

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT)
REGULATIONS 2007

2007 No 1077

1. This Explanatory Memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty. This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

Under section 92, of the Finance Act 2006 payments are retrospectively treated as employment income. This instrument sets out how income tax due on that employment income, and any income tax which, by virtue of any subsequent legislation is charged on anything which is retrospectively charged to tax as employment income, is to be recorded, paid and reported to HMRC. These regulations take effect from 6th April 2007.

3. Matters of Special Interest to the Select Committee on Statutory Instruments

3.1 It is very much regretted that this Statutory Instrument is laid in breach of the convention requiring laying of an instrument subject to annulment 21 days before it comes into force (“the 21 day rule”).

3.2 The timing of the making of these Regulations is dependent on the approval of the Social Security Contributions (Consequential Provisions) Regulations 2007 by both houses of Parliament. The relevant debates took place on 13th March 2007 in Committee in the House of Commons and on the 20th March 2007 in the House of Lords. The Regulations also needed to be formally approved on the floor of the House of Commons, which did not occur until 27th March 2007 and must come into force at the beginning of a tax year (on 6th April). The breach of the 21 day rule was therefore an inevitable consequence of the Parliamentary timetable.

4. Legislative Background

- 4.1. Section 92 of the Finance Act 2006 amends Part 7 of Income Tax (Earnings and Pensions) Act 2003. It applies a tax charge to income from employment-related securities options used in avoidance arrangements, backdated to 2nd December 2004.
- 4.2. This instrument deals with the recording, reporting and payment to HMRC of income tax (PAYE) resulting from the changes introduced in section 92 Finance Act 2006, both where payments were received in a tax year

which has not yet finished (an open year) and in a closed year. It also provides a new statutory return to enable employers to report payments made to employees in a closed tax year. (The corresponding national insurance charges are dealt with by the Social Security (Contributions) (Amendment No. 2) Regulations 2007 which were approved by both Houses of Parliament, and the Social Security) (Contributions) (Consequential Provisions) Regulations 2007

4.3. These Regulations remove the requirement for electronic reporting and payment in respect of PAYE due on payments made in closed tax years that are treated as employment income retrospectively

4.4 They also provide for employers to notify affected employees of their additional taxable income and tax due on that income.

4.5 In addition they contain some consequential amendments.

5. Extent

These Regulations apply throughout the United Kingdom.

6. European Convention on Human Rights

These Regulations are subject to annulment and do not amend primary legislation. Accordingly no statement of compatibility with the Convention rights is required.

7. Policy Background

7.1 The Paymaster General made a statement (House of Commons Hansard Vol. 428 Col.45WS) on 2 December 2004 signalling that the Government would be prepared to act against tax and National Insurance avoidance involving employee remuneration by backdating any anti-avoidance legislation to 2 December 2004 if necessary.

7.2 These regulations make changes to the Income Tax (Pay as You Earn) Regulations 2003 in order to give effect to the recording, reporting and payment of income tax PAYE relating to earnings charged to tax retrospectively.

7.3 Finance Act 2006 imposed a retrospective charge to income tax on certain types of employment related securities options (section 92), and made consequential changes to the Income Tax (Earnings and Pensions) Act 2003. In addition it amended the powers under which PAYE Regulations might be made. These Regulations represent the first exercise of these extended powers.

8. Impact

These Regulations impose requirements as to the reporting and collection of tax arising by virtue of anti-avoidance legislation. They affect a very small

number of employers who remunerate their employees seeking to avoid tax and National Insurance. The impact of these regulations is restricted to those employers who pay their employees in this way.

9. Contact

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