

2012 No. 822

INCOME TAX

**The Income Tax (Pay As You
Earn) (Amendment) Regulations
2012**

Made - - - -

14th March 2012

Laid before the House of Commons

15th March 2012

Coming into force - -

6th April 2012



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The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 59A(10), 59B(8), 98A and 113(1) of the Taxes Management Act 1970(a), section 133 of the Finance Act 1999(b), section 136 of the Finance Act 2002(c) and sections 684, 706, 707 and 710 of the Income Tax (Earnings and Pensions) Act 2003(d) and now exercisable by them(e):

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 and come into force on 6th April 2012.

(2) In these Regulations, “the 2003 Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(f).

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- (a) 1970 c.9. Section 59A was inserted by section 192 of the Finance Act 1994 (c.9) and subsection (10) was inserted by section 126(1) of the Finance Act 1996 (c.8). Section 59B was inserted by section 193 of the Finance Act 1994 and subsection (8) was inserted by section 126(2) of the Finance Act 1996. Sections 59A(10) and 59B(8) were amended by paragraphs 130(b) and 131(4) respectively of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“ITEPA”) and section 145(7)(b) of the Finance Act 2003 (c.14). Section 98A was inserted by section 165 of the Finance Act 1989 (c.26). It was amended, so far as relevant, by paragraph 138 of Schedule 6 to ITEPA and paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c.11).
- (b) 1999 c.16.
- (c) 2002 c.23.
- (d) 2003 c.1. Section 684 was amended, so far as relevant, by section 145 of the Finance Act 2003, paragraph 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c.11) (“CRCA”), section 94 of the Finance Act 2006, paragraphs 2 to 7 of Schedule 58 to the Finance Act 2009 (c.10) and section 85 of the Finance Act 2011 (c.11).
- (e) Paragraph 102 of Schedule 4 to CRCA amended section 684 of ITEPA so that the Commissioners for Her Majesty's Revenue and Customs have the power to make the Regulations. The functions of the Commissioners of Inland Revenue under section 113(1) of the Taxes Management Act 1970, section 133 of the Finance Act 1999 and section 136 of the Finance Act 2002 were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of CRCA. Section 50(1) of CRCA provides that, in so far as is appropriate in consequence of section 5, a reference, howsoever expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (f) S.I. 2003/2682; relevant amending instruments are S.I. 2005/2691, 2006/777, 2007/1077, 2007/2069, 2007/2969, 2008/782, 2008/2601, 2009/56, 2009/588, 2009/2029, 2010/668, 2010/2496, 2011/729 and 2011/1054.

Amendment of the 2003 Regulations

2. The 2003 Regulations are amended as provided for in regulations 3 to 52 and 58 to 68.

PART 2

Real Time Information

CHAPTER 1

Amendments to the 2003 Regulations

Interpretation

3. In regulation 2(1) (interpretation), insert in the appropriate places—

““non-Real Time Information employer” means an employer other than one within regulation 2A;”;

““non-Real Time Information pension payer” means a pension payer other than one within regulation 2B;”;

““Real Time Information employer” has the meaning given in regulation 2A;”;

““Real Time Information pension payer” has the meaning given in regulation 2B;”.

4. After regulation 2 insert—

“Real Time Information employers

- 2A.**—(1) The following are Real Time Information employers—

- (a) an employer who has entered into an agreement with HMRC to comply with the provisions of these Regulations which are expressed as relating to Real Time Information employers,
- (b) an employer within paragraph (2),
- (c) on and after 6th April 2013, employers to whom regulation 67D (exceptions to regulation 67B) applies, and
- (d) on and after 6th October 2013, all employers.

(2) An employer is within this paragraph if the employer has been given a general or specific direction by the Commissioners for Her Majesty’s Revenue and Customs before 6th October 2013 to deliver to HMRC returns under regulation 67B (real time returns of information about relevant payments).

Real Time Information pension payers

- 2B.**—(1) The following are Real Time Information pension payers—

- (a) a pension payer who has entered into an agreement with HMRC to comply with the provisions of these Regulations which are expressed as relating to Real Time Information pension payers or Real Time Information employers,
- (b) a pension payer within paragraph (2),
- (c) on and after 6th April 2013, pension payers to whom regulation 67D (exceptions to regulation 67B) applies, and
- (c) on and after 6th October 2013, all pension payers.

(2) A pension payer is within this paragraph if the pension payer has been given a general or specific direction by the Commissioners for Her Majesty’s Revenue and Customs before 6th October 2013 to deliver to HMRC returns under regulation 67B (real time returns of information about relevant payments).”.

Application of the 2003 Regulations to pension payers and pensioners

5. In the list in regulation 11(2) (application to pension payers and pensioners), in the entry relating to regulation 71, for “regulation 68” substitute “regulations 67G and 68”.

Cessation of employment: Form P45

6. In regulation 36 (cessation of employment: Form P45)—
- (a) in paragraph (2)(a), after “Revenue” insert “if the employer is one to whom paragraph (2A) applies”, and
 - (b) after paragraph (2) insert—
 - “(2A) This paragraph applies to—
 - (a) non-Real Time Information employers, and
 - (b) Real Time Information employers to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee’s employment.”.

Death of employee

7. In regulation 38(1) (death of employee), before paragraph (1) insert—
- “(A1) This regulation applies to—
 - (a) non-Real Time Information employers, and
 - (b) Real Time Information employers to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee’s employment.”.

Death of pensioner

8. In regulation 39(1) (death of pensioner), before paragraph (1) insert—
- “(A1) This regulation applies to—
 - (a) non-Real Time Information pension payers, and
 - (b) Real Time Information pension payers to whom HMRC has given a notice requiring the pension payer to send to HMRC Form P45 or Form P46(Pen) on the commencement of a new pensioner’s pension.”.

Employee’s duty to provide Form P45

9. In regulation 40 (employee’s duty to provide Form P45)—
- (a) in paragraph (3), for “But paragraph (4) applies” substitute “But paragraphs (4) and (6) apply”,
 - (b) in paragraph (4), for “The” substitute “If the employer is a non-Real Time Information employer or a Real Time Information employer to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee’s employment, the”, and
 - (c) after paragraph (5) insert—
 - “(6) If the employer is a Real Time Information employer, the employee need not comply with paragraphs (1) and (2).”.

Duty of employee to assist with completion of new employee fields

10. After regulation 40 and before the heading “Chapter 2” insert—

“Duty of employee to assist with completion of new employee fields in returns under regulations 67B and 67D

40A.—(1) An employee who commences employment with a Real Time Information employer must provide the information required to allow the employer to complete the new employee fields in the first return required by regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) which includes information in respect of the employee.

(2) The employer must verify the information given under paragraph (1) before making that return.

(3) In this regulation, “the new employee fields” means the information required under paragraphs 36 to 44 of Schedule A1.”.

Procedure if employer receives Form P45

11. After regulation 42(6) (procedure if employer receives Form P45) insert—

“(6A) Paragraphs (7) and (8) apply if the employer is either—

- (a) a non-Real Time Information employer, or
- (b) a Real Time Information employer to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee’s employment.”.

Procedure where information missing and code not known: employers

12. After regulation 45 (other Forms P45) insert—

“Application of regulations 46 to 49E: Real Time Information employers and non-Real Time Information employers

45A.—(1) Regulations 46 to 49 (procedure where no Form P45) apply in relation to—

- (a) non-Real Time Information employers, and
- (b) Real Time Information employers to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee’s employment.

(2) Regulations 49A to 49E (procedure where employee fails to assist with completion of new employee fields or no Form P45) apply in relation to Real Time Information employers other than those within paragraph (1)(b).”.

Form P46 where employer does not receive Form P45 and code not known

13. In regulation 46(7) (Form P46 where employer does not receive Form P45 and code not known), for “51(2)” substitute “51(2)(a)”.

14. After regulation 49 insert—

“Procedure where employee fails to assist with completion of new employee fields in returns under regulations 67B and 67D

49A.—(1) If, despite the requirements of regulation 40A(1) and (2) (duty of employee to assist with completion of new employee fields in returns under regulations 67B and 67D) and regulations 67B (real time returns of information about relevant payments) and 67D (exceptions to regulation 67B), a return is sent to HMRC under those regulations without the new employee fields being completed in respect of the employee, the employer must deduct tax on the non-cumulative basis using code 0T.

(2) In paragraph (1), “the new employee fields” has the same meaning as in regulation 40A.

Procedure where no Form P45 and code not known: application of regulations 49C to 49E

49B.—(1) Regulations 49C to 49E (procedure where no Form P45) apply if—

- (a) regulation 49A does not apply,
- (b) an employee commences employment without giving the employer Parts 2 and 3 of Form P45 and the circumstances mentioned in regulation 51(2)(b) (late presentation of Form P45) do not apply, and
- (c) a code in respect of the employee has not otherwise been issued to the employer.

(2) For the purposes of paragraph (1)(c), the employer must ignore any code issued to the employer in respect of an employee’s earlier employment which has ceased.

Procedure where no Form P45 and: (a) employee is not a seconded expatriate and paragraph 41(a) of Schedule A1 applies; or (b) seconded expatriate is national of EEA state

49C.—(1) This regulation applies where—

- (a) the employee is not a seconded expatriate and has indicated in accordance with regulation 40A(1) (duty of employee to assist with completion of new employee fields in returns under regulations 67B and 67D) that the statement in paragraph 41(a) of Schedule A1 (real time returns) is correct, or
- (b) the employee is a seconded expatriate and has confirmed in accordance with regulation 40A(1) being a national of an EEA state.

(2) On making the first relevant payment which equals or exceeds the lower earnings limit to the employee, the employer must—

- (a) prepare a deductions working sheet and enter the total payments to date, and
- (b) deduct tax on the cumulative basis using the emergency code.

(3) On making any subsequent relevant payment before HMRC issue a code for use in respect of the employee, the employer must continue to deduct or repay tax on the cumulative basis using the emergency code.

Procedure where no Form P45 and: (a) employee is not a seconded expatriate and paragraph 41(b) of Schedule A1 applies; or (b) employee is a seconded expatriate and paragraph 43(b) or 43(c) of Schedule A1 applies

49D.—(1) This regulation applies where—

- (a) the employee is not a seconded expatriate and has indicated in accordance with regulation 40A(1) that the statement in paragraph 41(b) of Schedule A1 is correct, or
- (b) the employee is a seconded expatriate to whom regulation 49C does not apply and has indicated in accordance with regulation 40A(1) that the statement in paragraph 43(b) or 43(c) of Schedule A1 is correct.

(2) On making the first relevant payment which equals or exceeds the lower earnings limit to the employee, the employer must—

- (a) prepare a deductions working sheet and enter the total payments to date, and
- (b) deduct tax on the non-cumulative basis using the emergency code.

(3) On making any subsequent relevant payment before the employee’s code is issued, the employer must continue to deduct or repay tax on the non-cumulative basis using the emergency code.

Procedure where no Form P45 and: (a) employee is a not seconded expatriate and paragraph 41(c) of Schedule A1 applies; or (b) employee is a seconded expatriate and paragraph 43(a) of Schedule A1 applies

49E.—(1) This regulation applies in any case which is not dealt with by regulation 49C or 49D.

(2) On making the first relevant payment to the employee, the employer must—

- (a) prepare a deductions working sheet and enter both the total payments to date and the total tax to date before the first payment as nil,
- (b) deduct tax on the cumulative basis using the basic rate code.

(3) On making any subsequent relevant payment before the employee’s code is issued, the employer must continue to deduct tax on the cumulative basis using the basic rate code.

(4) In the case of a seconded expatriate, the emergency code must be used instead of the basic rate code mentioned in paragraphs (2)(b) and (3).”.

No Form P45: code treated as issued by HMRC

15. For the heading to regulation 50 (procedure in Form P46 cases: code treated as issued by HMRC) substitute “No Form P45: code treated as issued by HMRC”.

16. In regulation 50—

- (a) for “The” substitute “Code 0T, the”,
- (b) for “47” substitute “46”
- (c) for “49”, in both places, substitute “49E”, and
- (d) omit “Form P46 procedure and”.

Procedure in cases of retrospective earnings: code treated as issued by HMRC

17. In regulation 50A(3) (procedure in cases of retrospective earnings: code treated as issued by HMRC), for “49” substitute “49E”.

Late presentation of Form P45

18. In regulation 51 (late presentation of Form P45)—

(a) for paragraph (2) substitute—

“(2) If the employee gives Parts 2 and 3 of Form P45 to the employer before, as the case may be—

- (a) the employer is required to send Form P46 to HMRC under regulations 47 to 49, or
- (b) the employer is required to send the first return in relation to the employee under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) to HMRC,

regulation 42 (procedure if employer receives Form P45) applies.”, and

(b) for paragraph (3)(a) substitute—

“(a) after, as the case may be—

- (i) Form P46 is required to have been sent to HMRC, or
- (ii) the employer is required to send the first return in relation to the employee under regulation 67B or 67D to HMRC,

but”.

Late presentation of Form P45: employer's duties

19. After regulation 52(1) (late presentation of Form P45: employer's duties) insert—

“(1A) Paragraphs (2) and (3) apply if the employer is either—

- (a) a non-Real Time Information employer, or
- (b) a Real Time Information employer to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee's employment.”.

No Form P45: subsequent procedure on issue of employee's code

20. For the heading to regulation 53 (Form P46 cases: subsequent procedure on issue of employee's code) substitute “No Form P45: subsequent procedure on issue of employee's code”.

21. In regulation 53—

- (a) in paragraph (1), for “49 (procedure in Form P46 cases)” substitute “49E (procedure where no Form P45)”, and
- (b) in paragraph (2)(b)(ii), for “or 49” substitute “, 49, 49C, 49D or 49E”.

Application of Chapter 3 of Part 3 of the 2003 Regulations to Real Time Information pension payers

22. After regulation 54 (scope of Chapter 3 of Part 3) insert—

“Application of this Chapter to Real Time Information pension payers

54ZA.—(1) Any requirement in this Chapter to complete (howsoever expressed) and send to HMRC Part 3 of Form P45 or Form P46(Pen) applies only to—

- (a) non-Real Time Information pension payers, and
- (b) Real Time Information pension payers to whom HMRC has given a notice requiring the pension payer to send to HMRC Form P45 or Form P46(Pen) on the commencement of a new pensioner's pension.

(2) Paragraph (1) is without prejudice to the requirement in regulation 55(3)(b) (PAYE pension income paid by former employer) to complete and give Form P46(Pen) to the pensioner.”.

Procedure in regulation 54A cases: code treated as issued by HMRC

23. For the heading to regulation 54B (procedure in Form P46(Pen) cases: code treated as issued by HMRC) substitute “Procedure in regulation 54A cases: code treated as issued by HMRC”.

24. In regulation 54B(2), omit “Form P46(Pen) procedure,”.

Procedure if no Form P45 and code not known: UK pensioners

25. For the heading to regulation 58 (information (Form P46(Pen)) and procedure if code not known: UK residents) substitute “Procedure if no Form P45 and code not known: UK pensioners”.

UK resident pensioner's code treated as issued by HMRC

26. In regulation 59(2) (UK resident pensioner's code treated as issued by HMRC), omit “Form P46(Pen) procedure,”.

Real time returns, payments and associated matters

27. In Chapter 1 of Part 4—

- (a) omit the cross heading “Payment and recovery of tax by employer” which appears before regulation 68, and
- (b) before regulation 68 insert—

“Real time returns

Real time returns of information about relevant payments

67B.—(1) On or before making a relevant payment to an employee, a Real Time Information employer must deliver to HMRC the information specified in Schedule A1 in accordance with this regulation unless the employer is not required by regulation 66 (deductions working sheets) to maintain a deductions working sheet for any employees.

(2) The information must be included in a return.

(3) Subject to paragraph (4), if relevant payments are made to more than one employee at the same time, the return under paragraph (2) must include the information required by Schedule A1 in respect of each employee to whom a relevant payment is made at that time.

(4) If relevant payments are made to more than one employee at the same time but the employer operates more than one payroll, the employer must make a return in respect of each payroll.

(5) The return is to be made using an approved method of electronic communications.

(6) Section 98A of TMA (special penalties in case of certain returns) applies to returns within paragraph (7).

(7) A return is within this paragraph if it is one of the following—

- (a) a return under this regulation which relates to the relevant payments made on the final normal pay day in the tax year 2012-13 for any of the employees in respect of whom information is included in the return, or
- (b) a return under this regulation which contains information about the final relevant payment made to any employee in the tax year 2012-13 where—
 - (i) the relevant payment is made after the employee’s final normal pay day in the tax year, or
 - (ii) the employee is paid at irregular intervals.

Modification of the requirements of regulation 67B: notional payments

67C.—(1) This regulation applies if an employer makes a relevant payment which is a notional payment (including a notional payment arising by virtue of a retrospective tax provision) to an employee.

(2) If the employer is unable to comply with the requirement in regulation 67B(1) to deliver the information required by that regulation on or before making the relevant payment, the employer must instead deliver the information as soon as reasonably practicable after the payment is made and in any event no later than—

- (a) the time at which the employer deducts tax in respect of the relevant payment in accordance with regulation 62 (deductions in respect of notional payments), or
- (b) 14 days after the end of the tax month the payment is made in,

whichever is the earliest.

Exceptions to regulation 67B

67D.—(1) This regulation applies to—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications,
- (b) a partnership, if all the partners fall within sub-paragraph (a),

- (c) a company, if all the directors and the company secretary fall within sub-paragraph (a), and
- (d) a care and support employer.

(2) A Real Time Information employer to whom this regulation applies may proceed in accordance with this regulation instead of regulation 67B.

(3) A Real Time Information employer must deliver to HMRC the information specified in Schedule A1 in respect of each employee to whom relevant payments are made in a tax month unless the employer is not required by regulation 66 (deductions working sheets) to maintain a deductions working sheet for any employees and, for the purposes of this regulation, references in Schedule A1 to a relevant payment shall be read as if they were references to all the relevant payments made to the employee in the tax month.

(4) The information must be included in a return.

(5) The return required under paragraph (4) must be delivered within 14 days after the end of the tax month the return relates to.

(6) If relevant payments have been made to more than one employee in the tax month, the return under paragraph (4) must include the information required by Schedule A1 in respect of each employee to whom a relevant payment has been made.

(7) Section 98A of TMA (special penalties in case of certain returns) applies to returns within paragraph (8).

(8) A return is within this paragraph if it is one of the following—

- (a) a return under this regulation which contains information about the relevant payments made on the final normal pay day in the tax year 2012-13 for any of the employees in respect of whom information is included in the return, or
- (b) a return under this regulation which contains information about the final relevant payment made to any employee in the tax year 2012-13 where—
 - (i) the relevant payment is made after the employee's final normal pay day in the tax year, or
 - (ii) the employee is paid at irregular intervals.

(9) In paragraph (1)(c), "company" means a body corporate or unincorporated association but does not include a partnership.

(10) In paragraph (1)(d), "a care and support employer" means an individual ("the employer") who employs a person to provide domestic or personal services at or from the employer's home where—

- (a) the services are provided to the employer or a member of the employer's family,
- (b) the recipient of the services has a physical or mental disability, or is elderly or infirm, and
- (c) it is the employer who delivers the return (and not some other person on the employer's behalf).

Returns under regulations 67B and 67D: amendments

67E.—(1) This regulation applies where an employer discovers an error in a return made under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) and paragraph (2), (3) or (4) applies.

(2) This paragraph applies where the error relates to the information given in the return in respect of an employee under paragraph 16 or 17 of Schedule A1 (real time returns).

(3) This paragraph applies where the error was the omission of details of a relevant payment to an employee.

(4) This paragraph applies where the error arises because, as a result of a retrospective tax provision, the total amount of the relevant payments made by an employer to an employee increases for any tax year in which the employer was a Real Time Information employer.

(5) The employer must provide the correct information in the first return made after the discovery of the error under regulation 67B or 67D for the tax year in question.

(6) But if the information has not been corrected before 20th April following the end of the tax year in question, the employer must make a return under this paragraph.

(7) A return under paragraph (6)—

(a) must include the following—

- (i) the information specified in paragraphs 2 to 4, 8 to 13 and 15 of Schedule A1,
- (ii) the tax year to which the return relates,
- (iii) the value of the adjustment to the information given under paragraphs 16 or 17 of Schedule A1 in the final return under regulation 67B or 67D containing information in respect of the employee in the tax year in question,
- (iv) in any case where information given under paragraph 17 of Schedule A1 is corrected, the tax code operated in arriving at the value of the correction, and
- (v) if paragraph (8) applies, the information specified in paragraphs 36 to 44 of Schedule A1,

(b) must be made as soon as reasonably practicable after the discovery of the error, and

(c) must be made by an approved method of electronic communications.

(8) This paragraph applies if—

- (a) the error is within paragraph (3),
- (b) the relevant payment was the first relevant payment to the employee in the employment, and
- (c) the information specified in paragraphs 36 to 44 of Schedule A1 has not otherwise been provided.

(9) In the application of paragraphs (6) and (7) to cases within paragraph (3), if no information was given in any returns under regulation 67B or 67D in respect of the employee in the tax year, the value of the adjustments required must be calculated as if there was a final return containing information for the employee in the year and the figure requiring adjustment was zero.

(10) Paragraph (7)(c) does not apply if the employer is one to whom regulation 67D applies.

Additional information about payments

67F.—(1) A Real Time Information employer may send to HMRC a notification if—

- (a) for a tax period, the employer was not required to make any returns in accordance with regulation 67B or 67D because no relevant payments were made during the tax period, or
- (b) the employer has sent the final return under regulation 67B or 67D that the employer expects to make—
 - (i) in the circumstances described in paragraph 5 of Schedule A1 (real time returns), or
 - (ii) for the tax year.

(2) A notification under paragraph (1)(b) must—

- (a) include the information specified in paragraph 7 of Schedule A1,
- (b) be sent within 14 days of the end of final tax period of the tax year.

(3) A notification under this regulation must—

- (a) state—
 - (i) the tax year to which it relates,

- (ii) the employer's HMRC office number,
 - (iii) the employer's PAYE reference, and
 - (iv) the employer's accounts office reference, and
- (b) be sent using an approved method of electronic communications unless the employer is one to whom regulation 67D applies.

Payment and recovery of tax by employer

Payments to and recoveries from HMRC for each tax period by Real Time Information employers

67G.—(1) For each tax period, a Real Time Information employer must pay to, or may recover from, HMRC the amount arrived at under the formula in paragraph (4).

(2) If the amount arrived at under the formula in paragraph (4) is a positive amount, the employer must pay the excess to HMRC.

(3) If the amount arrived at under the formula in paragraph (4) is a negative amount, the employer may recover that amount either—

- (a) by deducting it from the amount which the employer is liable to pay under paragraph (2) for a later period in the tax year, or
- (b) from the Commissioners for Her Majesty's Revenue and Customs.

(4) The formula in this paragraph is $A - B$, where—

- A is the sum total of the relevant amounts for each of the employer's employees, and
- B is amount A for the previous tax period in the tax year, if any.

(5) For the purposes of paragraph (4), a "relevant amount" is the amount shown under paragraph 17 of Schedule A1 (real time returns) for an employee in the most recent return made in the tax year by the employer under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) which contains information about that employee.

(6) In paragraph (5) "the most recent return" means the return which, as at the end of the tax period, contains the most up to date information under paragraph 17 of Schedule A1 about the employee.

(7) This regulation is subject to regulations 67H (payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under regulation 67E(6)), 71 (modification of regulations 67G and 68 in case of trade dispute) and 75B (certificates under regulation 75A: excess payments).

Payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under regulation 67E(6)

67H.—(1) This regulation applies if, during any tax period, an employer makes a return under regulation 67E(6) (returns under regulations 67B and 67D: amendments) other than by virtue of regulation 67E(4).

(2) The amount arrived at by the employer under regulation 67G for the final tax period of the tax year covered by the return is to be adjusted to take account of the information in the return.

(3) If the value of the adjustment required by paragraph (2) is a negative amount, the employer may recover that amount—

- (a) by setting it off against the amount the employer is liable to pay under regulation 67G for the tax period the return was made in, or
- (b) from the Commissioners for Her Majesty's Revenue and Customs."

28. For the heading to regulation 68 (periodic payments to and recoveries from HMRC), substitute “Periodic payments to and recoveries from HMRC: non-Real Time Information employers”.

29. In regulation 68(1), for “an employer” in the first place it appears substitute “a non-Real Time Information employer”.

Due date and receipts for payment of tax

30. In regulation 69 (due date and receipts for payment of tax), in both places, before “68(2)” insert “67G(2) or”.

Quarterly tax periods

31. In regulation 70(3) (quarterly tax periods), in the definition of “P”, before “68” insert “67G or”.

Modification of regulations 67G and 68 in case of trade dispute

32. In the heading to regulation 71 (modification of regulation 68 in case of trade dispute), for “regulation 68” substitute “regulations 67G and 68”.

33. In regulation 71—

- (a) in paragraph (1), for “regulation 68” substitute “regulations 67G and 68”,
- (b) in paragraph (3)—
 - (i) before “68(2)”, insert “67G(2) or, as the case may be,”,
 - (ii) in the heading to table (3), before “68” insert “67G or”, and
- (c) in paragraph (4), before “68(3)” insert “67G or, as the case may be,”.

Annual returns

34. Before regulation 73 and below the cross heading “Annual returns of relevant payments of tax” insert—

“Application of regulations 73 to 75

72H. Regulations 73 to 75 apply to—

- (a) non-Real Time Information employers,
- (b) Real Time Information employers in relation to tax years in which they were, for the whole of the tax year, non-Real Time Information employers, and
- (c) Real Time Information employers to whom HMRC has given a notice requiring a return under regulation 73 in respect of a tax year.”.

Failure to account for deductible tax

35. Before regulation 76 and below the cross heading “Failure to account for deductible tax” insert—

“Power of HMRC to issue a notice and certificate in cases where regulation 67B or 67D returns are not made, etc

75A.—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B or C is met.

- (2) Condition A is that a Real Time Information employer—
 - (a) has not paid to HMRC any tax for that tax period,

- (b) has not made any returns under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) in respect of the tax period, and
- (c) has not sent HMRC a notification under regulation 67F(1)(a) (additional information about payments),

and HMRC are not satisfied that no relevant payments have been made in the tax period.

(3) Condition B is that—

- (a) a Real Time Information employer has paid an amount of tax for that tax period, whether or not the amount is the amount due under regulation 67G (payments to and recoveries from HMRC for each tax period by Real Time Information employers), but
- (b) HMRC are not satisfied, after seeking the employer’s explanation, that the amount due under regulation 67G is the amount which would have been due had any tax returned under regulation 67B or 67D as deducted from each of the employer’s employees during the period been the amount that the employer was liable to deduct.

(4) Condition C is that a Real Time Information employer has not paid to HMRC the amount of tax due under regulation 67G.

(5) HMRC, on consideration of the matters specified in paragraph (6), may—

- (a) specify to the best of their judgment, the amount of tax, or a combined amount, they consider the employer is liable to pay, and
- (b) serve notice on the employer requiring payment of that amount within 7 days of the issue of the notice (“the notice period”).

(6) The matters specified in this paragraph are—

- (a) the employer’s record of past payments, whether of tax or combined amounts,
- (b) any returns made by the employer under regulation 67B or 67D in respect of the tax period,
- (c) any returns made by the employer under regulation 67B or 67D in respect of earlier tax periods,
- (d) any returns made by the employer under regulation 67E(6),
- (e) any returns made by the employer under regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)) in relation to previous tax years.

(7) If the notice extends to two or more consecutive tax periods in a tax year, this regulation has effect as if they were the latest period specified in the notice.

(8) If, during the notice period, the employer—

- (a) claims that the amount paid in respect of the tax period specified in the notice represents the full amount of tax the employer was liable to deduct from each of the employer’s employees during the period, but
- (b) does not satisfy HMRC that this is the case,

the employer may require HMRC to inspect the employer’s PAYE records as if the employer had been required to produce those records under Schedule 36 to the Finance Act 2008(a) (information and inspection powers).

(9) If there is an inspection by virtue of paragraph (8), the notice given by HMRC under paragraph (5) must be disregarded.

(a) 2008 c.9. Schedule 36 was amended by Schedules 47 and 48 to the Finance Act 2009, Schedules 23 and 24 to the Finance Act 2011 and S.I. 2009/56 and 2009/3054. It has been prospectively amended by Schedule 6 to the Finance Act 2010 (c.13).

(10) If the amount specified in the notice, or any part of it, is not paid during the notice period—

- (a) the amount unpaid is treated as an amount of tax or as including an amount of tax which the employer was liable to pay for that tax period under regulation 67G, and
- (b) HMRC may prepare a certificate showing how much of that amount remains unpaid.

(11) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Certificates under regulations 75A: excess payments

75B.—(1) This regulation applies if, as a consequence of paying a certified amount of tax under regulation 75A in relation to the tax year, the total amount of tax paid to HMRC for the tax year under these Regulations by an employer exceeds the amount which would have been paid had it not been necessary for HMRC to prepare the certificate.

(2) The employer is entitled to set off the excess tax against any amount which the employer is liable to pay under regulation 67G for any subsequent tax period or, if the tax year in question has ended, the excess of tax paid may be repaid.”.

36. In the heading to regulation 77 (return and certificate if tax may be unpaid), after “unpaid” insert “: amounts due under regulation 68”.

37. In the heading to regulation 78 (notice and certificate if tax may be unpaid), after “unpaid” insert “: amounts due under regulation 68”.

Determination of unpaid tax and appeal against determination

38. In regulation 80 (determination of unpaid tax and appeal against determination)—

- (a) in paragraph (1)—
 - (i) before “68” insert “67G or”, and
 - (ii) before “76,” insert “75A,”,

(b) after paragraph (1) insert—

“(1A) In paragraph (1), the reference to tax payable for a tax year under regulation 67G includes a reference to any amount the employer was liable to deduct from employees during the tax year whether or not that amount was included in any return under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B).”, and

(c) in paragraph (4), before “68” insert “67G or”.

Interest on tax overdue

39. In regulation 82(6) (interest on tax overdue)—

- (a) in sub-paragraph (a), before “68” insert “67G or”, and
- (b) in sub-paragraph (b), before “68(3)(b)” insert “67G(3)(b) or”.

Recovery of tax and interest

40. In regulation 84 (recovery of tax and interest)—

- (a) in paragraph (1)(a) before “76(2)” insert “75A(10),”, and
- (b) in Table 4 in paragraph (3), before “77(6)” insert “75A(10),”.

Retention by employer of PAYE records

41. In regulation 97(3)(a) (retention by employer of PAYE records), after “46)” insert “, information provided under regulation 40A(1) (duty of employee to assist with completion of new employee fields in returns under regulations 67B and 67D)”.

Relevant debts of managed service companies

42. In regulation 97B (debts of managed service companies), after paragraph (2) insert—

“(2A) Condition A2 is met if—

- (a) HMRC serve a notice on an employer under regulation 75A(5) (power of HMRC to issue a notice and certificate in cases where regulation 67B or 67D returns are not made, etc) requiring payment of the amount of tax they consider the employer is liable to pay, and
- (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.”.

Time limits for issue of transfer notices: managed service companies

43. In regulation 97D (time limits for issue of transfer notices), after paragraph (3) insert—

“(3A) In a case in which condition A2 in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HMRC serve notice to the employer under regulation 75A(5).”.

Succession to a business: trade disputes

44. In regulation 104 (succession to a business: trade disputes)—

- (a) in paragraph (4), before “68(3)(b)” insert “67G(3)(b) (payments to and recoveries from HMRC for each tax period by Real Time Information employers) or, as the case may be,”, and
- (b) in paragraph (5), before “68” insert “67G or”.

Effect of PAYE settlement agreement

45. In regulation 107(7)(a) (effect of PSA), before “73” insert “67B, 67D, 67E,”.

Electronic payment by large employers: meaning of “large employer”

46. In regulation 198A(2)(b) (large employers), after “employee” insert “or, as the case may be, has not indicated in a return under regulation 67B or 67D that the employee’s employment has ceased”.

Large employers required to make specified payments electronically

47. In regulation 199(2) (large employers required to make specified payments electronically), for “68 (periodic payments to and recoveries from HMRC)” substitute “67G (payments to and recoveries from HMRC: Real Time Information employers) or 68 (periodic payments to and recoveries from HMRC: non-Real Time Information employers)”.

Electronic communications

48. In the heading to Chapter 4 of Part 10 (mandatory use of electronic communications), after “communications” insert “: specified information”.

49. After Chapter 4 of Part 10 insert—

“CHAPTER 4A

Mandatory use of electronic communications: real time returns of information about relevant payments of tax and associated matters

Application of Chapter 4 to real time returns of information about relevant payments of tax and associated matters

210D. Regulation 205(3) applies to the delivery of the following as if they were specified information within the meaning given by regulation 207—

- (a) returns under regulation 67B (real time returns of information about relevant payments),
- (b) returns under regulation 67E(6) (returns under regulation 67B and 67D: amendments), unless the employer is one to whom regulation 67D (exceptions to regulation 67B) applies, and
- (c) notifications under regulation 67F (additional information about payments) unless the employer is one to whom regulation 67D applies.”.

Certificate that sum due

50. In the list in regulation 218(2) (certificate that sum due), before the entry relating to regulation 76 insert—

“regulation 75A(10) unpaid amounts from regulation 75A specification”.

Payment by cheque

51. In the list in regulation 219(2) (payment by cheque), after the entry relating to regulation 72 insert—

“regulation 75A notice and certificate in cases where regulation 67B or 67D returns are not made”.

New Schedule: information to be included in returns under regulations 67B and 67D

52. Before Schedule 1 insert Schedule A1 as set out in the Schedule to these Regulations.

CHAPTER 2

Transitional provisions

Information about employees

53. Subject to regulation 55, on becoming a Real Time Information employer, an employer must provide to HMRC the following information—

- (a) the information specified in paragraphs 2 to 4 of Schedule A1 to the 2003 Regulations, as inserted by these Regulations,
- (b) the income tax year in which the employer became a Real Time Information employer,
- (c) the following information about each of the employer’s employees during the tax year in which the employer became a Real Time Information employer—
 - (i) the employee’s name,
 - (ii) the employee’s date of birth,
 - (iii) the employee’s current gender,
 - (iv) if known, the employee’s national insurance number,
 - (v) the employee’s address,

- (vi) the number used by the employer to identify the employee, if any,
- (vii) the date on which the employee's employment commenced, if that date is in the tax year in which the employer became a Real Time Information employer,
- (viii) if applicable, the date on which the employee's employment ceased,
- (ix) if applicable, an indication that an occupational pension is being paid to the employee and that the employer is the pension payer,
- (x) if applicable, an indication that the employee is a seconded expatriate,
- (xi) if applicable, an indication that relevant payments are made in respect of the employee to a person other than the employee,
- (xii) if applicable, an indication that relevant payments are made to the employee on an irregular basis,
- (xiii) the tax code operated on relevant payments made to the employee, and
- (xiv) if applicable, an indication that the tax code operated on relevant payments made to the employee is operated on the non-cumulative basis.

Information about payments to employees

54.—(1) Within one month of making the first return under regulation 67B or 67D of the 2003 Regulations, as inserted by these Regulations, a Real Time Information employer must provide to HMRC the information specified in paragraph (2) in respect of—

- (a) each employee who has been employed in the tax year the return was made in but whose employment had ceased before the date on which the return was made, and
- (b) each employee to whom relevant payments are made on an irregular basis and—
 - (i) in respect of whom information was not included on that return, and
 - (ii) to whom the employer does not expect to make a relevant payment within one month of making the return.

(2) The information specified in this paragraph is the information specified in paragraphs 2 to 4, 8 to 13, 15 to 17 and 45 of Schedule A1 to the 2003 Regulations, as inserted by these Regulations.

Provision of information under regulations 53 and 54

55.—(1) If an employer is one to whom paragraph (3) applies, the information required by regulation 53 must be provided before the employer makes any returns under regulation 67B or 67D of the 2003 Regulations, as inserted by these Regulations.

(2) Any other employer may provide the information required by regulation 53 as part of the first return the employer makes under regulation 67B or 67D of the 2003 Regulations, as inserted by these Regulations.

(3) This paragraph applies to an employer who, on the day the employer becomes a Real Time Information employer, employs 250 or more employees.

(4) The information required by regulations 53 and 54 must be provided using an approved method of electronic communications unless the employer is one to whom regulation 67D of the 2003 Regulations, as inserted by these Regulations, applies in which case the information must be provided in the form specified by HMRC.

Postponement of first return under regulation 67B or 67D of the 2003 Regulations

56.—(1) This regulation applies if a return due under regulation 67B or 67D of the 2003 Regulations, as inserted by these Regulations, is the first return made under either of those provisions by an employer.

(2) HMRC may notify the employer that the return must not be sent until such a date as HMRC notifies.

(3) If a second or subsequent return falls to be made by the employer under either of those provisions before the date notified by HMRC, it is also to be made on that date.

Regulations 53 to 56: interpretation

57. Terms used in regulations 53 to 56 have the same meaning as they have in the 2003 Regulations, as amended by these Regulations.

PART 3

Security for payment of PAYE

New Part 4A

58. After regulation 97L (repayment of surplus amounts) insert—

“PART 4A

Security for payment of PAYE

Interpretation

97M. In this Part—

“a further notice” has the meaning given in regulation 97U(3); and

“PGS” has the meaning given in regulation 97S(1).

Requirement for security

97N.—(1) In circumstances where an officer of Revenue and Customs considers it necessary for the protection of the revenue, the officer may require a person described in regulation 97P(1) (persons from whom security can be required) to give security or further security for the payment of amounts in respect of which an employer described in regulation 97O (employers) is or may be accountable to HMRC under regulation 67G(a), 68 or 80 (payments to HMRC and determination of unpaid amounts).

(2) Paragraph (1) does not apply to any amount which the employer is required to pay to HMRC that relates to income to which Part 8 (social security benefits) applies.

Employers

97O.—(1) The employer is any employer other than—

- (a) the Crown,
- (b) an employer to whom paragraph (2) applies,
- (c) an employer who employs only employees who are personal employees within the meaning given in regulation 34(3) (simplified deduction scheme for personal employees), and
- (d) a care and support employer within the meaning given by regulation 206(4) (employers).

(2) This paragraph applies to employers who at the relevant time could not be liable to a penalty under Schedule 56 to the Finance Act 2009(b) by virtue of paragraph 10 of that

(a) Regulation 67G is inserted by regulation 27(b) of these Regulations.

(b) 2009 c.10.

Schedule (suspension of penalty for failure to make payments on time during currency of agreement for deferred payment).

(3) In paragraph (2), the relevant time is a time at which, but for paragraph (1)(b), the officer would require security.

Persons from whom security can be required

97P.—(1) The persons are—

- (a) the employer,
- (b) any of the following in relation to the employer—
 - (i) a director,
 - (ii) a company secretary,
 - (iii) any other similar officer, or
 - (iv) any person purporting to act in such a capacity, and
- (c) in a case where the employer is a limited liability partnership, a member of the limited liability partnership.

(2) An officer of Revenue and Customs may require—

- (a) a person to give security or further security of a specified value in respect of the employer, or
- (b) more than one person to give security or further security of a specified value in respect of the employer, and where the officer does so those persons shall be jointly and severally liable to give that security or further security.

Notice of requirement

97Q.—(1) An officer of Revenue and Customs must give notice of a requirement for security to each person from whom security is required and the notice must specify—

- (a) the value of security to be given,
- (b) the manner in which security is to be given,
- (c) the date on or before which security is to be given, and
- (d) the period of time for which security is required.

(2) The notice must include, or be accompanied by, an explanation of—

- (a) the employer's right to make a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009, and
- (b) the effect of regulation 97R(2) and (3) (date on which security is due).

(3) In a case which falls within regulation 97P(2)(b), the notice must include, or be accompanied by, the names of each other person from whom security is required.

(4) The notice may contain such other information as the officer considers necessary.

(5) A person shall not be treated as having been required to provide security unless HMRC comply with this regulation and regulation 97R(1).

Date on which security is due

97R.—(1) The date specified under regulation 97Q(1)(c) (notice of requirement) may not be earlier than the 30th day after the day on which the notice is given.

(2) If, before the date specified under regulation 97Q(1)(c), the employer makes a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009, the requirement to give security on or before that date does not apply.

(3) In a case which falls within paragraph (2), if HMRC does not agree to the employer's request, security is to be given on or before the 30th day after the day on which HMRC notifies the employer of that decision.

Application for reduction in the value of security held

97S.—(1) A person who has given security (“PGS”) may apply to an officer of Revenue and Customs for a reduction in the value of security held by HMRC if—

- (a) PGS’ circumstances have changed since the day the security was given because—
 - (i) of hardship, or
 - (ii) PGS has ceased to be a person mentioned in regulation 97P(1) (person from whom security can be required), or
- (b) since the day the security was given there has been a significant reduction in the number of employees of the employer to whom the security relates or that employer has ceased to be an employer.

(2) Where regulation 97P(2)(b) applies, a person who has not contributed to the value of the security given may not make an application under paragraph (1).

Outcome of application for reduction in the value of security held

97T.—(1) If an application under regulation 97S(1) (application for reduction in the value of security held) is successful, the officer must inform PGS of the reduced value of security that is still required or, where that value is nil, that the requirement for security has been cancelled.

(2) HMRC may make such arrangements as they think fit to ensure the necessary reduction in the value of security held.

Outcome of application for reduction in the value of security held: further provision

97U.—(1) This regulation applies—

- (a) in cases which fall within regulation 97P(2)(b), and
- (b) where PGS’ application is made under regulation 97S(1)(a).

(2) As a consequence of arrangements made under regulation 97T(2) (outcome of application for reduction in the value of security held), an officer of Revenue and Customs may require any other person who was given notice under regulation 97Q (notice of requirement) in relation to the security (“the original security”), or any other person mentioned in regulation 97P(1), to provide security in substitution for the original security.

(3) Where an officer of Revenue and Customs acts in reliance on paragraph (2), the officer must give notice (“a further notice”).

(4) Regulation 97Q and regulation 97R (date on which security is due) apply in relation to a further notice.

(5) Subject to paragraph (6), regulation 97V(1) (appeals) applies in relation to a further notice.

(6) A person who is given a further notice and who was also given notice under regulation 97Q in relation to the original security may only appeal on the grounds the person is not a person mentioned in regulation 97P(1).

Appeals

97V.—(1) A person who is given notice under regulation 97Q may appeal against the notice or any requirement in it.

- (2) PGS may appeal against—

- (a) the rejection by an officer of Revenue and Customs of an application under regulation 97S(1), and
 - (b) a smaller reduction in the value of security held than PGS applied for.
- (3) Notice of an appeal under this regulation must be given—
- (a) before the end of the period of 30 days beginning with—
 - (i) in the case of an appeal under paragraph (1), the day after the day on which the notice was given, and
 - (ii) in the case of an appeal under paragraph (2), the day after the day on which PGS was notified of the outcome of the application, and
 - (b) to the officer of Revenue and Customs by whom the notice was given or the decision on the application was made, as the case may be.
- (4) Notice of an appeal under this regulation must state the grounds of appeal.
- (5) On an appeal under paragraph (1) that is notified to the tribunal, the tribunal may—
- (a) confirm the requirements in the notice,
 - (b) vary the requirements in the notice, or
 - (c) set aside the notice.
- (6) On an appeal under paragraph (2) that is notified to the tribunal, the tribunal may—
- (a) confirm the decision on the application, or
 - (b) vary the decision on the application.
- (7) On the final determination of an appeal under this regulation—
- (a) subject to any alternative determination by a tribunal or court, any security to be given is due on the 30th day after the day on which the determination is made, or
 - (b) HMRC may make such arrangements as it sees fit to ensure the necessary reduction in the value of security held.
- (8) An appeal under this regulation is subject to the provisions of Part 5 of TMA(a) (appeals and other proceedings) apart from—
- (a) section 46D,
 - (b) section 47B,
 - (c) section 50(6) to (9), and
 - (d) sections 54A to 57.

Appeals: further provision for cases which fall within regulation 97R(2)

97W. In a case which falls within regulation 97R(2) (date on which security is due), if the request mentioned in that provision is made before an appeal under regulation 97V(1) (appeals), regulation 97V(3)(a)(i) applies as if the words “the day after the day on which the notice was given” were “the day after the day on which HMRC notifies the employer of its decision”.

Offence

97X.—(1) For the purposes of section 684(4A) of ITEPA(b) (PAYE regulations – security for payment of PAYE: offence)—

(a) Regulation 2(1) of the Income Tax (Pay As You Earn) Regulations 2003 defines TMA as meaning the Taxes Management Act 1970. Part 5 of that Act was amended in particular by Schedule 1 to S.I. 1994/1813, paragraph 7 of Schedule 22 to the Finance Act 1996, Schedule 1 to S.I. 2009/56 and paragraph 31 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c.8).

(b) Regulation 2(1) of the Income Tax (Pay As You Earn) Regulations 2003 defines ITEPA as meaning the Income Tax (Earnings and Pensions) Act 2003.

- (a) in relation to a requirement for security under a notice under regulation 97Q (notice of requirement) the period specified is the period which starts with the day the notice is given and ends with—
 - (i) the first day after the date specified under regulation 97Q(1)(c), or
 - (ii) in a case which falls within regulation 97R(2), the first day after the date determined under regulation 97R(3),
- (b) in relation to a requirement for security under a further notice the period specified is the period which starts with the day the further notice is given and ends with—
 - (i) the first day after the date specified under regulation 97Q(1)(c) as it applies in relation to the further notice, or
 - (ii) in a case which falls within regulation 97R(2), the first day after the date determined under regulation 97R(3) as it applies in relation to the further notice, and
- (c) in relation to a requirement for security to which regulation 97V(7)(a) applies the period specified is the period which starts with the day the determination is made and ends with the first day after—
 - (i) the day the tribunal or court determines to be the day that the security is to be given, or
 - (ii) the day determined in accordance with that regulation, as the case may be.”.

How information may be delivered to HMRC

59. In regulation 213 (how information may be delivered by HMRC)—

- (a) in paragraph (3), beneath the entry relating to regulation 61(2) in Table 11, insert the following—

“97Q(1), 97U(3)	notice of requirement for security	notice of requirement	of yes”
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- (b) for paragraph (5) substitute—
 - “(5) References in paragraphs (2) and (4) to—
 - (a) an employer include, in relation to regulations 97Q(1) (notice of requirement) and 97U(3) (outcome of application for reduction in the value of security held: further provision), any person to whom a notice under those regulations is given, and
 - (b) an employer’s agent are to a person acting on behalf of the employer.”.

PART 4

Other amendments

Interpretation and related matters

60. In regulation 2(1) (interpretation)—

- (a) insert in the appropriate places—
 - ““lower earnings limit” means the lower earnings limit for Class 1 contributions for the purposes of section 5(1) of the Social Security Contributions and Benefits Act 1992(a);”;

(a) 1992 c.4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c.30) and subsection (1) was amended by section 1(1)(a) of the National Insurance Contributions Act 2008 (c.16).

“seconded expatriate” means an employee meeting one of the following descriptions—

- (a) an employee in section 689 of ITEPA (employee of non-UK employer); or
- (b) an employee in a branch of an employer where—
 - (i) these Regulations would not apply to that employer but for that branch,
 - (ii) the employer seconded the employee to that branch, and
 - (iii) the employee was not employed in the United Kingdom immediately before the secondment;” and

(b) for the definition of “Student Loan Regulations” substitute—

“Student Loan Regulations” means the Education (Student Loans) (Repayment) Regulations 2009(a) or, in Northern Ireland, the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009(b);”.

61. Omit regulation 46(1C) (Form P46 where employer does not receive Form P45 and code not known).

62. In regulations 47 and 48 (procedure in Form P46 cases), omit paragraph (4).

63. In regulation 70(3) (quarterly tax periods), in the definition of “L”—

- (a) for “39(1)” substitute “54(1) or, in Northern Ireland, 49(1)”, and
- (b) in sub-paragraph (a), for “that regulation” substitute “those regulations”.

Simplified deduction scheme for personal employees

64. In regulation 34 (simplified deduction scheme for personal employees)—

- (a) in paragraph (1) after “may” insert “, subject to paragraph (1A),” and
- (b) after paragraph (1) insert—

“(1A) But authorisation under paragraph (1) must not be given on or after 6th April 2012.”.

PAYE income paid after employment ceased

65. In regulation 37 (PAYE income paid after employment ceased)—

- (a) in paragraph (2) for “Subject to paragraph (2A), the” substitute “The”,
- (b) omit paragraph (2A), and
- (c) omit paragraph (2B).

Commonwealth citizens

66. In regulation 46(1B) omit the words “, or is a Commonwealth citizen (see section 278(2)(a) of ICTA),”.

67. In regulation 47(1) omit the words “or being a Commonwealth citizen”.

How information must or may be delivered by employers

68. In Table 10 in regulation 211 (how information must or may be delivered by employers)—

- (a) in the entries relating to regulations 67(1), 132(1), 157(2)(b) and 184I(2)(b), in column 5 for “yes” substitute “not applicable”, and

(a) S.I. 2009/470, to which there are amendments not relevant to these Regulations.

(b) S.R. (NI) 2009 No. 128, to which there are amendments not relevant to these Regulations.

- (b) in the entry referring to regulation 184(G)(1) in column 1, for “184(G)(1)” substitute “184G(1)”.

Steve Lamey
Stephen Banyard

14th March 2012

Two of the Commissioners for Her Majesty’s Revenue and Customs

SCHEDULE

Regulation 52

“SCHEDULE A1 Regulations 67B and 67D(a)

Real time returns

1. The information specified in this Schedule is as follows.

Information about the employer

2. The employer’s HMRC office number.
3. The employer’s PAYE reference.
4. The employer’s accounts office reference.
5. If applicable, an indication that this is the final return under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) that the employer expects to make because this PAYE scheme has ceased, unless that information will be included in a notification under regulation 67F (additional information about payments).
6. If applicable, an indication that this is the final return under regulation 67B or 67D that the employer expects to make for the tax year, unless that information will be included in a notification under regulation 67F.
7. Unless the information will be included in a notification under regulation 67F, if either paragraph 5 or 6 applies details of the following—
 - (a) whether the employer made any taxable payments to an employee in respect of which the employer has borne the tax liability,
 - (b) whether any person other than the employer paid expenses or provided benefits to any employees during their employment with the employer in the year,
 - (c) whether anyone employed by a non-UK employer has undertaken work for the employer for 30 days or more in a row in the tax year,
 - (d) whether any payments of employment income in respect of an employee have been made directly to a person other than the employee,
 - (e) whether the employer is required to make a return under regulation 85 (employers: annual return of other earnings (Forms P11D and P9D)) for the tax year,
 - (f) whether, the return is being made by an intermediary within Chapter 8 of Part 2 of ITEPA or a managed service company.

(a) Regulations 67B and 67D are inserted by regulation 27(b) of these Regulations.

Information about the employee

8. The employee's name.
9. The employee's date of birth.
10. The employee's current gender.
11. If known, the employee's national insurance number.
12. If the employee's national insurance is not known, the employee's address.
13. The number used by the employer to identify the employee, if any.
14. If the number used by the employer to identify the employee is different to that shown on the previous return for the employee (if any), an indication of that and the number shown on the previous return.

Information about payments to the employee, etc

15. The tax year to which the return relates.
16. The total payments to date in this employment.
17. The total net tax deducted in relation to those payments.
18. The employee's pay frequency or an indication that payments are made to the employee on an irregular basis.
19. The date of the payment the return relates to.
20. The tax week number or tax month number in which the payment is made.
21. An indication of which of the following bands the number of normal hours worked each week by the employee falls into—
 - (a) up to 15.99,
 - (b) 16 to 29.99,
 - (c) 30 or more,or an indication that none of the bands is applicable.
22. The value of the payment the return relates to.
23. The tax code operated on the payment the return relates to.
24. If applicable, an indication that the employee's tax code is being operated on a non-cumulative basis.
25. The total net tax deducted from the payment the return relates to.
26. The value of any amount comprised within the payment made to the employee which falls to be reported under regulation 85 (employees: annual return of other earnings (Forms P11D and P9D)) and in respect of which tax has been deducted.
27. The value of any amount which is not subject to tax or national insurance paid to the employee at the same time as the payment.
28. The value of any deductions made from the payment which do not otherwise fall to be reported under this Schedule.

29. The value of the payment after allowable pension contributions within the meaning given by regulation 3(2) (net PAYE income) and the deduction of tax, national insurance and deductions due under the Student Loan Regulations^(a).

30. The value, if any, of allowable pension contributions within the meaning given by regulation 3(2) deducted from the payment of PAYE income comprising the payment.

31. The value, if any, of employee pension contributions other than allowable pension contributions within the meaning given by regulation 3(2) deducted from the payment.

32. The value of any earnings for the purposes of the Social Security Contributions and Benefits Act 1992 comprised within the total payment which are included in the gross earnings from the employment for the purpose of calculating liability to Class 1 contributions under that Act but in respect of which tax is not deducted under these Regulations, excluding allowable pension contributions.

33. In paragraphs 15 to 31, “payment” means the relevant payment the information being given in accordance with this Schedule relates to.

34. In paragraph 32, “total payment” means the relevant payment the information being given in accordance with this Schedule relates to plus any other amount paid to the employee at the same time as the relevant payment.

Information on the commencement of employment

35. If the return is the first return in respect of the employee in this employment the information required by paragraphs 36 to 44.

36. The date on which the employment commenced or will commence.

37. The employee’s address.

38. If known, the employee’s passport number.

39. An indication of which of the statements in paragraph 41 applies to the employee.

40. If the employee is a seconded expatriate, the information required by paragraph 42 and an indication of which of the statements in paragraph 43 applies to the employee.

41. The statements in this paragraph are—

- (a) the employment is the employee’s first employment since the preceding 6th April, and the employee has not since that date received—
 - (i) jobseeker’s allowance or incapacity benefit which is subject to income tax, or
 - (ii) a retirement pension or an occupational pension,
- (b) the employee is not receiving a retirement pension or an occupational pension and since the preceding 6th April—
 - (i) has had another employment, but is not now in receipt of employment income from it, or
 - (ii) has received jobseeker’s allowance or incapacity benefit which is subject to income tax, but payment of that allowance or benefit has ceased,
- (c) the employee either has another employment (which is continuing) or is in receipt of a retirement pension or an occupational pension.

42. An indication of whether the employee is a seconded expatriate who is a national of an EEA state.

^(a) Regulation 2(1) of the Income Tax (Pay As You Earn) Regulations 2003, as amended by regulation 60(b) of these Regulations, defines “Student Loan Regulations”.

43. The statements in this paragraph are—
- (a) the employee intends to live in the United Kingdom for six months or more,
 - (b) the employee intends to live in the United Kingdom for less than six months, or
 - (c) the employee will work both inside and outside the United Kingdom, but will live outside.
44. An indication of whether a pension is being paid and, if so—
- (a) the amount of the pension, and
 - (b) an indication of whether the pension is being paid because the pensioner is a bereaved spouse or civil partner.

Information on the cessation of employment

45. If the employment has ceased, the date of cessation.
46. If applicable, an indication that the payment to which the details under this Schedule relate was made after cessation of the employment.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (“the 2003 Regulations”).

The amendments contained in Chapter 1 of Part 2 of these Regulations deal with the way that employers report information under the Pay As You Earn system to HM Revenue and Customs (“HMRC”) about employees commencing and ceasing employment, the payments made to employees and the tax deducted from those payments. There are also consequential changes to the provisions dealing with the amount of tax that employers must account to HMRC for in respect of each tax period and the information that employees must receive when they cease employment.

The amendments in Part 2 come into force on 6th April 2012 but will apply to different employers at different times. Employers to whom the new reporting arrangements apply are referred to in the amendments as Real Time Information employers. The definition of a Real Time Information employer is contained in new regulation 2A of the 2003 Regulations, which is inserted by regulation 4 of these Regulations. New regulation 2B of the 2003 Regulations, which is also inserted by regulation 4, contains the definition of “Real Time Information pension payer” for the purposes of the provisions which apply specifically to pension payers when payment of a pension commences or ceases.

The amendments dealing with the cessation of employment are contained in regulations 6 to 8.

The principal amendments dealing with the commencement of employment are contained in regulations 9 to 26. In particular, these amendments deal with the procedures a Real Time Information employer and Real Time Information pension payer must go through when a new employee commences employment or a new pensioner first receives a pension.

The principal amendments dealing with the information a Real Time Information employer must send to HMRC in relation to payments made to their employees and the tax deducted from those payments and the amount of tax the employer must accordingly pay to HMRC are in regulations 27 to 35. In particular, regulation 27 inserts new regulations 67B to 67H into Part 4 of the 2003 Regulations.

Of these, new regulations 67B and 67D contain the principal new reporting obligations. Regulation 67B requires employers to provide information to HMRC each time a payment is made to an employee and for this to be done using an approved method of electronic communications.

“Approved method of electronic communications” is defined in regulation 189 of the 2003 Regulations, which is not amended by these Regulations.

Regulation 67D contains exceptions from the obligation in regulation 67B for certain employers. It allows those employers to report to HMRC at the end of each tax month and does not require the reporting to be done using an approved method of electronic communications.

The information to be reported to HMRC under regulations 67B and 67D is set out in new Schedule A1 to the 2003 Regulations. This is inserted by the Schedule to these Regulations.

New regulations 67G and 67H of the 2003 Regulations contain the provisions dealing with how much tax a Real Time Information employer must pay to HMRC for a tax period. Regulation 35 inserts new regulations 75A and 75B dealing with the enforcement of unpaid sums.

Chapter 2 of Part 2 of these Regulations contains transitional provisions dealing with information that an employer must provide to HMRC when they become a Real Time Information employer and under which HMRC can delay the obligation on a Real Time Information employer to comply with new regulation 67B or 67D, as the case may be, for the first time.

Part 3 of these Regulations inserts new Part 4A into the 2003 Regulations and makes a consequential amendment to regulation 213.

Part 4A provides for an officer of Revenue and Customs to require a person to give security, or further security, in respect of certain amounts that an employer is liable to pay to HMRC under the Pay As You Earn system. New Part 4A does not apply in relation to employers excepted by new regulation 97O (which include care and support employers and those in time to pay arrangements) or to amounts which relate to social security income. An officer may require a security where he or she considers that it is necessary for the protection of the revenue.

New regulation 97P lists the persons from whom security may be required and also makes provision for liability to give security to be joint and several in cases where it is required from more than one person.

New regulation 97Q requires the officer to give notice to a person from whom security is required and specifies the information that must be included in the notice. Regulation 97R prevents the notice from requiring the security on a date that is earlier than the 30th day after the day on which the notice is given and also provides that the date by which the security is required is delayed if, after the notice is served, the employer makes a request to HMRC to enter into a time to pay arrangement.

New regulation 97S makes provision for a person who has given security to apply to an officer of Revenue and Customs for a reduction in the value of security that HMRC hold. Regulation 97T permits HMRC to make such arrangements as they think fit to ensure the reduction in the value of security held in cases where an application under regulation 97S is successful. If an application made under regulation 97S results in a reduction in the value of security held by HMRC, regulation 97U provides that an officer of Revenue and Customs may require further security in substitution for the original security in certain cases.

New regulation 97V contains provisions allowing a person from whom security is required to appeal against that requirement, and a person whose application under regulation 97S is refused (in whole or in part) to appeal against that decision. With regulation 97W, it also contains (in part) the procedural requirements and practical arrangements for appeals.

Under section 684(4A) of the Income Tax (Earnings and Pensions) Act 2003, which was inserted by section 85 of the Finance Act 2011, it is an offence for a person from whom security is required to fail for a specified period to give security. New regulation 97X specifies the period for that purpose.

Part 4 of these Regulations contains other amendments to the 2003 Regulations. These deal, in particular, with:

- the closure to new employers of the simplified deduction scheme for personal employees provided for in regulation 34 of the 2003 Regulations,
- the removal of an exception to the requirement in regulation 37(2) of the 2003 Regulations to deduct tax from relevant payments made after an employment has ceased by the former employer or another on the employer’s behalf on the non-cumulative basis using the 0T code. The exception related to payments in the form of securities, interest in securities and securities options and provided that such payments must be taxed using the basic rate, and
- the treatment of Commonwealth citizens on the commencement of employment.

Tax Information and Impact Notes covering Part 2 and regulations 64 and 65 of this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

A Tax Information and Impact Note covering Part 3 of this instrument was published on 9th December 2010 alongside draft legislation and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

A Tax Information and Impact Note has not been prepared for regulations 61 to 63 or 66 to 68 as they contain no substantive changes to tax policy.

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