

[42-04-01] PAYE Exclusion Orders

Section 984 of the Taxes Consolidation Act 1997

Reviewed February 2017

1. Introduction

This manual supersedes previous instructions in relation to the issuing of PAYE (Pay As You Earn) Exclusion Orders and clarifies the circumstances in which a PAYE Exclusion Order may be issued.

2. What is a PAYE Exclusion Order?

The obligation to deduct tax at source under the PAYE system from emoluments is a statutory obligation placed on employers and other persons paying emoluments by Section 985 of the Taxes Consolidation Act (TCA) 1997. A PAYE Exclusion Order issued by Revenue to an employer or other person paying emoluments, under Section 984 TCA, relieves that employer or other person from that obligation.

3. Main categories to whom PAYE Exclusion Orders apply

The main categories to whom PAYE Exclusion Orders apply are –

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| A. | Directors (including non-resident directors) of Irish incorporated companies | See Part 4 |
| B. | Non-resident employees | See Part 5 |
| C. | Non-resident pensioners | See Part 6 |
| D. | Certain resident employees and office holders | See Part 7 |

4. Directors of Irish incorporated companies

4.1 Overview

Matters pertaining to the tax treatment of directors' remuneration are dealt with in manual [Part 42-04-61](#).

4.2 Non-resident directors of Irish incorporated companies

In the Irish tax case of *Tipping v Jeancard* [2 ITR 68], it was accepted that a director of an Irish incorporated company holds an Irish *public* office. Therefore, a director of an Irish incorporated company is chargeable to tax in this State on the income attributable to such directorship *irrespective* of -

- his/her tax residence position, or where the duties of the office of director are exercised.

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However, such directorship income may, in some instances, be relieved from the charge to Irish tax under the terms of a double taxation agreement (DTA).

Therefore, a PAYE Exclusion Order **should not issue** in respect of such a director of an Irish incorporated company **unless** it is clear that the income from his/her directorship is relieved from the charge to Irish tax under the terms of a relevant DTA.

In practice, on receipt of an application for a PAYE Exclusion Order in respect of the remuneration of a director of an Irish incorporated company, Districts should refer to the provisions of the relevant DTA to determine -

- whether such agreement has an article relating to Directors; and
- if so, whether such article relieves the director from the charge to income tax here on such remuneration.

PAYE Exclusion Orders **should not be issued** in respect of the directorship income of non-resident directors of Irish incorporated companies where such directors are resident of a non-treaty country. Such income remains chargeable to income tax in this State.

4.3 Directors' remuneration received by partners of certain partnerships

There is a long standing practice whereby a partner (who is a solicitor or accountant) in a legal or accountancy firm may formally apply in writing to Revenue for permission to have the remuneration derived by him or her from the having or exercising of a *public office* of director of an Irish incorporated company -

- (a) paid into the partnership (of which he or she is a partner), and
- (b) divided amongst the partners, with the individual partners paying income tax, USC, etc. on such income under the self-assessment system.

However, this practice -

- (i) operates **only** -
 - (I) on a Revenue "prior approval" basis; and
 - (II) in respect of partners liable to income tax in the State who are either solicitors or accountants and who are partners of a legal or accountancy partnership operating in the State;

and

- (ii) is for income tax purposes only and does not impinge on any other responsibilities of the director or the company.

In summary, with effect from 1 January 2012, Revenue will generally accede to a written request from a partner (who is either a solicitor or an accountant) in a legal or accountancy partnership to have remuneration attributable to the having or exercising of the *public office* of director of an Irish incorporated company paid

into an account for the benefit of all of the partners but only under the following conditions:

- (a) the partnership agreement provides for the division amongst all the partners of such director's remuneration;
- (b) in comparison to the partnership income, such director's remuneration is insignificant;
- (c) the relevant partner is not a shareholder of the relevant company;
- (d) the relevant partner undertakes to ensure that such director's remuneration paid into an account for the benefit of all the partners is paid out in full to the individual partners;
- (e) the individual partners accept that such remuneration is taxable in full in their hands (and liable to the USC) in the tax year in which the money is paid into the account for the benefit of the partners and without offset of any of the partnership's business expenses.

Note – Up to and including the 2011 tax year, where permission for the practice was granted by Revenue, the relevant director's remuneration may have been treated as part of the partnership trade income attracting normal trade qualifying expenses – such years need not be amended to comply with paragraph (e) above.

Partnerships and partners seeking the treatment outlined above must obtain prior approval from the Revenue office dealing with the tax affairs of the partnership.

Where permission to apply such tax treatment is granted, Revenue will arrange to issue to the relevant company of which the partner is a director a *PAYE Exclusion Order* that enables the emoluments of the specific director named in that Order to be paid without deduction of income tax to the partnership. The Order also enables payment without deduction at source of the USC. The Department of Social Protection has indicated that, in such instances, the charge to PRSI does not arise. [Note - In the absence of such a *PAYE Exclusion Order*, the company paying the remuneration must apply the PAYE, PRSI and USC systems as regards that remuneration].

5. Non-resident employees

5.1 *Non-resident employees of Irish 'private sector' employers*

Where an individual is in receipt of Irish source 'private sector' employment income and where the individual -

- is **not resident** in the State for tax purposes for the relevant tax year, and
- exercises the duties of the employment wholly outside the State,

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a PAYE Exclusion Order may be issued for the relevant tax year. In general, individuals will have to be absent from the State for a complete income tax year or for a sufficient period over two income tax years to 'break' Irish residence to qualify for a PAYE Exclusion Order.

In determining where the duties of the employment are exercised, incidental duties performed in the State may be ignored. 'Incidental' in this context means fewer than 30 days working here over a full tax year.

Example 1.

An individual employed by an Irish limited company is sent to work in the UK from 1 January 2016 to 31 December 2016 and takes up residence in the UK. He will spend less than 30 days in the State during 2016 performing incidental duties of his or her employment. As the individual will not be resident in the State for 2016 and will perform all the duties of his employment outside the State (aside from some incidental duties), it is in order to issue a PAYE Exclusion Order for the year 2016.

5.1A *Non-resident employees who are recruited abroad and who exercise all their duties abroad*

Some Irish resident employers carry on some or all of their trade or profession in foreign jurisdictions and recruit non-resident employees to work in the foreign jurisdiction. These employees generally reside locally in the area in which the trade or profession is being carried on and carry out all the duties of their employment in the foreign jurisdiction and never set foot in Ireland.

To obviate the necessity for such a non-resident employee to apply for a PPS number and for the employer to apply for an Exclusion Order, Revenue is prepared to accept that the employer is released from the obligation to make the appropriate deductions under the PAYE system from the employee's remuneration where the employee;

- is not resident in the State for tax purposes,
- has been recruited abroad,
- carries out all the duties of employment abroad,
- is not a director of the employer, and
- is outside the charge to tax in the State.

Revenue expects employers to maintain a record of each such individual, together with a record of any payments made to him or her each year.

5.2 *'Split Year' cases involving employees*

In the case of an individual leaving the State during the year (and becoming tax resident elsewhere) to carry out the duties of an Irish employment wholly outside the State, and where the individual will be resident outside the State in the following tax year, a PAYE Exclusion Order may be issued effective from the date of departure (i.e. the Exclusion Order may apply to the income arising

as and from date of departure) and any review of the individual's liability for that year can be on a split year basis.

Example 2.

An individual employed by an Irish limited company is sent to work in the UK (and takes up tax residence in the UK) from 1 June 2014 to 30 May 2016. He will spend approximately 30 days in the State during 2015 performing incidental duties of his or her employment.

As the individual will not be resident in the State for 2015 (will be here fewer than 183 days in 2015 AND will be non-resident under the look back rule as he will spend fewer than 280 days in the State in 2014 and 2015 combined), it is in order to issue a PAYE Exclusion Order for the period commencing 1 June 2014 (and to review liability on a split year basis).

In the case of an individual returning to the State to resume the duties of an Irish employment in the State, any PAYE Exclusion Order issued ceases to have effect from the date the employee returns to the State.

5.3 Non-resident employees working in the State under a foreign contract of employment

Foreign employment income (i.e. income earned under a foreign contract of employment) attributable to duties performed in the State is, with effect from 1 January 2006, within the charge to tax in the State under Schedule E and within the scope of the PAYE system of deductions at source.

Where certain criteria are met, foreign employers may be released from the obligation to make Irish PAYE deductions and these are outlined in

Statement of Practice SP – IT/03/07 of 2007 - Pay As You Earn (PAYE) system - Employee payroll tax deductions in relation to non-Irish employments exercised in the State.

Where a foreign employer is released from the obligation to make employee payroll deductions at source under the Irish PAYE system under the terms of SP IT/03/07, it is not necessary to issue PAYE Exclusion Orders.

5.4 Non-resident employees in the 'public sector'

The holder of an Irish *public* office or employment is liable to tax in this State on the income attributable to such office or employment **irrespective** of

- his/her tax residence position; or
- where the duties of the office or employment are exercised.

A PAYE Exclusion Order **should not issue** in respect of such an individual unless it is clear that the income from such office or employment is relieved from the charge to Irish tax under the terms of a DTA between the State and the relevant jurisdiction.

6. Non-resident pensioners

6.1 “Split year” basis

The “split year” basis as provided by Section 822 TCA 1997 applies only to employment income and does not apply to pensions.

6.2 ‘Private Sector’ Irish Occupational Pensions

Irish Occupational Pensions are chargeable to tax in this state under Schedule E by virtue of Section 779, regardless of the residence position of an individual. However, where an individual:

- is in receipt of an Irish occupational pension (**other than a Governmental or a Local Authority pension**),
- is **not resident** in the State for tax purposes; and
- is resident in a country with which Ireland has a DTA for the relevant tax year,

generally under the terms of most DTAs, the pension will be taxable solely in the country in which the individual is tax resident.

Upon receipt of an application for a PAYE Exclusion Order in such cases, the pensions Article of the appropriate DTA should be examined and a PAYE Exclusion Order issued where the agreement relieves the individual from the charge to income tax in the State in respect of his/her occupational pension.

‘Private Sector’ Irish Occupational Pensions- Non-DTA countries

In the case of an individual in receipt of an Irish occupational pension (**other than a Governmental or a Local Authority pension**), who is resident in a non-DTA country, the pension is not relieved from the charge to tax in this State (as no DTA applies), so no exclusion order is due and the pension remains taxable here.

6.3 Public sector pensions

In general, employment income and pensions payable by a State or a Local Authority in connection with the discharge of functions of a governmental nature or in respect of services rendered to that State are taxable solely in that State, notwithstanding that the recipient may be tax resident in another DTA State. Therefore, in general, an Irish governmental salary and pension will be taxable solely in the State, irrespective of the residence status of the recipient.

For confirmation that the above treatment applies, or in cases of doubt, Districts should refer to the Government Service article or Government Pensions article of the appropriate DTA.

Individuals resident in non-treaty countries remain chargeable to income tax in the State.

Note: Irish Social Welfare Pensions and foreign Social Security pensions are not regarded as Governmental pensions for the purposes of interpretation of DTAs.

7. Situations where a PAYE Exclusion Order may be issued in respect of emoluments of resident employees or office holders

7.1 *Freelance Actors*

Generally speaking, actors are engaged as employees by theatres, television and radio stations and PAYE is applied to emoluments received. Prior to 1994, Revenue issued PAYE Exclusion Orders to a limited number of actors who had -

- other freelance professional income as an actor which was assessed to income tax under Schedule D, **and**
- a satisfactory record in submitting accounts/returns and payment of tax.

Such PAYE Exclusion Orders were withdrawn in early 1994 in line with a general policy to restrict the use of PAYE Exclusion Orders. However, following discussions with Actors Equity and other representatives at the time, the following was agreed -

- (1) PAYE Exclusion Orders should be restored, upon application, to actors who were previously afforded the facility. Therefore, where an individual is a freelance actor and a PAYE Exclusion Order was previously issued in respect of the individual's activities and the individual has a satisfactory record in submitting accounts/returns and in the payment of tax on time, a PAYE Exclusion Order should continue to be issued upon request;
- (2) where a PAYE Exclusion Order was not previously issued in respect of the individual's activities and the individual has a '*duality of engagements on a freelance basis*' and has a satisfactory record in submitting accounts/returns and in the payment of tax on time, a PAYE Exclusion Order may be issued on request.

Duality of engagements on a freelance basis means acting in more than one production throughout the year (e.g. multiple short engagements in television, radio and/or theatre during the year) rather than working in one media or for one company or on one project on a regular salaried basis for an extended period.

Where an individual is in employment (e.g. playing a part in an ongoing television series) and, in addition, acts in other production(s), a PAYE Exclusion Order should not be issued in respect of his/her employment, but may be issued in respect of the other production(s).

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PAYE Exclusion Orders should cover a tax year rather than the period of a particular production or number of productions.

7.2 *Doctors in private practice partnerships who hold appointments to medical institutions.*

Historically there was a practice to issue Exclusion Orders in respect of the salary from such appointments. This practice has been discontinued and no new Exclusion Orders should be issued in respect of such appointments.

7.3 *Foreign students working in the State on a temporary basis*

PAYE Exclusion Orders may be granted in respect of foreign students coming to work in the State on a temporary basis as part of an exchange programme run by one of the following organisations

- USIT
- IAESTE
- AIESEC

where the following conditions are satisfied:

- the time spent in the State does not exceed four months, commencing from the date of arrival in the State;
- the student's earnings would be covered by the single person's personal tax credit;
- the Exclusion Order is issued in respect of one employment only; and
- the application for exemption is made through the relevant student organisation and includes
 - the name and address of the employer,
 - the date employment commenced,
 - the rate of pay,
 - the date the student arrived in the State, and
 - the intended date of departure.

The Exclusion Order is to be dated from the first date of the employment but is not to exceed four months from the date the student arrived in the State.

The student organisation will retain the following documents, which should be available to the Revenue Commissioners for inspection –

- (a) a copy of the student's application to the programme; and
- (b) a copy of the student's work permit (where one is required by law).

PAYE Exclusion Orders in respect of students are to be endorsed with the following statement:

This PAYE Exclusion Order is valid from {inset date} to {insert date}, and where the total emoluments payable to {insert name} do not exceed

{insert the amount which would be covered by the single person's personal tax credit e.g. €8,250 in 2016}.

Where any of the conditions outlined above are not satisfied, a PAYE Exclusion Order should not be issued. Where a PAYE Exclusion Order has issued and any of the above conditions are breached, the PAYE Exclusion Order should be withdrawn.

7.4 Researchers or lecturers from certain tax treaty countries

Some DTAs provide that remuneration paid to certain researchers or lecturers working or studying at a “university, research institute, school college or other similar establishment” (to quote Article 19 of the Ireland-France DTA for example) during a period of temporary residence not exceeding two years, shall not be taxable in the State where the university, etc., is located. PAYE Exclusion Orders may be issued in cases where the individual is from a country whose DTA with Ireland provides for this.

8. ARFs, AMRFs, vested PRSAs and retirement fund balances

Income and assets retained in an Approved Retirement Fund (ARF), an Approved Minimum Retirement Fund (AMRF) or a vested PRSA are beneficially owned by the ARF/AMRF/vested PRSA owner.

Distributions or withdrawals (whether actual or imputed) from ARFs, AMRFs and vested PRSAs are treated and taxed as emoluments under Schedule E, regardless of the residence status of the individual.

As Revenue's position is that distributions or withdrawals from ARFs, AMRFs and vested PRSAs are not payments of pension, PAYE Exclusion Orders are **not issued** in respect of such distributions or withdrawals.

For the sake of completeness, Revenue also confirms that PAYE Exclusion Orders are **not issued** where an individual takes the balance of his or her retirement fund (i.e. after any retirement lump sum and any amount which has been transferred into an AMRF or used to purchase an annuity) as a taxable lump sum.

9. PRSI

Where a PAYE Exclusion Order has issued to an employer relieving the employer of the obligation to make PAYE deductions from certain emoluments, a liability to PRSI (both employee and employer) may still arise. Prior to the year of assessment 2011, employers were obliged to remit such PRSI directly to the Department of Social Protection's Special Collection Section. From 2011 onwards, any PRSI contributions due may be deducted and remitted through the PAYE system even though no income tax is being deducted. However, employers are not obliged to do so. Any individuals for whom this presents difficulties should contact the Special Collection Section

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to make arrangements to remit any PRSI directly to that section instead of through the PAYE system.

For clarification on whether PRSI contributions are due and on how they should be remitted, employers should be directed to:

Special Collection Section
Department of Social Protection
Government Buildings
Cork Road
Waterford
Locall: 1890 690 690 (from the Republic of Ireland only)
Telephone: +353 1 4715898 (from Northern Ireland and overseas)
E-mail e101spc@welfare.ie

The contact details are now printed on all PAYE Exclusion Orders.

It is not necessary to forward a copy of the PAYE Exclusion Order to the Department of Social Protection.