
STATUTORY INSTRUMENTS

1996 No. 2631

INCOME TAX

**The Income Tax (Employments)
(Amendment No. 6) Regulations 1996**

<i>Made</i>	- - - -	<i>14th October 1996</i>
<i>Laid before the House of Commons</i>	- - - -	<i>15th October 1996</i>
<i>Coming into force</i>	- -	<i>5th November 1996</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by sections 203 and 206A of the Income and Corporation Taxes Act 1988(1), hereby make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Income Tax (Employments) (Amendment No. 6) Regulations 1996 and shall come into force on 5th November 1996.

(2) These Regulations shall have effect with respect to any PAYE settlement agreement entered into for the year 1996–97, whether or not before the coming into force of these Regulations, or for any subsequent year of assessment.

Interpretation

2. In these Regulations—

“PAYE settlement agreement” shall be construed in accordance with regulation 80A(1) and (2) of the principal Regulations (inserted by regulation 4 of these Regulations);

“the principal Regulations” means the Income Tax (Employments) Regulations 1993(2).

Transitional provision

3. A PAYE settlement agreement to which these Regulations apply that is entered into before the date of coming into force of these Regulations shall have effect for the purposes of these Regulations and of the principal Regulations as amended by these Regulations as if it had been entered into on or after that date; and accordingly—

(a) income to which the agreement applies that arises before that date, and

(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), section 45(3) of, and Part IV of Schedule 17 to, the Finance Act 1989 (c. 26), and paragraph 38 of Schedule 19, and Part V (23) of Schedule 26, to the Finance Act 1994 (c. 9). Section 206A was inserted by section 110 of the Finance Act 1996 (c. 8).
(2) S.I. 1993/744, amended by S.I. 1993/2276, 1994/775 and 1212, 1995/216, 447, 853, 1223 and 1284, 1996/804, 980, 1312, 2381 and 2554.

(b) sums accounted for by the employer in accordance with the agreement before that date, shall be treated for those purposes as arising or accounted for on or after that date.

Amendments to the principal Regulations

4. In Part VI of the principal Regulations after regulation 80 there shall be added the following Chapter—

“CHAPTER V

PAYE SETTLEMENT AGREEMENTS

General provision

80A.—(1) The Board and an employer may agree that the employer shall be accountable to the Board in respect of income tax on such emoluments of his employees as are specified in paragraph (3) in accordance with the terms of the agreement and not in accordance with Parts III to V, and Part VIII, of these Regulations.

(2) An agreement falling within paragraph (1) is referred to in this Chapter as a “PAYE settlement agreement”.

(3) The emoluments specified are emoluments that—

(a) consist of—

- (i) sums paid by the employer to an employee or other person in respect of expenses of the employee and falling within section 19 of the Taxes Act(3) as emoluments from the employment,
- (ii) any benefit provided for, or made available to, an employee by the employer and falling within section 19 of the Taxes Act as emoluments from the employment,
- (iii) sums paid by the employer to an employee in respect of expenses of the employee and falling within section 153 of the Taxes Act(4), or
- (iv) any benefit provided for, or made available to, an employee by the employer and falling within any of sections 141 to 146(5), or within Chapter II of Part V, of the Taxes Act;

(b) are agreed by the Board and the employer to be—

- (i) minor as regards the amount of the sums paid or the type of benefit provided or made available, or
- (ii) irregular as regards the frequency in which, or the times at which, the sums are paid or the benefit is provided or made available, or
- (iii) paid or (as the case may be) provided or made available in the circumstances specified in paragraph (4); and

(c) are not emoluments to which regulation 80C(2) (a) or (b) applies.

(3) Section 19 was amended by section 36 of the Finance Act 1989 and paragraph 5 of Schedule 7 to the Finance Act 1996.
(4) Section 153 was amended by section 53(2)(b) of the Finance Act 1989 and section 91(2) of the Finance Act 1995 (c. 4).
(5) Section 141 was amended by sections 46(1) and 47(1) of the Finance Act 1988, section 89(2) and (3) of, and Part V(26) of Schedule 26 to, the Finance Act 1994, and sections 91(2) and 93(1) of the Finance Act 1995. Section 142 was amended by sections 46(2) and 48(1) of the Finance Act 1988, section 89(5) to (7) of the Finance Act 1994, and sections 91(2) and 93(2) of the Finance Act 1995. Section 143 was amended by section 89(9) to (11) of the Finance Act 1994. Section 144 was amended by section 89(13) and (14) of the Finance Act 1994. Section 144A was inserted by section 132 of the Finance Act 1994. Section 145 was amended by section 106(1) of, and paragraph 7 of Schedule 20 and Part V(4) and (10) of Schedule 41 to, the Finance Act 1996. Section 146 was amended by section 179(5) of the Finance Act 1989.

- (4) The circumstances specified are where—
 - (a) in the case of sums paid, deduction of tax by reference to the tax tables is impracticable;
 - (b) in the case of a benefit provided or made available, the benefit is shared by more than one employee and apportionment of the benefit between the employees concerned is impracticable.
- (5) Emoluments comprised in a PAYE settlement agreement shall not be included in a return by the employer under regulation 43, 44, 45 or 46(6) of these Regulations.

Form of agreement

- 80B.**—(1) A PAYE settlement agreement—
- (a) shall be in writing, and shall be signed and dated by the employer and by an inspector or other officer of the Board on behalf of the Board, and
 - (b) shall incorporate, whether by specification or indirect reference, the matters specified in paragraph (2).
- (2) The matters specified are—
- (a) the emoluments comprised in the agreement;
 - (b) the method of calculation, determined in accordance with regulation 80F, of the amount of income tax for which the employer is to be accountable to the Board in respect of those emoluments for the year to which the agreement relates;
 - (c) the date specified in regulation 80G(2) on which income tax in respect of those emoluments is due and payable for the year to which the agreement relates.

Commencement of agreement

- 80C.**—(1) A PAYE settlement agreement may be entered into—
- (a) at any time before the beginning of the year for which it is intended by the Board and the employer that it should have effect, or
 - (b) at any time during that year, or
 - (c) after that year but before 6th July in the following year.
- (2) An agreement entered into at a time specified in paragraph (1) (b) or (c) shall not apply to—
- (a) emoluments that, at the date the agreement is entered into, have been, or should have been, paid earlier in that year under deduction of tax in accordance with Parts III and IV of these Regulations, or
 - (b) emoluments consisting of benefits that, at the time the agreement is entered into, are reflected in the employee's code for that year in accordance with Part III of these Regulations.

Variation of agreement

- 80D.**—(1) The Board and the employer may, by agreement and consistently with the provisions of this Chapter, and not later than the date specified in paragraph (3), vary the terms of a PAYE settlement agreement entered into by them.

(2) Any such agreement to vary shall be in writing and signed and dated by the employer and by an inspector or other officer of the Board on behalf of the Board.

(3) The date specified is the 6th July in the year following the year to which the PAYE settlement agreement relates.

Emoluments comprised in agreement and liability to tax—consequential provisions

80E.—(1) Emoluments of an employee included in a PAYE settlement agreement shall be treated as excluded from his income for the purposes of section 198 of the Taxes Act⁽⁷⁾ (relief for necessary expenses) and of otherwise determining the amount of his liability to income tax under Schedule E for the year to which the agreement relates, but not so as to affect the chargeability of those emoluments to income tax or his employer's liability under the agreement to account for income tax in respect of those emoluments.

(2) An employee shall be treated, except for the purposes of the obligations imposed on his employer under regulation 80N, as relieved from any obligations under the Income Tax Acts—

- (a) to retain records containing information relating to emoluments included in a PAYE settlement agreement, or
- (b) to render returns in respect of those emoluments.

(3) Sums in respect of income tax for which an employer is to be accountable to the Board under a PAYE settlement agreement shall not be treated, for the purposes of these Regulations, as tax deducted from emoluments.

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

Calculation of tax payable under agreement

80F.—(1) A PAYE settlement agreement shall provide for the sums in respect of income tax for which an employer is to be accountable to the Board under the agreement—

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

(2) The factors specified are—

- (a) in the case of emoluments 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 under section 198 of the Taxes Act if the emoluments had not been included in the agreement;
- (b) in the case of emoluments 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 under section 198 of the Taxes Act if the emoluments had not been included in the agreement;
- (c) the total number of employees in receipt of emoluments comprised in the agreement;
- (d) the number of those employees respectively chargeable to income tax—

(7) Section 198 was amended by paragraph 8(10) of Schedule 1 to the Capital Allowances Act 1990 (c. 1).

- (i) at the lower rate, but not the basic rate or higher rate, for the year to which the agreement relates,
 - (ii) at the lower rate and the basic rate, but not the higher rate, for that year, and
 - (iii) at the lower rate, the basic rate and the higher rate for that year;
- (e) such other matters as are agreed by the Board and the employer to be relevant in relation to the emoluments comprised in the agreement.
- (3) The amount specified for the purposes of paragraph (1)(b) is an amount equal to income tax on the aggregate of the amounts computed in accordance with paragraph (2) (a) and (b).
- (4) The amount specified in paragraph (3) shall be calculated so as to take account of the factor specified in paragraph (2) (d).

Payment of tax

80G.—(1) An employer shall, on or before the date specified in paragraph (2), pay to the collector the aggregate amount for which he is accountable to the Board under a PAYE settlement agreement for the year to which the agreement relates.

(2) The date specified is the 19th October next following the year concerned.

(3) Subject to paragraph (5), the provisions of any enactment relating to the recovery of income tax charged under Schedule E shall apply to the recovery of the amount specified in paragraph (4) (in this regulation referred to as “the amount of tax”) as if that amount had been charged under Schedule E by way of an assessment on the employer.

(4) The amount specified is the aggregate amount referred to in paragraph (1) or any part of that amount.

(5) 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 after the date specified in paragraph (2).

(6) 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 PAYE settlement agreement and without specifying the employees in question, and the amount of tax shall be one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of the Management Act(8).

Formal determination of tax payable by the employer

80H.—(1) This regulation applies where it appears to an inspector or other officer of the Board that there may be an amount payable to the collector under regulation 80G(1) for any year which has not been paid by the date specified in paragraph (2) of that regulation.

(2) Where this regulation applies, the inspector or officer may determine that amount to the best of his judgment, and shall serve notice of his determination on the employer.

(3) A determination under this regulation shall be subject to the like provisions as are contained in Parts IV, V and VI of the Management Act as if it were an assessment, and as if the amount determined were income tax charged on the employer, and those Parts of that Act shall apply accordingly with any necessary modifications.

(8) Section 65 was amended by section 57(1) of the Finance Act 1984 (c. 43) and paragraph 19 of Schedule 19 to the Finance Act 1994. Section 66 was amended by section 57(2) of the Finance Act 1984 and by S.I. 1980/397 (N.I. 3) and 1991/724 (L.5). Section 67 was amended by section 58 of, and Part III of Schedule 15 to, the Finance Act 1976 (c. 40), and section 156 of the Finance Act 1995.

(4) Where pursuant to paragraph (3) an appeal against a determination is to the General Commissioners, it shall be brought before the General Commissioners for the division in which the place where the determination was made is situated.

Interest on unpaid tax

80J.—(1) Where in respect of the year to which the agreement relates the employer has not paid in full to the collector, on or before the date specified in regulation 80G(2), the amount referred to in paragraph (1) of that regulation, the amount unpaid shall carry interest at the prescribed rate from that date (“the due date”) until payment.

(2) Where—

- (a) an inspector or other officer of the Board makes a determination of an amount under regulation 80H for any year, and
- (b) the amount is payable pursuant to that determination,

the amount so payable shall carry interest at the prescribed rate from the date specified in regulation 80G(2) applicable to that year (“the due date”) until payment.

(3) A certificate of the collector that any amount of interest payable under this regulation has not been paid to him or, to the best of his knowledge and belief, to any other collector or to any person acting on his behalf or on behalf of another collector, shall be sufficient evidence that the sum mentioned in the certificate is unpaid and due to the Crown.

(4) Any document purporting to be a certificate under paragraph (3) shall be deemed to be such a certificate until the contrary is proved.

(5) In this regulation “the prescribed rate” means the rate applicable under section 178 of the Finance Act 1989⁽⁹⁾ for the purposes of section 86 of the Management Act⁽¹⁰⁾; and where that rate changes on an operative date within the meaning given by regulation 2 of the Taxes (Interest Rate) Regulations 1989⁽¹¹⁾ by virtue of those Regulations, the change shall have effect for periods beginning on or after the operative date in relation to interest running from before that date as well as from or from after that date.

(6) For the purpose of this regulation, where—

- (a) any payment to the collector is made by cheque, and
- (b) the cheque is paid on its first presentation to the banker on whom it is drawn,

the payment shall be treated as made on the day on which the cheque was received by the collector.

(7) The amount referred to in paragraph (1) as unpaid and the amount referred to in paragraph (2) as payable shall carry interest from the due date even if that date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882⁽¹²⁾.

(8) Interest payable under this regulation shall be recoverable as if it were an amount unpaid as mentioned in paragraph (1).

⁽⁹⁾ Section 178 was amended by paragraph 44 of Schedule 19 to the Finance Act 1994.

⁽¹⁰⁾ Section 86 was substituted by section 110 of the Finance Act 1995, and the section as substituted was amended by section 131(2) of, and paragraph 3 of Schedule 18 to, the Finance Act 1996 with effect for 1996-97 and subsequent years of assessment and, in relation to assessments made on or after 6th April 1998, with effect for 1995-96 and earlier years of assessment.

⁽¹¹⁾ S.I. 1989/1297.

⁽¹²⁾ 1882 c. 61.

Interest on overpaid tax

80K.—(1) Where tax in respect of the year to which the agreement relates is repaid to the employer after the date specified in regulation 80G(2), the tax repaid shall carry interest at the prescribed rate from that date or, if later, from the date on which the tax was paid until the date on which the order for the repayment is issued.

(2) In paragraph (1) “the prescribed rate” means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of the Taxes Act(13); and where that rate changes on an operative date within the meaning given by regulation 2 of the Taxes (Interest Rate) Regulations 1989 by virtue of those Regulations, the change shall have effect for periods beginning on or after the operative date in relation to interest running from before that date as well as from or from after that date.

(3) For the purposes of this regulation, where—

- (a) pursuant to paragraph (1) interest is payable from the date on which the tax was paid,
- (b) the payment of tax was made to the collector by cheque, and
- (c) the cheque was paid on its first presentation to the banker on whom it was drawn.

the payment of tax shall be treated as made on the day on which the cheque was received by the collector.

Review of agreements

80L.—(1) An inspector or other officer of the Board shall, on or before the date specified in paragraph (2), review the operation of a PAYE settlement agreement for the year to which the agreement relates.

(2) The date specified is the 6th July next following the year concerned.

Cancellation of Agreement

80M.—(1) In the circumstances specified in paragraph (2), the Board may, by notice to an employer, cancel a PAYE settlement agreement entered into by that employer with effect from the date of the notice.

(2) The circumstances specified are where—

- (a) there has been serious or persistent failure on the part of the employer—
 - (i) to account to the Board for sums for which he is accountable under the agreement, or otherwise to comply with the terms of the agreement, or
 - (ii) to produce records in accordance with regulation 80N, or
- (b) there has been serious or persistent failure on the part of the employer with respect to the deduction of, and accounting for, tax in accordance with Parts III to V of these Regulations, or the rendering of returns in accordance with those Parts of these Regulations.

(3) The obligations of the employer contained in Parts III to V, and Part VIII, of these Regulations shall have effect with respect to emoluments to which the cancelled agreement related that are paid or (as the case may be) provided or made available by the employer following the receipt by him of a notice of cancellation pursuant to paragraph (1).

(13) Section 824 was amended by paragraph 7 of Schedule 13 to the Finance Act 1988, sections 110(5), 111(4), 158(2)(b) and 179(1)(a)(vii) of, and Parts IV, VIII and X of Schedule 17 to, the Finance Act 1989, paragraph 14(52) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), and paragraph 41 of Schedule 19, and Part V(23) of Schedule 26, to the Finance Act 1994.

Inspection and retention of records

80N.—(1) Every employer, whenever called upon to do so by an inspector or other officer of the Board, shall produce the records specified in paragraph (2) to that person for inspection, at such time as that person may reasonably require, at the prescribed place.

(2) The records specified are—

(a) all books, documents and other records relating to—

(i) the emoluments comprised in a PAYE settlement agreement entered into by the employer,

(ii) the calculation of amounts for which the employer is accountable to the Board in accordance with the agreement in respect of the years specified by the officer, and

(iii) the payment of those amounts to a collector, or

(b) such of those books, documents and other records as may be specified by the inspector or officer.

(3) “The prescribed place” mentioned in paragraph (1) means—

(a) such place in the United Kingdom as the employer and the inspector or officer may agree upon, or

(b) in default of such agreement—

(i) the place in the United Kingdom at which the records specified in paragraph (2) are normally kept, or

(ii) if there is no such place, the employer’s principal place of business in the United Kingdom.

(4) The inspector or officer may—

(a) take copies of, or make extracts from, any records produced to him for inspection in accordance with paragraphs (1) and (2);

(b) remove any records so produced if it appears to him to be necessary to do so, at a reasonable time and for a reasonable period.

(5) Where any record is removed in accordance with paragraph (4) (b), the inspector or officer shall provide—

(a) a receipt for the record so removed, and

(b) a copy of the record, free of charge, within seven days, to the person by whom it was produced or caused to be produced where the record is reasonably required for the proper conduct of a business.

(6) Where a lien is claimed on a record produced in accordance with paragraphs (1) and (2), the removal of the document under paragraph (4) (b) shall not be regarded as breaking the lien.

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

(8) The records specified in paragraph (2) (a) shall be retained by the employer for not less than three years after the end of the most recent year to which they relate..”

14th October 1996

C W Corlett
G H Bush
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”) by adding a new chapter to Part VI of those Regulations (“Special Provisions”) dealing with PAYE settlement agreements.

A PAYE settlement agreement is an agreement made between the Board of Inland Revenue (“the Board”) and an employer whereby the employer is to be accountable to the Board for income tax in respect of certain emoluments paid or provided to his employees in accordance with the terms of the agreement instead of under Parts III to V of the principal Regulations.

These Regulations contain provisions relating to the types of emoluments that may be included in a PAYE settlement agreement, the calculation of tax payable in respect of those emoluments, payment of tax and recovery of unpaid tax and other related matters.

The Regulations have effect in relation to PAYE settlement agreements entered into in the year 1996/97 (including those entered into before the coming into force of the Regulations) and subsequent years of assessment. Authority for the retrospective effect of these Regulations is given by section 206A(5) of the Income and Corporation Taxes Act 1988 (inserted by section 110 of the Finance Act 1996).

Regulation 1 provides for citation, commencement and effect, and regulation 2 for interpretation.

Regulation 3 provides, by way of a transitional provision, that PAYE settlement agreements made before the date of coming into force of the Regulations shall have effect for the purposes of the Regulations and the principal Regulations as if made on or after that date.

Regulation 4 adds a new chapter (Chapter V) to Part VI of the principal Regulations dealing with PAYE settlement agreements and comprising new regulations 80A to 80N (“the new regulations”).

The remainder of this note describes the provisions made by the new regulations.

Regulation 80A contains a general provision relating to PAYE settlement agreements that defines the emoluments which may be included in any such agreement.

Regulation 80B provides for the form of the agreement, regulation 80C for commencement of the agreement, and regulation 80D for variation of the agreement.

Regulation 80E provides for any emoluments included in a PAYE settlement agreement to be treated as excluded from the employee’s income for the purposes of determining the amount of his Schedule E income tax liability. The regulation also provides for the employee to be relieved of his obligation to include details of those emoluments in his tax return, and makes other consequential provisions relating to emoluments included in a PAYE settlement agreement and liability to tax under the agreement.

Regulation 80F provides for the calculation (on a grossed up basis) of the tax payable under the agreement.

Regulation 80G provides for payment of the tax.

Regulation 80H provides for the determination by an inspector or other officer of the Board of any amount of tax that appears to him to be payable under the agreement but that has not been paid, and for appeals against determinations.

Regulation 80J provides for interest to be payable on unpaid tax, and regulation 80K for interest to be payable on overpaid tax.

Regulation 80L provides for an annual review by an inspector or other officer of the Board of the operation of an agreement.

Regulation 80M makes provision for the cancellation of an agreement in certain circumstances.

Regulation 80N provides for inspection and retention of records relating to emoluments included in an agreement and to the calculation and payment of tax under the agreement