
STATUTORY INSTRUMENTS

2010 No. 668

**The Income Tax (Pay As You Earn)
(Amendment) Regulations 2010**

PART 3

Communications

CHAPTER 1

Electronic communications: interpretation

Revocations

4. Omit regulations 190 (specified date) and 191 (large and medium sized employers).

CHAPTER 2

Electronic payment by large employers

Definition of large employers

5. At the beginning of Chapter 3, before regulation 199 (large employers required to make specified payments electronically) insert—

“Large employers

198A.—(1) “Large employer” means an employer treated as paying PAYE income to 250 or more employees at the specified date.

(2) An employer is treated as paying PAYE income to an employee at the specified date if the employer—

- (a) is required at that date by these Regulations to prepare or maintain a deductions working sheet in respect of that employee, and
 - (b) has not sent to HMRC Part 1 of Form P45 in respect of that employee.
- (3) The specified date for each tax year is 31st October.”

Large employers required to make specified payments electronically

- 6.—(1) In regulation 199 (large employers required to make specified payments electronically)—

(a) in paragraph (1) omit “to whom an e-payment notice in respect of a tax year has been issued”,

(b) for paragraph (2) substitute—

“(2) “Specified payments”, in this regulation, means payments of tax under regulation 68 (periodic payments to and recoveries from the Revenue).”, and

(c) after paragraph (4) insert—

“(5) A specified payment is not treated as received in full by HMRC on or before the date by which that specified payment is required in accordance with regulation 69 unless it is made in a manner which secures (in a case where the specified payment is made otherwise than in cash) that, on or before that date, all transactions can be completed which need to be completed before the whole amount of the specified payment becomes available to the Commissioners for Her Majesty’s Revenue and Customs.”.

Revocations

7. Omit regulations 200 (e-payment notices and appeal), 201 (employer in default if specified payment not received by applicable due date) and 202 (default notice and appeal).

CHAPTER 3

Mandatory use of electronic communications

Delivery of information

8. For regulation 205 (mandatory use of electronic communication for delivering relevant annual returns), 205A (mandatory use of electronic communication for delivering specified information) and 205B (general provisions relating to this Chapter) substitute—

“Mandatory use of electronic communications

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

(2) The Commissioners for Her Majesty’s Revenue and Customs may make a general or specific direction requiring an employer to deliver specified information by a particular approved method of electronic communications.

(3) Specified information may be delivered by a person on behalf of an employer.

(4) This regulation does not apply to specified information which relates to payments of tax due under a retrospective tax provision for a closed year.

(5) 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)(1).”.

Employers

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

(2) In regulation 206—

(a) omit paragraph (1),

(b) in paragraph (2), for the words before sub-paragraph (a) substitute—

“(2) For the purposes of this Chapter, the following shall not be regarded as employers—”, and

(c) in paragraph (4)(d) for “relevant annual return” substitute “specified information”.

(1) Section 135(8) explains what the term “delivery of information” includes.

Specified information

10. In regulation 207(1) (specified information) after sub-paragraph (d) insert—
- “(e) the return and accompanying information required by regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)).”.

Penalties

11.—(1) In the heading to regulation 210 (penalty for failing to deliver relevant annual returns and specified information) omit “relevant annual returns and”.

(2) In regulation 210—

(a) for paragraphs (A1) to (2) substitute—

“(1) An employer who fails to deliver specified information or any part of it in accordance with regulation 205 is liable to a penalty.

(2) Where the specified information is the return and accompanying information required by regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14) the penalty will be determined in accordance with regulation 210AA.”, and

(b) in paragraph (3), for regulation 210B substitute “regulations 210B and 210BA”.

(3) For the heading to regulation 210AA (penalty: relevant annual return for the tax year ending 5th April 2011 and subsequent years) substitute “Penalty: forms P35 and P14”.

(4) In regulation 210AA and Table 9ZA for “relevant annual return” substitute “specified information”.

(5) For the heading to regulation 210B (penalty: form P45 (Part 1 or Part 3), P46 or P46 (Pen)) substitute “Penalty: form P45 (Part 1 or Part 3), P46 or P46 (Pen); tax years ending 5th April 2012 and 5th April 2013”.

(6) In regulation 210B—

(a) for paragraph (1) substitute—

“(1) This regulation applies for the tax years ending 5th April 2012 and 5th April 2013 (the “relevant period”).”,

(b) for the heading to Table 9A substitute “Penalties: tax years ending 5th April 2012 and 5th April 2013”, and

(c) in the first column in Table 9A for the first entry substitute “1-2” and for the second entry substitute “3-49”.

(7) After regulation 210B insert—

“Penalty: form P45 (Part 1 or Part 3), P46 or P46(Pen); tax years ending 5th April 2014 and subsequent years

210BA.—(1) Table 9AA sets out penalties depending on the number of items of specified information the employer has failed to deliver in each tax quarter falling within the tax year ending 5th April 2014 and subsequent years.

Table 9AA

Penalties: tax year ending 5th April 2014 and subsequent years

<i>1 Number of items of specified information the employer has failed to deliver in the tax quarter</i>	<i>2 Penalty</i>
1-49	£100
50-149	£300
150-299	£600
300-399	£900
400-499	£1,200
500-599	£1,500
600-699	£1,800
700-799	£2,100
800-899	£2,400
900-999	£2,700
1000+	£3,000

(2) Each of the types of specified information mentioned in sub-paragraphs (a) to (d) of regulation 207(1) counts as a separate item of specified information for this purpose.

(3) An item of specified information counts even if it relates to the same employee as one or more other items.”.

Other revocations

12.—(1) The following are omitted—

- (a) regulation 206A (relevant annual return),
- (b) regulation 208 (e-filing notice and appeals), and
- (c) regulation 210A (penalty: relevant annual return for the tax year ending 5th April 2010).

(2) In regulation 209 (standards of accuracy and completeness) omit “relevant annual return or” in both places those words occur.

(3) In regulation 210C (appeals and interest)—

- (a) omit the words “or regulation 205A” in both places they occur,
- (b) in paragraph (1), omit the words “relevant annual return or”,
- (c) in paragraph (2), omit sub paragraph (a), and
- (d) omit paragraph (3).

CHAPTER 4

Methods of providing information, etc

How information must or may be delivered by employers

13. In Table 10 in regulation 211(4) (how information must or may be delivered by employers), for the entries in relation to regulations 67(1), 132(1), 157(2)(b) and 184I(2)(b), in column 5 for “no” substitute “yes”.

How information may be delivered by Her Majesty’s Revenue and Customs

14. In regulation 213(3), in Table 11—
- (a) omit the entry relating to regulation 199(1), and
 - (b) omit the entry relating to regulation 206(1).

CHAPTER 5

Consequential amendments

Interpretation

15. In regulation 2(1) (interpretation)—
- (a) for the definition of “large employer” and “large or medium employer” substitute—
““large employer” has the meaning given in regulation 198A;”, and
 - (b) for the definition of “specified date” substitute—
““specified date” for the purposes of Chapter 3 of Part 10, has the meaning given in regulation 198A;”.

Multiple PAYE schemes

16. In regulation 99(2) (multiple PAYE schemes: election made for improper purpose ineffective) —
- (a) in regulation (b) for “205” substitute “205A”,
 - (b) omit paragraph (c), and
 - (c) omit paragraph (b).

Employment and support allowance

17. In regulation 184B (employment and support allowance; application of other regulations)—
- (a) in paragraph (1) for “(4)” substitute “(5)”,
 - (b) in the list in paragraph (1)—
 - (i) for the entries relating to regulation 205A to 205B substitute the following—

“regulation 205	mandatory	use	of	electronic
	communications”,			

- (ii) in the entry relating to regulation 206 omit “and specified employers”,
- (iii) omit the entry relating to regulation 208,
- (iv) in the entry relating to regulation 210 omit “relevant annual returns and”, and

- (v) omit the entry relating to 210B,
- (c) in paragraph (2) in the first column of Table 7A omit “, specified employer”,
- (d) after paragraph (4) insert —
 - “(5) In the application of regulation 210 (penalty for failing to deliver specified information)—
 - (a) where the specified information is the return and accompanying information required by regulation 184J (annual return) the penalty will be determined in accordance with regulation 210A, and
 - (b) where the specified information is 184G (return in respect of all claimants to taxable employment and support allowance), Part 1 of Form P45ESA or the information required under regulation 184E(9) the penalty will be determined in accordance with regulation 210B.”, and
- (e) in paragraph (5) inserted by sub-paragraph (d) of this regulation for “210A” substitute “210AA” and for “regulation 210B” insert “regulations 210B and 210BA”.