

2009 No. 2029

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment No. 2)
Regulations 2009**

<i>Made</i>	- - - -	<i>22nd July 2009</i>
<i>Laid before the House of Commons</i>		<i>23rd July 2009</i>
<i>Coming into force</i>	- -	<i>13th August 2009</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 684 of the Income Tax (Earnings and Pensions) Act 2003(a), as extended by section 136 of the Finance Act 2002(b) and section 205 of the Finance Act 2003(c), and now exercisable by them:

Citation, commencement, transitional and interpretation

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2009.

(2) These Regulations shall come into force on 13th August 2009.

(3) The amendments made by regulation 4 shall have effect in relation to deferred payment agreements made on or after 13th August 2009.

(4) Subject to paragraphs (5) and (6), the amendments made by regulations 3 and 5 to 15 shall have effect in relation to the tax year 2009-10 and subsequent tax years.

(5) The amendments made by regulations 5 to 15 shall not have effect for the tax year 2009-2010 in relation to an employer in respect of whom all of the sub-paragraphs of paragraph (6) apply.

(6) An employer who —

- (a) is not a specified employer,
- (b) ceases paying PAYE income during the tax year 2009-10, and

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- (a) 2003 c.1. Section 684 was amended by paragraph 102 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) so that the Commissioners for Her Majesty's Revenue and Customs have the power to make the Regulations.
- (b) 2002 c.23. The power in section 136 was transferred to the Commissioners of Inland Revenue by virtue of section 5(1) of the Commissioners for Revenue and Customs Act 2005 ("CRCA 2005"). Section 50 of the CRCA 2005 provides that, in so far as is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs. Section 136 extends any power of the Commissioners for Her Majesty's Revenue and Customs to make subordinate legislation for or in connection with the delivery of information to include the power to make any provision as could be made in the exercise of the power conferred by section 135 of the Finance Act 2002. Section 135 was amended by paragraph 95 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 so that the Commissioners for Her Majesty's Revenue and Customs have the power to make the regulations and directions.
- (c) 2003 c.14. Section 94(8)(b) of the Finance Act 2007 (c.11) amended section 205(1) so that the Commissioners for Her Majesty's Revenue and Customs have the power to make the Regulations.

- (c) submits the return and accompanying information, required by regulation 73, before 6th April 2010.

(7) In paragraph (6)—

“regulation 73” means regulation 73 of the Income Tax (Pay As You Earn) Regulations 2003(a) (annual return of relevant payments liable to deduction of tax (Forms P35 and P14));

“specified employer” shall be construed in accordance with regulation 206 of the Income Tax (Pay As You Earn) Regulations 2003(b).

Amendment of the Income Tax (Pay As You Earn) Regulations 2003

2. The Income Tax (Pay As You Earn) Regulations 2003(c) are amended as follows.

3. In regulation 184B (application of other regulations)(d)—

- (a) in the list in paragraph (1) for the entries relating to regulation 205 to 210 substitute the following—

“regulation 205A	mandatory use of electronic communication for delivering specified information
regulation 205B	general provisions relating to this Chapter
regulation 206	employers and specified employers
regulation 207	specified information
regulation 208	e-filing notice and appeals
regulation 209	standards of accuracy and completeness
regulation 210	penalty for failing to deliver relevant annual returns and specified information
regulation 210B	penalty: form P45 (Part 1 or Part 3), P46 or P46(Pen)
regulation 210C	appeals and interest”, and

- (b) in paragraph (2) in the first column of Table 7A for “Employer” substitute “Employer, specified employer”.

4. In regulation 203(default surcharge), after paragraph (7) insert—

“(8) Section 108 of the Finance Act 2009(e) (suspension of penalties during currency of agreement for deferred payment) applies to a surcharge payable under this regulation with the following modifications—

- (a) in the Table in subsection (5), insert at the end—

“Specified payments within the meaning of regulation 199 of the Income Tax (Pay As You Earn) Regulations 2003	Surcharge under regulation 203 of the Income Tax (Pay As You Earn) Regulations 2003.”
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, and

- (b) omit subsections (7), (8), (9) and (11).”.

5. For regulation 205 (mandatory use of electronic communications) substitute—

(a) S.I. 2003/2682.

(b) The terms “large employer” and “large or medium sized employer” used in regulation 206 are defined in regulation 191 of the Income Tax (Pay As You Earn) Regulations 2003.

(c) The relevant amending instruments are S.I. 2007/1077, 2007/2969 and 2008/2601.

(d) Regulation 184B was inserted by S.I. 2008/2601.

(e) 2009 c.10.

“Mandatory use of electronic communication for delivering relevant annual returns

205. An employer (as to which see regulation 206) must deliver a relevant annual return by an approved method of electronic communications to HMRC.

Mandatory use of electronic communication for delivering specified information

205A. A specified employer (as to which see regulation 206) must deliver specified information by an approved method of electronic communications to HMRC.

General provisions relating to this Chapter

205B.—(1) The Commissioners for Her Majesty’s Revenue and Customs may make a general or specific direction requiring an employer or a specified employer to deliver any relevant annual return or specified information by a particular approved method of electronic communications.

(2) Any relevant annual return or specified information may be delivered by a person on behalf of an employer or a specified employer.

(3) Regulations 205 and 205A do not apply to any relevant annual return or specified information which relates to payments of tax due under a retrospective tax provision for a closed year.

(4) References in this Chapter to information and to the delivery of information must be construed in accordance with section 135(8) of the Finance Act 2002 (mandatory e-filing)(a).”.

6. For the heading to regulation 206 (specified employers) substitute “Employers and specified employers”.

7. In regulation 206—

(a) for paragraph (2) substitute—

“(2) The following are not specified employers and, for the purposes of this Chapter, shall not be regarded as employers—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications;
- (b) a partnership, if all the partners fall within sub-paragraph (a);
- (c) a company, if all the directors and company secretary fall within sub-paragraph (a);
- (d) an employer who is authorised by HMRC to deduct tax from relevant payments made to employees in accordance with regulation 34 (simplified deduction scheme for personal employees) and who has not received an incentive payment; and
- (e) a care and support employer.”, and

(b) after paragraph (3) insert—

“(4) In paragraph (2)(e), “a care and support employer” means an individual (“the employer”) who employs a person to provide domestic or personal services at or from the employer’s home where—

- (a) the services are provided to the employer or a member of the employer’s family;
- (b) the recipient of the services has a physical or mental disability, or is elderly or infirm;
- (c) the employer has not received an incentive payment in respect of any of the last 3 tax years; and

(a) 2002 c.23. Section 135(8) explains what the term “delivery of information” includes.

(d) it is the employer who delivers the relevant annual return (and not some other person on the employer's behalf).

(5) In this regulation an "incentive payment" means an incentive payment received under the Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) Regulations 2003(a).".

8. After regulation 206 insert—

"Relevant annual return

206A.—(1) In this Chapter "relevant annual return" means the return and accompanying information required by regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)).

(2) But relevant annual return does not include information supplied under special arrangements for the collection of tax made under regulation 141 (direct collection and special arrangements).".

9. In regulation 207 (specified information) omit sub-paragraph (e) of paragraph (1).

10. In regulation 208 (e-filing notice and appeals)—

(a) for "the Inland Revenue", in both places where the term occurs, substitute "HMRC", and

(b) at the end of paragraph (1)(b) omit "(religious objection)".

11. For regulation 209 (standards of accuracy and completeness) substitute—

"209.—(1) Any relevant annual return or specified information delivered by a method of electronic communications must meet the standards of accuracy and completeness set by specific or general directions given by the Commissioners for Her Majesty's Revenue and Customs.

(2) Any relevant annual return or specified information which fails to meet those standards must be treated as not having been delivered.".

12. For the heading to regulation 210 (penalty for failing to deliver specified information) substitute "Penalty for failing to deliver relevant annual returns and specified information".

13. In regulation 210—

(a) before paragraph (1) insert—

"(A1) An employer who fails to deliver a relevant annual return or any part of it in accordance with regulation 205 is liable to a penalty.",

(b) in paragraph (1) for "205" substitute "205A",

(c) for paragraph (2) substitute —

"(2) Where paragraph (A1) applies the penalty must be determined in accordance with regulation 210A.".

14. For regulation 210A (penalty: regulation 73 return and accompanying information (Forms P35 and P14)) substitute the following—

"Penalty: relevant annual return for the tax year ending 5th April 2010

210A. Table 9 sets out the penalty for the tax year ending 5th April 2010, depending on the number of employees for whom particulars should have been included with the relevant annual return.

(a) S.I. 2003/2495; relevant amendments were made by S.I. 2005/826.

Table 9**Penalties: tax year ending 5th April 2010**

<i>1 Number of employees for whom particulars should have been included with the relevant annual return</i>	<i>2 Penalty</i>
1-5	0
6-49	£100
50-249	£600
250-399	£900
400-499	£1200
500-599	£1500
600-699	£1800
700-799	£2100
800-899	£2400
900-999	£2700
1000 or more	£3000

Penalty: relevant annual return for the tax year ending 5th April 2011 and subsequent years

210AA. Table 9ZA sets out the penalty for the tax year ending 5th April 2011 and subsequent years, depending on the number of employees for whom particulars should have been included with the relevant annual return.

Table 9ZA**Penalties: tax years ending 5th April 2011 and subsequent years**

<i>1 Number of employees for whom particulars should have been included with the relevant annual return</i>	<i>2 Penalty</i>
1-5	£100
6-49	£300
50-249	£600
250-399	£900
400-499	£1200
500-599	£1500
600-699	£1800
700-799	£2100
800-899	£2400
900-999	£2700
1000 or more	£3000

15. In regulation 210C (appeals and interest)—**(a) in paragraph (1) —**

(i) after “205” insert “or regulation 205A”, and

(ii) before “specified information” insert “relevant annual return or”,

(b) in paragraph (2) —

(i) after sub-paragraph (a) insert—

“(aa) the employer is not regarded as an employer the purposes of this Chapter”, and

(ii) in sub-paragraph (b) after “205” insert “or regulation 205A”.

22nd July 2009

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (S.I.2003/2682; “the PAYE Regulations”) to provide for the mandatory electronic communication of certain returns. It is already mandatory for employers employing 50 or more employees to deliver certain information by an approved method of mandatory electronic communications, this is now extended to all employers in respect of the return, and accompanying information, required by regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)) of the PAYE Regulations. (This is referred to as a “relevant annual return” in these Regulations.)

These Regulations also amend the PAYE Regulations to provide that section 108 (suspension of penalties during currency of agreement for deferred payment) of the Finance Act 2009 applies with modifications to surcharges under regulation 203 (default surcharge) of the PAYE Regulations.

Regulation 1 provides for citation, commencement, etc. It provides that the Regulations commence on 13th August 2009 and that regulation 4 has effect in relation to deferred payment agreements made on or after 13th August 2009 and regulations 3 and 5 to 15 apply to the tax year 2009-10 and subsequent years. In relation to regulations 5 to 15, it also provides a transitional provision that the amendments made by these Regulations do not apply for the tax year 2009-10 where the employer is not a specified employer, ceases paying PAYE income in the tax year 2009-10 and submits the return and accompanying information required by regulation 73 of the PAYE Regulations before 6th April 2010.

Regulation 3 updates the provisions listed in regulation 184B(1) of the PAYE Regulations in consequence of the amendments made by these Regulations. It also corrects a minor error in regulation 184B(2).

Regulation 4 inserts a new paragraph (8) in regulation 203, so as to apply section 108 of the Finance Act 2009 to surcharges under regulation 203 for electronic payments made late. That section provides for the suspension of penalties during the currency of a deferred payment agreement.

Regulation 5 substitutes regulations 205 to 205B of the PAYE Regulations in place of the existing regulation 205. Regulation 205 now provides that all employers must deliver a relevant annual return by an approved method of electronic communications. Regulation 205A provides that specified employers must deliver specified information by an approved method of electronic communications. Regulation 205B makes general provisions previously contained in regulation 205.

Regulations 6 and 7 amend regulation 206 to the PAYE Regulations so that it now deals also with the meaning of employer for the purposes of Chapter 4 of the PAYE Regulations. In particular that the term employer does not include a care and support employer or an employer who operates the simplified deduction scheme in accordance with regulation 34 of the PAYE Regulations and who has not received an incentive payment. An “incentive payment” means an incentive payment under the Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) Regulations 2003 (S.I. 2003/2495).

A care and support employer is someone who employs a person to provide domestic or personal services at or from the employer's home. The services need to be provided to the employer or a member of the employer's family where the recipient of the services has a physical or mental disability, or is elderly or infirm. The exemption does not apply where some other person delivers the relevant annual return on the employer's behalf or the employer has received an incentive payment in respect of the last 3 tax years.

Regulation 8 inserts a new regulation 206A to the PAYE Regulations which defines the term “relevant annual return”.

Regulation 9 makes an amendment to regulation 207 of the PAYE Regulations in consequence of inserting regulation 206A of the PAYE Regulations.

Regulation 10 updates the references to the Inland Revenue to HMRC in regulation 208 of the PAYE Regulations and makes a consequential amendment.

Regulation 11 substitutes regulation 209 of the PAYE Regulations to make provision for the standard of accuracy and completeness of relevant annual returns.

Regulation 12 and 13 amend regulation 210 of the PAYE Regulations to provide that a penalty is payable where an employer fails to deliver a relevant annual return or any part of it in accordance with regulation 205.

Regulation 14 substitutes regulation 210A and Table 9 and inserts a new regulation 210AA and Table 9ZA to the PAYE Regulations to set out the amount of penalty which is payable. The amount depends on the number of employees in respect of whom particulars should have been included in the relevant annual return.

Regulation 15 amends regulation 210C of the PAYE Regulations and makes provision for appeals and interest.

A full Impact Assessment has not been produced in relation to regulations 3 and 4 of this instrument as no impact on the private or voluntary sectors is foreseen.

A full Impact Assessment of the effect that regulations 5 to 15 of this instrument will have on the costs of business and the voluntary sector is available on the HMRC website and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

STATUTORY INSTRUMENTS

2009 No. 2029

INCOME TAX

The Income Tax (Pay As You Earn) (Amendment No. 2)
Regulations 2009

£5.50