

# **PAYE Regulation 16 - Arrears of pay being paid to an employee who has left an employment**

## **Part 42-04-24B**

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## 1. Introduction

With effect from 1 January 2019, the Income Tax (Employments) Regulations 2018 govern the operation of the PAYE system as it relates to income tax. This Manual sets out how PAYE operates on arrears of pay paid to an employee who has left an employment. See Regulation 16.

## 2. Operation of PAYE on arrears of pay

### 2.1 Arrears of pay to current employees

Where arrears are paid to current employees, tax deductions are calculated by reference to the Revenue Payroll Notification that has been sent or made available to the employer in advance of the payment.

### 2.2. Arrears of pay to employees who have left the employment

Where arrears are paid to employees whose employment with the employer has ceased:

- if a Revenue Payroll Notification (RPN) has been sent to or made available to the employer, the amount of tax to be deducted is calculated by reference to the RPN. The employer will need to ensure that the latest RPN is being used.
- in any other circumstances, tax must be deducted at the higher rate of tax applicable on the date the payment is made.

## 3. Prior to 2019

Prior to the year of assessment 2019, the provisions of the Income Tax (Consolidated) Regulations 2001 applied to such payments. The operation of PAYE on arrears of pay was covered by Regulation 19A.

The Regulation provided that -

- tax under the PAYE system was to be deducted from the arrears on payment of those arrears,
- the amount of tax to be deducted was to be calculated by reference to the certificate of tax credits and standard rate cut off point (SRCOP) or a tax deduction card held by the former employer (the payer) for the year in which the

employee ceased employment (i.e. as if the payment was being made on the date the employee ceased to be employed by the employer); and

- if a certificate of tax credits and SRCOP or tax deduction card was not held by the payer for the tax years in which the employee ceased employment, the emergency basis of deduction (Regulation 22) was to be applied to the arrears.

**Note: Whilst the employer applied the tax credits and SRCOP as if the payment was being made at the date of cessation, there was no change to the procedure for remitting the PAYE or the completion of the supplementary P45 by the employer.**

#### 4. The tax year in respect of which arrears of pay are correctly assessable

For all years prior to 2018, payment of arrears of pay is assessable in the tax year in which such arrears were attributable (earned) (see Example below). From 2018 onwards, Schedule E income is assessed on a receipts basis for most taxpayers.

#### 5. The time limit for assessing arrears of pay

Except in the case of fraud or neglect, a four-year time limit applies in the raising of assessments to tax. However, under Section 959AB TCA 1997, as regards arrears of pay, the four-year time-limit for raising an assessment commences at the end of the tax year in which the arrears are paid and not at the end of the tax year for which the arrears are earned (see Example below).

#### 6. The tax year in respect of which credit for PAYE deducted is to be given

Prior to 2018, arrears of pay were correctly assessable for the tax year in which such arrears were earned. However, the credit for tax deducted under PAYE is given in the tax year in which such tax is deducted (see Example below) – this applies both pre- and post-2018.

##### **Example**

Mr. Black, a 'former' employee, left employment in 2015 but received arrears of pay of €4,000 in June 2016 of which €2,500 referred to the 2014 tax year and €1,500 to the

2015 tax year. Tax of €1,600 was deducted under PAYE on payment of the arrears in 2016. Liability to tax on the arrears is as follows –

<b>Tax Year</b>	<b>Amount of arrears of pay assessable</b>	<b>Tax due on arrears</b>	<b>Credit for tax deducted under PAYE</b>	<b>(Underpayment) Overpayment</b>	<b>Time limit for raising assessment on arrears of pay</b>
<b>2014</b>	€2,500	€1,025	Nil	(€1,025)	31 December 2020
<b>2015</b>	€1,500	€600	Nil	(€600)	31 December 2020
<b>2016</b>	€Nil	€----	€1,600	€1,600	
Net underpayment				(€25)	

## 7. USC on arrears of pay

USC is due on the date of payment of the emoluments (including arrears of pay) irrespective of whether those emoluments may be attributable to an earlier year. There is no adjustment for back years similar to that which applies for income tax.