

## Revenue Compliance Interventions – Operation of Payroll Taxes (Income Tax, PRSI, USC) by Employers

This manual should read in conjunction with Tax and Duty Manuals (TDM) (Income Tax Employment Regulations Part 42-04-71 and The Employer's Guide to PAYE with effect from January 2019 Part 42-04-35a).

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**Note: This manual is currently subject to review and may not reflect up-to-date position. Most recent version.**

## 1 Introduction

The purpose of this manual is to provide guidance for caseworkers conducting compliance interventions in respect of employers who have incorrectly operated payroll taxes.

This guidance deals only with cases where it is determined that the updating of an employee's payroll record is required due to the **incorrect operation** of the Pay As You Earn (PAYE) system by an employer **as a result of error or carelessness**.

Cases involving total failure to operate the PAYE system in respect of certain employees or the deliberate concealment of all or part of certain employees' income are dealt with separately in the TDM [Part 42-04-66 - Payment made without deduction of income tax](#).

The guidance set out in this TDM will apply to any self-correction or qualifying disclosure received and/or Revenue compliance intervention initiated following the publication of this TDM.

## 2 Compliance Interventions

Historically, Revenue's compliance activity in relation to the PAYE system generally focused on periods outside of the current calendar year. Prior to the modernisation of PAYE (PMOD), PAYE interventions generally focussed on the employers' annual Return on the now discontinued form P35.

Following the modernisation of the PAYE system in 2019 (PMOD), employers are required to return details of pay and tax in "real-time" as emoluments are paid. Revenue's approach to compliance management is evolving to reflect this real time tax administration of the PAYE system. Revenue will seek to identify areas of risk in relation to employer's behaviour as early as possible and where possible, interventions will focus on correcting behaviour and ensuring the correct operation of the PAYE system. This will ensure that employees pay the right tax at the right time.

Compliance Interventions notified prior to 1 May 2022 were primarily undertaken as Aspect Queries. However, in certain cases, the perceived risks involved meant that Revenue may have initiated an Audit. Any such interventions were conducted in accordance with the Code of Practice for Revenue Audits and Other Compliance Interventions (the Code). With effect from 1 May 2022, Revenue is implementing the revised framework of compliance interventions which are conducted in accordance with the new Code of Practice for Revenue Compliance Interventions. This framework provides for a consistent, graduated response to taxpayer compliance behaviour ranging from easily accessible opportunities to voluntarily correct errors up to criminal investigation for serious cases of evasion.

Level 1 Compliance Interventions aim to support voluntary compliance. Revenue may carry out Level 1 Compliance Interventions to support employers in ensuring that payroll taxes are being correctly operated. In general, where an employer does not have a poor compliance record but there is a risk of technical errors in the operation of the PAYE systems, an early Level 1 intervention is the most appropriate intervention. The following are **some** examples of instances where it **may** be appropriate for Revenue to initiate a Level 1 Compliance Intervention in relation to an employer:

- Employer not using the correct RPN,
- Employee paying Emergency Tax despite correct RPN being available,
- Employee liable to Emergency Tax yet no income tax paid, or
- PPS number included yet Employee not registered for PAYE.

Level 1 Compliance Interventions initiated for these types of reasons aim to support the Employer in achieving voluntary compliance and to ensure that employees pay the right amount of tax at the right time. Where a Level 1 Compliance Intervention is initiated, employers have the opportunity to self-review, self-correct and/or make an unprompted qualifying disclosure as appropriate.

Where a caseworker has identified a specific risk(s) in respect of an employer indicating a potential liability due to the incorrect operation of the PAYE system, in particular in relation to prior years, it may be more appropriate to initiate a Level 2 Compliance Intervention (Risk Review or Audit).

If, following a Level 1 intervention, an employer does not take immediate steps to address failures to correctly operate the PAYE system, a Level 2 (or in egregious cases Level 3) intervention may be initiated.

### 3 An Employer's Obligations

Briefly, the PAYE system is a method of tax deduction under which an employer calculates and deducts any income tax due each time a payment of emoluments is made to an employee. Part 42, Chapter 4 of the Taxes Consolidation Act provides the statutory basis for the operation of the PAYE collection system, [SI No 345/2018 The Income Tax \(Employments\) Regulations 2018](#), made under section 986 of the Act, provides the detail for the practical day to day operation of the PAYE system. These Regulations, introduced on 1 January 2019, replaced The Income Tax (Employments) (Consolidated) Regulations 2001 (No. 559 of 2001) in relation to payments made after 31 December 2018. Any payments made prior to that date remain subject to the earlier Regulations.

On or before the payment of any emolument, an employer must calculate the correct deductions due in accordance with the latest Revenue Payroll Notification (RPN) available and submit the relevant Pay and Tax details to Revenue in the form of a payroll submission.



The employer's Return for the month is the cumulation of Payroll Submissions made in that month (an employer may make a Return, but if a Return is not made, the cumulation of the Payroll submissions is deemed to be the Return for the month). The employer is then liable to remit the tax within 14/23 days from the end of the income tax month in which it was deductible.

#### 4 Payroll Submission Errors

Payroll errors may arise for a variety of reasons including, for example operating Emergency Tax when an RPN is available, not using the latest RPN, incorrect valuation of a benefit in kind, the non-operation of benefit in kind at the time it was received etc. Revenue guidance confirms that employers should review notional pay regularly, at least quarterly, to ensure payments reported to Revenue are as accurate as possible.

Where an error arises in the operation of the PAYE system, the employer is required under section 985G(6) Taxes Consolidation Act 1997 to correct the incorrect Return by amending the relevant payroll submission(s) to reflect the correct income and tax position using the employee's RPN in operation at the time. Subsequent returns may also require amending where more than one Return is found to be incorrect due to the employer error.

As set out in Section 2 above, our approach to initiating PAYE compliance interventions has changed, reflecting the real-time nature of PMOD. Our intention is to address issues as early as possible, preferably within the year in which they arise. The decision to initiate either a Level 1 or Level 2 compliance intervention will depend on the particular circumstances of the case.

The processes set out below provide the mechanism for addressing Current and Prior Year corrections and associated liabilities arising due to the incorrect operation of payroll taxes where an employer fully cooperates with the Compliance Intervention. Please note that the procedures outlined in TDM [Part 42-04-59 - Credit in respect of tax deducted from emoluments of directors and employees](#) and [Part 42-04-23 - Unpaid Remuneration](#), still apply.

##### 4.1 Current Year Liabilities

Both the employer and all relevant employees' records will need to be updated due to the understatement of cumulative pay and the corresponding income tax, PRSI (employer and employee) and USC that arises.

The employer is required to ensure that the cumulative emoluments, as defined under Regulation 2, are updated. Similarly, the deduction or repayment due must be calculated in accordance with Regulation 11. However, in order to minimise the cost to employers of correcting payroll errors, instead of updating each of the previous incorrect submissions using the RPN available for the relevant payroll period to determine the liability, Revenue will facilitate employers by allowing them to **treat untaxed emoluments (arising from incorrect operation) as being paid at the time they are identified**, using the

latest RPN available to calculate the correct liability in accordance with Regulation 11.

Therefore, the liability due will be corrected through the next payroll submission (within the current tax year) rather than over multiple submissions. Please see examples in [Section 6](#).

Where this approach is taken, the cumulative system will collect any tax due at the next payroll date. This may result in a nil salary or a large deduction for the employee. Where this arises and causes hardship for affected employees, the employer may notify Revenue and request that the employee's RPN is placed on a week1 basis in accordance with Section 7.6.5 of the TDM [Part 42-04-35A, Employers' Guide to PAYE effect from January 2019](#). A list of employees which require a week1 RPN can be provided by the employer to the caseworker who will arrange for amended RPNs to be issued. The employer will need to confirm that the employee(s) has been advised of the week1 request.

Treating untaxed emoluments as paid at the time of identification may also lead to situations where employees having insufficient wages from which to deduct tax. In these circumstances, an employer is still required to pay the full tax deductible for the month to the Collector-General and that amount will be reflected in their monthly statement. The employer may arrange for any tax to be repaid by the employee at the next payroll date.

Where the employee does not repay the tax to the employer in full before 28 February of the following year, the employer is required to treat any outstanding tax as a benefit. The employer must pay Income Tax, PRSI and USC on this benefit. The employer will treat this benefit as if it was provided on 28 February of the following year and it should be taxed at the employee's appropriate rate of tax. Where the employee repays the tax in full before 28 February of the following year, no further payment is required. [Further information](#) is available on the Revenue website.

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

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#### 4.1.1 Employee Liability Paid by the Employer

The correction of the employee's cumulative pay will likely give rise to an underpayment on the part of the employee. Where an employer opts to pay any underpayments on behalf of their employees, the employee tax amount i.e. income tax, PRSI and USC paid by the employer will be treated as an additional gross payment and will also be subject to normal deductions. The deductions due in respect of this additional benefit may be paid by the employee or by the employer.

Where the employer opts to bear the additional liability that arises as a consequence of this additional benefit, this will not be considered a further benefit for tax purposes. This treatment is afforded on the basis that the employer cooperates fully with Revenue in relation to any remedial action required under the provisions of [Section 4.1](#).

In all circumstances the additional amounts must be reflected in each relevant employee's record. Please see examples 1 and 2 in [Section 6](#).

#### 4.2 Prior Year Liabilities

Revenue recognises the challenge of re-opening individual employee records for historic payroll periods, especially where employees may have retired, moved to a different employer etc. In circumstances where it is necessary to correct payroll tax liabilities in respect of prior years, employers will need to make a Qualifying Disclosure setting out the outstanding income tax, PRSI and USC in respect of the payroll periods on a global basis (i.e. one settlement for all relevant employees). Such are subject to standard statutory interest charges from the relevant return date and tax-geared penalties where appropriate.

Once Revenue has agreed the global liability identified for all employees (notified by way of Qualifying Disclosure), it can be brought to account at the employer level via a once off PAYE Assessment for the relevant year without amendment to individual employee records. The assessment will be raised in respect of the last pay period of the relevant year.

The identification of prior year liabilities may give rise to Debt Warehousing Considerations. Please refer to [section 4.4](#) for further information.

Guidelines are available in the TDM [Guidelines on PAYE Assessments Part 42-04-72](#).

Please note that this treatment will not apply where any form of deliberate concealment of emoluments or non-operation of payroll has been identified.

#### 4.3 Interventions open at Year End

Where an intervention is opened close to the end of the year, employers should make every effort to correct the records during the current year. This will prevent a situation arising whereby Revenue need to collect additional amounts of tax from employees following an amended end of year statement.

In such cases, an employer will be required to make an additional payroll submission in December (using the last pay date in the month) of the year the intervention commenced confirming the additional gross pay received. Any underpayment, not paid by the employer, will be collected from the employee through an End of Year Statement. The additional tax to be collected via the End of Year Statement. Any such underpayments may be coded forward (i.e.

collected in the coming year by way of reduced tax credits for the employee concerned) or paid at the discretion of the employee. Please see example 6 in [Section 6](#).

#### 4.4 Tax Debt Warehousing arrangements

The Debt Warehousing Scheme (DWS) allows for the deferral of the payment of VAT, PAYE (Employer), certain self-assessed income tax liabilities, and overpayments under the Temporary Wage Subsidy Scheme (TWSS) and the Employment Wage Subsidy Scheme (EWSS). DWS was automatically made available to customers in Business and Personal Divisions, and available on application to LCD and MED customers subject to specific criteria.

Revenue has written to certain taxpayers who are included in the debt warehouse inviting them to self-review the accuracy of the returns filed for Period 1, before 31 January 2023. This applies to:

- taxpayers who have either previously or currently warehoused their liability under the terms of the DWS, and
- those taxpayers for whom the DWS was automatically made available but who did not avail of the DWS for their previously declared liabilities in respect of Period 1 or cases who had nil declared liabilities.

In line with our policy of facilitating voluntary compliance, we will offer, on a concessionary basis, an opportunity to have previously undeclared liabilities for Period 1, to be warehoused, where the taxpayer discloses those undeclared liabilities before 31 January 2023. In such cases, the additional liabilities will be included in the Debt Warehouse and for the associated benefits to apply.

Any additional Period 1 liabilities identified after the 31 January 2023 deadline will result in revocation of the warehousing arrangements. Revenue will apply standard interest charges<sup>1</sup> to the warehoused debt and initiate immediate collection of all tax liabilities, interest and penalties. This applies to both the warehoused debt and the additional liabilities identified.

Please refer to TDM [Debt Warehousing Scheme - Level 1 Compliance Programme Guide](#) which deals with the Debt Warehousing disclosure opportunity.

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<sup>1</sup> Standard Interest rate charge of 8% on PPAs for Income Tax, Corporation Tax and Capital Gains Tax. Standard interest rate charge of 10% on a PPA for Employers' Income Tax, Value-Added Tax and Relevant Contracts Tax



## 5 Interest and Penalties

For current year adjustments, where any additional emoluments are treated as paid at the next pay date, no interest arises. Statutory interest will be applicable for incorrect returns in prior years from the due date(s) to the payment date.

Similarly, as any additional emoluments are treated as paid at the next pay date, tax geared penalties will not arise. However, where breaches of the PAYE Regulations have occurred, fixed penalties in accordance with section 987 TCA, 1997 may be pursued.

Revenue's objective is to ensure that employers fully operate the PAYE system thereby ensuring that employee deductions are made correctly at the right time. Where employers respond promptly in addressing any errors in the operation of the PAYE system fixed penalties need not be pursued. Where there is persistent failure by employers to address or correct errors, Revenue will progressively pursue the application of fixed penalties in a manner proportionate to the employer behaviour. The decision to pursue fixed penalties will be determined by the caseworker, in consultation with their line manager, having due regard to the facts of the case.

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

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## 6 Examples

The following in-year examples will assist caseworkers in determining the corrections required.

### Example 1:

In August 2022 Revenue initiates a compliance intervention covering an employer's April 2022 PAYE Return. As part of the compliance intervention it is established that benefit in kind has not been operated in respect of company cars for 5 employees for the months of January to May. The employer will follow the [calculation rules for establishing the valuation of the benefit received](#), available on the Revenue website. A notional emolument of €200 should have been included in their cumulative gross each month. The next available payroll submission is 31 August.

In accordance with [Section 4.1](#) above, the cumulative gross for each employee will be determined for the payroll submission 31 August. The cumulative gross will include the €1,000 (€200 in respect of each month from January to May inclusive) for each relevant employee. The employer will use the latest RPN available to determine the tax due on 31 August. The resulting €520 (in this case, €1,000\*52%) will be paid by the employee through salary deduction on 31 August. Employer's PRSI will also be due.

No interest or tax geared penalty will be sought. However fixed penalties may be pursued where appropriate (see Section 5 above).

### Example 2:

As above, however the employer wishes to pay the €520 (income tax, PRSI and USC) on behalf of the relevant employees. The additional notional benefit received by each employee is €520 and, using the RPN available, a further €270 (€520\*52%, income tax, PRSI and USC) is now due. The additional amount will be included as part of the employee's cumulative figures on 31 August. The employer may choose to bear this additional tax liability.

### Example 3:

On 28 July 2022, Revenue initiates a compliance intervention covering an employer's June 2022 PAYE Return. As part of the compliance intervention it is established that the employer is paying mileage expenses in excess of the civil service rates. A total of 3 employees have received an additional €200 each per month which should have been included in the cumulative taxable pay.

At the next payroll run, the employer will increase the cumulative gross by €1,200 (€200 for each month from January to June inclusive). The employer, using the latest RPN available, will calculate the tax due and a deduction of €624

(€1,200\*52%, income tax, PRSI and USC) is now due from each employee on 31 July 2022. Employer's PRSI will also be due.

No interest or tax geared penalty will be sought. However fixed penalties may be pursued where appropriate (see [Section 5](#) above).

**Example 4:**

On 1 September 2022, Revenue initiates a compliance intervention covering an employer's May 2022 PAYE Return. As part of the compliance intervention it is established that the employer has paid amounts in excess of the civil service mileage rates to 10 employees since the beginning of the year with an overall value of €5,000.

The employer will be required to identify the employees and the amount attributable to each. At the next payroll run, e.g. 24 September, the notional benefit for each of the 10 employees will be added to their cumulative gross for the payroll period. The 10 employees affected will each show an increase in their taxable pay for the relevant amount. For an employee with untaxed excess payments totalling €500, the employer, using the latest RPN available, will calculate the tax due and a deduction of €260 (€500\*52%, income tax, PRSI and USC) will be made. Employer's PRSI will also be due.

No interest or tax geared penalty will be sought. However fixed penalties may be pursued where appropriate (see [Section 5](#) above).

**Example 5:**

On 1 September 2022, Revenue initiates a compliance intervention covering an employer's May 2022 PAYE Return. An employer makes a prompted disclosure in relation to the non-operation of benefit in kind on a once off entertainment expense relating to a number of employees for the current year. The entertainment was received by 5 employees at different stages over the months of April, May and June. The overall value attributable is €20,000.

The employer confirms that the liability is €10,400.

The €20,000 must be attributed to the 5 employees when the next payroll submission is being processed. The cumulative pay for each employee will be increased by €4,000 and the subsequent liability of €2,080 (€4,000\*52%, income tax, PRSI and USC) will be collected via payroll on 25 September. Employers PRSI will also be due.

No interest or tax geared penalty will be sought. However fixed penalties may be pursued where appropriate (see [Section 5](#) above).

**Example 6:**

On 1 October 2022, Revenue initiates a compliance intervention covering ABC Limited's August 2022 Return. ABC Limited request 60 days to make a prompted disclosure. A prompted disclosure is received in relation to the non-operation of benefit in kind on company cars for the year 2021 and 2022 for 5 employees. The disclosure confirms a notional value relating to the cars of €5,000 for each employee resulting in a total liability of €13,000 ( $€5,000 * 5 * 52\%$ , income tax, PRSI and USC). Due to the additional 60 days and the examination of the disclosure, the liability is not confirmed until February 2023.

For 2021, a PAYE assessment is input for the liability of €13,000 together with Employer's PRSI. Statutory interest will be applied, and a tax-geared penalty sought in accordance with the Code of Practice.

For 2022, as the intervention commenced in a current year an employee level payroll submission will be required. The employer may correct the final submission for the year or provide an additional submission to include the notional benefit. Employer's PRSI will also be due. Any tax due for the employee will be collected via the employee's End of Year Statement.

For 2023, as the employer has been operating BIK correctly from 1 January, no further adjustment arises.

Where an employer opts to bear the cost of the employee's income tax, PRSI and USC then these, together with the additional benefit in kind liability, will be included with the additional cumulative pay in accordance with [Section 4.1.1](#). No interest or tax geared penalty will be sought. However fixed penalties may be pursued where appropriate (see [Section 5](#) above).

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