

relate

information for all

Vol. 33 No. 3
December 2005
ISSN 07904290

Contents

Page No.

1 Working from Home

2 Employing Someone in Your Home

What are your responsibilities towards your employee, family members as employees

5 Taxation

Rental income and the rent a room scheme; how Capital Gains Tax may apply

7 Medical Card Income Guidelines

New guidelines and deductions

Home Matters

Introduction

Most people do not regard their houses as centres of economic activity. Nevertheless, various such activities do take place in peoples' home – you may be working from home, you may be employing someone in your home or you may be letting part of your house. Generally, the value of the house in which you are living is not taken into account in the social welfare means test but it may be for other means-tested payments, notably the nursing home subvention. There is no direct taxation on the value of the house after it have been bought but certain taxes may arise in particular circumstances. In this issue we look at a number of such matters that arise in relation to your home.

Working from Home

You may be working from home in the sense that you are an employee and you carry out your work from your home or you may be self-employed.

Employee

Various items which are provided by your employer are subject to tax as benefit in kind whether you work at home or not. Items which your employer provides primarily for the purposes of enabling you to work at home are not taxable as benefits in kind – this is the case even if you also use them for private use. So, in general, computers and related technology, a business telephone line, internet connection and office furniture may be provided and you are not liable for benefit in kind taxation.

Your employer may also pay you a contribution towards the costs of heating and electricity. At present, the Revenue Commissioners allow employers to make a payment of €3.20 a day towards such costs without



INSIDE: Rights of domestic workers p3
Tax and PRSI p4
Letting your house p5

deducting income tax or PRSI. If your actual costs are greater than this, your employer may pay you but must deduct PAYE and PRSI. You may then claim a refund from the Revenue Commissioners.

Working from home as an employee does not affect the general exemption from Capital Gains Tax for principal private residences (see below).

Self-employed

If you are self-employed and conduct your business from your home, your liability for income tax, PRSI and VAT is the same as if you were conducting your business from an office or factory. You are obliged to keep the usual records and make returns in the normal way. You may claim expenses in the normal way. You must keep records of actual expenses incurred and accurately assess the proportion of your heating, electricity and other household bills which are related to your business.

Running a business from your home may affect your liability for Capital Gains Tax when the house is sold – see below.

Rates

Rates are payable on commercial and industrial property but not on domestic property. So, in general, you do not have to pay rates on your house. However, if you are running a business from your house, you may be liable for rates on the part of your house which is used exclusively for your business. If you use a room for your business and you also use it for domestic purposes, it is not regarded as commercial. If part of your house is considered to be commercial property you may also be liable for commercial water and waste charges. There are no water charges for domestic property at present, and domestic waste charges may be different from commercial waste charges.

Employing a person in your home

Employers have various obligations towards employees regardless of the place of employment. If you employ someone in your home e.g. a cleaner, your obligations as an employer are broadly the same as your obligations towards employees who work in an office or factory. However, there are various issues which arise in the case of domestic employment and we look at these here.

The first question which arises is whether the person is actually an employee or not. This is not always easy to establish and depends on the facts of each case. A person working in your home may be a family member who helps but is not employed, may be an au pair, an employee or self-employed.

Family employment

The work which family members who live with you carry out in the house is generally not employment. The work they carry out in your business may not be employment either – for example, your student children who help in the evenings or weekends are generally not employees.

Family members who do not live with you and who work in your home – either doing domestic work or working in your business – may or may not be employees. It is impossible to be totally specific but, in general, they are not employees if the arrangements are on a casual, friendly basis and it is not the intention of either party to have a contractual relationship. So, if your mother comes in to help look after the children or to help you in your home-based business when you are very busy, she is probably not

an employee. If you engage your sister to come to your home every day to organise your business in return for a weekly payment, she is an employee.

Family employment and PRSI

If the family member is not an employee, then the question of PRSI does not arise. If he/she is an employee, there are circumstances in which the general obligation to operate PRSI does not apply. This is the case if you, as an individual (not as a company or member of a partnership), employ your spouse. It is also the case if you as an individual employ a prescribed relative, and the employment relates to a private house or a farm in or on which you and your employee both live. A prescribed relative is a parent, grandparent, child, grandchild, sibling (including step-relatives). If you employ a relative other than a spouse in any other activity, the employment is subject to PRSI even if the relative lives with you.

In these circumstances, the family member is not covered for social insurance benefits and, as a result, is not covered for redundancy payments and some other protective labour laws. You are his/her

employer and you must operate PAYE (see below for some exceptions). Your employee may be liable for the health levy. If so, the employment is classified as Class K. Class M is for those who are not liable for either PRSI or the health levy.

If you are in doubt about whether or not PRSI should be applied, you should contact the Scope section of the Department of Social and Family Affairs (see below).

Babysitters and au pairs

Babysitting on a casual basis is not generally regarded as employment. However, simply calling a person a babysitter does not necessarily mean that she is not an employee. If you have a “babysitter” for a few hours every day, the arrangement is quite likely to be employment.

There is no clear definition of an au pair. Working as an au pair is commonly understood to involve an informal agreement that the family provide bed and board and some pocket money in return for some domestic services, possibly childminding, cleaning and cooking, and the au pair has time off to attend language classes or other study. However, the dividing line between being an au pair and an employee is not very clear – again, simply describing someone as an au pair does not necessarily mean that he/she is not an employee. An “au pair” who is expected to provide full-time care for children while their parents are in full-time work or who is expected to provide full-time care for a person with a disability is almost certainly an employee. In immigration law, au pairs are generally regarded as students. The proposals for legislation on immigration and residence recognise au pairs as a category to be dealt with differently from workers generally but does not provide a clear definition. The Council of Europe agreement on au pair placements (1979) has not been ratified by Ireland.

Employed or self-employed

It is not always easy to know whether a person is employed or self-employed. For example, a person who comes to your house to do the cleaning or the gardening for a few hours a week may be employed by you or by someone else or may be self-employed.

If you make an agreement with an agency to provide you with a cleaner or a gardener and you pay the agency for the services provided, then it seems reasonably clear that you are not an employer. However, if you then deal directly with the worker concerned and pay him/her, you may be an employer.

There is no simple definition of “employed” and “self-employed”. The Department of Social and Family Affairs (DSFA) and the Revenue Commissioners have issued a leaflet entitled *Employed or Self-Employed: A Guide for Tax and Social Insurance* which aims to help you to decide whether or not a person is employed or self-employed. You are generally considered to be an employee if you are under the control of another person who directs you as to how, when and where the work is to be carried out. There are a number of other tests which apply. It would appear that a person who cleans or gardens on a regular basis for you is probably your employee.

Many people who work as domestic cleaners and gardeners work in a number of different households and may be employed by all of them.

You may get a ruling from the Scope Section of the DSFA or from the Revenue Commissioners on whether the person is employed or self-employed but such a ruling is not necessarily definitive. The Scope Section also gives rulings on whether the employment is insurable.

Scope Section
Floor 3
Oisín House
Pearse Street
Dublin 2
Phone: 01 673 2585

Rights of domestic workers

An employee in your home is entitled to broadly the same rights as other workers. This means, among other things, that your employee is entitled to the following minimum rights:

- ◆ a written statement of the main terms and conditions of employment including hours of work, payment, entitlement to holidays
- ◆ the national minimum wage – currently €7.65 an hour (but employed family members – spouses, parents, grandparents, children, grandchildren, siblings and step family members – are not entitled)
- ◆ written statements of pay, including any deductions from pay
- ◆ Sunday premium if applicable or paid time off in lieu for Sunday work
- ◆ a maximum of 48 hours work a week on average with various breaks; at least 11 consecutive hours off work every day and at least one full day off every week

- ◆ access to a PRSA – you do not have to contribute to a pension scheme but you must facilitate access to a standard PRSA
- ◆ the same public holiday and holiday entitlement as other workers – that means 4 weeks holidays a year (proportionate for part-time workers) and for public holidays, either a paid day off, another paid day off within a month, an extra day's annual leave or an extra day's pay.
- ◆ maternity and parental leave and *force majeure* leave
- ◆ redundancy compensation if this arises

You can find further information in the Comhairle booklet *Employment Rights Explained* available from Citizens Information Centres (see listing in Golden Pages).

If you are providing room and board you are allowed to deduct a charge for this from your employee's wages. There is no statutory set charge. The Irish Congress of Trade Unions (ICTU) suggests that the maximum charges which have been agreed between unions and employers in the hotel and catering industry could also be regarded as suitable maximum charges for domestic employees. (Currently, the agreed maximum for full board and lodging is €54.12 a week or €7.73 a day.)

Equality legislation

The general rules about discrimination do not apply to the process of recruiting a domestic employee but, once recruited, the employee is fully covered by the legislation. For further information see www.equality.ie

You may get further information on your employee's rights from

Employment Rights Information Unit
Department of Enterprise, Trade and Employment
Tel: (01) 631 3131
Lo-Call (outside the 01 area) 1890 201 615
www.entemp.ie

The Irish Congress of Trade Unions has published a leaflet *Homes and Workplace: The Rights of Domestic Workers*
www.ictu.ie

Tax and PRSI

Apart from certain family members who are not liable for PRSI as described above, **you are responsible for applying PRSI and PAYE to your domestic employees.** You must register as an employer with

the Revenue Commissioners. *PAYE/PRSI for Small Employers* explains how to operate the system and is available from the Revenue Commissioners.
www.revenue.ie

If the person who works in your house is self-employed, he/she is responsible for paying his/her own tax and PRSI and may be obliged to register for VAT.

It is not necessary to operate PRSI or PAYE in certain very low-income employments.

PRSI – employment of inconsiderable extent

Employment of inconsiderable extent is exempt from PRSI. A person who earns less than €38 a week is considered to be in employment of inconsiderable extent. This is the total income from employment so a person who earns less than €38 from one employer but earns more than €38 in total from employment is liable for PRSI in each employment.

PAYE domestic employer scheme

In general, you must operate PAYE for your employee. However, this may not be necessary if you meet the conditions for the domestic employer scheme.

This scheme applies if

- ◆ you, as an individual, employ a person in your own home (it does not apply to companies or organisations)
- ◆ you have only one domestic employee who carries out domestic duties for you (domestic duties includes childminding)
- ◆ you pay less than €38 a week

You do not have to operate PAYE but you may have to pay employer's PRSI.

In order to avail of this scheme you should register as a domestic employer with the DSFA. The leaflet *Domestic Employer Scheme* is available from the Revenue Commissioners.

PRSI

The following are the rates of employer's PRSI:

If the employee earns less than €38 a week:	0.5%
€38 - €356	8.5%
Over €356	10.75%

The relevant figure is your employee's total gross earnings from all employments. So, if he/she is earning less than €38 from you but has income from other employments, then the higher rate of PRSI is payable.

If you do not have to operate PAYE because the earnings from you are less than €38, then the PRSI should be paid directly to the Department of Social and Family Affairs.

Employee PRSI

You are obliged to deduct employee PRSI. Your employee does not have to pay any PRSI if earnings

are less than €287 a week. If they are more than this, PRSI is payable at 4% on all earnings above €127 a week. If your employee earns more than €400 a week, the PRSI rate may be 2% on the first €127 and 6% on the rest unless he/she is exempt from the health levy. Standard medical card holders and people receiving lone parent or widowed benefits from the DSFA are exempt from the health levy.

Taxation

There is no direct tax on your home apart from the stamp duty which you may have to pay when you buy it. If you get an income from your home, then generally you have to pay tax on it – but there are some exceptions which we look at here.

There is a number of schemes for tax relief for owner-occupiers, for example, the rural renewal scheme and living over the shop schemes. If you want further information on these and similar schemes which are no longer available – see the Revenue *Guide to Residential Owner-Occupier Relief*.

Tax law generally distinguishes between your principal private residence and any other property you may own. Your principal private residence is the house in which you usually live – for most people it is their only property.

Letting your house

Income from the letting of your house is generally taxable. You may deduct expenses incurred in the letting, for example, maintenance costs, service charges, insurance and interest on the mortgage and premiums paid for mortgage protection insurance in respect of the loan.

If you are go abroad and rent your house, tax (at the standard rate of 20%) may have to be deducted from the rental income by your tenant or by your agent. This arises if you are non-resident for tax purposes.

If you are letting your house, you are subject to the Equal Status Acts. This means you may not discriminate on any of the stated grounds. If you provide accommodation in your home and that accommodation is not separate or self-contained, and its provision affects your private life, you are not subject to the equality requirements. You are obliged to register the tenancy with the Private Residential Tenancies Board and must supply your tenants with a rent book.

Rent a room scheme

You do not have to pay tax on all the income received from renting a room or rooms in your house. If you rent a room in your principal private residence, you are entitled to receive €7,620 in rental income free of tax and free of PRSI and the health levy. This is the case whether you own the house or you are renting from someone else. You must be living in the house and must declare the income. You are not entitled to deduct expenses in arriving at rental income.

This rental income does not affect your entitlement to mortgage interest credits nor does it affect the capital gains tax exemption on the sale of a principal private residence (see below).

Capital Gains Tax

Capital Gains Tax (CGT) may be payable if you make a gain from selling assets such as shares and property. In general, you do not have to pay CGT on the gains from selling your private house (including grounds of up to an acre). This general exemption applies if the house has been occupied as your only or main private residence for all the time you owned it.

Married couples

The transfer of assets between married couples does not give rise to CGT – this includes the transfer of assets arising from a separation agreement or divorce. A married couple may only have one main residence at any one time.

Dependent relatives

You may qualify for the general exemption from CGT if the house was occupied by a dependent relative.

When you may have to pay CGT

You may have to pay CGT if

- ◆ part of your house was used for commercial purposes
- ◆ your house has development value
- ◆ you did not live in the house for part of the time that you owned it

Commercial purposes

You may not qualify in full for this exemption if some of the house had been used exclusively for business purposes or some rooms had been let. Rooms let under the rent a room scheme do not affect the exemption. A domestic employee who has exclusive use of a room in the house and lodgers who have their meals with the family do not affect the exemption. You may have to pay CGT on the proportion of the gain that relates to the commercial part of the house.

Development value

Your house has development value if it is sold for a price which is higher than its current use value.

Selling part of your property

The general exemption for a principal private residence is not granted if the private residence

includes development land and you are paid more than €19,050 for it. So, if you sell part of your garden as a site you are liable for CGT. In general, if you give part of your garden as a gift, you are liable to CGT if the market value is more than €19,050. However, if a parent makes a gift of a site to a child in order to enable the child to build a principal private residence and the value of the site is not more than €254,000, no CGT is payable. If the child subsequently sells the house built on the site without having occupied it for at least three years, the child is liable for the capital gain for which the parent would otherwise have been liable.

Not living in the house you own

You may have to pay Capital Gains Tax if you sell your house and you have not lived in it for all the time you owned it. Certain periods when you did not actually live in the house are treated as if you did. These are:

- ◆ the year before you sell – this, in effect, gives you a year to sell after you have moved to a new main residence
- ◆ the year after buying it when you are not living in it because of carrying out work on it or because you have not yet sold your other house
- ◆ any period during which you were employed outside the country and a period of up to four years during which your conditions of employment required you to live somewhere else
- ◆ a period spent in hospital or long-stay care when the house is not occupied, or is occupied by a relative on a rent-free basis in order to provide security.

If you have owned the house for a total of 10 years but have not lived there for two years, then you may have to pay one fifth of the CGT.

Means Tests

The house in which you live is not taken into account in the means test for social welfare payments or medical cards. However, it may be taken into account in the means test for a private nursing home subvention. In fact, if your house is worth more than €95,230, you may not qualify for a subvention at all – this is expected to be increased in the near future.

The principal private residence is not taken into account if it is occupied immediately before the application and continues to be occupied by your spouse, or a child aged under 21 or in full-time education, or a relative in receipt of Disability Allowance, Blind Pension, Disability Benefit, Invalidity Pension or Old Age (Non-Contributory) Pension.

The annual value of your house is assessed at five per cent of the estimated market value net of loan repayments.

Income Guidelines for Medical Cards

The income guidelines for medical cards and for doctor-only medical cards have been increased from 13 October 2005. Doctor-only medical cards are now officially called “GP visit cards”. Changes have also been made to the means test.

Entitlement to a medical card

Legally you are entitled to a standard medical card if you are unable without undue hardship to arrange general practitioner medical and surgical services for yourself and your dependants. The Health Service Executive (HSE) decides whether or not you meet this criterion. In doing so, it must look at your overall financial situation (including the means of yourself and your spouse) in view of your reasonable expenditure in relation to yourself, your spouse and your dependants. You are entitled to a GP visit card if it would be unduly burdensome to arrange GP services for yourselves and your dependants. (The law on entitlement to health services is described in detail in the April 2005 issue of Relate.)

In practice, income guidelines are set and if your income is less than the guideline for your circumstances, you get a medical card or a GP visit card. The same application form is used for the standard medical card and the GP visit card. If you do not qualify for the standard medical card you are automatically assessed for the GP visit card.

Everyone aged 70 or over is entitled to a standard medical card regardless of means.

The income guidelines

The income guidelines are guidelines – they are not absolutely binding. However, you are unlikely to get a card if your income is above the guideline figure for your circumstances unless you have exceptional medical expenses.

Means test

In order to assess your entitlement, the HSE carries out a means test. This is usually done by the Community Welfare Officer. There are no statutory rules about how the means test is to be carried out and the former health boards operated different practices in respect of the assessment of means.

Lone parents with dependants are generally regarded as married couples for the purposes of the means test.

It seems that the HSE has introduced some changes in the means test and that it will apply in the same way all around the country. The details of the

changes have not been published so it is not possible to give full information about them. The main changes are that a range of outgoings such as tax and childcare costs may now be taken into account.

Income

As with all means tests, you must declare all your income. The application form asks for your gross income from all sources – that is, your income before PRSI and tax are deducted. The guideline figures given below refer to your income after tax and PRSI. It is not clear how the HSE knows how much tax you pay.

You must provide documentary evidence of your income. Tax forms such as P60s or assessments from the tax office in the case of self-employed people may be used. Income from social welfare payments is taken into account except for Child Benefit, Supplementary Welfare Allowance, Family Income Supplement, Domiciliary Care Allowance, Foster Care Allowance, Blind Welfare Allowance, War of Independence Pensions, Mobility Allowance, and Carer’s Allowance.

In general, if you are getting the maximum amount of a social welfare means-tested payment or less you qualify for a medical card and the HSE does not usually make any further enquiry into your means. The increase in the income guidelines mean that anyone whose only income is a social welfare payment should qualify for a standard medical card.

There are no rules laid down about assessing income from savings, and the practice used to vary from one health board to another. (The social welfare means test has very precise rules about assessing income from savings.) The HSE application form asks for details of your savings – you must provide information about the capital amount and the income you are receiving from this. It is not clear whether it is intended to apply an assessment to the capital (as the social welfare means test does) or to simply take account of the income you receive.

Outgoings

The application form asks for details of your

outgoings and for documentary evidence of them under the headings of housing (rent or mortgage), travel costs to work, loans (the purpose of the loan and the repayments involved), maintenance, details and evidence of any other issues which you wish to be considered (for example, GP fees/prescribed drug/medicines/appliances, hospital charges and travel/accommodation costs associated with attending clinics/hospitals). You are also asked for details of any other circumstances or issues which you wish to have considered, examples given being money management issues and childcare costs.

The HSE has given examples of how the means test works. From these, it seems that it takes your gross income and subtracts PRSI and tax. Up to now only PRSI was deducted. It then subtracts travel to work costs, mortgage interest or rent and childcare costs.

The HSE has not published the full details of how childcare costs and housing costs are to be taken into

account but the sample assessments on the HSE website suggest that the full costs are to be taken into account. Allowances for weekly travel costs to work are assessed as the actual cost of public transport or mileage at €0.50 a mile.

It is not clear what proof is required. The application form states that you must provide documentary evidence of outgoings such as childcare costs, but it does not state what constitutes acceptable evidence. Outgoings in respect of housing costs are easy to document but this is not the case for informal childcare arrangements.

The application form also asks for information on loans and the repayments costs involved. It is not clear if these outgoings are taken into account.

You use the same application form for the standard medical card and the GP visit card.

Medical Card Income (net of tax and PRSI) Guidelines: October 2005

	Standard Medical Cards Weekly	GP Visit Cards Weekly
Single person living alone (under 66)	€184	€230.50
Single person living alone (66-69 years)	€201.50	€252
Single person living with family (under 66)	€164	€205
Single person living with family (66-69 years)	€173.50	€217
Married couple (under 66)	€266.50	€333
Married couple (66-69 years)	€298	€373
Married couple (70-79 years)	€595.50 (one is under 70)	
Married couple (80 and over)	€627 (one is under 70)	
Allowance for first two children under 16	€38	€47.50
Allowance for third and subsequent children under 16	€41	€51
Allowance for first two dependent children over 16	€39	€49
Allowance for third and subsequent dependent children over 16 years	€42.50	€53.50
Allowance for a dependant over 16 who is in full-time third level education and not grant-aided	€78	€98

Relate Subscription Rates:
Annual Subscription
(12 issues, January to December)
€15.85 post free

Each additional subscription sent
in the same envelope
€1.90 per year.

Published by:

Comhairle
7th Floor, Hume House
Ballsbridge, Dublin 4.
Tel: 01-6059000 Fax: 01-6059099
E-mail: comhairle@comhairle.ie
Website: www.comhairle.ie

Individual copies 75 cent



information for all