

42-4-24B PAYE Regulation 19A – Arrears of pay being paid to an employee who has left the employment.

Reviewed June 2017

1. Introduction

The Income Tax (Employments) (Consolidated) Regulations 2001 (more commonly known as the PAYE Regulations) govern the operation of the PAYE system. This manual sets out the operation of PAYE on arrears of pay paid to an employee who has left an employment. It is covered by PAYE Regulations 19A.

2. Operation of PAYE on arrears of pay

2.1 *Arrears of pay to current employees*

Where arrears are paid to employees who are employed by the employer making the payment of arrears at the time of that payment, PAYE deductions are calculated by reference to the certificate of tax credits for the tax year in which the arrears are paid.

2.2. Regulation 19A

Regulation 19A came into effect on 1 January 2009. The Regulation provides that –

- tax under the PAYE system is to be deducted from the arrears on payment of those arrears,
- the amount of tax to be deducted is to be calculated by reference to the certificate of tax credits and standard rate cut off point (SRCOP) or a tax deduction card held by the former employer (the payer) for the year in which the employee ceased employment (i.e. as if the payment is being made on the date the employee ceased to be employed by the employer); and
- if a certificate of tax credits and SRCOP or tax deduction card is not held by the payer for the tax years in which the employee ceased employment, the emergency basis of deduction (PAYE Regulation 22) is to be applied to the arrears.

Note: Whilst the employer applies the tax credits and SRCOP as if the payment was being made at the date of leaving, there is no change to the procedure for remitting the PAYE or the completion of the supplementary P45 by the employer.

3. The tax year in respect of which arrears of pay are correctly assessable

Following the principle established in the Irish tax case of *Bedford (Collector General) v H* (Irish Tax Reports Volume 11), arrears of pay are correctly assessable for the tax year in which such arrears are attributable (earned) (see Examples below).

4. The time limit for assessing arrears of pay

Except in the case of fraud or neglect, a four-year time limit applies in the raising of assessments to tax. However, under Section 959AB TCA 1997, as regards arrears of pay, the four year time-limit for raising an assessment commences at the end of the tax year in which the arrears are paid and not at the end of the tax year for which the arrears are earned (see Examples below).

5. The tax year in respect of which credit for PAYE deducted is to be given.

Following the Irish tax case of *Bedford v H* referred to above, arrears of pay are correctly assessable for the tax year in which such arrears are earned, but the credit for tax deducted under PAYE is to be given in the tax year in which such tax was deducted (see Examples below).

6. Examples

Example A

Mr. Black, a 'former' employee, left employment in 2015 but received arrears of pay of €4,000 in June 2016 of which €2,500 referred to the 2014 tax year and €1,500 to the 2015 tax year. Tax of €1,600 was deducted under PAYE on payment of the arrears in 2016. Liability to tax on the arrears is as follows –

Tax Year	Amount of arrears of pay assessable	Tax due on arrears	Credit for tax deducted under PAYE	(Underpayment) Overpayment	Time limit for raising assessment on arrears of pay
2014	€2,500	€1,025	Nil	(€1,025)	31 December 2020
2015	€1,500	€600	Nil	(€600)	31 December 2020
2016	€Nil	€----	€1,600	€1,600	
Net underpayment				(€25)	

In some instances, as in the example above, neither an underpayment nor an overpayment will arise on the assessing of arrears of pay for back years.

Example B

Ms. Brown, a 'current' employee, received arrears of pay of €10,000 in October 2016 from which tax of €4,000 was deducted under the PAYE system. Of the €10,000, €1,500 was earned in each of the tax years 2010 to 2015 and €1,000 in 2016. The liability on the arrears is as follows –

Tax Year	Amount of arrears of pay assessable	Tax due on arrears	Credit for tax deducted under PAYE	(Underpayment) Overpayment	Time limit for raising assessment on arrears of pay
2010	€1,500	€615	Nil	(€615)	31 December 2020
2011	€1,500	€615	Nil	(€615)	31 December 2020
2012	€1,500	€615	Nil	(€615)	31 December 2020
2013	€1,500	€615	Nil	(€615)	31 December 2020
2014	€1,500	€615	Nil	(€615)	31 December 2020
2015	€1,500	€600	Nil	(€600)	31 December 2020
2016	€1,000	€400	€4,000	€3,600	31 December 2020
Net underpayment				(€75)	

7. USC on arrears of pay

USC is due on the date of payment of the emoluments (including arrears of pay) irrespective of whether those emoluments may be attributable to an earlier year. There is no adjustment for back years similar to that which applies for income tax.