



Cathaoirleach
Chairman



Oifig na gCoimisinéirí Ioncaim
Caisleán Bhaile Átha Cliath
Baile Átha Cliath 2
D02 F342
Éire

www.revenue.ie

Office of the Revenue Commissioners
Dublin Castle
Dublin 2
D02 F342
Ireland

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Mr Paschal Donohoe, T.D.,
Minister for Finance and Public Expenditure and Reform,
Department of Finance and Public Expenditure and Reform,
Merrion Street,
Dublin 2.

Dear Minister,

I refer to your letter of 12 November requesting a factual update on the current status of the comprehensive review of the flat rate expenses (FRE) regime that has been undertaken by Revenue over the last 18 months.

By way of background, the FRE review was conducted for a number of reasons, including the need to address historical issues raised through Parliamentary Questions over the past number of years in relation to the basis for calculation of FREs, the need to examine some differentials in allowances between male and female employees in the same sector and the need to ensure that new sectors seeking access to the FRE regime were treated equitably with those sectors already availing of the scheme. Moreover, having regard to the statutory requirement for tax deductibility in respect of employment expenses, the historic nature of some of the FREs and changes in the work environment, regulations and work practices across employments, an examination seemed particularly appropriate.

The review of the FRE regime initially focussed on 20 of the 134 individual (FRE) amounts. It was subsequently extended to include all FRE categories. The review is in line with best practice and good corporate governance, to ensure expenses previously agreed as deductible are still justified, appropriate in the context of modern day employment regulations and work practices and are in accordance with the legislative requirement for deduction as set out in section 114 Taxes Consolidation Act 1997 (TCA 1997). A detailed draft report is currently being compiled, which will reflect the conclusions of the review.

You will be aware from recent PQ replies that the review of FREs is well advanced with a proposed implementation date of 1 January 2020. While engagement with the relevant representative bodies is now almost complete, a number of final letters are yet to issue to a small cohort of representative bodies that did not engage in the process.

The review has highlighted some issues and inconsistencies throughout the FRE regime.



1. The different treatment between the self-employed versus employees.

For an expense to be tax deductible in the case of an employee, section 114 TCA 1997 requires that it must be wholly, exclusively and necessarily incurred in the performance of the duties of the employment. Case law over many years has supported the strict application of the rules of section 114 TCA 1997 and each of the 3 tests in the section must be satisfied if an expense is to qualify for tax deduction. In that context, satisfaction of the "necessarily" test can be quite difficult to achieve.

In contrast to the position that applies in relation to the tax deductibility of expenses of employees – the "wholly, exclusively and necessarily" tests – the position that applies in relation to tax deductibility of expenses incurred by self-employed taxpayers requires (section 81 TCA 1997 refers) that disbursements or expenses must be wholly and exclusively laid out or expended for the purposes of the trade or profession concerned. It should be noted that the somewhat more liberal regime for tax deductibility in the case of business expenses of self-employed taxpayers was one of the reasons advanced for the introduction of the employee (PAYE) tax credit available under section 472 TCA 1997.

2. Registration fees claimed

As part of the review it was noted that the only profession where the CORU (the regulator for health and social care employees) registration fee is incorporated in an FRE allowance is Optometrists/Dispensing Opticians, while in reality a further eight sectors for which CORU currently has a register should have the entitlement, including dietitians, medical scientists, occupational therapists, physiotherapists, radiographers and radiation therapists, social care workers, social workers and speech and language therapists. Currently, all such employees are obliged to submit individual claims for tax deduction in respect of the CORU registration fee.

3. Nature of the expenses claimed

A significant portion of claims, which feature in many claims by representative bodies for retention of specific FREs, are for the purchase and maintenance of clothing and the purchase of footwear none of which fulfil the requirement of being incurred wholly, exclusively and necessarily in the performance of the duties of the employment. In accordance with case law, on the basis of duality of purpose, unless footwear is specialist footwear it is not worn wholly, exclusively and necessarily in the performance of the duties of the employment. On this point one of the larger of the representative bodies is considering bringing a test case to the Tax Appeals Commissioner if there is a change to this FRE. In another sector, a significant element of the FRE claim relates to body cleaning / hygiene products (shower gels, shampoos, etc). Again, while work in the sector may well be viewed as "dirty work", case law would dictate that expenses incurred on such products are not incurred exclusively in the performance of the duties of the employment concerned.



You also requested further clarification on the number of employees that benefit from the FRE regime under each employment classification as well as information on the associated costs. While our operational systems hold information on employees with FREs during the year, the final position on cost for a year cannot be estimated until returns data is available and analysed. This is necessary to ascertain the true cost to the exchequer of FREs, as it requires combining the information on those claiming the expenses with their incomes (also returned through the Income Tax Returns Form


11 or Form 12 returns as well as the P35 employer returns for 2018) to assess the extent to which those claiming the expense have a tax liability against which to offset the FRE amount. Where an individual claims an expense but does not have a tax liability, there is no cost to the exchequer. At present information is available only up to and including tax year 2017. For 2017 the estimated number of taxpayer units who availed of FRE was 606,570 with gross claims of €163 million equating to a tax cost of €48 million. Final figures for 2018 are not expected to be available until mid-2020 to allow for processing of the data from income tax returns and cross referencing across the operational systems.

At the moment, our systems do not facilitate reporting on FRE amounts and numbers of claimants across individual FRE categories. The Income Tax Return Form 11 has been improved for 2018 so that we can separately identify FREs from general expenses claims going forward and this will enable some more granular reporting from 2018 returns onwards.

In the interest of fairness to all sectors and employees currently benefitting from the regime, Revenue publicly committed that any changes to particular FRE categories will not be implemented until such time as the review of all the flat rate expenses operating in the various employment categories is completed. We expect our review to be fully complete within the next few weeks.

Finally, we have noted that during the Finance Bill 2019 Committee Stage debate that requests were made by two Deputies for reports on granting tax relief for trade union subscriptions and professional registration fees and on the FRE regime and the planned changes to that regime. The question of granting tax relief for such subscriptions and fees are policy matters for you and the Department of Finance. On the FRE regime, there may well be aspects of the current regime that warrant some policy consideration with a view to considering whether legislative change around employment expenses is necessary or feasible. In conjunction with the consideration of granting tax relief for trade union subscriptions and professional fees, that might well be a matter best considered by the Tax Strategy Group in 2020.

Yours sincerely,


Niall Cody,
Chairman.