

**2003 No. 2494**

**INCOME TAX**

**The Income Tax (Employments) (Amendment) Regulations  
2003**

*Made* - - - - - *29th September 2003*  
*Laid before the House of Commons* *29th September 2003*  
*Coming into force* - - - *20th October 2003*

The Commissioners of Inland Revenue in exercise of the powers conferred upon them by section 684 of the Income Tax (Earnings and Pensions) Act 2003<sup>(a)</sup> as extended by section 136 of the Finance Act 2002<sup>(b)</sup> and section 205 of the Finance Act 2003<sup>(c)</sup> hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Income Tax (Employments) (Amendment) Regulations 2003 and shall come into force on 20th October 2003.

**Amendment of the Income Tax (Employments) Regulations 1993**

2. Amend the Income Tax (Employments) Regulations 1993<sup>(d)</sup> as follows.

3.—(1) Amend regulation 2D<sup>(e)</sup> as follows.

(2) In paragraphs (1) to (3)—

(a) at the beginning of each paragraph insert “Subject to paragraph (4),”; and

(b) in each paragraph for the words “an authorised” substitute “a”.

(3) after paragraph (3) insert—

“(4) For the purpose of this regulation the delivery of information must use an approved method of electronic communication.”

4.—(1) Amend regulation 3 as follows.

(2) In paragraph (1) at the beginning insert—

“Subject to paragraph (6),”.

(3) After paragraph (5) add—

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(a) 2003 c. 1.

(b) 2002 c. 23.

(c) 2003 c. 14.

(d) S.I. 1993/744.

(e) Regulation 2D was inserted by regulation 3 and 5 of the Income Tax (Employments and Electronic Communications) (Miscellaneous Provisions) Regulations 2002 (S.I. 2002/680).

“(6) An election made under this regulation shall be disregarded if within 60 days of the election being made an officer of the Board issues a notice to the employer stating that it appears to him that the election is made wholly or mainly for an improper purpose (“an improper purpose notice”).

(7) For the purpose of this regulation an election is made for an improper purpose if it is made for the purpose of—

- (a) avoiding the requirement imposed by regulation 42A of these Regulations;
- (b) avoiding the requirement imposed by regulation 46ZC of these Regulations; or
- (c) receiving an incentive payment under the Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) Regulations 2003(a).

(8) An employer may appeal against an improper purpose notice—

- (a) by notice to an officer of the Board,
- (b) within 30 days of the issue of the improper purpose notice,
- (c) on the grounds that—
  - (i) the election was not made wholly or mainly for an improper purpose, or
  - (ii) the improper purpose notice was not issued within 60 days of the election, and if the appeal is successful the improper purpose notice shall be withdrawn.

(9) Regulation 46ZH applies to appeals under paragraph (8).”.

5. At the end of regulation 40(1) add “or, where payment is made by an approved method of electronic communications in respect of emoluments paid after 5th April 2004, within 17 days of the end of every income tax month”.

6. In regulation 41(1) after “income tax quarter” insert “or, where payment is made by an approved method of electronic communications in respect of emoluments paid after 5th April 2004, within 17 days of the end of every income tax quarter,”.

7. After regulation 42 insert—

#### “ **Mandatory electronic payment**

**42A.**—(1) A large employer to whom an e-payment notice has been issued by 31st December following the specified date is required to use an approved method of electronic communications for the making of specified payments.

(2) For the purposes of—

- (a) this regulation and regulation 42B, “specified payments” are payments of tax the employer is due to make under regulation 40 in respect of payments of emoluments in the year following that in which the specified date occurs;
- (b) this regulation, regulation 42B and regulation 46ZD, “a large employer” is a person treated as paying PAYE income to 250 or more recipients at the specified date;
- (c) this regulation—
  - (i) “e-payment notice” means a notice issued in respect of a year by an officer of the Board stating that the person appears to be a large employer and accordingly is required to use an approved method of electronic communications for the making of specified payments;
  - (ii) “the specified date” means such date in the preceding year as is announced annually by means of a direction given by the Board not later than 30th November of the preceding year;

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(a) S.I. 2003/ 2495.

(iii) “the preceding year” means the year preceding the year in which were paid the emoluments to which the specified payments relate.

(3) A person is treated as paying PAYE income to a recipient at the specified date where—

- (a) he is required at that date by these Regulations or by regulation 6(6) of the Working Tax Credit (Payment by Employers) Regulations 2002(a) to prepare or maintain a deductions working sheet in respect of the recipient, and
- (b) he has not sent, transmitted or delivered to the inspector a statement required by regulation 23(b) for the recipient.

(4) A person may appeal against an e-payment notice—

- (a) by notice to an officer of the Board,
  - (b) within 30 days of the issue of the e-payment notice,
- (c) on the grounds that the person is not a large employer, and if the appeal is successful the e-payment notice shall be withdrawn.

(5) The Board may give specific or general directions—

- (a) suspending, for any period during which the use of an approved method of electronic communications for the making of payments is impossible or impractical, any requirement imposed by these Regulations relating to the use of such means;
- (b) substituting alternative requirements for the suspended ones; and
- (c) making any provision that is necessary in consequence of the imposition of the substituted requirements.

#### **Default surcharge**

**42B.**—(1) Subject to paragraph (4), a person is in default in respect of a specified payment required to be made by an approved method of electronic communications in accordance with regulation 42A where the payment is not received in full by the collector on or before the applicable due date.

(2) For the purpose of this regulation the applicable due date in relation to any specified payment is the date on which payment is required in accordance with regulation 40.

(3) For the purposes of paragraph (1), a payment is not treated as received in full by the collector on or before the applicable due date unless it is made in such manner as secures (in a case where the payment is made otherwise than in cash) that, on or before the applicable due date for payment of that amount, all transactions can be completed that need to be completed before the whole amount of the payment becomes available to the collector.

(4) Subject to paragraph (5), paragraph (1) does not apply if the employer had a reasonable excuse for failing to make the specified payment in such manner as secures it is received in full by the collector on or before the applicable due date and the payment is received in full by the collector without unreasonable delay after the excuse ceased.

(5) Inability to pay the specified payment is not a reasonable excuse for the purposes of paragraph (4).

(6) An officer of the Board shall issue a default notice to any person who appears to be in default in respect of a specified payment.

(7) A person may appeal against a default notice—

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(a) S.I. 2002/2172.

(b) Regulation 23 was amended by regulations 1 and 3 of the Income Tax (Employments) (Amendment) Regulations 1996 (S.I. 1996/804), regulation 5 of the Income Tax (Employments) (Amendment) Regulations 1998 (S.I. 1998/2484) and regulations 7 and 10 of the Income Tax (Electronic Communications) (Miscellaneous Amendments) Regulations 2001 (S.I. 2001/1081).

- (a) by notice to an officer of the Board,
- (b) within 30 days of the issue of the default notice,
- (c) on the grounds that—
  - (i) the person is not in default; or
  - (ii) subject to paragraph (8), the person is not a large employer, and if the appeal is successful the default notice shall be withdrawn.

(8) Paragraph (7)(c)(ii) does not apply where following an appeal under regulation 42A(5) the notice was not withdrawn.

(9) A person in default in respect of any specified payment to whom a default notice and a surcharge notice have been issued is liable to a surcharge equal to the aggregate of the surcharges in respect of every default relating to the year in which were paid the emoluments to which the specified payments relate, calculated in accordance with paragraph (10).

(10) For the purpose of paragraph (9), the surcharge in respect of each default is equal to a specified percentage of the total of—

A-B,

where—

- (a) A is the total amount of tax due for the year in which were paid the emoluments to which the specified payment relates;
- (b) B is the total of the amounts deducted from the total amount of tax due for the year in which were paid the emoluments to which the specified payment relates under—
  - (i) rule 1 of regulation 7(2) of the Working Tax Credit (Payment by Employers) Regulations 2002(a);
  - (ii) regulations 3 and 5 of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002(b);
  - (iii) regulations 4, 5 and 6 of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994(c); and
  - (iv) regulation 44B of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993(d);
- (c) the specified percentage is determined by reference to the number of the defaults during the surcharge period in accordance with the Table below;

**Table**

<i>Default number (within the surcharge period)</i>	<i>Specified percentage</i>
First	0%
Second	0%
Third	0.17%
Fourth	0.17%
Fifth	0.17%
Sixth	0.33%
Seventh	0.33%
Eighth	0.33%
Ninth	0.58%

(a) S.I. 2002/2172.

(b) S.I. 2002/2820.

(c) S.I. 1994/1882, regulations 4, 5 and 6 were substituted by regulation 4 of the Statutory Maternity (Compensation of Employers) Amendment Regulations 2003 (2003/672).

(d) S.I. 1993/743, regulation 44B was inserted by regulation 8 of the Income Tax (Sub-contractors in the Construction Industry) (Amendment) Regulations 2003 (S.I. 2003/536).

Tenth	0.58%
Eleventh	0.58%
Twelfth and subsequent defaults	0.83%

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and

- (d) the surcharge period is a period which—
- (i) begins on the day following the applicable due date for the first specified payment in respect of which the person is in default, and
  - (ii) ends at the end of a year in which the person has not been in default in respect of any specified payment.

(11) For the purposes of this regulation, a surcharge notice is a notice issued by an officer of the Board within six years of the end of the year or, if earlier, of the employer rendering a return in accordance with regulation 43(a), to a person liable to a surcharge showing the total surcharge liability for all the defaults relating to that year.

(12) A person may appeal against a surcharge notice—

- (a) by notice to an officer of the Board,
- (b) within 30 days of the issue of the surcharge notice,
- (c) on the grounds that—
  - (i) subject to paragraph (13), the number of defaults stated in the notice is incorrect; or
  - (ii) the amount of the surcharge is incorrect.

(13) Paragraph (12)(c)(i) does not apply in respect of a disputed default which has already been the subject of an appeal under paragraph (7) following which the notice was not withdrawn.

(14) Subject to paragraphs (12) and (15), the provisions of Parts 4, 5 and 6 of the Management Act(b) apply to the surcharge notice as if it were an assessment and the amount of the surcharge was tax charged by the assessment.

(15) On an appeal under paragraph (12), section 50(6) to (8) of the Management Act shall not apply but the Commissioners may—

- (a) if it appears to them that no surcharge has been incurred, set the surcharge notice aside,
- (b) if the amount of the total surcharge liability appears to them to be correct, confirm the surcharge notice, or
- (c) if the amount of the total surcharge liability appears to them to be incorrect, increase or reduce it to the correct amount.

(16) A surcharge payable under this regulation is payable 30 days after the issue of the surcharge notice.

(17) Section 102 of the Management Act (mitigation of penalties) applies to a surcharge payable under this regulation as if it were a penalty.”.

8. After regulation 46ZB insert—

**“ Mandatory use of electronic communications**

**46ZC.**—(1) Specified persons are required to—

- (a) transmit the specified information electronically to the inspector or, if so required, the collector, or

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(a) Regulation 43 was amended by regulation 14 of the Income Tax (Employments) (Amendment) Regulations 1998 (S.I. 1998/2484) and regulation 7 and 15 of the Income Tax (Electronic Communications) (Miscellaneous Amendments) Regulations 2001 (S.I. 2001/1081).

(b) 1970 c. 9.

(b) deliver the specified information by an approved means of electronic communication to an official computer system.

(2) The specified information may be transmitted or delivered in accordance with paragraph (1) either by the specified person or by another person on his behalf.

(3) The Board may make a general or specific direction requiring a specified person to transmit the specified information electronically or to deliver it by an approved means of electronic communication.

(4) References in regulations 46ZC to 46ZG to information and to the delivery of information shall be construed in accordance with section 135(8) of the Finance Act 2002(a).

### **Specified persons**

**46ZD.**—(1) A specified person for the purposes of these Regulations is an employer who satisfies the description specified in paragraph (2) or (3) and to whom an e-filing notice has been issued by 31st December following the specified date.

(2) The description specified in this paragraph is that the employer—

- (a) is a large employer;
- (b) is not an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communication;
- (c) is not a partnership where all the partners are practising members of a religious society or order whose beliefs are incompatible with the use of electronic communication; and
- (d) is not a company where all the directors and the company secretary are practising members of a religious society or order whose beliefs are incompatible with the use of electronic communication.

(3) The description specified in this paragraph is that the employer—

- (a) is a large or medium sized employer;
- (b) is not an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communication;
- (c) is not a partnership where all the partners are practising members of a religious society or order whose beliefs are incompatible with the use of electronic communication; and
- (d) is not a company where all the directors and the company secretary are practising members of a religious society or order whose beliefs are incompatible with the use of electronic communication.

(4) For the purposes of this regulation—

- (a) “company” means any body corporate or unincorporated association but does not include a partnership;
- (b) “a large employer” has the meaning given in regulation 42A(2)(b);
- (c) “a large or medium sized employer” is a person treated as paying PAYE income to 50 or more recipients at the specified date;
- (d) a person is treated as paying PAYE income in the circumstances specified in regulation 42A(3);
- (e) “e-filing notice” means a notice issued in respect of a year by an officer of the Board stating that the employer satisfies the description in paragraph (2) or (3) and accordingly is required to use electronic communications for the delivery of specified information;

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(a) 2002 c. 23.

- (f) “the specified date” means such date in the preceding year as is announced annually by means of a direction given by the Board not later than [30th November] of the preceding year;
  - (g) “the preceding year” means the year preceding that to which the specified information relates.
- (5) An employer may appeal against an e-filing notice—
- (a) by notice to an officer of the Board,
  - (b) within 30 days of the issue of the e-filing notice,
- (c) on the grounds that the employer does not satisfy the description specified, and if the appeal is successful the e-filing notice shall be withdrawn.

**Specified information**

**46ZE.**—(1) Subject to paragraph (2), specified information for the purposes of these Regulations is the return and accompanying information required by virtue of regulation 43(a) of these Regulations (return by employer at end of year)—

- (a) for the tax year ending on 5th April 2005, in relation to employers who satisfy the description specified in paragraph (2) of regulation 46ZD; and
- (b) for the tax year ending on 5th April 2006 and thereafter, in relation to employers who satisfy the description specified in paragraph (3) of regulation 46ZD.

(2) Specified information does not include information that is supplied in accordance with the provisions and arrangements within regulation 102 of these Regulations (provision for direct collection).

**Standards of accuracy and completeness**

**46ZF.**—(1) Specified information delivered by means of electronic communications must meet the standards of accuracy and completeness set by specific or general directions given by the Board.

(2) Where the specified information delivered by means of electronic communications fails to meet the standard specified in paragraph (1), that information shall be treated as not having been delivered.

**Penalties**

**46ZG.**—(1) Subject to paragraph (2), where a specified person or another person on his behalf fails to deliver all or any part of the specified information in accordance with regulation 46ZC(1) he shall be liable to a penalty in accordance with the tables below.

**Table 1**

Penalty table in relation to specified information relating to the tax year ending 5th April 2005

<i>Number of employees for whom particulars should have been included with the specified information</i>	<i>Penalty</i>
1 to 249	nil
250 to 399	£900
400 to 499	£1200
500 to 599	£1500
600 to 699	£1800
700 to 799	£2100

(a) Regulation 43 was amended by regulation 14(2) of S.I. 1998/2484 and regulation 15 of S.I. 2001/1081.

800 to 899	£2400
900 to 999	£2700
1000 or more	£3000

**Table 2**

Penalty table in relation to specified information relating to the tax years ending 5th April 2006 to 2009

<i>Number of employees for whom particulars should have been included with the specified information</i>	<i>Penalty</i>
1 to 49	nil
50 to 249	£600
250 to 399	£900
400 to 499	£1200
500 to 599	£1500
600 to 699	£1800
700 to 799	£2100
800 to 899	£2400
900 to 999	£2700
1000 or more	£3000

(2) Paragraph (1) does not apply if the employer had a reasonable excuse for failing to comply with regulation 46ZC(1) and the excuse had not ceased at the time the specified information was delivered.

(3) A notice of appeal against determination under section 100 of the Management Act (a) of a penalty under this regulation can only be on the grounds that—

- (a) subject to paragraph (4), the employer is not a specified person;
- (b) the employer did comply with regulation 46ZC;
- (c) the amount of the penalty is incorrect; or
- (d) paragraph (2) applies.

(4) Paragraph (3)(a) does not apply where following an appeal under regulation 46ZD(5) the notice was not withdrawn.

### Appeals

**46ZH.**—(1) The following provisions of the Management Act(b) apply to an appeal under regulations 3(8), 42A(4), 42B(7) and 46ZD(5) of these Regulations as they apply to an appeal under section 31 of that Act—

- (a) section 31A(5) and (6) (notice of appeal)(c);
- (b) section 31B (appeals to General Commissioners);
- (c) section 31D (election to bring appeal before Special Commissioners).

(2) Section 103A of the Management Act(d) (interest on penalties) applies to penalties payable under regulation 46ZG.

(a) Section 100 was substituted by section 167 of the Finance Act 1989 (c. 26) and amended by paragraphs 3(2) and 5 of Schedule 11 to the Finance Act 1990 (c. 29), regulation 2 of and paragraphs 1 and 14 of Schedule 1 and Part 1 of Schedule 2 to the General and Special Commissioners (Amendment of Enactment) Regulations 1994 (S.I. 1994/1813), paragraph 38 of Schedule 19 to the Finance Act 1998 (c. 36) and section 91 of the Finance Act 2001 (c. 9).

(b) 1970 c. 9.

(c) Sections 31A-31D were substituted by section 88 of and paragraph 11 of Schedule 29 to the Finance Act 2001(c. 9).

(d) Section 103A was inserted by sections 196 and 199 of and paragraph 33 of Schedule 19 to the Finance Act 1994 (c. 9) and amended by section 115(8) of the Finance Act 1995 (c. 4) and paragraph 40 of Schedule 19 to the Finance Act 1998 (c. 36).



(3) In an appeal under regulations 3(8), 42A(6), 42B(7) and (12) and 46ZD(5), the relevant place for the purposes of paragraph 3(1)(a) of Schedule 3 to the Management Act(a) (rules for assigning proceedings to General Commissioners) is the place which at the time of the notice of appeal is —

- (a) the employer's place of business in the United Kingdom, or
- (b) where the employer has no place of business, the employer's place of residence in the United Kingdom.

(4) For the purpose of paragraph (2)—

- (a) "place of business" means—
  - (i) the place where the trade, profession, vocation or business with which the proceedings are concerned is carried on, or
  - (ii) if the trade, profession, vocation or business is carried on at more than one place, the head office or place where it is mainly carried on;
- (b) "place of residence" means the employer's usual place of residence or, if that is unknown, his last known place of residence."

**9.** In regulation 47(1) after "14 days" insert ", or 17 days where payment is made in respect of emoluments paid after 5th April 2004,".

**10.** In regulation 48(1)(b) after "14 days" insert ", or 17 days where payment is made in respect of emoluments paid after 5th April 2004,".

**11.—(1)** Amend regulation 51 as follows.

(2) In paragraph (1) after "14 days" insert ", or 17 days where payment is made by an approved method of electronic communications in respect of emoluments paid after 5th April 2004,".

(3) At the end of paragraph (3) add "or the 17th day after the end of that year where payment is made by an approved method of electronic communications in respect of emoluments paid after 5th April 2004".

*Ann Chant*  
*Helen Ghosh*

29th September 2003

Two of the Commissioners of Inland Revenue

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(a) Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8).

(b) Regulation 48(1) was amended by regulation 4 (a) of the Income Tax (Employments) (Amendment No. 2) Regulations 1995 (S.I. 1995/447).

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Income Tax (Employments) Regulations 1993 (S.I. 1993/744) (the “PAYE Regulations”) to provide for mandatory electronic communications.

Regulation 1 provides for citation and commencement.

Regulation 3 amends regulation 2D of the PAYE Regulations to make that regulation apply to all electronic payments but only to electronic delivery of information by means of an approved method of electronic communication.

Regulation 4 amends regulation 3 of the PAYE Regulations to provide that an election under regulation 3 shall be disregarded if it is made wholly or mainly for the purpose of avoiding a requirement to make electronic payment or use electronic communications, or to secure an incentive payment on using electronic communications.

Regulation 5 and 6 amend regulations 40 and 41 of the PAYE Regulations respectively to provide for a later due date for electronic payments.

Regulation 7 inserts new regulations 42A and 42B.

New regulation 42A imposes a requirement on large employers to use an approved method of electronic communications for making specified payments.

New regulation 42B imposes a default surcharge where a payment required to be made by an approved method of electronic communications is not received in full by the Inland Revenue on or before the relevant due date.

Regulation 8 inserts new regulations 46ZC to 46ZI which impose a requirement to use electronic communications for the delivery by certain employers of information required to be delivered under the regulation 43 of the PAYE Regulations.

New regulation 46ZC imposes a requirement on specified persons to use electronic communications for the delivery of specified information.

New regulation 46ZD makes provisions to determine specified persons.

New regulation 46ZE makes provisions to determine specified information.

New regulation 46ZF provides for the standards of accuracy and completeness for information delivered by means of electronic communication to be set by specific or general directions given by the Commissioners of Inland Revenue and provides that information which fails to meet these standards shall be treated as not having been delivered.

New regulation 46ZG provides for penalties up to the tax year ending 5th April 2009 where information is delivered otherwise than by means of an authorised method of electronic communication. New Regulations will be made for the tax year ending 5th April 2010 and subsequent years of assessment.

New regulation 46ZH provides for provisions of the Taxes Management Act (c. 9) to apply to appeals under these Regulations.

Regulations 9 and 10 amend regulations 47 and 48 of the PAYE Regulations respectively to provide a later date for the issue by the collector of a notice relating to unpaid tax.

Regulation 11 amends regulation 51 of the PAYE Regulations to provide a later date from which interest runs on unpaid tax where payment is due by an approved method of electronic communications.

Regulatory Impact Assessments for these Regulations are available, and the directions referred to in the Regulations will, when published in October 2003, be available, on the Inland Revenue website at [www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk). The Assessments and the directions will also be available from the Inland Revenue Press Office, whose telephone number is 020 7438 6420.

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STATUTORY INSTRUMENTS

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2003

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