

[05-05-34] Tax treatment of payments made pursuant to a Court order under section 2B of Employment Permits Act 2003

Reviewed October 2016

Section 37 of the Employment Permits (Amendment) Act 2014 introduced a new section – section 124A – into the Taxes Consolidation Act 1997.

Section 124A imposes an income tax charge on any payments made under a court order under section 2B of the Employment Permits Act 2003. Any payments made under such a court order are chargeable to tax under Schedule E and are within the PAYE system of tax deduction.

In tandem with the new section 124A, section 192A of the Taxes Consolidation Act 1997 (*Exemption in respect of certain payments under employment law*) was also amended. The insertion of new subsection (5A) puts beyond doubt that the exemption provided for in section 192A does not apply to payments made under a court order under section 2B of the Employment Permits Act 2003 – see manual 07.01.27.

The objective of section 2B of the Employment Permits Act 2003 is to deter employers from employing foreign nationals without an employment permit by permitting the foreign national to take civil action for compensation against the employer in respect of work done or services rendered, notwithstanding the illegality of any contract. Compensation is to be calculated by a court by reference to the national minimum hourly rate of pay or any other rate of pay which is fixed under, or pursuant to, any enactment.

Any compensation paid is taxable in full and is subject to PAYE and USC by virtue of the provisions of Section 124A of the Taxes Consolidation Act 1997. Any such compensation shall not be treated as reckonable emoluments for the purposes of PRSI contributions.