

2014 No. 472

INCOME TAX

**The Income Tax (Pay As You Earn) and the Income Tax
(Construction Industry Scheme) (Amendment) Regulations 2014**

Made - - - - *12th March 2014*

Laid before the House of Commons *13th March 2014*

Coming into force in accordance with regulation 1(2) and (3)

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 113(1) of the Taxes Management Act 1970(a), section 133 of the Finance Act 1999(b), section 136 of the Finance Act 2002(c), section 684(1) and (2) of the Income Tax (Earnings and Pensions) Act 2003(d) and section 73 of the Finance Act 2004(e), now exercisable by them(f), and by paragraph 6(8A)(a) and (8B) of Schedule 56 to the Finance Act 2009(g).

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2014.

(2) Regulations 1 to 12, 14, 15 and 17 to 21 come into force on 6th April 2014.

(3) Regulations 13 and 16 come into force on 6th April 2015.

(4) Regulations 7, 17 and 21 have effect in relation to a payment made in relation to the tax year 2014-15 and subsequent tax years.

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- (a) 1970 c. 9.
(b) 1999 c. 16.
(c) 2002 c. 23.
(d) 2003 c. 1. Section 684 has been relevantly amended by section 145 of the Finance Act 2003 (c. 14), paragraphs 102(2) and 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) ("CRCA"), section 94(3) of the Finance Act 2006 (c. 25), paragraphs 2 to 7 of Schedule 58 to the Finance Act 2009 (c. 10) and by section 225 of the Finance Act 2012 (c. 14).
(e) 2004 c. 12.
(f) The powers of the Board of Inland Revenue under section 684 of the Income Tax (Earnings and Pensions) Act 2003 were transferred to the Commissioners for Revenue and Customs by paragraph 102(2) of Schedule 4 to CRCA. The functions of the Board of Inland Revenue under section 113(1) of the Taxes Management Act 1970, section 133 of the Finance Act 1999 and sections 135 and 136 of the Finance Act 2002 were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of CRCA. Section 50(1) of that Act provides that, in so far as appropriate, in consequence of section 5 a reference in an enactment, instrument or other document to the Commissioners of Inland Revenue (however expressed) shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
(g) 2009 c. 10. Sub-paragraphs (8A) and (8B) were inserted into paragraph 6 of Schedule 56 to the Finance Act 2009 by paragraph 12(6) of Schedule 50 to the Finance Act 2013 (c. 1).

PART 1

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

2. The Income Tax (Pay As You Earn) Regulations 2003(a) are amended as provided for in regulations 3 to 20.

3. In regulation 2(1) (interpretation), in the definition of “deductions working sheet”, omit paragraph (b).

4. In regulation 67B (real time returns of information about relevant payments)(b)—

(a) in paragraph (1) for “paragraphs (1A) and (1B)” substitute “paragraph (1A)”; and

(b) for paragraphs (1A) and (1B) substitute—

“(1A) But a Real Time Information employer(c)—

(a) which for the tax year 2014-15 meets Conditions A and B, or

(b) which for the tax year 2015-16 meets Conditions A and C,

may instead for that tax year deliver to HMRC the information specified in Schedule A1 (real time returns)(d) in respect of all relevant payments made to an employee in a tax month on or before making the last relevant payment in that month.

(1B) Condition A is that, at 5th April 2014, the Real Time Information employer is one to whom HMRC has issued an employer’s PAYE reference(e).

(1C) Condition B is that, at 6th April 2014, the Real Time Information employer employs no more than 9 employees.

(1D) Condition C is that, at 6th April 2015, the Real Time Information employer employs no more than 9 employees.”.

5. In regulation 67D (exceptions to regulation 67B)(f)—

(a) in paragraph (1)(e) after “paragraph (11)” insert—

“,

but this is subject to paragraph (2B).”.

(b) after paragraph (2A) insert—

“(2B) This regulation does not apply if a Real Time Information employer within paragraph (1) makes a return using an approved method of electronic communications.”, and

(c) in paragraphs (3), (5) and (6) for “month”, wherever it occurs, substitute “quarter”.

6. In regulation 67E (returns under regulations 67B and 67D: amendments)(g)—

(a) in paragraph (1)—

(i) for “an employer discovers an error in a return” substitute “there is an inaccuracy in a return”, and

(ii) after the second reference to “67B” insert “, whether careless or deliberate.”,

(b) in paragraphs (2), (3), (4) and (8)(a) for “error” substitute “inaccuracy”,

(c) for paragraph (5) substitute—

(a) S.I. 2003/2682; relevant amending instruments are S.I. 2007/1077, 2007/2969, 2008/782, 2009/2029, 2010/668, 2012/822, 2012/1895, 2013/521 and 2013/2300.

(b) Regulation 67B was inserted by regulation 27 of S.I. 2012/822 and amended by regulation 18 of S.I. 2013/521 and regulation 2 of S.I. 2013/2300.

(c) “Real Time Information employer” is defined in regulation 2A.

(d) Schedule A1 was inserted by regulation 52 of S.I. 2012/821 and amended by regulation 37 of S.I. 2013/521.

(e) The term “employer’s PAYE reference” is defined in regulation 2.

(f) Regulation 67D was inserted by regulation 27 of S.I. 2012/822 and amended by regulation 21 of S.I. 2013/521.

(g) Regulation 67E was inserted by regulation 27 of S.I. 2012/822 and amended by regulation 22 of S.I. 2013/521.

“(5) Where an employer becomes aware of an inaccuracy in a return submitted under regulation 67B or 67D, the employer must provide the correct information in the next return for the tax year in question.”, and

- (d) in paragraph (7)(b) for “discovery of the error” substitute “employer becomes aware of the inaccuracy”.

7. After regulation 69 (due date and receipts for payment of tax) insert—

“Circumstances in which payment of a lesser amount is to be treated as payment in full for the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009

69A.—(1) A payment that is less than the full amount due under regulation 67G(2) (payments to and recoveries from HMRC for each tax period)(a), as adjusted by regulation 67H (payments due and recoveries from HMRC for each tax period: returns under regulation 67E(6))(b) where appropriate, will for the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009 (amount of penalty: PAYE and CIS)(c) be treated as payment of the full amount if the difference between the full amount and the amount paid is no more than £100 (“the tolerance”), but this is subject to paragraphs (2) and (3).

(2) Paragraph (1) does not apply where—

- (a) the payment relates to a return which is correcting information given in a return filed in respect of a relevant payment made in an earlier tax month, and
(b) the return is delivered after 19th April following the end of the tax year in question.

(3) If the total sum paid by the employer to HMRC for the tax period includes not only the amount due under regulation 67G(2), as adjusted by regulation 67H where appropriate, but also one or more of—

- (a) any earnings-related contributions (as defined by regulation 1(2) of the SSC Regulations 2001(d)),
(b) any payment under regulation 7(1) of the Income Tax (Construction Industry Scheme) Regulations 2005(e), or
(c) any repayment due under the Student Loans Regulations(f),

the tolerance is applied to the total sum paid to HMRC for the tax period to which the payments relate.”.

8. In regulation 72E(1) (conditions where regulation 72F applies)(g)—

- (a) in sub-paragraph (a), for “an employee has” substitute “one or more employees have”, and
(b) for sub-paragraph (b)(i), substitute—
“(i) is likely to have been self-assessed by one or more of the employees, or”.

9. In regulation 72F(3) (recovery from employee of tax that has been self-assessed etc)(h), for sub-paragraph (b) substitute—

“(b) the—

(a) Regulation 67G was inserted by regulation 27 of S.I. 2012/822 and amended by regulation 25 of S.I. 2013/521.
(b) Regulation 67H was inserted by regulation 27 of S.I. 2012/822 and amended by regulation 26 of S.I. 2013/521.
(c) Paragraph 6(2) was substituted by paragraph 6 of Schedule 11 to the Finance (No. 3) Act 2010 (c. 33) and amended by paragraph 12(3) of Schedule 50 to the Finance Act 2013.
(d) S.I. 2001/1004. The term “SSC Regulations” and its definition were inserted into regulation 2 of S.I. 2003/2682 by regulation 3 of S.I. 2007/1077.
(e) S.I. 2005/2045; relevant amending instruments are S.I. 2008/740 and 2012/820.
(f) S.I. 2009/470. The term “Student Loan Regulations” and its definition were inserted into regulation 2 of S.I. 2003/2682 by regulation 3 of S.I. 2008/782 and substituted by regulation 60 of S.I. 2012/822.
(g) Regulation 72E was inserted by regulation 7 of S.I. 2008/782.
(h) Regulation 72F was inserted by regulation 7 of S.I. 2008/782.

- (i) amount (or amounts) within regulation 72E(1)(b) to which it relates, or
- (ii) employment in respect of which the relevant payment within regulation 72E(1)(a) was received and in respect of which the amount within regulation 72E(1)(b)(i) is likely to have been self-assessed, and”.

10. In regulation 141(1) (direct collection and special arrangements), for sub-paragraph (b) and the text to the end of the paragraph, substitute—

“(b) any other case in which HMRC are of the opinion that deduction of tax by reference to the tax tables is impracticable,

the direct collection procedure in regulation 142 applies to any PAYE income, unless HMRC makes special arrangements for the collection of tax in respect of that PAYE income.”.

11. For regulation 142 (direct collection: issue of deductions working sheet) substitute—

“Direct collection: employee to report payments

142.—(1) On receiving a relevant payment—

- (a) an employee (E) must proceed in accordance with paragraph (3) or paragraph (4), as the case may be, and
- (b) regulations 143 to 147A (direct collection) apply to E,

unless E objects to the application of the direct collection procedure.

(2) E may, within 30 days beginning with the date of receipt of written notification from HMRC that the direct collection procedure applies, object by written notice to HMRC to that procedure.

(3) E must deliver the information specified in Schedule A1 as if E were a Real Time Information employer for the purposes of regulations 67B (real time information returns of information about relevant payments), 67E (returns under regulations 67B and 67D: amendments), 67EA (failure to make a return under regulation 67B or 67D)(a) and 67F (additional information about payments)(b) and references to “an employer making a relevant payment” are to be read as if they were references to “the employee receiving a relevant payment”.

(4) But if E—

- (a) is an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications, or
- (b) has been given a direction under paragraph (5),

E may instead proceed as if E were a Real Time Information employer to whom regulations 67D (exceptions to regulation 67B), 67E (returns under regulations 67B and 67D: amendments), 67EA (failure to make a return under regulation 67B or 67D) and 67F (additional information about payments) apply with the modification referred to in paragraph (3).

(5) Where the Commissioners for Her Majesty’s Revenue are satisfied that—

- (a) it is not reasonably practicable for E to make a return using an approved form of electronic communication, and
- (b) it is E who delivers the return (and not some other person on E’s behalf),

they may make a direction specifying that E is not required to make a return using an approved method of electronic communication.”.

12. In regulation 143 (direct collection: employee to keep records)—

(a) Regulation 67EA was inserted by regulation 23 of S.I. 2013/521.

(b) Regulation 67F was inserted by regulation 27 of S.I. 2012/822 and amended by regulation 24 of S.I. 2013/521.

- (a) in paragraph (1) for “the deductions” substitute “a deductions”,
- (b) in paragraphs (2) and (4) for “the deductions” substitute “that deductions”, and
- (c) in paragraph (5) for “regulations 145 and 146” substitute “regulation 146”.

13. In regulation 143(5) omit “and regulation 146”.

14. In regulation 144(1) (direct collection: payment), in paragraph (1) for the definition of “the current total tax” substitute—

““the current total tax” means the amount required to be recorded at paragraph 17 of Schedule A1 (real time returns)(a) in the most recent return which the employee is required to make in the tax year, or where the employee is required to make a return under regulation 67EA(3) (failure to make a return under regulation 67B)(b), the amount required to be recorded at paragraph 17 of Schedule A1 for the tax year to which that return relates;”.

15. Omit regulation 145 (direct collection: return when relevant payments cease).

16. Omit regulation 146 (direct collection: end of year return).

17. After regulation 147 (direct collection: failure to pay) insert—

“Circumstances in which payment of a lesser amount is to be treated as payment in full for the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009

147A.—(1) A payment that is less than the full amount due under regulation 67G(2) (payments to and recoveries from HMRC for each tax period), as adjusted by regulation 67H (payments due and recoveries from HMRC for each tax period: returns under regulation 67E(6)) where appropriate, will for the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009 (amount of penalty: PAYE and CIS) be treated as payment of the full amount if the difference between the full amount and the amount paid is no more than £100 (“the tolerance”), but this is subject to paragraphs (2) and (3).

(2) Paragraph (1) does not apply where—

- (a) the payment relates to a return which corrects information given in a return filed in respect of a relevant payment made in an earlier tax month, and
- (b) the return is delivered after 19th April following the end of the tax year in question.

(3) If the total sum paid by the employer to HMRC for the tax period includes not only the amount due under regulation 67G(2), as adjusted by regulation 67H where appropriate, but also one or more of—

- (a) any earnings-related contributions (as defined by regulation 1(2) of the SSC Regulations 2001),
- (b) any payment under regulation 7(1) of the Income Tax (Construction Industry Scheme) Regulations 2005, or
- (c) any repayment due under the Student Loans Regulations,

the tolerance is applied to the total sum paid to HMRC for the tax period to which the payments relate.”.

18. In regulation 206(2) (employers)(c), after sub-paragraph (e) insert—

“and,

(a) Schedule A1 was inserted by regulation 52 of S.I. 2012/822 and amended by regulation 37 of S.I. 2013/521.
 (b) Regulation 67EA was inserted by regulation 23 of S.I. 2013/521.
 (c) Paragraph (2) has been substituted and amended by regulation 7 of S.I. 2009/2029 and amended by regulation 9 of S.I. 2010/668 and by regulation 10 of S.I. 2013/521.

- (f) an employer to whom a direction has been given under regulation 67D (exceptions to regulation 67B)(a) or regulation 142 (direct collection: employee to report payments)(b)”.

19. Omit regulation 207(2) (specified information).

20. In Schedule A1 (real time returns)(c) for paragraph 21(b) substitute—

“(b) 16 to 23.99,

(ba) 24 to 29.99,”.

PART 2

Amendment of the Income Tax (Construction Industry Scheme) Regulations 2005

21. Amend the Income Tax (Construction Industry Scheme) Regulations 2005(d) by inserting after regulation 7 (payment, due date for payment of amounts deducted and receipts)—

“7A.—(1) Payment of an amount that is less than the amount which the contractor was liable to pay to the Commissioners for Her Majesty’s Revenue and Customs under regulation 7(1)(e), will, for the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009 (amounts of penalty: PAYE and CIS), be treated as a payment of the full amount if the difference between the full amount and the amount paid is no more than £100 (“the tolerance”), but this is subject to paragraph (2).

(2) If a contractor makes a payment under regulation 7(1) and the total sum paid to Her Majesty’s Revenue and Customs for the tax period includes not only that payment but also one or more of—

- (a) any tax deducted under the PAYE Regulations(f),
- (b) any earnings-related contributions (as defined by regulation 1(2) of the SSC Regulations(g), or
- (c) any repayment due under the Student Loans Regulations 2009(h),

the tolerance is applied to the total sum paid to the Commissioners for Her Majesty’s Revenue and Customs for the tax period to which the payments relate.”.

Jim Harra

Ruth Owen

12th March 2014

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 principal Regulations”) which make provision for the assessment, charge, collection and recovery of income tax in respect of all pay as you earn (“PAYE”) income. These Regulations also amend the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) (“the CIS Regulations”) which make provision in relation to the construction industry scheme established by Chapter 3 of Part 3 of the Finance Act 2004 (c. 12).

Part 1 of these Regulations amends the principal Regulations.

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- (a) Regulation 67D was relevantly amended by the insertion of paragraph (11) by regulation 21 of S.I. 2013/521.
 - (b) Regulation 142 has substituted by regulation 11 of these Regulations.
 - (c) Schedule A1 was inserted by regulation 52 of S.I. 2012/822 and has been amended by regulation 37 of S.I. 2013/521.
 - (d) S.I. 2005/2045; relevant amending instruments are S.I. 2008/740 and 2012/820.
 - (e) Regulation 7 has been amended by regulation 4 of S.I. 2008/740.
 - (f) The term “PAYE Regulations” is defined in regulation 2 of S.I. 2005/2045.
 - (g) The term “SSC Regulations” is defined in regulation 2 of S.I. 2005/2045 and was inserted by regulation 3 of S.I. 2008/740.
 - (h) The term “Student Loan Regulations” is defined in regulation 2 of S.I. 2005/2045 and was substituted by regulation 3 of S.I. 2012/820.

Regulation 1 provides for citation, commencement and effect.

Regulation 3 makes a consequential amendment to the definition of “deductions working sheet” following the substitution of regulation 142 of the principal Regulations by regulation 11 of these Regulations.

Regulation 4 amends regulation 67B of the principal Regulations which requires a Real Time Information employer to provide the information specified in Schedule A1 to those Regulations on or before making a relevant payment to an employee. Regulation 4 substitutes regulation 67B(1A) and (1B) and inserts new paragraphs (1C) and (1D). These new paragraphs alter the filing requirement for one or both of the tax years 2014-15 and 2015-16 for employers who are existing employers at 5th April 2014 and who employ no more than 9 employees. For one or both of those tax years providing that the relevant conditions are met, these employers can deliver one return, on or before the last relevant payment is made in the tax month, in respect of all the relevant payments in that month. Condition A (paragraph (1B)) is that at 5 April 2014 the employer must have an employer’s PAYE reference (a reference issued by HMRC to identify each PAYE Scheme). Condition B (paragraph (1C)) and Condition C (paragraph (1D)) are that at 6 April 2014 and 6 April 2015 the employer employs no more than 9 employees.

Regulation 5 makes two amendments to regulation 67D of the principal Regulations, which regulation allows certain employers (“paper filer employers”) to file on paper rather than using an approved method of electronic communications. Regulation 4(a) and (b) clarifies that where a paper filer employer decides to file returns electronically, that employer will also be required to make the returns on or before making a relevant payment. Regulation 4(c) amends regulation 67D so that paper filer employers are required to submit information within 14 days of the end of a tax quarter.

Regulation 6 makes minor amendments to regulation 67E of the principal Regulations to clarify the circumstances in which the regulation applies.

Regulation 7 inserts new regulation 69A which makes provision for a tolerance of £100 between the total of all the amounts that the employer is due to pay to Her Majesty’s Revenue and Customs (“HMRC”) for a tax period and the amount paid over for that period. As a consequence if the difference between the sum due to HMRC and the sum paid over is no more than £100 the employer will not be liable to a late payment penalty under paragraph 6 of Schedule 55 to the Finance Act 2009 (c. 10).

Regulations 8 and 9 amend regulation 72E and regulation 72F of the principal Regulations which allow HMRC to direct that an employer is not liable to pay an amount of tax when regulation 72F applies. That regulation requires that a direction must be made by notice to the employer and the employee.

Regulation 8 amends regulation 72E so that regulation 72F applies where it is likely that an amount of tax has been self-assessed on a relevant payment.

Regulation 9 amends regulation 72F so that a direction made by notice to the employer and the employee must state either the amount of tax that has been self-assessed on the relevant payment or the employment in respect of which the relevant payment was received and tax was self-assessed.

Regulations 10 to 17 of these Regulations amend Chapter 4 of Part 7 of the principal Regulations which make provision for cases where it is not practicable for the employer to deduct tax by reference to the tax tables, for instance where the employer has no presence in the United Kingdom.

Regulation 10 provides that in such cases the employee will be required to operate Pay As You Earn upon the relevant payments received from the employer (“the direct collection procedure”) unless HMRC makes special arrangements. The employee may object to operating the direct collection procedure, in which case the relevant payments will be reportable under Self Assessment.

Regulation 11 provides that an employee who is within the direct collection procedure must proceed as though that employee were the employer for the purposes of regulation 67B, or regulation 67D where a direction is made. The employee has 30 days from receipt of written notification from HMRC that the direct collection procedure applies. Where the employee so objects, the relevant payments will be reportable under Self Assessment.

Regulations 12 to 16 make consequential amendments to regulations 143 to 146 of the principal Regulations, including the repeal of regulation 146 (from April 2015) which requires a direct collection employee to file an end of year return. Such returns will no longer be required as the information will be provided each time a payment is received by the employee.

Regulation 17 makes provision for the £100 tolerance to apply to direct collection employees.

Regulation 18 makes a consequential amendment to regulation 206 of the principal Regulations to remove paper filer employers from the requirement to file by an approved method of electronic communications.

Regulation 19 makes a consequential amendment to regulation 207 of the principal Regulations to require employees within Chapter 4 of Part 7 of those Regulations to file using an approved method of electronic communications.

Regulation 20 amends paragraph 21(b) of Schedule A1 to the principal Regulations, to increase the number of bands to be used by employers in reporting the hours worked by their employees.

Part 2 of these Regulations amends the CIS Regulations. Regulation 21 inserts new regulation 7A into the CIS Regulations. New regulation 7A makes provision for the £100 tolerance between the amount that a contractor is liable to pay to HMRC and the amount that is paid for the tax period. As a consequence of this regulation, if the difference between the two sums is no more than £100 the contractor will not be liable to a late payment penalty under paragraph 6 of Schedule 56 to the Finance Act 2009.

A Tax Information and Impact Note covering Part 1 of this instrument (with the exception of regulations 7 and 17) was published on 15th March 2012 alongside the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (S. I. 2012/822). This was updated as a result of changes to the impacts as a result of the year long RTI pilot and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to Part 1 of this instrument.

A Tax Information and Impact Note covering regulations 7 and 17 and Part 2 of this instrument was published on 20 March 2013 alongside the Budget documentation and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to regulations 7 and 17 and Part 2 of this instrument.

A Tax Information and Impact Note covering regulations 8 and 9 of this instrument was published on 24th February 2014 alongside a draft of those regulations and is available on the HMRC website at <http://www.hmrc.gov.uk/the library/tiins.htm>. It remains an accurate summary of the impacts that apply to regulations 8 and 9 of this instrument.

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