYE underpayments/overpayments that cannot be corrected until after the year end. These situations could be more easily dealt with in an environment where Revenue has oversight of all current employee pay and tax data, rather than, as is now the case, each employment being treated separately.

### **3. Updating Legislation**

The opportunity should also be taken to review the existing PAYE legislation and regulations to ensure that they reflect present date practices and needs. We recognise that policy and legislation is not within the Revenue Commissioners remit, nonetheless, we consider that it would be remiss not to consider the legislative framework within which the PAYE system operates.

For example, Sec 996 TCA 1997, which deals with unpaid remuneration and dates from 1976, is an anti-avoidance mechanism aimed at certain practices which are now largely addressed in other provisions. However, Sec 996 TCA 1997 remains in force and is now becoming an issue for regulated businesses which are required by regulation to defer elements of their employees remuneration, for example under the Capital Requirements Directives (CRD III and IV). This gives rise to the possibility that PAYE may be required to be paid over on earnings that are not yet paid out. Other elements of the legislation that may benefit from a review include the circumstances in which employers are liable for PAYE underpayments arising to their employees, particularly having regard to the exceptions provided for in PAYE Regulations 28 (3) and (4) which essentially operate on Revenue's discretion.

### **4. International Aspects**

Our client base includes a significant number of Irish and multinational employers whose employees are globally mobile and who are paid, and pay taxes in, multiple countries, including Ireland. The collation of employee compensation data attributable to and assessable to tax in each country can be time consuming and complex. Consideration and concession should be given to employers in such circumstances to allow time to collate the relevant compensation assessable to Irish tax in a particular month, as it is unlikely that all home and house data will be available in all cases by a single date in the month.

International travel and cross border working are common features of the modern economy. In many cases employees who are resident in Ireland are subject to double taxation on their employment earnings, often through concurrent payroll withholding in Ireland and the host country. While a concessional practice has been introduced in recent years through which 'real time' foreign tax credit is granted through the PAYE system, the concession has a number of limitations. For example, the credit is calculated and coded into the PAYE credits at a particular point in time and does not allow for regular fluctuations in the amount of the foreign tax credit. A system in which real time information is available should be able to reflect the foreign tax credit quickly and accurately, thus ensuring that the employee is not subject to penal levels of

taxation pending a year end 'true up' and settlement. We recommend that consideration is given to these cases in the course of the consultation.

## **5. Comparative Regimes**

Many of our clients have had experience of the UK's RTI PAYE initiative. While experience on the whole is that the system has worked since its introduction, feedback from our clients indicates that the level of contact with the Tax Office has increased rather than fallen since the introduction of RTI, and that direct costs and the amount of time spent in dealing with RTI related queries have also increased. This view is supported by reports published by the National Audit Office in the UK.

While some reference to RTI is inevitable, it may not however be productive to focus too much on the UK experience, as some account needs to be taken of differences in legislation and the aims of the RTI system. However, there are two aspects of the UK's rollout of RTI which we believe could be usefully applied here, these are

- The running of a pilot project using real employers to test the system prior to its general launch, and;
- A phased roll out starting with larger employers.

Given the importance of the PAYE system and the range of impacts that any issues may have, the use of a pilot project to identify potential issues before general implementation seems not just advisable, but unavoidable and we would recommend this approach.

A phased approach has already been applied in Ireland to other systems changes e.g. the extension of mandatory e-filing by different categories of employer, and we believe that it should also be applied to any new system that is introduced here.

## **6. Key Client Concerns**

The majority of the questions that we are hearing from our clients relate to three key themes;

- What will PAYE Modernisation entail?
- What systems changes will be required?
- Will additional costs be incurred in relation to systems, training and implementation?

It is difficult to answer these questions at this time without a better understanding of what PAYE modernisation will mean in practice. The benefits that will accrue to employers and employees from modernisation also need to be commensurate with the scale of the changes and shared equally by all stakeholders, including the State, Revenue, employers and employees. We appreciate that the project is at an early stage, however the exchange of views between employers, their agents and Revenue would benefit greatly from further insights into the likely key features of any new system.

## **7. Summary and Conclusions**

We have referred above to a number of specific areas which would benefit from modernisation, as well as concerns and questions associated with the introduction of any new system. As the scope and nature of many of these issues will only become apparent in the course of implementation, we believe it is essential therefore that further consultation takes place during the two year period leading up to the introduction of the modernised PAYE system in 2019.

In closing we would note the very strong track record of the Irish Revenue in the design and implementation of key IT systems and in particular the success of ROS, which has been widely acknowledged internationally. We believe that this will provide the foundations for a modern, efficient PAYE system that serves the needs of all its users.

Tax agents, including EY, play a critical role in the operation of the PAYE regime, both in assisting employers and acting as a liaison for the Revenue Commissioners. This role will become even more important in a real-time environment and therefore we look forward to continued dialogue with the PAYE Modernisation project team in the lead up to its introduction.

Yours sincerely

Sarah Connellan  
Partner

*[Document transmitted electronically and does not bear a signature]*