



Ireland – Employment tax and workforce issues bulletin

December 2006

There has been a recent development in the income tax treatment of the reimbursement of travel and subsistence expenses to employees who are assigned to work temporarily in Ireland. This bulletin is designed to update finance, tax and human resource professionals on this development and on year-end PAYE housekeeping.

Are there any temporary assignees working for your company?

Extensive representations have been made to the Minister for Finance and the Revenue Commissioners on the taxation of assignees to Ireland. In one area, at least, these representations have achieved a result. Revenue now have issued a statement in which they have agreed to extend the tax-free subsistence arrangements, which are currently available to domestic employees, to employees who are assigned from abroad to work temporarily in Ireland. With effect from 1 January 2007, subject to certain conditions, tax-free subsistence may be paid or reimbursed provided the period of the assignment to Ireland does not exceed 24 months.

Practice to date

If a foreign employee is assigned to work in Ireland a number of additional costs generally arise, the most common of which are travel and housing. Revenue practice to date has been to regard these expenses as taxable benefits on which, from 1 January 2006, the employer is required to operate PAYE, in addition to operating PAYE on their salary.

How does a temporary assignee qualify for tax-free subsistence?

To qualify, the employee must be temporarily working away from his/her normal place of work and meet the restricted definition of temporary assignee below.

A "temporary assignee" is an employee who:

- holds a foreign employment or directorship with a non-resident employer and was employed outside Ireland for at least three months by that employer;
- holds a 'temporary assignment', (restrictively defined), in Ireland on behalf of his/her non-resident employer; and
- remains a director or employee of that employer while on temporary assignment in Ireland.

Restrictions

Revenue have excluded from the tax-free subsistence regime those employees who are recruited to work in Ireland. The assignment must not exceed 24 months and there must be an intention that the employee will, at the end of the assignment, return to work at the foreign location from which they were assigned. Revenue are excluding employees, who in the normal course of their employment, are transferred from country to country.

It is expected that, in general, the period of assignment to Ireland should not exceed the period of employment with the employer outside Ireland prior to the start of the temporary assignment.

Reimbursement of expenses

The Revenue statement says that the reimbursement of subsistence expenses may be by way of either:

- vouched expenses; or
- a flat-rate as published by Revenue.

Vouched expenses

The statement provides that reimbursement of vouched expenses tax-free must not exceed the cost of 'reasonable accommodation' and meals while on temporary assignment.

'Reasonable accommodation' includes hotel accommodation for up to twelve months for the assignee only. Where an assignee is accompanied by their family, they may enjoy hotel accommodation, tax-free, for one month only.

As an alternative to hotel accommodation, 'reasonable accommodation' includes the vouched cost of rent, furniture rental and utilities (heat and light) for 12 months.

Flat-rate reimbursement

Reimbursement of expenses tax-free must not exceed the amount provided for in the Revenue tables below.

Limitations

Expenses may be reimbursed tax-free for a period not exceeding 12 months, in total, from the commencement of the assignment.

Travel

The cost of journeys to and from Ireland at the commencement and cessation of the assignment are tax-free. The vouched cost of one return trip per year may also be provided tax-free. Where the spouse and children do not accompany the assignee, one return trip per year to Ireland may be provided for them, tax-free.

Overall comment

The Revenue statement is welcome in that it signifies Revenue's acceptance of the principle of tax-free subsistence payments where employees are assigned to Ireland. Revenue have resisted this issue previously,

perhaps because of the favourable "remittance basis of taxation" which has been curtailed since 1 January 2006. The statement is quite restrictive and a significant proportion of assignees will not enjoy tax free subsistence.

We will be happy to assist employers in interpreting the new Revenue statement and its application to their particular circumstances. We will also be happy to approach Revenue where individual circumstances are not specifically covered by the statement.

Assignee subsistence – flat rate re-imbursement

Period of assignment	Allowable tax- free subsistence
First 14 nights of the assignment	Up to the Normal Civil Service Subsistence Rate as per Revenue Leaflet IT54
Next 14 nights of the assignment	Up to the Reduced Civil Service Subsistence Rate as per Revenue Leaflet IT54
Next 28 nights of the assignment	Up to the Detention Civil Service Subsistence Rate as per Revenue Leaflet IT54
Remainder of the assignment (up to a maximum of 12 months)	Vouched expenses, subject to a maximum of three night's subsistence per week at the Normal Rate.

Civil Service subsistence rates per IT54

Domestic subsistence rates effective from 1 July 2006			
Class of Allowances	Night Allowances		
	Normal Rate	Reduced Rate	Detention Rate
A - Rate	€140.44	€129.48	€70.21
B - Rate	€132.18	€113.05	€66.12

PAYE: year-end housekeeping

The PAYE form P35 for 2006 must be filed with Revenue by 15 February 2007. It is important that employers take the time to review their PAYE procedures, particularly with regard to employees who have been assigned to Ireland, and ensure that there is no inadvertent oversight in their policies or

procedures which may result in a significant PAYE underpayment. A selection of issues for review includes:

- Have all PAYE monthly liabilities been paid?
- For assignees in 2006, has PAYE been operated on their total remuneration, including salary, taxable benefits and bonuses for 2006? If the foreign employer has not paid over the PAYE, the responsibility will generally fall on the Irish entity at whose location the assignee is working.
- Was the issue of Irish and non-Irish work days considered and has this been factored into the liability for PAYE for 2006, as appropriate?
- Has PAYE been operated on taxable benefits, provided to all employees, i.e. non-cash remuneration, for 2006?
- Is there PAYE on some taxable benefits which was not collected from the employee in 2005? Does this have to be reflected, as appropriate, in the payment of PAYE for 2006?
- Was PAYE on the provision of company car benefit correctly calculated? Has business mileage been reviewed to ensure that the appropriate BIK percentage has been applied? Is an adjustment required to the BIK for the year-end? Has a BIK reduction for qualifying foreign work days been factored in?
- Has PAYE on unusual, irregular and once-off benefits been paid?
- Has PAYE been correctly operated where the employer has provided a net benefit, e.g. a prize, to employees, and the employer is bearing the tax?
- Has PRSI being correctly operated, particularly with regard to assignees? Have the certificates of coverage/forms E101 been obtained (which are required as evidence of no Irish PRSI liability)?

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