



Ireland - Employment Tax and Workforce Issues Bulletin

There have been a number of significant developments in the areas of Tax, Reward and Immigration in Ireland in recent months. This bulletin is designed to keep finance, tax and HR professionals up to date with such developments, which will impact on many organisations.

Employee Share Schemes

Revenue Equity Survey

The Revenue Commissioners with the support of Department of Finance have embarked upon a sample survey of 500 companies to identify the nature and extent of employee equity incentives (excluding Revenue approved schemes). The stated intent is to undertake some factual research in this area so as to allow for an informal decision on policy in this area. This is an information gathering exercise only and follows an initial consultative meeting which was attended by a PwC representative. Completion of the questionnaire is voluntary. PwC will be glad to assist companies where they have been requested to respond to the survey.

Restricted Stock Units (RSU's)

There is no formal legislation governing the Irish tax treatment of RSU type arrangements (a particular type of share award plan which restricts the rights of the recipient over the stock until certain conditions are met). However, Revenue has now issued guidance on the timing of a tax charge arising on such plans. In general, where the RSU's are awarded subject to a vesting period, the income tax liability will arise on the date of vesting of the RSU rather than the date of grant. However, if shares or cash pass to the recipient prior to vesting, the tax charge will arise on that earlier date.

Revenue has further clarified that RSU's do not typically constitute share options. As such, where RSUs are settled in shares, the tax liability will generally be collected from the employee through self-assessment. If the RSU is settled in cash, the payment will be within the scope of PAYE/PRSI. In addition, if dividend equivalents (payments matching the dividend receivable had the employee had full rights over the shares) are delivered prior to the vesting of any RSU, it is expected such amounts will be processed through payroll and subject to the same payroll deductions as these are regarded as normal salary.

If you are in any doubt as to the timing of any tax charge and/or the associated PAYE obligations, we would be happy to review your company's RSU plan and offer advice on the appropriate tax treatment.

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PAYE/PRSI

Secondary PAYE Obligations in respect of Foreign Employees Working in Ireland

As part of the extension of the PAYE system to foreign employees working in Ireland, a new secondary liability in respect of PAYE has been introduced where a foreign employer fails to account for Irish PAYE. The legislation provides that where an employee is working in Ireland for someone who is not his/her employer and the employee is paid from abroad, if Irish PAYE is not operated, then the liability to account for Irish PAYE falls on the Irish entity for whom the employee is working.

These provisions significantly increase the tax risks associated with engaging foreign companies to undertake work in Ireland, and employers now need to consider how they can put appropriate controls in place to ensure that they are not left exposed by these provisions. The PwC employment tax team is available to give assistance and guidance on this issue.

Foreign Employees with Non Irish Workdays

Revenue has recently set out its position in respect of the operation of Irish PAYE on foreign employments which are exercised partly in Ireland and partly abroad. Revenue has indicated that income from the employment must be distinguished between:

- (i) the part attributable to the performance in Ireland of the duties of the employment (now subject to Irish PAYE) and
- (ii) the part attributable to the performance of the duties of the employment outside of Ireland (this remains chargeable to Irish tax under the self assessment system and where appropriate, the remittance basis continues to apply to this income).

The legislation provides that PAYE should be applied to the whole of the income from the employment, unless approval is received to limit Irish PAYE to income attributable to Irish duties. All relevant information available should be provided to Revenue where such approval is sought. If circumstances change materially the direction given will be void and a new direction should be sought.

The Revenue has stated that a direction is not necessary where:

- (a) there is certainty as to the proportion of income assessable under Schedule E, (e.g. a set work pattern exists) or
- (b) the individuals are "temporary assignees" who meet the conditions which allow for the non operation of PAYE.

Generally speaking the above "temporary assignees" exemption applies to employees who are resident in a country with which Ireland has a double taxation agreement, and who come to work in Ireland for a period of up to 60 working days.

PRSI for Foreign Employees Working in Ireland

Although the majority of foreign employees working in Ireland for a temporary period remain in their home country social security system, a significant number enter the Irish PRSI system. In light of the Finance Act 2006 introduction of PAYE on foreign employment income, the question arises as to the basis on which the income would in future be liable to PRSI/Health Levy. Following discussions with the authorities on this issue we have received the following clarification -

PRSI - PRSI need only be charged on that element of the total remuneration that is liable to PAYE - i.e. the element attributable to duties performed in Ireland. Therefore, no PRSI will apply to the 'foreign duties' element.

Health Levy - The levy will arise on that element of the income that is liable to PAYE. In relation to the 'foreign' element of the remuneration, this will (as before) suffer the levy only to the extent that it falls liable to income tax and will continue to be collected through the self-assessment system, along with any income tax due.

To summarise, with effect from 1 January 2006, PRSI and the Health Levy will be chargeable on the element of foreign employment income that is liable to PAYE. Both will be collected along with PAYE through the PAYE/PRSI system. In relation to the 'foreign' element of the income (i.e. not liable to PAYE), no PRSI applies. As before, the levy will arise (directly on the individual through the self-assessment system) if this income is taxable in Ireland.

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Reward Update

According to PricewaterhouseCoopers Snapshot Survey - 2005 & 2006 Salary Increase Trends, the general marketplace was awarded higher base salary increases in 2005 (5.5%), than in

both 2004 (5.0%) and 2003 (4.9%), and is reflective of the continued optimism in the general marketplace. In 2006 the general marketplace is anticipating awarding average salary increases of 4.8% of base salary. Based on previous year's we will expect that salary increases awarded in 2006 would actually exceed the anticipated amount of 4.8% of base salary.

For information on salary increase projections for 2007 watch out for PricewaterhouseCoopers' - 2006 & 2007 Salary Increase Trends Survey which will be conducted during October and published in November 2006.

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Immigration & Employment Permits

The Employment Permits Act 2006, which is expected to come into effect in early 2007, will see the launch of a revamped employment permits system. The proposed changes include a range of additional conditions which must be met by Irish employers seeking to recruit individuals from outside the European Economic Area (EEA), together with the introduction of a "green card" system to facilitate the deployment of highly skilled workers within certain industry sectors facing resource shortages. More information is contained in our bulletin dated May 2006.

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Other Points of Interest

- Revenue has reissued its publications IT51 and IT54 showing increased maximum Irish mileage and subsistence rates payable to employees who are temporarily away from their normal workplace.
- The Department of Finance have also issued increased worldwide subsistence rates effective from 1 September 2006.
- Revenue's main audit focus currently centres around the construction industry and companies dealt with by Large Cases Division. It would appear that in the majority of cases, Revenue is focusing on auditing PAYE/PRSI, Relevant Contacts Tax (RCT) and VAT records. Some high risk areas include the employment status of "consultants", termination payments, PAYE/PRSI on benefits in kind, subsistence/country money, non-operation of RCT on relevant payments and VAT on property.

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