
STATUTORY INSTRUMENTS

2003 No. 2682

The Income Tax (Pay As You Earn) Regulations 2003

PART 5

EMPLOYERS

Special arrangements

Multiple PAYE schemes

98.—(1) An employer may elect, for the purposes of these Regulations, to be treated as different employers in relation to different groups of employees.

(2) Where the employer makes an election, these Regulations apply as if—

- (a) in respect of each group the employer were a different employer;
- (b) each group constituted all of the employer's employees;
- (c) each group were employed in a separate undertaking from the others; and
- (d) an employee who has moved from one group to another has left one employment and started employment with a new employer.

(3) While an election is in force, an employer must allocate any new employees to one of the groups.

(4) An election must be made by notice to the Inland Revenue containing—

- (a) such information as may be necessary to identify the groups of employees, and
- (b) a certificate that each employee falls into one of the groups.

(5) An employer must, subject to paragraph (6), make an election before the beginning of the tax year for which it is to have effect.

(6) An employer who acquires the whole or a part of any business of another employer may, within 90 days of the acquisition, elect—

- (a) to be treated as a different employer in relation to the acquired employees, or two or more different employers in relation to groups of the acquired employees, whether or not an election is already in force in respect of the existing employees, or
- (b) to add some or all of the acquired employees to existing groups of employees in respect of whom an election is already in force,

and such an election has effect for the tax year in which the acquisition takes place.

(7) In paragraph (6)—

“business” includes any trade, concern or undertaking;

“acquired employee” means an employee who was employed in the acquired business.

(8) An election continues in effect until revoked by a notice given to the Inland Revenue.

(9) A notice of revocation must be given before the beginning of the tax year for which the election is to be revoked, but the revocation of an election does not prevent the making of a new election for that or a later tax year.

(10) An election which has not yet come into effect may be revoked at any time before the beginning of the tax year for which it is to have effect.

(11) This regulation is subject to regulation 99.

Multiple PAYE schemes: election made for improper purpose ineffective

99.—(1) An election made under regulation 98 must be disregarded if the Inland Revenue—

- (a) issue a notice to the employer stating that it appears to them that the election is made wholly or mainly for an improper purpose (“an improper purpose notice”), and
- (b) issue the improper purpose notice within 60 days of the making of the election.

(2) An election is made for an “improper purpose” if it is made for the purpose of—

- (a) avoiding the requirement imposed by regulation 199 (large employers required to make specified payments electronically),
- (b) avoiding the requirement imposed by regulation 205 (mandatory use of electronic communications), or
- (c) receiving an incentive payment under the Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) Regulations 2003(1).

(3) An employer may appeal against an improper purpose notice by giving notice to the Inland Revenue within 30 days of the issue of the improper purpose notice.

(4) The grounds of appeal are—

- (a) that the election was not made wholly or mainly for an improper purpose, or
- (b) that the improper purpose notice was not issued within 60 days of the election.

(5) If the appeal is successful the improper purpose notice must be withdrawn.

(6) Regulation 217 (appeals: supplementary provisions) applies to appeals under this regulation.

Tips: special arrangements

100.—(1) This regulation applies if an organised arrangement exists for tips to be shared among employees by a person (“T”) who is not the principal employer.

(2) On becoming aware of the existence of an arrangement, the principal employer must notify the Inland Revenue about the arrangement giving T’s name, if known.

(3) For the purposes of these Regulations—

- (a) every payment made to an employee by way of the employee’s share of tips by T (including the retention by T of T’s own share if T is also an employee) is regarded as a relevant payment by T; and
- (b) to the extent of any such payment, T is regarded as the employer.

(4) But if in any case the Inland Revenue are satisfied that T has failed to comply with any of the requirements of these Regulations and they so direct, then—

- (a) any tips paid to T through the principal employer for sharing among the employees are to be dealt with in accordance with paragraph (5), and

- (b) any other tips may be taken into account by the Inland Revenue under regulation 14(1)(b) in determining the code for each employee.
- (5) If this paragraph applies—
 - (a) the principal employer is treated as the employer for the purposes of these Regulations in relation to the tips;
 - (b) T must, before the principal employer pays any tips to T, give the principal employer such particulars of every payment by way of the sharing of tips to be made to an employee as may be necessary to enable the principal employer to comply with these Regulations;
 - (c) the principal employer must, on making any payment of tips to T, deduct or repay tax in accordance with these Regulations in respect of the amount of such tips to be paid to each employee, and notify T of each amount so deducted or repaid.
- (6) Paragraph (2) does not apply if the arrangement came into existence before 6th April 2004.
- (7) In this regulation—
 - “the principal employer” means the person under whose general control and management the employees work;
 - “tips” means gratuities and service charges.

Death of employer and succession

Death of employer

- 101.**—(1) This regulation applies if an employer dies.
- (2) Anything which the employer would have been liable to do under these Regulations must be done by the employer’s personal representatives.
- (3) But if the employer made payments on behalf of another person (“the principal”), anything which the employer would have been liable to do under these Regulations in respect of or in connection with those payments must be done by the principal.

Succession to a business etc

- 102.**—(1) This regulation applies if there is a change in an employee’s employer while the employee remains in employment in the same business.
- (2) This regulation also applies if there is a change in the pension payer who pays a pension to a pensioner.
- (3) The change is not to be treated as a cessation of employment for the purposes of regulation 36 (cessation of employment: Form P45).
- (4) The new employer is, in relation to any matter arising after the change, liable to do anything which the former employer would have been liable to do under these Regulations if the change had not taken place.
- (5) Paragraph (4) is subject to paragraphs (6) and (7) and regulation 104 (succession to a business: trade disputes).
- (6) The new employer is not liable for the payment of any tax which was deductible from relevant payments made to the employee—
 - (a) before the change took place, unless those payments were made by the new employer, or
 - (b) by the former employer after the change took place.

(7) The new employer is not liable for the payment of any tax which was to be deducted or accounted for in accordance with regulation 62(4) or (5) (notional payments) in respect of notional payments made to the employee—

- (a) before the change took place, unless those payments were made by the new employer, or
- (b) by the former employer after the change took place.

(8) The former employer must give the new employer any particulars which the new employer needs in order to comply with this regulation.

(9) In paragraph (1), “business” includes any trade, concern or undertaking.

Death and succession

103.—(1) Regulation 101 (death of employer) does not affect the operation of regulation 102 (succession to a business etc) for the purposes of which the deceased employer’s personal representative or the principal may also be the new employer.

(2) But paragraph (3) applies where a person (“P”) is both the new employer and also the deceased employer’s personal representative or the principal.

(3) Paragraphs (6) and (7) of regulation 102 (new employer not liable for certain payments of tax) do not apply to P in P’s capacity as personal representative or principal.

(4) “Principal” has the same meaning as in regulation 101.

Succession to a business: trade disputes

104.—(1) This regulation applies if a trade dispute began, but did not end, before a change to which regulation 102 (succession to a business etc) applies took place.

(2) The former employer must comply with regulations 64(8) (trade disputes: payments to Revenue) and 75 (additional return in case of trade dispute) as though the time limit of 42 days ran out on the date on which the change took place.

(3) The new employer is liable to repay, in accordance with regulation 64, any tax that was withheld in the tax year in which the change took place by the former employer.

(4) The new employer may recover from the Board of Inland Revenue an amount repayable under paragraph (3), as if it were an amount recoverable under regulation 68(3)(b) (periodic payments to and recoveries from Revenue).

(5) But any amount recovered under paragraph (4) must be ignored when determining how much the new employer must pay or can recover under regulation 68.