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STATUTORY INSTRUMENTS

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**2003 No. 2682**

**The Income Tax (Pay As You Earn) Regulations 2003**

**PART 6**

**PAYE SETTLEMENT AGREEMENTS**

*Making and effect of PSA*

**Inland Revenue and employer may make PSA**

**105.**—(1) The Inland Revenue and an employer may agree that paragraph (2) applies in respect of income tax on qualifying general earnings of the employer's employees for a tax year.

- (2) In relation to qualifying general earnings included in the agreement, the employer is—
- (a) accountable to the Board of Inland Revenue in accordance with the terms of the agreement and this Part, and
  - (b) not accountable in accordance with the rest of these Regulations.
- (3) Such an agreement is referred to as a PAYE settlement agreement ("PSA").

**Qualifying general earnings**

**106.**—(1) Qualifying general earnings are those general earnings which meet conditions A and B.

- (2) Condition A is that the general earnings consist of—
- (a) taxable benefits provided or made available by reason of employments with the employer, or
  - (b) expenses paid to persons holding those employments.
- (3) Condition B is that the employer and the Inland Revenue agree that the general earnings are—
- (a) minor, as regards the amount of the sums paid or the type of benefit provided or made available,
  - (b) irregular, as regards the frequency in which, or the times at which, the sums are paid or the benefit is provided or made available,
  - (c) paid in circumstances where deduction of tax by reference to the tax tables is impracticable, or
  - (d) in the case of a benefit provided or made available, shared between employees so that apportionment of the benefit between the employees is impracticable.
- (4) "Taxable benefit", in relation to an employee, means any benefit provided or made available, other than in the form of a payment of money, to the employee or to a person who is a member of the employee's family or household.
- (5) General earnings to which regulation 112(2)(a) or (b) (pre-agreement general earnings etc) apply are not qualifying general earnings.

**Effect of PSA**

**107.**—(1) Qualifying general earnings included in the PSA are treated as excluded from an employee's income for the purposes of determining the amount of the employee's liability to income tax for the tax year to which the PSA relates.

(2) But this does not affect—

- (a) the chargeability of those qualifying general earnings to income tax, or
- (b) the employer's liability under the PSA to account for income tax in respect of those qualifying general earnings.

(3) Sums in respect of income tax for which an employer is accountable to the Board of Inland Revenue under a PSA are not to be treated, for the purposes of these Regulations, as tax deducted from relevant payments.

(4) An employee has no right to be treated as having paid tax in respect of sums for which the employer is accountable under a PSA, and accordingly is not entitled to claim or receive any refund of tax paid by the employer under the PSA.

(5) An employee must, subject to paragraph (6), be treated as relieved from any obligations under the Income Tax Acts—

- (a) to keep records containing information relating to qualifying general earnings included in a PSA, or
- (b) to deliver returns in respect of those qualifying general earnings.

(6) Paragraph (5) does not apply for the purposes of the obligations imposed on the employer under regulation 117 (inspection of PSA records).

(7) Qualifying general earnings comprised in a PSA are not to be included—

- (a) in a return by the employer under regulation 73, 74, or 75 (returns of relevant payments and tax deducted), nor
- (b) in particulars provided by the employer under regulation 85 (annual return of other earnings (Forms P11D and P9D)).

*Payment of tax under PSA*

**Calculation of tax payable under PSA**

**108.**—(1) A PSA must provide for the sums in respect of income tax for which an employer is to be accountable to the Board of Inland Revenue under the PSA—

- (a) to be computed in accordance with the factors specified in paragraph (2), and
- (b) to be comprised of the amounts specified in paragraph (3).

(2) The factors are—

- (a) in the case of qualifying general earnings comprising sums paid in respect of expenses, the estimated aggregate amount of such payments on which income tax is chargeable, reduced by such amount (if any) as would have been deductible if the qualifying general earnings had not been included in the PSA;
- (b) in the case of qualifying general earnings comprising benefits provided or made available, the estimated aggregate amount of the cash equivalents and other amounts on which income tax is chargeable, reduced by such amount (if any) as would have been deductible if the qualifying general earnings had not been included in the PSA;
- (c) the total number of employees in receipt of qualifying general earnings comprised in the PSA;

- (d) the number of those employees respectively chargeable to income tax—
    - (i) only at the starting rate for the tax year to which the PSA relates,
    - (ii) at both the starting rate and the basic rate for that tax year, and
    - (iii) at the starting rate, the basic rate and the higher rate for that tax year;
  - (e) such other matters as are agreed by the Inland Revenue and the employer to be relevant in relation to the qualifying general earnings comprised in the PSA.
- (3) The amounts specified for the purposes of paragraph (1)(b) are—
- (a) an amount equal to income tax on the aggregate of the amounts computed in accordance with paragraph (2)(a) and (b), calculated so as to take account of the factor specified in paragraph (2)(d); and
  - (b) a further amount reflecting an estimate of the income tax on the benefit to the employees of having no tax liability on the qualifying general earnings included in the PSA.

### **Payment of tax and recovery proceedings**

**109.**—(1) The employer must pay to the Inland Revenue by the due date the aggregate amount for which the employer is accountable to the Board of Inland Revenue under a PSA.

(2) “The due date” means 19th October following the end of the tax year to which the PSA relates.

(3) Part 6 of TMA (collection and recovery) applies to the recovery of the aggregate amount or any part of it (“the amount of tax”) as if it were income tax charged on the employer.

(4) But summary proceedings for the recovery of the amount of tax may be brought in England, Wales or Northern Ireland at any time before the expiry of 12 months beginning with the due date.

(5) Proceedings may be brought for the recovery of the amount of tax without distinguishing the amounts which the employer is liable to pay in respect of each employee under the PSA and without specifying the employees in question.

(6) The amount of tax is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of TMA(1) (magistrates' courts, county courts and inferior courts in Scotland).

### **Formal determination of tax payable by the employer**

**110.**—(1) This regulation applies if it appears to the Inland Revenue that there may be an amount payable under regulation 109(1) for any tax year which has not been paid by the due date (as defined by regulation 109(2)).

(2) The Inland Revenue may determine the amount payable to the best of their judgment.

(3) If a determination is made, the Inland Revenue must serve notice of it on the employer.

(4) A determination under this regulation is subject to Parts 4, 5 and 6 of TMA (assessment, appeals, collection and recovery) as if—

(a) the determination were an assessment, and

(b) the amount determined were income tax charged on the employer,

and those Parts of TMA apply accordingly with any necessary modifications.

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(1) Section 65 was amended by section 57(1) of the Finance Act 1984 (c. 43) and paragraph 30 of Schedule 19 to the Finance Act 1998 (c. 36); section 66 was amended by section 57(2) of the Finance Act 1984, section 89(1) of the Finance Act 2001 (c. 9), S.I.1980/397 (N.I. 3) and S.I. 1991/724; section 67 was amended by section 58 of the Finance Act 1976 (c. 40), section 156 of the Finance Act 1995 (c. 4) and section 89(1) of the Finance Act 2001.

(5) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA(2) (rules for assigning proceedings to General Commissioners), the relevant place for an appeal against a determination is the place where the determination was made.

#### *Form and commencement of PSA*

##### **Form of PSA**

- 111.**—(1) A PSA must be—
- (a) in writing, and
  - (b) signed and dated by the employer and the Inland Revenue.
- (2) A PSA must incorporate, whether by specification or indirect reference—
- (a) the qualifying general earnings included in the PSA,
  - (b) the method of calculation, determined in accordance with regulation 108, of the amount of income tax for which the employer is to be accountable in respect of those qualifying general earnings, and
  - (c) the due date by which, in accordance with regulation 109, income tax in respect of those qualifying general earnings is due and payable.

##### **Commencement of PSA**

- 112.**—(1) A PSA may be entered into at any time before 6th July following the end of the tax year for which it is to have effect (“the year in question”).
- (2) A PSA entered into after the beginning of the year in question cannot apply to—
- (a) general earnings which, when the PSA is entered into, have been, or should have been, paid earlier in the year in question under deduction of tax in accordance with Part 3, or
  - (b) general earnings consisting of benefits which, when the PSA is entered into, are or were reflected in the employee’s code for the year in question in accordance with Part 2.

#### *Variation and cancellation of PSA*

##### **Variation of PSA**

- 113.**—(1) The Inland Revenue and the employer may, by agreement and consistently with the provisions of this Part, vary the terms of a PSA entered into by them.
- (2) The agreement must be—
- (a) in writing, and
  - (b) signed and dated by the employer and by the Inland Revenue.
- (3) The last date for variation of a PSA is 6th July following the end of the tax year to which it relates.

##### **Cancellation of PSA**

- 114.**—(1) The Inland Revenue may cancel a PSA if the employer has seriously or persistently failed—

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(2) Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8) and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

- (a) to account to the Board of Inland Revenue for sums for which the employer is accountable under the PSA, or otherwise to comply with the terms of the PSA,
  - (b) to produce records in accordance with regulation 117 (inspection of PSA records),
  - (c) to deduct, or account for, tax in accordance with Parts 3 and 4 (deduction and repayment of tax; payments, returns and information), or
  - (d) to deliver returns in accordance with Parts 3 and 4.
- (2) Cancellation must be effected by notice to the employer.
- (3) A cancellation comes into effect from the date of the notice.
- (4) If a PSA is cancelled, this Part does not apply to general earnings—
- (a) to which the cancelled PSA related, and
  - (b) which are paid, or (as the case may be) provided or made available, after the employer receives notice of the cancellation.

### *Interest*

#### **Interest on unpaid tax**

- 115.**—(1) This regulation applies if an employer has not paid to the Inland Revenue by the due date (as defined by regulation 109(2)) the full amount for which the employer is liable under this Part.
- (2) The unpaid amount carries interest at the prescribed rate from the due date until payment (“the interest period”).
- (3) Paragraph (2) applies even if the due date is a non-business day as defined by section 92 of the Bills of Exchange Act 1882(3).
- (4) Any change made to the prescribed rate during the interest period applies to the unpaid amount from the date of the change.
- (5) Interest is recoverable as if it were an amount payable under the PSA.
- (6) “The prescribed rate” means the rate applicable under section 178 of the Finance Act 1989(4) for the purposes of section 86 of TMA(5).

#### **Interest on overpaid tax**

- 116.**—(1) This regulation applies if tax in respect of the tax year to which a PSA relates is repaid to the employer after the due date (as defined by regulation 109(2)).
- (2) The tax repaid carries interest at the prescribed rate from the later of—
- (a) the due date, and
  - (b) the date on which the tax was paid,
- until the order for the repayment is issued (“the interest period”).
- (3) Any change made to the prescribed rate during the interest period applies to the tax repaid from the date of the change.
- (4) “The prescribed rate” means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA(6).

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(3) 1882 c. 61; section 92 was amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

(4) 1989 c. 26, to which there are amendments not relevant to these Regulations.

(5) Section 86 was substituted by section 110(1) of the Finance Act 1995 (c. 4) and amended by section 131 of, and paragraph 3 of Schedule 18 to, the Finance Act 1996 (c. 18).

(6) Section 824 was amended by paragraph 7 of Schedule 13 to the Finance Act 1988 (c. 39), sections 110(5), 111(4), 158(2) and 179(1) of, and Parts 4, 8 and 10 of Schedule 17 to, the Finance Act 1989 (c. 26), paragraph 14(52) of Schedule 10 to

## Records

### Inspection of PSA records

**117.**—(1) An authorised officer may require an employer who has entered into a PSA to produce all PSA records, or such PSA records as may be specified by the authorised officer, for inspection—

- (a) at the prescribed place, and
- (b) at such time as that officer may reasonably require.

(2) “PSA records” means all books, documents and other records relating to—

- (a) the qualifying general earnings comprised in the PSA,
- (b) the calculation of amounts for which the employer is accountable to the Board of Inland Revenue in accordance with the PSA, and
- (c) the payment of those amounts to the Inland Revenue.

(3) “The prescribed place” means such place in the United Kingdom as the employer and the authorised officer may agree upon, or in the absence of agreement—

- (a) the place in the United Kingdom at which the PSA records are normally kept, or
- (b) if there is no such place, the employer’s principal place of business in the United Kingdom.

(4) The authorised officer may—

- (a) take copies of, or make extracts from, any records produced for inspection in accordance with paragraph (1);
- (b) remove any records so produced if the officer considers it necessary to do so, at a reasonable time and for a reasonable period.

(5) If any record is removed in accordance with paragraph (4)(b), the authorised officer must provide—

- (a) a receipt for the record, and
- (b) a copy of the record, free of charge, to the person by whom it was produced or caused to be produced, within 7 days of that person requesting a copy, if the record is reasonably required for the proper conduct of a business.

(6) If a lien is claimed on a record produced in accordance with paragraph (1), the removal of the document under paragraph (4)(b) is not to be regarded as breaking the lien.

(7) If records are maintained by computer, the person required to make them available for inspection must provide the authorised officer with all facilities necessary for obtaining information from them.

(8) An employer must keep PSA records for not less than 3 years after the end of the most recent tax year to which they relate.