

Schedule E Basis of Charge with effect from Year of Assessment 2018

Part 05-01-08

This document should be read in conjunction with section 112 of the Taxes Consolidation Act 1997

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1 Summary

For the year of assessment 2017 and prior years, the statutory basis of assessment (as set out in section 112 of the Taxes Consolidation Act 1997) for employment income is the amount actually earned in the year regardless of whether or not the income was paid to the individual during that year of assessment. This is known as the “earnings basis” of assessment.

However, the PAYE system operates on the basis that the employer deducts income tax from income at the time it is paid i.e. when it is paid to the employee. This is known as the “receipts basis” of assessment and, in practice, this basis has generally been used to determine the tax liability of employees on reviews (P21s).

Finance Act 2017 amended section 112 of the Taxes Consolidation Act 1997.

As a consequence, for the year of assessment 2018 and subsequent years, the statutory basis of assessment for employment income is, in most cases¹, the actual amount of income received (paid to the employee) in the year of assessment i.e. the “receipts basis”.

This change has the effect of aligning the statutory basis of assessment with the practical operation of the PAYE system.

2 PAYE Modernisation

From 1 January 2019, employers will report relevant payroll data to Revenue no later than the date of payment of the emoluments.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

PAYE Modernisation will result in an automatic end of year review being carried out on all PAYE customers for 2019 et seq.

2.1 Impact on employers

The move to the receipts basis of assessment does not affect employers. The employer will continue to make deductions when the payments are made using the PAYE system. The Finance Act 2017 amendment merely aligns, on a statutory basis, the charge to tax on the individual and the practical operation of the PAYE system.

¹ See Paragraph 4

2.2 Impact on employees

The move to the receipts basis of taxation does not have a significant effect on employees. The overall income of an employee is generally assessed to tax on the basis of the amount paid to the employee during the year i.e. the Form P60 amount. The Finance Act 2017 amendment merely aligns, on a statutory basis, the charge to tax on the individual and the practical operation of the PAYE system.

3 Emoluments arising or payable prior to the commencement of an office or employment or after cessation of an office or employment

Emoluments arising or payable prior to the holding of an office or employment are to be treated as emoluments for the first year in which the office or employment is held, that is, they only become taxable when the office or employment commences.

Similarly, emoluments arising or payable for a year in which the office or employment is no longer held are to be treated as emoluments earned in the last year of assessment in which the office or employment was held.

In effect, Section 112 TCA 1997 assigns such emoluments to a year of assessment for which the taxpayer is chargeable under Schedule E in respect of the office or employment.

However, for **2018 and subsequent years**, the income tax to be charged in respect of these emoluments is by reference to the amount of the emoluments paid to the person **in** the year of assessment i.e. the receipts basis of assessment.

4 Exclusions

4.1 Proprietary Directors

The receipts basis of assessment does not apply to income from certain directorships.

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[...]

Proprietary directors i.e. directors who own or control more than 15% of the share capital of a company continue to be taxed on the earnings basis of assessment.

Example:

Strict earnings Basis:

Director's remuneration charged in company accounts to 30 June 2018 - €100,000

Director's remuneration charged in company accounts to 30 June 2019 - €150,000

Strict earnings basis calculation of Schedule E Director's remuneration for tax year 2018 –

€100,000 x 6/12 = € 50,000

€150,000 x 6/12 = € 75,000

Assessable €125,000

However, other than the first and last year, the director's remuneration assessable for a tax year is normally taken as the amount of director's remuneration charged in the company accounts for a year ended within the tax year. In the example above, the director's remuneration charged in the company accounts to June 2018 will form the basis of assessment for Schedule E for 2018. The director will be assessed on the amount shown in the company accounts i.e. €100,000. However, this arrangement does not apply where either there is a change to the accounting period or the accounting period is not for a 12 month period.

4.2 PAYE exclusion orders

The receipts basis of assessment does not apply to income in respect of which a PAYE exclusion order has issued. Generally, exclusion orders are issued in respect of non-resident employees who are unlikely to have a tax liability in the State.

4.3 Social welfare payments

The Department of Employment Affairs and Social Protection holds an exclusion order in respect of taxable payments that it makes under the Social Welfare Acts. Consequently, all such payments continue to be assessed on the earnings basis of assessment. This addresses the situation where an accumulation of arrears is paid and could result in payments that would normally be taxed at the lower rate of tax coming into charge at the higher rate.

Example:

A pensioner has a private occupational pension of €5,000 per year. He should also have been paid a State pension of €13,000 for each of the tax years 2015, 2016, 2017, but for some reason, failed to claim it. Arrears are paid in 2018 together with the current State pension of €13,000.

For each of the tax years 2015, 2016 and 2017, €13,000 is added to the taxpayer's occupational pension income and taxed at the individual's marginal rate, assumed to be 20%.

Outcome: the arrears of Social Welfare payments are taxed in full at 20%.

5 Death cases

Where a person dies and salary is due to be paid to the deceased person, the payment is deemed to have been made to the deceased person immediately prior to death.

This ensures that the income tax liability remains on the deceased person and not on the estate of the deceased person. This avoids situations where the personal representative would be required to register the estate for income tax in respect of employment income earned prior to death.

6 Transitional Provision

Where emoluments are chargeable to tax for the year 2017 (on the earnings basis of assessment) and are also chargeable to tax in the year 2018 (on the receipts basis of assessment), an individual can apply to Revenue to have the emoluments for the year 2017 charged to tax on the basis of the actual emoluments paid to the individual in 2017 (i.e. on the receipts basis of assessment).

Example:

Deirdre is paid her basic salary in December 2017. This is taxed under the PAYE system in December. In January 2018 she is paid commission on sales made in December 2017 which is taxed under the PAYE system in January.

For 2017, the commission on sales earned in December 2017 but paid in January 2018 forms part of the income assessable to income tax under Schedule E. In addition, the commission paid in January 2018 forms part of the income assessable to income tax in 2018 under schedule E (under the receipts basis of assessment).

As these emoluments in respect of the commission on sales are strictly chargeable to income tax in both 2017 and 2018, Deirdre can apply to Revenue to have her emoluments chargeable to income tax for 2017 amended to the actual amount of emoluments paid to her in 2017. In effect, Deirdre can apply to have her 2017 liability determined on the basis of the income shown on the Form P60 (which may, in her case, include commission earned in December 2016 but paid in January 2017).