
STATUTORY INSTRUMENTS

1995 No. 853

INCOME TAX

**The Income Tax (Employments)
(Incapacity Benefit) Regulations 1995**

<i>Made</i>	- - - -	<i>22nd March 1995</i>
<i>Laid before the House of Commons</i>	- - - -	<i>22nd March 1995</i>
<i>Coming into force</i>	- -	<i>13th April 1995</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 203 of the Income and Corporation Taxes Act 1988(1) and section 139(4) of the Finance Act 1994(2), hereby make the following Regulations:

Citation, commencement and effect

1. These Regulations may be cited as the Income Tax (Employments) (Incapacity Benefits) Regulations 1995, shall come into force on 13th April 1995, and shall have effect with respect to payments of incapacity benefit to which section 139(1) of the Finance Act 1994 applies made on or after that date.

Interpretation

2. In these Regulations “the principal Regulations” means the Income Tax (Employments) Regulations 1993(3) and “regulation” means a regulation of those Regulations.

Amendments to the principal Regulations

3. For the purposes of section 139 of the Finance Act 1994 (taxation of incapacity benefit) the principal Regulations shall be amended as follows.

4. In regulation 81—

- (a) at the end of the definition of “claim” there shall be added the words “or to incapacity benefit”;

(1) 1988 c. 1; section 203 was amended by section 128 of, and paragraph 4 of Schedule 3 to, the Finance Act 1988 (c. 39), by section 45(3) of, and Part IV of Schedule 17 to, the Finance Act 1989 (c. 26), and (prospectively) by paragraph 38 of Schedule 19 and Part V(23) of Schedule 26 to the Finance Act 1994 (c. 9).

(2) 1994 c. 9.

(3) S.I.1993/744, amended by S.I. 1993/2276, 1994/775 and 1212, and 1995/216 and 447.

- (b) after the definition of “employed claimant” there shall be inserted—
- ““incapacity benefit” means “incapacity benefit” as defined by section 139(5) of the Finance Act 1994 which, by virtue of subsection (1) of that section, falls to be treated as income for the purposes of the Income Tax Acts and charged to income tax under Schedule E;”.
5. In regulation 82(4)—
- (a) in paragraph (1) after the words “taxable benefit” there shall be inserted the words “, and Parts III to V and Part VIII of these Regulations shall apply to payments of incapacity benefit;”;
- (b) in paragraph (2)—
- (i) after “VI” there shall be inserted the words “and Part VIII”;
- (ii) after the words “taxable benefit” there shall be added the words “or, as the case may be, “incapacity benefit””.
6. After regulation 98 there shall be added—

“CHAPTER IV PAYMENTS OF INCAPACITY BENEFIT

Interpretation of Chapter IV

98A. In this Chapter “the Department” means—

- (a) in Great Britain, the Department of Social Security, or
(b) in Northern Ireland, the Department of Health,

by whom a payment of incapacity benefit is made.

Application of other parts of these Regulations

98B. Subject to the following provisions of this Chapter, Parts III and IV, Part V except for regulations 47 to 53, and Part VIII of these Regulations shall apply to incapacity benefit paid by the Department as if it were a payment of emoluments from the claimant’s employment.

Deduction where appropriate code not yet determined

98C.—(1) On making any payment of incapacity benefit to a claimant—

- (a) in respect of whom no code authorisation has been received from the inspector,
and
(b) in the circumstances specified in paragraph (2),

the Department shall deduct tax and keep records on a deductions working sheet which it shall prepare for the purpose as if the payment were one to which regulation 17 applied, applying the code which, after allowing for the relevant personal relief, effects deduction of tax at one or both of the rates specified in paragraph (3) as the appropriate code.

(2) The circumstances specified in this paragraph are where for the year in question the claimant is not entitled to receive (in addition to payments of incapacity benefit) any

(4) Regulation 82 was amended by S.I. [1993/2276](#).

payments of emoluments, or is so entitled but has failed to furnish any details relating to those emoluments when making his claim.

(3) The rates specified in this paragraph are the lower rate and the basic rate.

(4) For the purposes of paragraph (1), the relevant personal relief is any one or more of the following reliefs claimed by the claimant, that is to say—

- (a) the relief specified in section 257(1) of the Taxes Act⁽⁵⁾ (personal allowance);
- (b) the relief specified in section 257A(1) of the Taxes Act⁽⁶⁾ (married couple's allowance);
- (c) the relief specified in section 265(1) of the Taxes Act⁽⁷⁾ (blind person's allowance).

Return of payment of incapacity benefit

98D.—(1) On the occasion of making any payment of incapacity benefit to a claimant, the Department shall, subject to paragraph (3), forthwith render a return to the inspector containing the particulars specified in paragraph (2).

(2) The particulars specified in this paragraph are—

- (a) the name, address and national insurance number of the claimant;
- (b) the date on which the claimant's entitlement to incapacity benefit commenced;
- (c) the weekly rate of incapacity benefit being paid to the claimant;
- (d) where the payment is made in the circumstances specified in regulation 98C(2), details of the code applied to the payment in accordance with paragraph (1) of that regulation.

(3) If the Department, having rendered the return mentioned in paragraph (1), makes any subsequent payment of incapacity benefit to the claimant, it shall not be required to render any further return pursuant to that paragraph unless—

- (a) the inspector had earlier made a determination as mentioned in regulation 98G(1) in relation to the payments of incapacity benefit made to the claimant, and
- (b) the subsequent payment—
 - (i) is made at a rate different from the rate subsisting at the time of the determination, and
 - (ii) is the first payment to be made at the different rate.

Delivery of certificate relating to cessation of employment

98E.—(1) Where—

- (a) a claimant has received from an employer on cessation of employment two copies of the certificate referred to in regulation 23, and is in possession of those copies immediately before the making of the claim, and
- (b) the claim is made in the circumstances specified in regulation 98C(2),

(5) Section 257 of the Income and Corporation Taxes Act 1988 was substituted by section 33 of the Finance Act 1988 and subsection (1) of section 257 was amended by S.I. 1992/622.

(6) Section 257A of the Income and Corporation Taxes Act 1988 was substituted by section 33 of the Finance Act 1988 and subsection (1) of section 257A was amended by section 77(2)(a) of the Finance Act 1994.

(7) Section 265 of the Income and Corporation Taxes Act 1988 was substituted by paragraph 8 of Schedule 3 to the Finance Act 1988 and subsection (1) of section 265 was amended by section 82 of the Finance Act 1994.

he shall, subject to paragraph (2), deliver the copies to the Department when making the claim, and the Department shall forthwith send the copies to the inspector by whom code authorisations are ordinarily issued to the Department.

(2) The requirement under paragraph (1) to deliver the two copies of the certificate shall not apply in any case where the claimant has made, or intends to make, a claim for repayment of tax for the year in which the claim to incapacity benefit is made.

Determination of appropriate code by inspector

98F.—(1) Following receipt by the inspector of the return referred to in regulation 98D(1), the inspector shall determine the appropriate code for the purposes of these Regulations.

(2) In determining the appropriate code, regulation 7 shall not apply but the inspector shall have regard, subject to paragraph (4), to the reliefs from income tax specified in paragraph (3) to which the claimant is entitled for the year in which the code is determined, so far as his title to those reliefs has been established at the time of the determination.

(3) The reliefs specified in this paragraph are—

- (a) the relief specified in section 257(1) of the Taxes Act;
- (b) the relief specified in section 257A(1) of the Taxes Act, having regard to whether or not the relief has been transferred in whole or in part to or from the claimant pursuant to section 257BA of that Act⁽⁸⁾;
- (c) the relief specified in section 265(1) of the Taxes Act;
- (d) the relief specified in section 259 of the Taxes Act⁽⁹⁾.

(4) Where the code is determined before the beginning of the year for which it is to have effect, the inspector shall disregard any relief specified in paragraph (3) if he is not satisfied that the claimant will be entitled to it for that year.

(5) Regulations 6, 8 and 10 to 13 inclusive shall apply with any necessary modifications to an appropriate code determined by the inspector in accordance with this regulation.

Coding where no tax is deductible

98G.—(1) The inspector may determine that no tax shall be deducted from any payment of incapacity benefit made in the circumstances specified in regulation 98C(2) if—

- (a) he is not satisfied that the amount of incapacity benefit will be chargeable to tax, or
- (b) he considers that the code which would otherwise be the appropriate code would result in too much tax being deducted for the year in question.

(2) Where the inspector determines as mentioned in paragraph (1), he shall be deemed to have determined the appropriate code, and regulations 6, 8 and 10 to 13 inclusive shall apply accordingly with any necessary modifications.

Subsequent procedure on issue of code authorisation

98H. On making any payment of incapacity benefit in the circumstances specified in regulation 98C(2) after a code authorisation has been issued in respect of the claimant, the Department shall, except where the inspector has made a direction under regulation 17(1)

(8) Section 257BA together with section 257BB was substituted for section 257B by paragraph 2 of Schedule 5 to the Finance (No. 2) Act 1992 (c. 48), and was amended by paragraph 2(1) and (2) of Schedule 8 to the Finance Act 1994.

(9) Section 259 was amended by section 30 of, and paragraph 5 of Schedule 3 to, the Finance Act 1988 (c. 39), paragraph 5 of Schedule 5 to the Finance (No. 2) Act 1992, and section 77(3) of, and paragraph 6 of Schedule 8 to, the Finance Act 1994.

(c) in relation to any such payment, deduct or repay tax by reference to the appropriate code in accordance with regulation 14 and keep the records required by regulation 38.”

22nd March 1995

S. C. T. Matheson
C. W. Corlett
Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the [Income Tax \(Employments\) Regulations 1993 \(S. I. 1993/744\)](#) (“the principal Regulations”) so as to provide for the operation of PAYE, with effect for the year 1995 – 96 and subsequent years of assessment, on payments of taxable incapacity benefit made to a claimant by the Department of Social Security or, in Northern Ireland, the Department of Health (“the Department”).

Regulation 1 provides for citation, commencement and effect and regulation 2 contains definitions. Regulation 3 is introductory to the following Regulations which amend the principal Regulations.

Regulations 4 and 5 amend regulations 81 and 82 in Part VII of the principal Regulations (Social Security Benefits) so as to enable PAYE to be applied to payments of incapacity benefit.

Regulation 6 inserts a new chapter (IV) in Part VII of the principal Regulations comprising regulations 98A to 98H.

Regulation 98A contains a definition.

Regulation 98B provides that, subject to the provisions of Chapter IV, other Parts of the principal Regulations shall apply to payments of incapacity benefit as if they were payments of emoluments.

Regulation 98C provides for the operation of PAYE by the Department on payments of incapacity benefit to a claimant who does not have another source of income subject to PAYE.

Regulation 98D provides for the making of returns by the Department to the inspector in connection with payments of incapacity benefit.

Regulation 98E provides that, where the claimant possesses copies of his former employer’s certificate relating to the cessation of his employment (P45), he shall transmit the copies to the Department who shall then forward them to the inspector.

Regulation 98F makes provision for the determination by the inspector of the appropriate code for PAYE purposes in connection with payments of incapacity benefit.

Regulation 98G provides that in the circumstances specified in the regulation the inspector may determine that no tax shall be deducted from any payment of incapacity benefit.

Regulation 98H provides for the procedure which the Department is to follow in accordance with the principal Regulations after the appropriate code has been determined by the inspector, and a code authorisation has been issued to the Department, in respect of a claimant.