

Termination payments

Payments made in connection with the termination of an employment, on retirement or on removal, are eligible for one of the following tax exemptions (the highest exemption usually applies):

- **Basic exemption** - €10,160 with an additional €765 for each complete year of service, or
- **Increased exemption** - the basic exemption may be increased by up to €10,000, subject to Revenue approval, and if no claim for relief has been made in the previous ten years of assessment. The €10,000 amount is reduced by the value of any tax-free lump sum received or receivable (provided it is not irrevocably waived) under an approved pension scheme, or
- **Standard Capital Superannuation Benefit (SCSB)** - the SCSB is an amount equal to: $(A \times B / 15) - C$ where:

A = average annual remuneration for the last 3 years' service

B = number of complete years' service

C = value of any tax-free lump sum received/receivable under an approved pension scheme.

Payments exempt from tax

The following payments are exempt from tax:

- certain ex-gratia payments made in connection with the death, injury or disability of an employee
- statutory redundancy payable under the Redundancy Payments Acts 1967-2007
- certain ex-gratia payments where the employee had significant periods of foreign service (over 75%).

Other reliefs available

- **Top slicing relief** - the tax payable on an ex-gratia payment is limited to the employee's average tax rate for the previous three tax years. Where the tax deducted on the termination payment exceeds this amount, a refund should be claimed after the end of the tax year in which the employment is terminated.

General

Special rules apply where two or more termination payments are made by the same or associated employers.

With effect from 1 May 2009, the taxable element of an ex-gratia payment is subject to PRSI at Class K1 (health contribution): employer - nil, employee - 4% or 5% depending on the taxable income in the month in which termination of employment occurs (see "Health contribution" page 26 for details). For the period up to 30 April 2009, the taxable element of an ex-gratia payment was liable to the health contribution at rates of 2% and 2.5% respectively.

With effect from 1 May 2009, the taxable element of an ex-gratia payment is also liable to the income levy of 2%, 4% or 6% depending on the taxable income in the month in which termination of employment occurs (see "Income levy" page 27 for details). For the period 1 January 2009 to 30 April 2009, the taxable element of an ex-gratia payment was liable to the income levy at the rates of 1%, 2% and 3% respectively.

Planning tip!

Ensure you know what counts as service for statutory redundancy, tax exemptions and ex-gratia purposes.

Planning tip!

Don't forget employers are entitled to a 60% rebate in relation to statutory redundancy payments.

Benefits-in-kind (BIKs)

The majority of employee benefits are subject to PAYE and PRSI (including the health contribution) and the income levy. The taxable benefit is treated as “notional pay” from which PAYE, PRSI and the income levy are deducted.

BIK on company cars – general rules

The BIK charge applying to company cars is payable under the PAYE system. The cash equivalent of the private use of a company car is determined by applying a percentage to the Original Market Value (OMV) taking account of emissions (new cars provided from 2009), with a further reduction for business travel over 24,000km. There is no percentage reduction in the BIK charge where the employee meets some or all of the car running expenses. However a reduction is made on a euro for euro basis for any amount made good by an employee directly to the employer in respect of the cost of providing or running the car.

Where an employee is required to work abroad for an extended period, the notional pay is reduced by reference to the number of days spent working abroad. This is conditional on the employee travelling abroad without a car and the car not being available for use by family or household members.

There is a 20% relief from notional pay on cars for employees whose annual business travel exceeds 8,000 kilometres and who spend 70% or more of their time away from their place of work or business and who do not avail of the tapering relief detailed below. The employee must also work for an average of at least 20 hours per week and must maintain a logbook of business travel and other details which are to be certified by the employer.

BIK on new company cars - from 2009

Revised BIK rules are effective for new company cars provided for the first time. The effective date of this provision will be determined by Ministerial Order. For 2009 or later years (see next page for existing company car BIK rules) the revised BIK rules will be based on the vehicle emissions category, as follows:

Vehicle emissions category	CO2 emissions (CO2 g/km)	OMV %
A	0g/km - 120g/km	30%
B	>120g/km - 140g/km	30%
C	>140g/km - 155g/km	30%
D	>155g/km - 170g/km	35%
E	>170g/km - 190g/km	35%
F	>190g/km - 225g/km	40%
G	> 225g/km	40%

Tapering relief is available for high levels of business travel as follows:

Lower business km	Upper business km	A, B & C OMV %	D & E OMV %	F & G OMV %
-	24,000	30	35	40
24,001	32,000	24	28	32
32,001	40,000	18	21	24
40,001	48,000	12	14	16
48,001	-	6	7	8

Planning tip!

Employers: Have you reviewed your car BIK valuations for 2009 - higher emission cars will impose higher BIK cost for employees.

Employee taxation

BIK on existing company cars

Existing BIK provisions continue to apply to cars not falling within the new CO₂ emissions regime. The annual notional pay arising from the use of a company car to which PAYE, PRSI and the income levy must be applied is calculated at 30% of the Original Market Value (OMV) of the car.

Tapering relief is available for high levels of business travel as follows:

Lower business km	Upper business km	OMV %
-	24,000	30
24,001	32,000	24
32,001	40,000	18
40,001	48,000	12
48,001	-	6

Planning tip!

If employees are contributing to the running costs of the car, consider whether such payments can be structured to reduce the BIK charge.

Parking levy

A parking levy is a charge on employees for the use of car parking facilities provided by the employer in designated areas of the following city councils:

- Dublin
- Galway
- Waterford
- Cork
- Limerick

The levy, which has yet to be introduced by Ministerial Order, will be deducted from employees who have an entitlement to use a parking space, including shared arrangements and a first come, first served basis. An employee may disclaim entitlement to a parking space in writing, in which case the levy will not apply.

The levy will apply to private cars and vans used as private vehicles, including where the employee uses the car in the performance of his duties. An employee who uses a company car will also be liable to the levy.

In general, motor bikes, certain official cars owned or provided by the State, the Garda Síochána, the Defence Forces and certain services such as the fire and ambulance service are excluded. The levy will not apply to disabled drivers or employees who have only occasional use of a parking space ie for not more than 10 days in a year.

The charge for a full year will be €200 where an employee has the ongoing entitlement to use a parking space. Where parking spaces are shared by employees, the levy is reduced to €100 where the ratio of the number of eligible employees to the number of car parking spaces is two to one or more. Reductions in the levy are also provided for to take account of job sharing, part-time work, maternity leave and certain shift work.

The levy will be collected by employers as a payroll deduction in each pay period.

BIK on preferential loans

In calculating the BIK charge for 2009 in respect of preferential loans from employers, the specified rates which apply are 5% (home loans) and 12.5% (other loans). The BIK charge arises on the difference between the interest on the loan at the specified rate and the interest actually paid on the loan for the year.

Planning tip!

Remember, if you reimburse an employee's non-business car parking fees the parking levy does not apply, instead the reimbursement is liable to PAYE/PRSI/income levy.

BIK on travel passes, childcare and small benefits

The following benefits are exempt from income tax:

- from 1 January 2009, the provision of new bicycles and/or related safety equipment to employees and directors generally, up to a cost of €1,000, will be exempt from a BIK charge, provided the bicycle is used for travel between home and the normal place of work or travel between work places. The exemption can only be claimed once in a five year period. If certain conditions are met it is possible to provide the benefit by reducing gross salary
- provision by an employer of monthly or annual bus/train/Luas pass for employees or directors; if certain conditions are met it is possible to provide such travel passes by reducing gross salary
- provision by an employer of free or subsidised childcare services for the benefit of all employees or directors, subject to conditions being met
- provision by an employer of a benefit to a value not exceeding €250. No more than one such benefit may be given to an employee in a tax year. It should be noted that where an employee discount scheme is in place the small benefit exemption cannot be applied.

Certain other benefits are concessionally treated as tax exempt. For details of the tax treatment of employer contributions to occupational pension schemes, refer to the section "Pension schemes" on page 28.

Salary sacrifice arrangements may only be applied to certain approved benefits without giving rise to a tax charge.

Motor travel rates - civil service (from 5 March 2009)

Official km in a calendar year	Engine capacity up to 1,200cc cent	Engine capacity 1,201cc to 1,500cc cent	Engine capacity over 1,500cc and cent
Up to 6,437km	39.12	46.25	59.07
6,438km and over	21.22	23.62	28.46

The rates shown above are the full rates. Reduced rates apply in certain circumstances.

Subsistence - civil service rates within Ireland (from 5 March 2009)

	Overnight rates			Day rates	
	normal rate	reduced rate	detention rate	10 hours or more	between 5 & 10 hours
	€	€	€	€	€
Class A	108.99	100.48	54.48	33.61	13.71
Class B	107.69	92.11	53.87	33.61	13.71

Notes

- Class A rates apply to employees whose annual salary exceeds €69,659. Class B rates apply where yearly salary is below €69,659
- The normal rate and reduced overnight rate are payable for set periods, generally not exceeding 28 nights in total. Special and lower rates apply thereafter
- In general, the overnight rate applies to each absence of not less than 24 hours necessarily spent away from the normal place of work

Employee taxation

Subsistence notes cont'd:

- The day rate applies in respect of a continuous absence of 5 hours or more from the employee's normal place of work provided the employee is not absent at a place within 5km of home or normal place of work. The relevant day rate depends on the period of absence
- Day and overnight rates cannot be paid in respect of the same period
- Advice should be taken before proceeding with any payments.

Unapproved share option schemes

Where, by reason of an employment, an employee receives an unapproved share option, a charge to income tax arises on the exercise of the option, irrespective of whether the employee retains or sells the shares concerned. The taxable amount is the excess of the market value of the share on exercise over the option price. This share option gain is taxable at the employee's marginal rate of income tax. The tax must be paid by the employee within 30 days of the date of exercise. The employee must file a Form RTSO1 at the same time. The income levy and health contribution are not payable within 30 days but under normal self assessment rules (ie by 31 October in the year following the year of exercise).

Revenue's Statement of Practice (SOP) SP-IT/1/07 sets out the tax treatment of share options granted to internationally mobile employees. The SOP includes two main provisions. Firstly, where options are granted on or after 5 April 2007 and the option holder spends time in other overseas locations, an Irish income tax charge will, subject to certain conditions, be applied by reference to Irish workdays during the vesting period. Secondly, the SOP provides clarification on the availability of double taxation relief where the exercise of an option gives rise to an income tax charge both in Ireland and abroad.

Companies are required to report the grant and exercise of share options on Form SO2 by 31 March following the end of the tax year in which the event occurs. Where the grantor is a non-resident company, the obligation to report extends to the Irish entity ie the branch, agency or other representative of the grantor in Ireland.

Approved share option schemes

Options granted under Revenue approved share option schemes qualify for favourable tax treatment. Under these schemes, the legislation provides for exemption from income tax, the income levy and the health contribution on both grant and exercise of the option, and provides for capital gains tax on disposal to be charged on the excess of the net sales proceeds over the price paid for the shares.

The primary requirements for Revenue approval are as follows:

- all grants must be at market value
- all employees with three years' service must be eligible to participate
- generally, options must be granted to all employees and on similar terms
- 'new hire' grants will be treated as meeting 'similar terms' criteria in certain circumstances
- options may be awarded to 'key employees' on a discretionary basis as long as they do not exceed 30% of total approved grants in the relevant tax year.

The scheme requires the formal written approval of the Revenue Commissioners and, to meet the conditions for approval, an existing scheme may need to be amended. The favourable tax treatment is not available where the option shares are sold within three years from date of grant.

SAYE share option schemes

A company may establish a Revenue approved save-as-you-earn (SAYE) share option scheme. Options under a SAYE scheme can be granted at a price discounted by up to 25% of the market value of the share. To fund the exercise of the option, employees must commit to regular monthly savings, from after tax income, over a period of 36 or 60 months. The monthly savings cap is €500. Any interest paid on the savings at maturity will be exempt from tax.

The SAYE scheme must be open to all employees on similar terms. Subject to certain requirements, options granted under a Revenue approved SAYE scheme are not liable to income tax, the income levy or the health contribution on grant or exercise. However, capital gains tax may arise on the sale of the shares based on the excess of the net sales proceeds over the price paid for the shares.

Approved profit sharing schemes

Employees are exempt from income tax, the income levy and the health contribution on shares received, up to the value of €12,700 annually, from a Revenue approved profit sharing scheme. To avoid an income tax liability, the shares must be held in trust for a total of three years. If the shares are sold within three years, income tax is charged on 100% of the value of the shares at appropriation, or on the sale proceeds, whichever is the lesser. The profit sharing scheme must be available to all employees on similar terms. A disposal of shares may give rise to a capital gains tax liability. The taxable gain is calculated on the difference between the sale proceeds and the market value of the shares on the date they were appropriated.

Restricted shares and forfeitable shares

New statutory provisions have been introduced for restricted shares to give legislative footing to long standing Revenue practice. Where share awards are 'restricted' such that the individual is precluded from selling the shares for a certain period of time, the taxable value of the shares can be abated to reflect the restriction. The prohibition on disposal must be absolute and for genuine commercial reasons. The permitted abatement is determined by the period of years for which the restriction applies, as follows:

Years of restriction	Abatement
1	10%
2	20%
3	30%
4	40%
5	50%
greater than 5	60%

For forfeitable shares there is a new legislative basis for employees to seek tax rebates where tax is paid in the year of acquisition but the shares are subsequently forfeited.

Share scheme reporting requirements

There are annual statutory reporting requirements for companies which operate employee share schemes. In general a return is required to be submitted to Revenue before 31 March after the end of the relevant tax year. Where companies or trustees operating an APSS or ESOTs fail to make the required returns, approval may be withdrawn.

There are increased penalties for companies and company secretaries for failure to meet the annual corporate filing deadline. Additional penalties apply where returns are filed incorrectly or carelessly.

Planning tip!

Employer PRSI costs of 10.75% could be saved by remunerating employees with shares in the employer or parent company rather than cash. Employee PRSI savings are also possible to the extent that the increased PRSI ceiling of €75,036 has not otherwise been reached.

Planning tip!

Shares delivered through a correctly structured and Revenue approved share scheme (eg APSS, SAYE and ASOS) are exempt from income tax, the income levy and the health contribution.

Contact us:

Gearóid Deegan

Partner
Ph: 353 1 792 6468
gearoid.deegan@ie.pwc.com

Mary O'Hara

Partner
Ph: 353 1 792 6215
mary.ohara@ie.pwc.com

Pat Mahon

Director
Ph: 353 1 792 6186
pat.mahon@ie.pwc.com