

## **PAYE Exclusion Orders**

### **Part 42-04-01**

Chapter 4 Part 42 of the Taxes Consolidation Act (TCA) 1997

Section 984 TCA 1997

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## 1 Introduction

This Manual sets out 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 the obligation to deduct Income Tax and USC. A liability to PRSI (both employee and employer) may still arise ([See Section 9](#)).

## 3 Main categories to whom PAYE Exclusion Orders apply

The main categories to whom PAYE Exclusion Orders apply are –

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

### 3.1 Schedule E Basis of Charge where a PAYE Exclusion Order has issued

The Finance Act 2017 amended section 112 TCA 1997 to provide that, for the year of assessment 2018 and subsequent years, the statutory basis of assessment for employment income is, in most cases, the actual amount of income received (paid to an employee) in the year of assessment i.e. the “receipts basis”. However, this amendment does not apply to income where an Exclusion Order is in place. Such income continues to be assessed on the “earned basis” i.e. the amount an individual actually earns in a year of assessment.

Further information on this issue is available in Tax and Duty Manual [Part 05-01-08 - Schedule E Basis of Charge](#).

## 4 Directors of Irish incorporated companies

### 4.1 Overview

Matters pertaining to the tax treatment of directors' remuneration are dealt with in the Tax and Duty Manual [Part 42-04-61 - Tax and Universal Social Charge treatment of income arising from having or exercising of the public office of director of an Irish incorporated company](#).

### 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.

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, caseworkers 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 in the State 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 in 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 having or exercising 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) is 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 having or exercising 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 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 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 appropriate PAYE, PRSI and USC deductions 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,

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.

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

[...]

### 5.2 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.

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

#### **Example 2 - PAYE Exclusion Order and split year relief**

Martha is employed by an Irish limited company and is sent to work in the UK (and takes up tax residence in the UK) from 1 June 2019 to 31 May 2021. She will spend less than 30 days in the State during 2020 performing incidental duties of her employment.

As she will not be resident in the State for 2020 (she will be here fewer than 183 days in 2020 AND will be non-resident under the look back rule as she will spend fewer than 280 days in the State in 2019 and 2020 combined), it is in order to issue a PAYE Exclusion Order for the period commencing 1 June 2019 (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.

## 5.4 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 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 Tax and Duty Manual [Part 42-04-65 - 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 within the terms of Tax and Duty Manual [Part 42-04-65](#), it is not necessary to issue PAYE Exclusion Orders.

## 5.5 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.

## 5.6 Bonus payments where PAYE Exclusion Order in place

Bonuses are a very common form of employment compensation. They can be paid quarterly, bi-annually or annually. Some are once off, others are recurring. Some bonuses may also be deferred over a certain period. Others may be considered spot bonuses and paid on occasion of exceptional work results.

Ordinarily, companies will have a bonus pool which has been established on foot of company performance or annual results. At an individual level, bonuses are usually awarded based on individual performance as determined by the employee’s annual review. This Tax and Duty Manual deals with bonuses paid under these circumstances only.

For example, a company’s bonus pool for 2021 may be determined on foot of 2020 annual company results. Bonuses may be paid to employees in 2021 but may be paid in respect of duties performed in 2020.

As noted above, with effect from 1 January 2018 the statutory basis of assessment for employment income is the actual amount of income received in the year of

assessment i.e. the “receipts basis”. However, this amendment does not apply to income where a PAYE Exclusion Order is in place. Such income continues to be assessed on the “earned basis” i.e. the amount an individual actually earns in a year of assessment.

A question, therefore, arises as regards how such bonuses are dealt with from a tax perspective where a PAYE Exclusion Order is in place either when the bonus is paid, or during the period the bonus was earned. The following outlines example scenarios.

### **Example 3 – Bonus paid when a PAYE Exclusion Order is in place, but bonus relates to a prior period**

Niamh is employed by an Irish company under an Irish contract of employment. She was tax resident, ordinarily resident and domiciled in Ireland for 2020. She is assigned by her employer to a sister company in Spain for 2 years with effect from 1 January 2021. During the period of her assignment, she will perform the duties of her Irish employment in Spain.

The employer holds a PAYE Exclusion Order for Niamh for 2021. Niamh is paid a bonus of €10,000 in March 2021 in respect of 2020. The bonus relates to the period prior to Niamh moving abroad when she carried out her duties of employment in Ireland.

S112(6)(b)(ii) TCA notes that the receipts basis under s112(3) does not apply to **“emoluments in respect of which a notification has issued under section 984(1)”**. As the bonus was earned before the exclusion order was in place, the bonus payment is taxed on a receipts basis. Payroll taxes should be deducted by the employer from the bonus payment in 2021.

Employers should apply the following process in such cases:

- Employer creates a “one day” employment in 2021 with a different employment ID. This employment ID will be used to submit the income and statutory deductions relating to the bonus.
- Employer requests a Revenue Payroll Notification (RPN) for 2021 (a “Nil” tax credits and rate band will be allocated to the RPN). If the RPN does not have ‘Nil’ credits and rate band allocated to it, it is advisable to operate on that basis.
- Employer then makes the payroll submission and includes a cessation date 1 day after the date of payment.
- The taxpayer may claim a refund of tax due at the end of the year by completing an Income Tax Return, if applicable.

**Example 4 - PAYE Exclusion Order in place when the bonus was earned. Bonus is paid after PAYE Exclusion Order ceases**

Michelle is employed under an Irish contract of employment. In January 2021, she was assigned to work in a sister company in the UK. The employer holds a PAYE Exclusion Order for Michelle for 2021. Michelle carries out the duties of employment in the UK during this period (Michelle was not tax resident in 2021). In 2022, Michelle returns to Ireland and carries out her duties of employment in Ireland during 2022. The PAYE Exclusion Order ceases on 31 December 2021. A bonus of €10,000 is paid to Michelle in March 2022 in respect of her duties carried out in the UK during 2021. As the bonus was earned during the period that a PAYE Exclusion Order was in place, PAYE is not due in respect of the bonus income. The payment should be included in the payroll submission for that period in the gross pay amount but excluded from the taxable pay figure.

**Example 5 - Bonus paid for portion of year when a PAYE Exclusion Order is in place**

An employer holds a PAYE Exclusion Order for Seán for 2021 which was issued by Revenue on 1 October 2020. Seán is paid a bonus of €12,000 in April 2021 in respect of 2020. The bonus is paid under an Irish contract of employment and Seán is Irish tax resident, ordinarily resident and domiciled in 2020.

As the employer holds a PAYE Exclusion Order for the period from 1 October 2020 to 31 December 2020, the employer is relieved from the obligation to operate PAYE on the portion of the bonus payment in respect of this period.

However, the employer is required to operate PAYE on the bonus payment earned in respect of the period 1 January 2020 to 30 September 2020 (i.e. €9,000).

Given a PAYE Exclusion Order is in place for 2021, employers should apply the following process in order to return the relevant payroll taxes on the bonus income:

- Employer creates a “one day” employment in 2021 with a different employment ID. This employment ID will be used to return the bonus income payroll taxes for the period 1 January 2020 to 30 September 2020.
- Employer requests a Revenue Payroll Notification (RPN) for 2021 (a “Nil” tax credits and rate band will be allocated to the RPN). If the RPN does not have ‘Nil’ credits and rate band allocated to it, it is advisable to operate on that basis.
- Employer then makes the payroll submission and includes a cessation date 1 day after the date of payment. The payment of €12,000 should be included in the payroll submission for that period in the gross pay amount, but only €9,000 should be included in the taxable pay figure.
- The taxpayer may claim a refund of tax due at the end of the year by completing an Income Tax Return, if applicable.

## 5.7 Non-resident employees of Irish 'private sector' employers who exercise duties both inside and outside the State

A non-resident employee is chargeable to tax under Schedule E on income from a Republic of Ireland (ROI) private sector employment which is exercised in the State. However, in cases where the non-resident employee exercises the duties of the employment both inside and outside the State, then an Irish tax liability arises only on the portion of the income which relates to the duties performed in the State, per section 18(1) TCA 1997.

In accordance with [paragraph 5.1](#), if the duties performed in the State are not "incidental" to the duties performed outside the State, then a PAYE Exclusion Order cannot issue to the Irish private sector employer. This means that the full employment income of the non-resident employee is subject to income tax, USC and PRSI (if applicable) through the PAYE system. The non-resident employee must then seek a reclaim of income tax and USC withheld through the PAYE system on the employment income which relates to duties performed outside the State by completing an Irish tax return for the relevant year.

To alleviate this burden, an Irish private sector employer may seek a direction from Revenue under section 984 TCA 1997 to withhold PAYE on income relating to Irish workdays only. An employer may seek a direction where -

- (i) it determines that the employee is **not** resident in the State for tax purposes for the relevant tax year, and
- (ii) it provides a commitment that it will subject the employee's Irish workdays to ongoing monitoring and has the ability to maintain a record of same should this be sought by Revenue.

The above treatment applies to an employee who is not resident and not ordinarily resident in the State for tax purposes. The employment income of an employee who is not resident, but is ordinarily resident, in the State is chargeable to tax in full if the employee performs non-incidental duties of the employment in the State (in such circumstances, the employment income is charged to tax as if the employee is resident in the State, per section 821 TCA 1997). An employer of such an employee may, however, seek a direction if Irish taxing rights on the employment income are restricted to income referable to Irish workdays under the terms of a DTA in force between the State and the country of residence of the employee.

A workday is a day during any part of which an individual performs work in the State.

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

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### Example 6

Jack has lived in Omagh, Northern Ireland, for many years. He is **not** tax resident in the State. Jack takes up employment with XYZ Ltd in November 2023 under an ROI private sector contract of employment. XYZ Ltd is an ROI incorporated and resident company based in Letterkenny. Jack's gross monthly salary is €4,000. His working week begins on Monday and ends on Friday. All employees of XYZ Ltd are paid monthly in arrears.

Jack is permitted by his employer to exercise the duties of his ROI employment from his home in Omagh. However, he is required to attend his employer's premises in Letterkenny as and when business needs arise. In November 2023, XYZ Ltd seeks and receives a section 984 direction from Revenue which authorizes XYZ Ltd to withhold PAYE on Irish workdays only.

On average, Jack spends five days per month working in his employer's offices in Letterkenny. When applying the direction, his employer is required to pro-rate his monthly salary by reference to his ROI workdays over his monthly workdays and operate the PAYE system on this pro-rated income. For example, if his total employment income in December 2023 is €4,000 and he spends five out of his 20 workdays in Letterkenny that month, then XYZ Ltd is required to operate PAYE on €1,000 only. [ $€4,000 \times (5 \text{ Irish workdays} / 20 \text{ total workdays})$ ]. XYZ Ltd makes the payroll submission on 28 December 2023. The payment of €4,000 should be included in the payroll submission for 28 December 2023 in the gross pay amount, but only €1,000 should be included in the taxable pay figure.

Jack is subject to tax in Northern Ireland on his XYZ Ltd employment income in full as he is resident there. As he is not resident in ROI for tax purposes, his employment income is chargeable to tax in ROI only to the extent that it relates to his ROI workdays.

In the absence of a PAYE direction, Jack would have to wait until 2024 to seek a refund of PAYE withheld on his non-ROI workdays by filing a 2023 ROI tax return.

## 6 Non-resident pension recipients

### 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 the 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 the 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, even though 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, caseworkers 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 the 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

Following correspondence with Industry and other representatives, Revenue's position is that where actors are classified as employees i.e. engaged under a contract of service (employee) as opposed to a contract for service (self-employed), payments made to such individuals should be net of statutory deductions for income tax, USC and PRSI under the PAYE system.

#### 7.1.1 Payments up to and including 31 December 2019

Concessionary treatment previously allowed a PAYE Exclusion Order to be granted to actors, engaged as employees by theatres, television and radio stations in limited circumstances 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 would 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. In determining if a PAYE Exclusion Order applies to payments made on or before 31 December 2019, the "duality of engagements" of the actor should be assessed in determining if the actor was acting in more than one production throughout the year, as outlined above.

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).

In relation to PAYE Exclusion Orders in respect of prior years' i.e. up to 2019, the PAYE Exclusion Order should cover a tax year rather than the period of a particular production or number of productions.

#### 7.1.2 Payments on or after 1 January 2020

PAYE Modernisation took effect from 1 January 2019 and involved the most significant reform of the PAYE system since its introduction in 1960. PAYE Modernisation integrates PAYE reporting obligations for tax purposes into the employers' payroll processes.

With the introduction of PAYE Modernisation, the concessionary treatment outlined above in paragraph 7.1.1 is withdrawn with effect from 1 January 2020 and therefore PAYE Exclusion Orders cannot be granted to actors subsequent to this date. Consequently, such payments should be paid net of statutory deductions for income tax, USC and PRSI under the PAYE system.

## 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.

## 7.2 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**
- The International Association for the Exchange of Students for Technical Experience (**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 Revenue 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 2020}}.

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. Employers should operate PAYE, PRSI and USC deductions, as appropriate, where any of the above conditions are breached even though Revenue has not withdrawn the PAYE Exclusion Order.

### 7.3 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), shall not be taxable in the State where the university, etc., is located when certain conditions are met. A PAYE Exclusion Order may be issued in a case where the conditions set out in the relevant DTA are met.

**Note:** Revenue offices should refer to the terms of the relevant DTA when considering an application for an Exclusion Order.

#### **Example 6 – PAYE Exclusion Order conditional on temporary period of residence under terms of relevant DTA**

In 2018, Maria, a resident of Italy is sent to the State to undertake research at a university. The contract is for 2 years but at the end of the contract she decides to remain in the State and continue working for the university.

#### **Article 19 of the Ireland/Italy DTA states:**

##### **Researchers, teachers, students and apprentices**

1. The remuneration which an individual of a Contracting State receives for undertaking study or research at a high level or for teaching, during a period of temporary residence not exceeding two years at a university, research institute, school, college or other similar establishment in the other Contracting State shall not be taxable in the latter State.

Under the DTA a PAYE Exclusion Order may only be granted if the period of residence is temporary i.e. if it does not exceed two years. In this case, as the period of residence has extended beyond the temporary two year period, the conditions of the DTA are not met. Although an Exclusion Order issued, the individual is chargeable to tax from day 1.

#### **Example 7 – Validity of PAYE Exclusion Order where period of residence prescribed under terms of relevant DTA exceeded**

Arun, a resident of India comes to Ireland in 2018 to undertake research at a university. The contract is for 2 years but at the end of the contract he decides to remain in the State and continue working for the university.

**Article 21 of the Ireland/India DTA states:****PROFESSORS, TEACHERS AND RESEARCH SCHOLARS**

1. A professor, teacher or research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other State for such purpose.

The DTA states that the exemption is valid up to a period not exceeding two years. Therefore, in this case the individual is exempt from tax on the first two years of earnings. He will however be subject to tax from the start of year 3.

## 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 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. The PAYE system continues to facilitate the deduction and submission of PRSI via payroll even though no income tax is being deducted. Any individuals for whom this presents difficulties should contact the Special Collection Section, Department of Social Protection 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 how they should be remitted, employers should be directed to:

Special Collection Section

Department of Social Protection

Government Buildings

Cork Road

Waterford

Telephone: 051 356000

Locall: 1890 690 690 (from the Republic of Ireland only)

Telephone: +353 1 4715898 (from Northern Ireland and overseas)

E-mail [e101spc@welfare.ie](mailto: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.

## 10 Making a payroll submission where a PAYE Exclusion Order has issued

If an Exclusion Order is in place for a full tax year, the taxable pay and gross pay for USC should be recorded as nil.

If an Exclusion Order is in place for only part of the tax year, the employer must request the latest RPN and enter:

- Taxable Pay
- Tax deducted
- Gross Pay for USC
- USC deducted.

The above details should be entered in respect of any employee on a payroll submission for which there is no Exclusion Order in place.

The employer should ensure that, prior to running the payroll, the latest RPN is used when calculating the employee's statutory deductions.

All PRSI deducted from the employee should be included on the payroll submission. The PRSI class(es) and the number of insurable weeks should also be included.

For information on making a payroll submission in relation to a bonus payment where a PAYE Exclusion Order is in place, see [section 5.6](#).

For further information on making a payroll submission where a PAYE Exclusion Order is in place, see Tax and Duty Manual [Part 42-04-35A - The Employers' Guide to PAYE with effect from January 2019](#) - at section 3.6.

## 11 COVID-19 – PAYE Exclusion Order concession

Given the unprecedented circumstances and the restrictions on travel as a consequence of COVID-19, Revenue issued a temporary concession applying to PAYE Exclusion Orders which were in operation in 2020. The text of the concession is outlined below.

### **PAYE Exclusion Order – Irish Contract of Employment**

If a PAYE exclusion order is in place it will not be adversely impacted where the employee works more than 30 days in the State due to COVID-19.

This measure only provides for a temporary relaxation on the employer's obligation to operate PAYE. It does not provide any concession regarding the underlying income tax liability that the individual may have regarding either:

- the tax liability
- or**
- filing obligations

This concessionary measure ceased to apply on 31 December 2020. From 1 January 2021 employers are required to operate PAYE on such employments in the usual manner.

In all cases where the travel restrictions imposed by COVID-19 affected the applicability of Irish tax legislation on an employee/employer's tax position and an employee/employer availed of a concession afforded by Revenue, records of facts and circumstances should be maintained outlining the circumstances and should be available to Revenue on request.

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

[...]

## Appendix I – Sample PAYE Exclusion Order

<b>PAYE                      EXCLUSION ORDER</b>								
Notice to Employers under Section 984, TCA 1997 - Individuals Within Section 822, TCA 1997								
SAMPLE	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="background-color: #333; color: white; padding: 5px;"><b>EXCLUSION ORDER NUMBER</b></td> </tr> <tr> <td style="text-align: center; padding: 10px;">XXXX</td> </tr> </table>		<b>EXCLUSION ORDER NUMBER</b>	XXXX				
<b>EXCLUSION ORDER NUMBER</b>								
XXXX								
Employer's Registered Number <input style="width: 100px;" type="text"/>								
<p><b>The emoluments paid to the person named below should not be subjected to deductions of INCOME TAX or USC under the PAYE system with effect from:</b> <input style="width: 100px;" type="text"/></p> <p><b>PRSI Obligations</b>                  Employers please note, this permission not to deduct INCOME TAX and USC applies to PAYE <i>only</i>. You may still have a legal obligation to pay PRSI in respect of this employment/occupational pension. To clarify, please contact:                  Special Collection Section,                  Department of Social Protection,                  Government Buildings,                  Cork Road, Waterford.                  LoCall: 1890 60 90 90 (from the Republic of Ireland only)                  Telephone: +353 1 4715898 (from Northern Ireland and overseas)                  e-mail: e101spc@welfare.ie</p> <p>Name <input style="width: 100%; height: 20px;" type="text"/></p> <p>PPS Number <input style="width: 100px;" type="text"/></p> <p>Address <input style="width: 100%; height: 40px;" type="text"/></p> <p><b>This Exclusion Order has effect until</b> <input style="width: 100px;" type="text"/> <b>and only so long as the employee resides abroad / the duties of the employment are performed abroad.</b></p>								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Signed _____</td> <td style="text-align: right;"><b>Inspector of Taxes</b></td> </tr> <tr> <td colspan="2">District _____</td> </tr> <tr> <td colspan="2">Date _____</td> </tr> </table>			Signed _____	<b>Inspector of Taxes</b>	District _____		Date _____	
Signed _____	<b>Inspector of Taxes</b>							
District _____								
Date _____								
PAYE Excl. 1 (Part 1)		RPC005497_EN_PR_L_1						

Figure 1: Sample PAYE Exclusion Order

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

[...]