

2009 No. 588

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment) Regulations
2009**

Made - - - - *10th March 2009*

Laid before the House of Commons *11th March 2009*

Coming into force in accordance with regulation 1

The Commissioners for Her Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by section 684 of the Income Tax (Earnings and Pensions) Act 2003(a), and now vested in them(b).

Citation and commencement

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2009 and shall come into force on 1st April 2009.

(2) These Regulations have effect as follows—

- (a) regulations 4, 5, 6, 7 and 8 have effect from 1st April 2009; and
- (b) regulations 3, 9 and 10 have effect from 6th April 2009.

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.

New employees (other than pensioners)

3.—(1) In regulation 46(1B), start a new line and continue—

“A seconded expatriate who is a national of an EEA state (see section 56(3)(za) of ITA(d)), or is a Commonwealth citizen (see section 278(2)(a) of ICTA(e)), must provide confirmation of this as additional information.”.

(2) After regulation 46(1B), insert—

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- (a) 2003 c. 1; section 684 was amended by the Finance Act 2006 (c. 25) sections 94(1) and 94(3), the Commissioners for Revenue and Customs Act 2005 (c. 11) Schedule 4 paragraphs 101, 102 and 117, and the Finance Act 2003 (c. 14) sections 145(1) and 145(2).
 - (b) Section 684(1) was amended by paragraph 102(2) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 so that the power to make regulations became vested in the Commissioners for Her Majesty's Revenue and Customs.
 - (c) S.I. 2003/2682; relevant amending instruments are S.I. 2005/2691, 2007/1077, 2007/2969, 2008/782, 2008/2601, 2009/56.
 - (d) The Income Tax Act 2007 (c. 3) as abbreviated in regulation 2(1) of S.I. 2003/2682; paragraph (za) was inserted by the Finance Act 2008 (c. 9) section 70(2). See the Interpretation Act 1978 (c. 30) Schedule 1 for “EEA state”, inserted by the Legislative and Regulatory Reform Act 2006 (c. 51) section 26(1).
 - (e) The Income and Corporation Taxes Act 1988 (c. 1) as abbreviated in regulation 2(1) of S.I. 2003/2682; and see the British Nationality Act 1981 (c. 61) section 51 for “Commonwealth citizen”.

“(1C) In this regulation and in regulations 47 to 49, a “seconded expatriate” is an employee meeting one of the following descriptions.

Description 1: An employee in section 689 ITEPA(a) (employee of non-UK employer) whose “work” in section 689(6) starts on 6 April 2009 or later.

Description 2: An employee in a branch of an employer. These Regulations would not apply to that employer but for that branch. The employer seconded the employee to that branch. The employee was not employed in the United Kingdom immediately before the secondment. The secondment starts on 6 April 2009 or later.”.

(3) In regulation 46(2), start a new line and continue—

“A seconded expatriate must indicate instead which of the following statements applies—

Statement A: the employee intends to live in the United Kingdom for more than 6 months;

Statement B: the employee intends to live in the United Kingdom for less than 6 months;

Statement C: the employee will work both inside and outside the United Kingdom, but will live outside.”.

(4) Change regulation 47’s heading to—

“Procedure in Form P46 cases: (a) seconded expatriate is national of EEA state or Commonwealth citizen, or (b) employee is not seconded expatriate and Statement A applies”.

(5) In regulation 47(1) after “employee” insert “(not a seconded expatriate)”. Then start a new line and continue—

“It also applies to a seconded expatriate who confirms being a national of an EEA state or being a Commonwealth citizen (see regulation 46(1B)).”.

(6) Change regulation 48’s heading to—

“Procedure in Form P46 cases: (a) Statement B applies (not seconded expatriate), or (b) Statement B or C applies (seconded expatriate)”.

(7) In regulation 48(1) after “employee” insert “(not a seconded expatriate)”. Then start a new line and continue—

“It also applies in the case of a seconded expatriate who indicates in the Form P46 that Statement B or C applies.”.

(8) Change regulation 49’s heading to—

“Procedure in Form P46 cases: (a) Statement C applies (not seconded expatriate), or (b) Statement A applies (seconded expatriate), or (c) Form P46 not signed when required”.

(9) After regulation 49(3), insert—

“(4) In the case of a seconded expatriate, the emergency code must be used instead of the basic rate code mentioned in paragraphs (2)(c) and (3) (see also regulation 7(3) about the codes).”.

Inspection and production of documents, etc

4. In regulation 78 (notice and certificate if tax may be unpaid)—

- (a) in paragraph (6) for “in accordance with regulation 97 (inspection of employer’s PAYE records)” substitute “under Schedule 36 to the Finance Act 2008(b) (information and inspection powers)”; and

(a) The Income Tax (Earnings and Pensions) Act 2003 (c. 1) as abbreviated in regulation 2(1) of S.I. 2003/2682.

(b) 2008 c. 9. Schedule 36 is brought into force on 1st April 2009 by S.I. 2009/404 (C. 25).

(b) in paragraph (7) omit “, regulation 97 applies to that inspection and”.

5. In regulation 79(1) for “regulation 97” substitute “Schedule 36 to the Finance Act 2008 (information and inspection powers)”.

6. For regulation 97 (inspection of employer’s PAYE records) substitute—

“Retention by employer of PAYE records

97.—(1) An employer must keep and preserve for not less than three years after the end of the tax year to which they relate all PAYE records which are not required to be sent to HMRC(a) by other provisions in these Regulations.

(2) The duty under paragraph (1) to keep and preserve PAYE records may be discharged by preserving them in any form or by any means.

(3) “PAYE records” means the following documents and records—

(a) all wages sheets, deductions working sheets, documents completed under regulation 46 (Form P46) and other documents and records relating to—

(i) the calculation of the PAYE income of the employees,

(ii) relevant payments to the employees, or

(iii) the deduction of tax from, or accounting for tax in respect of, such payments, and

(b) all documents relating to any information which an employer is required to provide to HMRC under regulation 85 (Forms P11D and P9D).”.

7. In column 2 of the list of provisions in each of regulations 150(1) (application of other regulations), 174(1) (application of other regulations) and 184B (application of other regulations) for “inspection of employer’s PAYE records” substitute “retention by employer of PAYE records”.

8. In column 2 of the list of provisions in regulation 218(2) (certificate that sum due), for “regulation 97” substitute “Schedule 36 to the Finance Act 2008”.

Cars

9. In regulation 90 (quarterly return if a car becomes available or unavailable (Form P46 (Car))—

(a) after paragraph (1) insert—

“(1A) This regulation does not apply if the reason a car becomes available or unavailable is that one car is replaced with another.”; and

(b) in paragraph (2) for “Inland Revenue” substitute “HMRC”.

Reserve forces’ pay

10. In the meaning for “reserve pay” in regulation 122(1), after “forces” insert—

“, excluding such payments made on 6 April 2009 or later”.

*Dave Hartnett
Mike Eland*

10th March 2009

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

(a) Regulation 2(1) of S.I. 2003/2682 defines “HMRC” as meaning Her Majesty’s Revenue and Customs. That definition was inserted by S.I. 2007/1077.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003^(a) (the “PAYE Regulations”).

New employees: Form P46 procedure

When an employer does not receive an income tax Form P45 (cessation of employment) for a new employee, they must both provide information to HM Revenue & Customs using the income tax Form P46 procedure. Regulation 3 introduces a modified and tailored Form P46 procedure for seconded expatriates who start work in the United Kingdom on 6 April 2009 or later^(b).

Inspection and production of documents, etc

The amendments in regulations 4 to 8 are consequential upon the introduction of the new Revenue and Customs powers of inspection and production of documents in Schedule 36 to the Finance Act 2008.

Regulations 4, 5, 7 and 8 make consequential amendments required as a result of the changes made by regulation 6 which substitutes a new regulation 97 of the PAYE Regulations. This keeps the existing definition of an employer’s “PAYE records” but, instead of requiring their production, requires them to be kept and preserved. These records will thus constitute “statutory records”, so Schedule 36 to the Finance Act 2008 will provide the power to require their production and to inspect.

Cars

Regulation 9 amends regulation 90 of the PAYE Regulations which requires employers to provide information to HM Revenue & Customs about company cars they provide to employees. It removes the requirement to do that if one car is replaced with another, such as with an upgrade to a newer model.

This will only affect the quarterly in-year return; there is no change to the Form P11D annual return about which regulation 85 makes provision.

The opportunity is taken to update the reference to Inland Revenue in paragraph (2) of regulation 90 to Her Majesty’s Revenue and Customs.

Reserve forces’ pay

The simplified Pay As You Earn income tax scheme operated by the Ministry of Defence for payments to members of the reserve forces is stopped for payments made on 6 April 2009 or later^(c). Such payments become subject to the ordinary PAYE rules.

A full Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available at www.hmrc.gov.uk and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

(a) S.I. 2003/2682.

(b) Regulation 3 so amends regulations 46 to 49 of S.I. 2003/2682.

(c) Regulation 10 so amends regulation 122(1) of S.I. 2003/2682.

STATUTORY INSTRUMENTS

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£4.00