
STATUTORY INSTRUMENTS

2003 No. 2682

The Income Tax (Pay As You Earn) Regulations 2003

PART 3

DEDUCTION AND REPAYMENT OF TAX

CHAPTER 1

DEDUCTION AND REPAYMENT

Deduction and repayment by reference to employee's code

Deduction and repayment of tax by reference to employee's code

21.—(1) On making a relevant payment to an employee during a tax year, an employer must deduct or repay tax in accordance with these Regulations by reference to the employee's code, if the employer has one for the employee.

(2) The employer must deduct or repay tax by reference to the employee's code, even if the code is the subject of an objection or appeal.

The cumulative basis

The cumulative basis

22. An employer must deduct or repay tax on the cumulative basis, unless these Regulations provide otherwise.

Cumulative basis: deduction and repayment

23.—(1) This regulation provides for deductions and repayments on the basis of total payments to date (the cumulative basis).

(2) In this regulation—

- (a) TT is the total tax to date relating to an employee;
- (b) UT is any tax not deducted because of the overriding limit when the last relevant payment was made to the employee, and is nil if the payment in question is the first relevant payment to the employee in any tax year;
- (c) PT is the previous total tax to date relating to the employee, and is nil if the payment in question is the first relevant payment to the employee in any tax year.

(3) The employer must, before making any relevant payment to the employee, calculate TT.

(4) If TT + UT exceeds PT, the employer must deduct the excess from the relevant payment on making the payment.

(5) But if the employee's code is a K code, the deduction is not to exceed the overriding limit, subject to 62(6) (notional payments).

(6) If $TT + UT$ is less than PT , the employer must repay the difference to the employee on making the payment, subject to regulations 25(4) (extra payment made before main payment) and 64 (trade disputes).

(7) If $TT + UT$ equals PT , the employer must neither deduct nor repay tax when making the payment.

(8) "Previous total tax to date" means the total tax to date corresponding to the employee's total payments to date and the employee's code—

- (a) at the date of the last preceding relevant payment, or
- (b) if later, at the date on which the employer complied with this regulation as if a relevant payment had been made.

(9) But—

- (a) if the employee's code is an amended code, and
 - (b) the employee's previous code was not used on the cumulative basis,
- "previous total tax to date" means the total net tax deducted by the employer.

(10) Paragraphs (2)(c), (8) and (9) are subject to regulations 43(9) and (10), 52(11) and (12), 53(4) and 61(4) (which modify the meaning of previous total tax to date in certain circumstances).

Cumulative basis: employee not paid weekly or monthly

24.—(1) This regulation applies if—

- (a) an employer normally makes main relevant payments to an employee at regular intervals which are longer than a week, other than monthly, and
- (b) the employee's code is used on the cumulative basis.

(2) The first main relevant payment in a tax year is treated for the purposes of calculating the deduction or repayment of tax as having been made at the end of the period which—

- (a) starts on the first day of the tax year, and
- (b) finishes at the end of the employee's normal regular payment interval.

(3) Subsequent main relevant payments in the tax year are treated for the purposes of calculating the deduction or repayment of tax as having been made at the end of the period which—

- (a) starts the day after the date on which the previous main relevant payment is treated as having been made (by paragraph (2) or this paragraph), and
- (b) finishes at the end of the employee's normal regular payment interval or the last day of the tax year (if earlier).

(4) If the employee's main relevant payments are normally made at regular intervals which are longer than a year, any such payment in a tax year is treated, for the purposes of calculating the deduction or repayment of tax, as made on the last day of that tax year.

(5) But, in every case, the employer must record the actual date of every payment in the deductions working sheet.

(6) This regulation does not apply if the payment falls within regulation 31(1) (payments in short payment periods).

Cumulative basis: subsidiary PAYE income of employee paid weekly or at greater intervals

25.—(1) This regulation applies if—

- (a) an employee's main relevant payments are normally made at regular intervals of a week or more,
 - (b) the employee's code is used on the cumulative basis, and
 - (c) the employer makes a payment in respect of overtime or other extra earnings (the "extra payment").
- (2) For the purposes of calculating the deduction or repayment of tax, the extra payment is treated as made on the same date as that on which the main relevant payment in the payment period is due to be paid or is due to be treated as paid by regulation 24 (employee not paid weekly or monthly).
- (3) But paragraph (4) applies if the extra payment is actually made before the date on which the main relevant payment in the payment period is due to be paid (disregarding the effects of regulation 24).
- (4) A repayment which would (but for this paragraph) be due under regulation 23(6) on making the extra payment must not be paid to the employee, but must instead be added to the previous total tax (as defined by regulation 23(8)) on making the next relevant payment.
- (5) This regulation does not apply if the extra payment is made in a short payment period (but regulation 31 applies instead if that period contains an extra pay day).
- (6) "Payment period"—
- (a) in the case of an employee normally paid weekly, means a tax week,
 - (b) in the case of an employee normally paid monthly, means a tax month,
 - (c) in the case of an employee normally paid at other regular intervals, has the meaning given in paragraph (7).
- (7) In the case mentioned in paragraph (6)(c)—
- (a) the first payment period in a tax year starts on 6th April and finishes at the end of the employee's normal regular payment interval, and
 - (b) subsequent payment periods in the tax year start the day after the end of the previous payment period and finish—
 - (i) at the end of the employee's normal regular payment interval, or
 - (ii) on 5th April (if earlier).
- (8) "Short payment period" means the last payment period in a tax year if, because of paragraph (7)(b)(ii), it is shorter than the previous payment periods.
- (9) "Extra pay day" has the meaning given in regulation 31(4).

The non-cumulative basis

The non-cumulative basis

26.—(1) An employer must deduct tax in accordance with regulation 27 (the non-cumulative basis) from any relevant payment made to an employee if—

- (a) the Inland Revenue direct, or
- (b) these Regulations provide,

that the non-cumulative basis is to apply.

- (2) If this regulation applies then regulation 22 (cumulative basis) does not apply.

Non-cumulative basis: general rule for deductions

27.—(1) On making a relevant payment, the employer must deduct the amount of tax which would have been deductible in accordance with the appropriate tax tables, by reference to the employee's code, if the payment had been made on the first day of the tax year.

(2) This is subject to—

| | |
|---------------|------------------------------|
| regulation 28 | modification of general rule |
| regulation 29 | aggregation of payments. |

Non-cumulative basis: modification of general rule

28.—(1) Paragraphs (2) to (5) modify the general rule in regulation 27(1) (the non-cumulative basis) in certain circumstances.

(2) If regulation 30 (employee not paid weekly or monthly) applies to the employee's main relevant payments, the employer must deduct from a relevant payment the amount of tax which would have been deductible, by reference to the employee's code, if the payment (whether or not it is a main relevant payment) had been made on the date given by that regulation.

(3) If the employer does not normally make relevant payments to the employee at regular intervals, the employer must deduct from a relevant payment the amount of tax which would have been deductible, by reference to the employee's code—

- (a) if the payment is the first payment in the tax year, on the date it is made, or
- (b) in any other case, on the date found by counting forward x days starting on 5th April, where x is the number of days found by starting with the date of the previous relevant payment and counting forward to the date of the payment in question.

(4) But if two or more relevant payments are made in the same tax week, the employer must deduct from the second or subsequent relevant payment the amount of tax which (subject to regulation 29(5)) would have been deductible, by reference to the employee's code, if that payment were made at the date given by paragraph (3) for the first payment.

(5) If the employee's code is a K code, the deduction is not to exceed the overriding limit, subject to regulation 62(6) (notional payments).

Non-cumulative basis: aggregation of payments

29.—(1) Paragraph (2) applies if—

- (a) relevant payments are normally made to an employee at regular intervals of a week or more, and
- (b) the employee's code is used on the non-cumulative basis.

(2) If the relevant payment is the second or subsequent relevant payment made to the employee during the payment period (as defined by regulation 25(6)), the amount of tax to be deducted must be—

- (a) calculated by reference to the aggregate of the relevant payments made to the employee during the payment period (as defined by regulation 25(6)),
- (b) increased by any tax not deducted because of the overriding limit when the previous relevant payment in that payment period was made to the employee, and
- (c) reduced by the amount of tax calculated when the employer made the previous relevant payment in that payment period.

(3) But, for the purposes of the aggregate, any effects of regulation 30(2) (regular payments treated as made at later date) must be disregarded.

(4) Paragraph (5) applies if relevant payments to an employee—

- (a) are normally made at regular intervals of less than a week, or
- (b) are made at irregular intervals of less than a week.

(5) If the relevant payment is the second or subsequent relevant payment made to the employee during a tax week, the amount of tax to be deducted must be—

- (a) calculated by reference to the aggregate of the relevant payments made to the employee in the tax week,
- (b) increased by any tax not deducted because of the overriding limit when the previous relevant payment in that tax week was made to the employee, and
- (c) reduced by the amount of tax calculated when the employer made the previous relevant payment in that tax week.

Non-cumulative basis: employee not paid weekly or monthly

30.—(1) This regulation applies if—

- (a) an employer normally makes main relevant payments to an employee at regular intervals which are longer than a week, other than monthly, and
- (b) the employee's code is used on the non-cumulative basis.

(2) Each main relevant payment in a tax year is treated for the purposes of calculating the deduction of tax as having been made at the end the period which—

- (a) starts on 6th April, and
- (b) finishes at the end of the employee's regular payment interval.

(3) If the employee's main relevant payments are normally made at regular intervals which are longer than a year, any such payment in a tax year is treated, for the purposes of calculating the deduction of tax, as made on 5th April in that tax year.

(4) But, in every case, the employer must record the actual date of every payment in the deductions working sheet.

Payments in short payment periods

31.—(1) An employer must deduct tax on the non-cumulative basis from any relevant payment made to an employee in a short payment period which includes an extra pay day, even if the employee's code is normally used on the cumulative basis.

(2) Paragraph (1) does not apply if the employee's code is the basic rate code.

(3) If—

- (a) the employee's total payments to date do not exceed the employee's total free pay to date, and
- (b) the employee's code is normally used on the cumulative basis,

the employer must not deduct any tax from relevant payments made in a short payment period which includes an extra pay day.

(4) "Extra pay day" means the last day in a tax year on which a main relevant payment is due to be made to an employee if—

- (a) the employee's main relevant payments are normally made weekly or at greater intervals which results in the number of pay days varying from tax year to tax year (solely because of the number of days in a calendar year), and
 - (b) the day falls in a short payment period.
- (5) "Short payment period" has the meaning given in regulation 25(8).

Higher rate and nil tax codes

Higher rate code: deductions

32. If an employee's code is the higher rate code the employer must deduct tax at the higher rate, and regulations 22 and 26 (cumulative and non-cumulative basis) do not apply.

Nil tax code: no deductions or repayments

33.—(1) If an employee's code is the nil tax code the employer must not deduct or repay any tax, and so regulation 22 (cumulative basis) does not apply.

(2) But—

- (a) if the nil tax code is an amended code, and
- (b) the Inland Revenue so direct,

regulation 22 applies to the next relevant payment the employer makes in the same tax year, and the employer must make any repayment of tax due.

Simplified deduction scheme

Simplified deduction scheme for personal employees

34.—(1) The Inland Revenue may authorise the employer of a personal employee to deduct tax from each relevant payment made to the employee by reference to the appropriate taxable payments in the simplified tax tables.

(2) The amount of tax to be deducted must be—

- (a) calculated by reference to the aggregate of the relevant payments made to the authorised personal employee during the payment period, and
- (b) reduced by the amount of tax calculated, by reference to that aggregate, when the employer made the previous relevant payment in the same payment period.

(3) In this regulation—

"payment period" means the interval for which free pay is calculated shown on the deductions working sheet issued in accordance with regulation 35(3);

"personal employee" means—

- (a) a person employed at the employer's home to provide domestic or personal services for the employer or the employer's family, or
- (b) a person employed to assist the employer with any business, profession or course of study which, solely because of any physical or mental disability, the employer would not be able to carry on without the assistance of the personal employee;

and "authorised personal employee" means a personal employee in respect of whom an authorisation under paragraph (1) is in force;

“simplified tax tables” means the parts of the tax tables which are prepared by the Board of Inland Revenue for use under this regulation.

(4) The following regulations do not apply to cases in which this regulation and regulation 35 apply—

| | |
|-----------------------|--|
| regulation 15 | flat rate codes |
| regulation 16 | continued application of employee’s code |
| regulation 21 | deduction and repayment of tax by reference to employee’s code |
| regulations 22 to 25 | cumulative basis |
| regulations 26 to 31 | non-cumulative basis |
| regulations 32 and 33 | higher rate and nil tax codes |
| regulation 36 | cessation of employment: Form P45 |
| regulations 42 to 45 | employer to complete Form P45 |
| regulation 55 | PAYE pension income paid by former employer |
| regulation 66 | deductions working sheets. |

Simplified deduction schemes: records

35.—(1) The employer must maintain the following records in relation to an authorised personal employee.

(2) The records are—

- (a) the date of each relevant payment,
- (b) the amount of the relevant payment,
- (c) the amount of the free pay,
- (d) the amount of the taxable payments, and
- (e) the amount of tax, if any, deducted on making the relevant payment, or to be deducted or accounted for under regulation 62(4) or (5) (notional payments).

(3) The employer must maintain the records in a deductions working sheet which has been issued by the Inland Revenue showing the code for use by the employer in respect of the employee for the tax year.

(4) On ceasing to employ an authorised personal employee, the employer must return the completed deductions working sheet in respect of that employee to the Inland Revenue.

(5) Before 20th May following the end of a tax year, an employer who, at the end of that tax year, was employing one or more authorised personal employees must send to the Inland Revenue—

- (a) the completed deductions working sheets in respect of those employees, and
- (b) a return which complies with paragraph (6).

(6) The employer must declare and certify in the return—

- (a) how many deductions working sheets are being sent,
- (b) that those are all the deductions working sheets which have been issued to the employer and not already returned to the Inland Revenue, and
- (c) that the information contained in the deductions working sheets is fully and truly stated to the best of the employer’s knowledge and belief.

(7) The return is treated for the purposes of these Regulations as the return required by regulation 73(1) (annual return of relevant payments liable to deduction of tax).

(8) “Personal employee” and “authorised personal employee” have the same meaning as in regulation 34.

Cessation of employment

Cessation of employment: Form P45

36.—(1) On ceasing to employ an employee in respect of whom a code has been issued, the employer must complete Form P45.

(2) The employer must then—

(a) send Part 1 of that form to the Inland Revenue, and

(b) provide Parts 1A, 2 and 3 to the employee,

on the day on which the employment ceases or, if that is not practicable, without unreasonable delay.

(3) Retirement on pension is not a cessation of employment for the purposes of this regulation if the PAYE pension income is paid by the same employer after retirement.

(4) The information listed in column 1 of Table 2 must, subject to the conditions set out in column 2, be provided in the various Parts of Form P45 as indicated in columns 3 to 5.

Table 2

Information which must be provided in Form P45

| 1. <i>Information to be provided</i> | 2. <i>Conditions</i> | 3–5. <i>Form P45 Part</i> | | |
|---|-------------------------|------------------------------|-----------|-------------|
| | | <i>1</i> | <i>1A</i> | <i>2, 3</i> |
| 1. the employer's PAYE reference | | yes | yes | yes |
| 2. the employee's national insurance number | if known | yes | yes | yes |
| 3. the employee's name | | yes | yes | yes |
| 4. the date on which the employment ceased | | yes | yes | yes |
| 5. the employee's code or, if more than one, the latest code, issued by the Inland Revenue for the tax year during which the employment ceased | | yes | yes | yes |

| 1. Information to be provided | 2. Conditions | 3–5. Form P45 Part | | |
|--|---|-----------------------|-----|------|
| | | 1 | 1A | 2, 3 |
| 6. whether the employee's code is used on the cumulative basis | | yes | yes | yes |
| 7. the tax week or month in which the last relevant payment was made to the employee or, in a case falling within regulation 24, was treated as having been made | if the employee's code is used on the cumulative basis | yes | yes | yes |
| 8. the total payments to date and the corresponding total net tax deducted | if the employee's code is used on the cumulative basis | yes | yes | yes |
| 9. the total payments to date relating to the employment in question and the corresponding total net tax deducted | if the employee's code is used on the cumulative basis, and if different from the information supplied under item 8 | yes | yes | no |
| 10. the total payments to date relating to the employment in question and the corresponding total net tax deducted | if the employee's code is not used on the cumulative basis | yes | yes | no |
| 11. the number used by the employer to identify the employee | if any | yes | no | no |
| 12. the department or branch in which the employee was employed | if any | yes | no | no |
| 13. the employee's address | if known | yes | no | no |

| 1. Information to be provided | 2. Conditions | 3–5. Form P45 Part | | |
|-------------------------------------|------------------|-----------------------|-----|------|
| | | 1 | 1A | 2, 3 |
| 14. the employer's name | | yes | yes | no |
| 15. the employer's address | | yes | yes | no |
| 16. the date the Form is completed | | yes | yes | no |

(5) This regulation is subject to regulations 38, 39 and 180 (death of employee etc).

PAYE income paid after employment ceased

37.—(1) This regulation applies if a relevant payment is made to an employee after the employment has ceased—

- (a) by the former employer in respect of the former employment, or
- (b) by any other person in respect of an obligation of the former employer,

and the payment has not been included in Form P45.

(2) The person making the payment must deduct tax at the basic rate in force for the tax year in which the payment is made.

(3) But—

- (a) the payment does not affect the cessation of employment, and
- (b) the provisions listed in paragraph (4) do not apply.

(4) The provisions are—

| | |
|-------------------------------|--|
| regulation 21 | deduction and repayment of tax by reference to employee's code |
| regulations 22 and 23 | cumulative basis |
| regulations 26 and 27 | non-cumulative basis |
| Chapters 2 and 3 of this Part | new employees and new pensioners: Forms P45 and P46. |

(5) The person making the payment must record the following information in a deductions working sheet (which the person must prepare for the purpose if one has not already been prepared for that tax year).

(6) The information is—

- (a) the date of the payment,
- (b) the amount of the relevant payment, and
- (c) the amount of tax deducted on making the payment, or to be deducted or accounted for under regulation 62(4) or (5) (notional payments).

(7) The person making the payment must also notify the employee of the information mentioned in paragraph (6) without unreasonable delay.

Death of employee

38.—(1) On the death of an employee (other than a pensioner) in respect of whom a code has been issued by the Inland Revenue, the employer must—

- (a) complete Form P45 indicating in Part 1 that the employee has died, and
- (b) send it to the Inland Revenue.

(2) The employer must comply with paragraph (1)—

- (a) on the day on which the employer learns of the employee's death, or
- (b) if that is not practicable, without unreasonable delay.

(3) The employer must, on making a relevant payment after learning of the employee's death but before completing Form P45, deduct or repay tax as if the deceased employee were still alive and employed by the employer at the date of the payment.

(4) Regulation 37(2) to (6) applies to any relevant payment which—

- (a) is made in respect of the employee's employment after the date of the employee's death, and
- (b) is not included in Form P45.

Death of pensioner

39.—(1) On the death of a pensioner in respect of whom a code has been issued by the Inland Revenue, the pension payer must—

- (a) complete Form P45 indicating in Part 1 that the pensioner has died, and
- (b) send it to the Inland Revenue.

(2) The pension payer must comply with paragraph (1)—

- (a) on the day on which the pension payer learns of the pensioner's death, or
- (b) if that is not practicable, without unreasonable delay.

(3) Paragraph (4) applies if the pension payer makes any relevant pension payments after the date of the pensioner's death—

- (a) before completing Form P45, or
- (b) after completing Form P45 but during the tax year in which the pensioner died.

(4) The pension payer must, on making any such payment, deduct or repay tax as if the deceased pensioner were still alive and in receipt of a pension at the date of the payment.

(5) Regulation 37(2) to (6) applies to any relevant pension payment which—

- (a) is made in a tax year following the tax year in which the pensioner died, and
- (b) is not included in Form P45.

Employee's duty to provide Form P45

Duty of employee to give new employer Form P45

40.—(1) An employee who has Parts 2 and 3 of Form P45 must give them to the new employer on commencing a new employment.

(2) If an employee receives Parts 2 and 3 of Form P45 after commencing a new employment, the employee must immediately give them to the new employer.

(3) But paragraph (4) applies if an employee objects to the disclosure of the total payments to date to the new employer.

(4) The employee may, instead of complying with paragraph (1) or (2), send Parts 2 and 3 of Form P45 to the Inland Revenue before commencing the new employment or as soon as the employee receives Form P45 (as the case may be).

(5) The Inland Revenue—

- (a) must then issue a code in respect of the employee to the new employer, and
- (b) may direct that the non-cumulative basis is to apply to all relevant payments which the new employer makes to the employee.