

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT No. 2)**  
**REGULATIONS 2015 No. 171**

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 These regulations require certain employment intermediaries to keep records of specified information, and to provide that information regularly to HMRC in order to aid HMRCs compliance activity.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 Section 16 of the Finance Act 2014 inserted a new section 44 in to the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), amending existing agency legislation to prevent the avoidance of employment taxes by UK agencies engaging UK workers via non-UK agencies and intermediaries facilitating false self-employment.
  - 4.2 These changes were supported by section 18 Finance Act 2014 that inserted section 716B ITEPA that gives the Commissioners for Her Majesty's Revenue and Customs a power to make regulations requiring specified employment intermediaries to comply with record keeping and return requirements . These regulations set out the requirements and the employment intermediaries that must comply with them.
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**
  - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**

- ***What is being done and why***

7.1 Employment intermediaries play an important role in the UK economy and workplace. However, HMRC has found in recent years that some intermediaries have been avoiding employment taxes as well as their obligations to comply with statutory employment rights. This is through the facilitation of false self-employment and off shore employers supplying UK workers to UK based companies.

7.2 Legislation to address the avoidance of employment taxes by employment intermediaries came into effect in April 2014. To enable HMRC to enforce the new rules, certain employment intermediaries will be required to make quarterly returns of information about workers they supply but in respect of whom they do not operate PAYE.

7.3 The intermediaries who will be required to return information will be those that place multiple workers with clients and do not currently operate PAYE. These regulations will not apply where services are provided wholly on the United Kingdom continental shelf.

7.4 The information required by HMRC includes details about the worker, their engagement and payments made in respect of the worker.

7.5 Intermediaries will need to return this information to HMRC quarterly, with the first quarter starting on 6 April 2015. Intermediaries will have until the 5<sup>th</sup> day of the following month, after the end of the quarter, to file the return.

- ***Consolidation***

7.6 Not applicable.

## **8. Consultation outcome**

8.1 HMRC published two consultations in 2013 and 2014 on tackling the use of employment intermediaries to facilitate false self-employment of workers to avoid employment taxes, and offshore employers to employ UK workers who are working for UK based companies. These consultations included the need for employment intermediaries to report new information to HMRC.

8.2 HMRC published a technical consultation on draft regulations on 1 October 2014, which closed on 25 November. Following feedback from this consultation HMRC made a number of changes to the regulations, reducing the amount of information that intermediaries are required to report. HMRC published a response to this consultation on 30 January 2015. This can be found on the GOV.UK website at <https://www.gov.uk/government/publications/draft-legislation-the-income-tax-pay-as-you-earn-amendment-no-x-regulations-2015>

## **9. Guidance**

9.1 General guidance on the reporting requirements can be found on the GOV.UK. Further detailed guidance will be published on GOV.UK ahead of the regulations coming into effect.

## **10. Impact**

10.1 These regulations do not place an additional tax burden on businesses, charities or voluntary bodies, although some intermediaries might face an additional administrative burden. HMRC has listened to feedback from stakeholders about the impacts of the policy and has developed these regulations to minimise the additional burdens placed on businesses.

10.2 The operational impact of this measure on HMRC is not expected to be substantial. This will aid HMRCs compliance work.

10.3 A Tax Information and Impact Note covering these regulations was published on 10 December 2013 and is available at <https://www.gov.uk/government/publications/onshore-intermediaries-false-self-employment>.

## **11. Regulating small business**

11.1 The legislation applies to small intermediaries in the same way as it applies to large intermediaries.

11.2 To minimise the impact of the requirements on some small businesses HMRC has excluded personal service companies who only employ one worker.

## **12. Monitoring & review**

12.1 The information being required through these regulations will be used on a regular basis to inform compliance work. HMRC will continue to monitor the information being returned, and its relevance for ensuring compliance with the tax rules by intermediaries.

## **13. Contact**

Mark Frampton at the HMRC (Tel: 03000 556 861 / email: [mark.frampton@hmrc.gsi.gov.uk](mailto:mark.frampton@hmrc.gsi.gov.uk)) can answer any queries regarding the regulations.