

Guidelines on PAYE/PRSI/Universal Social Charge (USC)/Local Property Tax (LPT) monthly and annual estimates

Reviewed January 2016

1. Operation of the Pay As You Earn (PAYE) system

The operation of the PAYE system is governed by Chapter 4 (Sections 983 to 997A) of Part 42 of the Taxes Consolidation Act (TCA) 1997 and the Income Tax (Employment) (Consolidated) Regulations 2001.

In brief, employers are obliged to operate the PAYE system and, in particular, to –

- deduct tax at source under the PAYE system from emoluments payable to employees and office holders (PAYE Regulation No. 16),
- remit such deductions to Revenue (PAYE Regulations No. 28 and No. 29), and
- submit relevant documentation in relation to such deductions (see, for example, PAYE Regulation No. 31 regarding the obligation on an employer to send in an end of year PAYE return on a form prescribed by the Revenue Commissioners – the prescribed form for this purpose is known as a Form P35).

2. Meaning of employer for the purposes of operating the PAYE system

The meaning of employer for the purposes of the PAYE system is contained in Section 983 TCA 1997 and in PAYE Regulation No. 2 - “*employer*” means *any person paying emoluments.*”

“Emoluments” means anything assessable to income tax under Schedule E.

3. Estimate and Notice of Estimation of amounts due

Where Revenue has reason to believe that the total amount of tax that an employer is liable to remit under the PAYE Regulations is greater than that remitted, Revenue may make an ‘estimate’ (commonly known as a PAYE estimate) of the amounts due. Where such an ‘estimate’ is made, then the inspector or other officer who made the ‘estimate’ may serve *notice* on the employer specifying the amount of the tax so estimated.

There are two types of PAYE estimate -

- ***monthly estimates*** – commonly known as a P30 estimate (Section 989 TCA 1997); and
- ***yearly estimates*** – commonly known as a P35 estimate (Section 990 TCA 1997).

The purpose of a PAYE estimate is to quantify the amounts of the PAYE income tax/PRSI/USC/LPT due and to generate demands seeking those amounts (in like manner as an assessment quantifies tax due and generates demands for that tax).

In practice, PAYE estimates are generated by -

- (a) the Office of the Collector-General where employers fail to fulfil their obligations as regards submission of employer Forms P30 and P35 or as regards remittances of PAYE income tax/PRSI/USC/LPT, and
- (b) Revenue auditors where, following an audit, there is no agreement as to the quantum of PAYE income tax/PRSI/USC/LPT due.

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4. PAYE, PRSI USC and LPT contained in an estimate

Where a PAYE estimate is to be raised, it should include amounts in respect of:-

- PAYE tax - Section 986 of the Taxes Consolidation Act 1997 provides the statutory basis for including this in the estimate;
- PRSI (employer and employee contribution) - Section 17 of the Social Welfare Consolidation Act 2005 provides the statutory basis for including these in the estimate;
- USC – Section 531AAA of the Taxes Consolidation Act 1997 applies the provision of Part 42 (PAYE system) to USC in relation to the collection and recovery of unpaid amounts;
- LPT – Part 10, Chapter 1 of the Finance (Local Property Tax) Act 2012 (as amended) deals with Deduction at Source for Employers.

5. Monthly PAYE estimates

5.1. Issue of a *notice* of a monthly estimate

Section 989(2) TCA 1997 provides for both -

- the making of an estimate, and
- the serving of a notice of that estimate on the relevant employer by Revenue as regards the PAYE tax that the employer is liable to remit.

Section 989(3)(e) TCA 1997 allows for Revenue to increase an estimate.

Section 989(4) TCA 1997 allows for Revenue to extend an ‘estimate’ or amended estimate to two or more consecutive income tax months.

5.2 Who can raise a monthly PAYE estimate?

Section 989(5) TCA 1997 provides that the Revenue Commissioners may nominate any of their officers for the purposes of section 989. Therefore, only officers nominated for this purpose can ‘sign off’ on PAYE monthly estimates and issue notices of such estimates.

5.3 Claim (objection) re a monthly PAYE estimate

Section 989(3)(a) TCA 1997 provides that where a person *claims* not to be liable to remit tax for the month to which the notice refers, that person may, by notice in writing to the Revenue Commissioners, require that the claim be referred to the Appeal Commissioners whose decision is final and conclusive (see Par. 8.5 below).

5.4 Grounds of Claim (objection) re a monthly PAYE estimate

A claim under Section 989(3)(a) TCA 1997 is not an appeal in the strict sense and the only grounds for the claim are that the person is not liable to remit tax for the month to which the notice refers (see also Par. 8.5 below).

5.5 Time limit for a Section 989(3) Claim (objection)

The time limit for such a claim is 14 days from the service of the notice (estimate).

5.6 Discharge of a monthly PAYE estimate

Section 989(3)(c) TCA 1997 provides that a monthly PAYE estimate can be discharged where the employer submits the relevant return (i.e. a Form P30) and pays the tax due.

However, Section 989(3)(d) TCA 1997 provides that where proceedings for the recovery of the tax due in the monthly estimate have commenced, the estimate cannot be discharged prior to completion of the recovery proceedings unless the Revenue Commissioners otherwise direct.

5.7 Increasing a monthly PAYE estimate

Where Revenue has reason to believe that the amount estimated in the notice (i.e. shown in the estimate) is less than the amount which the person was liable to remit, section 989(3)(e) TCA 1997 provides that the estimate may be increased.

5.8 Treating a claim under Section 989(3) in like manner to an appeal against an income tax assessment

Section 992 TCA 1997 provides that the provisions of the Income Tax Acts relating to appeals shall, with any necessary modifications, apply to a claim under Section 989(3) TCA 1997 BUT only in so far as those provisions apply to appeals to the Appeal Commissioners.

Therefore, the income tax appeals provisions regarding the right to a re-hearing before a Circuit Court Judge and a right to a case stated for the opinion of the High Court do NOT apply as regards monthly PAYE estimates (but do apply for yearly PAYE estimates – see Par.9.5).

6. Yearly PAYE Estimates

6.1 Issue of yearly PAYE estimates

Section 990(1) TCA 1997 provides for both -

- the making of an estimate, and
- the serving of a *notice* of that estimate on the relevant employer

by Revenue as regards the PAYE tax that the employer is liable to remit.

Section 990(1A)(d) TCA 1997 allows for Revenue to amend an estimate.

Section 990(3) TCA 1997 allows for Revenue to extend an ‘estimate’ or amended estimate to two or more consecutive years.

6.2 Who can make yearly PAYE estimates?

Section 990(1) TCA 1997 enables an inspector, or other officer as the Revenue Commissioners may nominate for the purposes of section 990, to make yearly PAYE estimates. Therefore, only nominated officers for this purpose can ‘sign off’ on the issue of a *notice* of a yearly estimate.

6.3 Discharge of a yearly PAYE estimate

If, prior to the service of the notice of the estimate, the employer had not lodged a P35 for the year, the estimate may be discharged by the employer, within 14 days of service of the notice, by lodging the outstanding return and paying any tax, interest and costs due.

If the employer does not do this, then the estimate becomes immediately enforceable, without any further appeal procedures, and no estimate will be discharged while enforcement proceedings are taking place in respect of the estimate, unless the Collector-General directs otherwise.

Note: If the Inspector has reason to believe that the amounts on the P35 are understated, an estimate under Section 990(2) TCA 1997 may be entered.

6.4 Appeal against a yearly PAYE estimate

The only grounds of appeals under Section 990(2) TCA 1997 are that the estimate is excessive.

An employer who had lodged the P35 before the estimate was raised and who considers that the estimate of the tax or balance of the tax due is excessive, may, by way of notice in writing to the inspector or other officer within 30 days from the service of the notice of the estimate appeal under Section 990(2) TCA 1997 to the Appeal Commissioners.

6.5 Treating an appeal under Section 990(2) in like manner to an appeal against an income tax assessment

Section 992 TCA 1997 provides that the provisions of the Income Tax Acts relating to appeals shall, with any necessary modifications, apply to an appeal under Section 990(2).

Therefore, the income tax appeals provisions including the right to a re-hearing before a Judge of the Circuit Court and a right to a case stated for the opinion of the High Court apply to an appeal under Section 990(2) against a yearly PAYE estimate.

7. Amending an estimate

Where the tax estimated in a notice is paid and the end of year return (Form P35) showing the liability for the year has not been made by the employer, or if the inspector or other officer has reason to believe the original amount estimated was too low, an increased estimate may be made and notice of that increased estimate served on the employer and the new estimate will supersede any previous one.

8. Supplementary Forms P35

- 8.1** A supplementary P35 should be submitted to account for additional payments being made after the original P35 has been lodged. It is imperative that a supplementary P35 is lodged to ensure correct credit is given for PAYE/PRSI/USC/LPT deducted and remitted for the employees concerned. All supplementary P35s must be signed by the employer or his or her representative. Where the employer is a mandatory e-filer, any supplementary P35 returns should be filed on ROS. An Amended P35 should be filed where corrections are required for employees who were included on the original P35 return.

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9. Other material

Further information is available in the “Collection Manual”— “[Guidelines for Issuing Manual PAYE/PRSI Annual P35 Estimate/Amended Estimate](#)”