

2018 No. 267

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment) Regulations
2018**

Made - - - - 28th February 2018

Laid before the House of Commons 1st March 2018

Coming into force - - 6th April 2018

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 684(1)(a), (2) and 704(b) of the Income Tax (Earnings and Pensions) Act 2003 and sections 105(1), (3) and (5) of the Finance Act 2016(c), and now exercisable by them(d).

Citation and commencement

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2018 and come into force on 6th April 2018.

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

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

3. In regulation 2 (interpretation)—

- (a) in the definition of “additional rate(f)” omit “, except where the employee is a Scottish taxpayer where it means any Scottish additional rate of income tax set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998”,
- (b) in the definition of “higher rate(g)” omit “, except where the employee is a Scottish taxpayer where it means any Scottish higher rate of income tax set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998”,

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- (a) 2003 c. 1. Section 684 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) has been relevantly amended by section 145 of the Finance Act 2003 (c. 14), paragraphs 102(1), (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), section 85(2) of the Finance Act 2011 (c. 11), section 225 of, and paragraph 5(4) of Schedule 1 to, the Finance Act 2012 (c. 14), section 17(2) of the Finance Act 2015 (c. 11), section 15 of the Finance Act 2016 (c. 24) and S.I. 2014/992.
 - (b) Section 704(1)(a) was amended by section 6 of the Finance (No. 2) Act 2017 (c. 32) and the words in section 704(2) were substituted by paragraph 102(3)(k) of Schedule 4 to CRCA.
 - (c) 2016 c. 24.
 - (d) The powers of the Board of Inland Revenue under section 684 of ITEPA were transferred to the Commissioners for Revenue and Customs by paragraph 102 of Schedule 4 to CRCA.
 - (e) S.I. 2003/2682. The relevant amending instruments are S.I. 2008/782, 2009/56, 2011/729, 2013/52, 2015/1667, and 2015/1927. There are other amending instruments which are not relevant to these Regulations.
 - (f) The definition of “additional rate” was amended by S.I. 2015/1667 and 2017/414.
 - (g) The definition of “higher rate” was amended by S.I. 2015/1667 and 2017/414.

- (c) after the definition of “retrospective tax provision(a)” insert—
- ““Scottish basic rate” means the Scottish basic rate of income tax for a tax year set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998;
- “Scottish lower rate” means any rate of income tax for a tax year set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998 which is lower than the Scottish basic rate for that tax year”, and
- (d) after the definition of “Scottish taxpayer” insert—
- ““Scottish upper rate” means any rate of income tax for a tax year set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998 which is higher than the Scottish basic rate for that tax year;”.

4. In regulation 7 (meaning of “code” etc)—

- (a) in paragraph (3)—
- (i) after sub-paragraph (ba) insert—
- “(bb) the appropriate Scottish upper rate code, which effects deductions of tax wholly at a Scottish upper rate for a Scottish taxpayer;”, and
- (ii) for sub-paragraph (ca) substitute—
- “(ca) the OT code, which without allowing for personal allowances, effects deductions of tax so that during the tax year the amounts subject to deductions are in accordance with section 10 of ITA (income charged at the basic, higher and additional rates: individuals) or section 11A of ITA (income charged at Scottish rates);”, and
- (b) in paragraph (4), before “blind person’s allowance” insert—
- ““appropriate Scottish upper rate code” means a Scottish upper rate code which effects deductions of tax from an employee who is a Scottish taxpayer at a Scottish upper rate which is considered by HMRC to apply where they have reason to believe that the employee will be chargeable at that rate on all or a substantial part of the employee’s relevant payments;”.

5. In regulation 15 (flat rate codes)—

- (a) after paragraph (2) insert—
- “(2A) HMRC may determine that the code for use by an employer in respect of an employee who is a Scottish taxpayer is an appropriate Scottish upper rate code if they have reason to believe that the employee will be chargeable at a Scottish upper rate on all or a substantial part of the employee’s relevant payments.”, and
- (b) after paragraph (4) insert—
- “(4A) For the purposes of this regulation an “appropriate Scottish upper rate code” has the meaning given in regulation 7(4).”.

6. After regulation 32A(b) (additional rate code: deductions) insert—

“Scottish upper rate codes

32B.—(1) If the employee’s code is an appropriate Scottish upper rate code the employer must deduct tax at the Scottish upper rate specified in that code and regulations 22 and 26 (cumulative and non-cumulative basis) do not apply.

(2) For the purposes of this regulation an “appropriate Scottish upper rate code” has the meaning given in regulation 7(4).”.

(a) The definition of “retrospective tax provision” was inserted by S.I. 2007/1077.
 (b) Regulation 32A was inserted by S.I. 2011/2682.

- 7. In regulation 105 (Inland Revenue and employer may make PSA)—**
- (a) in the heading for “Inland Revenue” substitute “HMRC”,
 - (b) in paragraph (1)—
 - (i) for “The Inland Revenue” substitute “HMRC”, and
 - (ii) after “for a tax year” insert “and for any subsequent tax years.”,
 - (c) in paragraph (2)(a) for the words “the Board of Inland Revenue” substitute “HMRC”, and
 - (d) after paragraph (3) insert—
 - “(4) A PSA will continue to have effect until cancelled.”.
- 8. In regulation 107 (effect of PSA)(a)—**
- (a) in paragraph (1) for “year” substitute “years”,
 - (b) in paragraph (3) for “the Board of Inland Revenue” substitute “HMRC”, and
 - (c) in paragraph (6) for “inspection” substitute “retention”.
- 9. In regulation 108 (calculation of tax payable under PSA)(b)—**
- (a) for paragraph (1) substitute—
 - “(1) A PSA must provide that the employer is accountable to HMRC for the income tax due.”,
 - (b) after paragraph (1) insert—
 - “(1A) A PSA must provide for the sums due to be—
 - (a) computed annually in accordance with the factors specified in paragraph (2), and
 - (b) comprised of the amounts specified in paragraph (3)”,
 - (c) in paragraph (2)—
 - (i) in sub-paragraph (d)(i), for “PSA” substitute “computation”,
 - (ii) at the end of paragraph (iii) insert “and”, and
 - (iii) after paragraph (iii) insert—
 - “(iv) at any Scottish rate(c) applicable for the tax year to which the computation relates;”, and
 - (d) in paragraph (3), for “paragraph (1)(b)” substitute “paragraph (1A)(b)”.
- 10. In regulation 109 (payment of tax and recovery proceedings)(d)—**
- (a) In paragraph (1)—
 - (i) for “the Inland Revenue” substitute “HMRC”,
 - (ii) for “the Board of Inland Revenue” substitute “HMRC”, and
 - (iii) after “a PSA” insert “in relation to the preceding tax year”, and
 - (b) in paragraph (2)—
 - (i) for “the tax year” substitute “each tax year”, and
 - (ii) for “PSA” substitute “computation”.
- 11. In regulation 111 (form of PSA)—**
- (a) in paragraph (1)(b) for “the Inland Revenue” substitute “HMRC”, and

(a) Regulation 107(7)(a) was amended by the Income Tax (Pay As You Earn) (Amendment) Regulations 2012, S.I. 2012/822 and paragraph (7)(b) was amended by the Income Tax (Pay As You Earn) (Amendment No.4) Regulations 2015, S.I. 2015/1927.

(b) Regulation 110 was amended by the Income Tax (Pay As You Earn) (Amendment) Regulations 2010, S.I. 2010/668.

(c) “Scottish rate” is defined for the purposes of the Income Tax Acts in section 989 of the Income Tax Act 2007 (c.3).

(d) Regulation 108(2) was amended by the Income Tax (Pay As You Earn) (Amendment) Regulations 2008, S.I. 2008/782 and the Income Tax (Pay As You Earn) (Amendment) Regulations 2011, S.I. 2011/729.

- (b) after paragraph (2) insert—
“(3) In paragraph (1) “in writing” includes electronic communications and “signed” includes electronic signatures.”.
- 12.** In regulation 112 (commencement of PSA) in paragraph (1) after “end of the” insert “first”.
- 13.** In regulation 113 (variation of PSA)—
- (a) in paragraph (1) for “The Inland Revenue” substitute “HMRC”,
 - (b) in paragraph (2) for “the Inland Revenue” substitute “HMRC”,
 - (c) in paragraph (3)—
 - (i) after “end of the” insert “first tax year to which the variation relates”, and
 - (ii) omit “tax year to which it relates”.
 - (d) after paragraph (3) insert—
“(4) In paragraph (2) “in writing” includes electronic communications and “signed” includes electronic signatures.”.
- 14.** In regulation 114 (cancellation of PSA)—
- (a) for the words in paragraph (1) substitute—
“(1) Either HMRC or the employer may cancel a PSA.”,
 - (b) in paragraph (2) for “notice to the employer” substitute “a notice in writing to the other party”, and
 - (c) after paragraph (4) insert—
“(5) In paragraph (2) “in writing” includes electronic communications.”.
- 15.** In regulation 116 (interest on overpaid tax)—
- (a) in paragraph (1) for “the tax year” substitute “a tax year”, and
 - (b) in paragraph (2) (a) after “due date” insert “for a tax year”.
- 16.** In regulation 117 (inspection of PSA records)—
- (a) in the heading for “Inspection” substitute “Retention”,
 - (b) for paragraph (1) substitute—
“(1) An employer must keep PSA records for not less than 3 years after the end of the most recent tax year to which they relate.”,
 - (c) in paragraph (2)—
 - (i) in sub-paragraph (b) for “the Board of Inland Revenue” substitute “HMRC”,
 - (ii) in sub-paragraph (c) for “the Inland Revenue” substitute “HMRC”, and
 - (d) omit paragraphs (3), (4), (5), (6),(7) and (8).
- 17.** In regulation 133A(1)(a) (interpretation of chapter 2A) omit the definitions of “basic rate”(b) and “higher rate”.
- 18.** In regulation 133B(2)(b) (application of other parts) for “the basic rate” substitute “20%”.
- 19.** In regulation 133C(1) (determination of rate of deduction)—
- (a) in paragraphs (1) and (2) omit “marginal”, and
 - (b) in paragraph (2)(b) for “the basic rate” substitute “20%”.
- 20.** In regulation 133D (notification by recipient of notice of tax rate)—

(a) Regulations 133A to 133H were inserted by S.I 2006/243.

(b) The definitions of “basic rate” and “higher rate” were inserted by S.I. 2015/1667.

- (a) in paragraph (1)(b) for “the basic rate” substitute “20%”, and
- (b) in paragraph (1)(c) for “the higher rate” substitute “40%”.

21. In regulation 147B (interpretation of Part 7A)(a) for “are payable” substitute “would be payable”.

22. In regulation 147C(2) (due date for payment of apprenticeship levy)(b) for “Part 4 and Chapter 1” substitute “Chapter 1 of Part 4”.

23. In regulation 147L(4) (assessment of unpaid apprenticeship levy)(c) for “the TMA” substitute “TMA”.

Justin Holliday
Jim Harra

28th February 2018

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments to the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“The PAYE Regulations”). In particular consequential amendments are made following a rate resolution made by the Scottish Parliament on 20 February 2018 under section 80C of the Scotland Act 1998 introducing two new bands for income tax for the tax year 2018-19 for Scottish taxpayers – the starter rate (which is lower than the Scottish basic rate) and the intermediate rate (which is in between the Scottish basic rate and Scottish higher rate).

Regulation 1 provides for citation and commencement.

Regulation 2 introduces the amendments to the PAYE Regulations.

Regulation 3 amends regulation 2 of the PAYE Regulations which provides for interpretation. Amendments and insertions are made to provide for rates lower and higher than the Scottish basic rate as set by the Scottish Parliament under section 80C of the Scotland Act 1998.

Regulation 4 amends regulation 7 of the PAYE Regulations which deals with codes. Amendments are made so tax codes can reflect the different rates and bands of income tax which been set by the Scottish Parliament for Scottish taxpayers which are lower and higher than the Scottish basic rate.

Regulation 5 amends regulation 15 of the PAYE Regulations which deals with flat rate codes. An amendment is made to provide for a Scottish upper rate code which can be used for Scottish taxpayers who are chargeable to income tax at a Scottish tax rate higher than Scottish basic rate.

Regulation 6 inserts new regulation 32B which provides for deduction of tax at a Scottish upper rate code.

Regulations 7 to 16 make amendments to Part 6 of the PAYE Regulations. The application procedure for employers to enter PAYE Settlement Agreements (“PSAs”) is changed: PSAs can be processed electronically and the duration of PSAs is extended by removing the need for annual renewal with the consequence that PSAs will continue to be in force for each subsequent tax year until cancelled by notice. Regulation 9 also makes a consequential amendment to regulation 108 reflecting the fact that the Scottish Parliament may set the rates and bands of income tax for Scottish taxpayers.

(a) Regulation 147B was inserted by S.I. 2017/414.
(b) Regulation 147C was inserted by S.I. 2017/414.
(c) Regulation 147L was inserted by S.I. 2017/414.

Regulations 17 to 20 make amendments to regulations 133A B, C and D of Chapter 2A of Part 7 of the PAYE Regulations which deal with the deduction of tax that must be made by the Department for Work and Pensions on paying social security lump sums. References to the basic rate and higher rate are omitted and replaced with references to 20% and 40% respectively.

Regulations 21 to 23 correct minor errors in regulations 147B, 147C and 147L of the PAYE Regulations as inserted by regulation 3 of the Income Tax (Pay As You Earn) (Amendment) Regulations 2017 (S.I. 2017/414).

An Impact Assessment covering this instrument (regulations 3 to 6) was published on 28 May 2015 alongside the draft clauses and explanatory notes for the Scotland Bill and is available on the website at <http://www.parliament.uk/documents/impact-assessments/IA15-004.pdf>. It remains an accurate summary of the impacts that apply to this instrument.

A Tax Information and Impact Note for the Apprenticeship Levy (regulations 21 to 23 of this instrument) was published on 4 February 2016 alongside the draft clauses and explanatory notes for the Finance Bill 2016 and is available on the website at <https://www.gov.uk/government/publications/apprenticeship-levy>. It remains an accurate summary of the impacts that apply to this instrument.

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