

2024 No. 355

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment) (No. 2)
Regulations 2024**

<i>Made</i> - - - -	<i>11th March 2024</i>
<i>Laid before the House of Commons</i>	<i>13th March 2024</i>
<i>Coming into force</i> - -	<i>6th April 2024</i>

The Commissioners for His Majesty’s Revenue and Customs make these Regulations in exercise of the powers conferred by sections 684(1) and (2) and 688AB of the Income Tax (Earnings and Pensions) Act 2003(a).

Citation and Commencement

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) (No. 2) Regulations 2024 and come into force on 6th April 2024.

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

2.—(1) The Income Tax (Pay As You Earn) Regulations 2003(b) are amended as follows.
(2) In Part 4, after regulation 72G, insert—

“Application of Regulation 72GB

72GA—(1) Regulation 72GB applies where—

(a) an amount of income tax or corporation tax has been—

- (i) paid, or
- (ii) assessed

in respect of a payment received by the intermediary that is subsequently treated as a deemed direct payment,

(b) the deemed direct payment was made on or after 6th April 2017,

(c) HMRC are in receipt of one or more tax returns, which include an amount of tax that appears to be referable to that deemed direct payment,

(a) 2003 c. 1. (“ITEPA”) Section 684 was amended by paragraph 102 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) with the effect that the Commissioners for His Majesty’s Revenue and Customs have the power to make the Regulations. Further relevant amendments were also made by paragraph 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11), and by paragraph 2 of Schedule 58 to the Finance Act 2009 (c. 10). Section 688AB was inserted by section 17 of the Finance Act 2024 (c. 3.).

(b) S.I. 2003/2682, amended by S.I. 2008/782; there are other amending instruments but none is relevant.

- (d) a trigger event has occurred, and
 - (e) the trigger event did not occur before 6th April 2024.
- (2) The following are trigger events—
- (a) HMRC serve notice of a determination made under regulation 80 of these Regulations (determination of unpaid tax and appeal against determination) that includes tax in respect of the deemed direct payment,
 - (b) HMRC receive a letter of offer,
 - (c) HMRC serve a recovery notice under Chapter 5 of Part 4 of these Regulations (debts arising under Chapter 10 of Part 2 of ITEPA), where it would be impractical to recover by way of a determination made under regulation 80, or
 - (d) when a determination made under regulation 80 becomes final and conclusive and that determination includes tax in respect of the deemed direct payment.
- (3) In this regulation—
- “intermediary” has the meaning given in section 61M(1)(c) of ITEPA;
- “letter of offer” means an offer in writing by the deemed employer to agree an amount in settlement of the deemed employer’s liability to pay an amount that includes tax on the payment.
- (4) In this regulation and regulations 72GB and 72GC—
- “deemed direct payment” has the meaning given in section 61N of ITEPA^(a).
- (5) For the purposes of this regulation and regulations 72GB and 72GC, tax is assessed if it—
- (a) is included in a return under section 8 of the Taxes Management Act 1970^(b) which includes a self-assessment, or under Schedule 18 to the Finance Act 1998^(c), and
 - (b) takes into account any reliefs, including reliefs from income tax, included in the return or returns.

Recovery of taxes

72GB.—(1) Where this regulation applies, HMRC may direct an amount to be treated as having been recovered from the payee and for that amount not to be recoverable from the deemed employer where—

- (a) the deemed employer would otherwise be liable to pay an amount in consequence of being treated under section 61N(3) of ITEPA as having made a deemed direct payment to a worker^(d) (other than by virtue of section 61WA of ITEPA)^(e), and
- (b) an amount of income tax or corporation tax has been paid or assessed in respect of the deemed direct payment.

(a) Part 2 of Chapter 10 of ITEPA of which section 61N is a part, was inserted (with effect in accordance with Schedule 1 paragraph 16 of the amending Act) by the Finance Act 2017 (c. 10), Schedule 1 paragraph 9.

(b) 1970 c. 9.

(c) 1998 c. 36.

(d) “Worker” is defined in section 61D of ITEPA. Part 2 Chapter 10 ITEPA of which section 61D is a part was inserted (with effect in accordance with Schedule 1 paragraph 16 of the amending Act) by the Finance Act 2017 (c. 10), Schedule 1 paragraph 9.

(e) Part 2 Chapter 10 ITEPA of which section 61WA is a part, was inserted (with effect in accordance with Schedule 1 paragraph 16 of the amending Act) by the Finance Act 2017 (c. 10), Schedule 1 paragraph 9.

(2) The amount referred to in the opening words of paragraph (1) may be the best estimate which can reasonably be made by an officer of Revenue and Customs (whether generally or specifically) of the amount referred to in paragraph (1)(b).

(3) The direction may be in respect of one or more amounts of income tax or corporation tax that fall within regulation 72GA(1)(a).

(4) A direction must be made by notice to the deemed employer and the payee, subject to paragraph (7), stating—

- (a) the date the notice was issued,
- (b) the amount to be treated as having been recovered, and
- (c) the services provided in respect of which the deemed direct payment within regulation 72GA(1)(a) was treated as having been made.

(5) A direction may be combined with one or more directions relating to the same deemed employer and may be made by issuing one notice to that deemed employer, but each payee must be issued with a separate notice.

(6) The amount referred to in paragraph (4)(b) will be the overall recovered amount.

(7) A notice need not be issued to a payee if HMRC or the deemed employer are unaware of the current address of the payee.

(8) The payee may not—

- (a) make a claim for the repayment of, or relief in respect of, the amount of income tax or corporation tax referred to in regulation 72GA(1)(a), or
- (b) deduct, or set off, the amount of tax referred to in regulation 72GA(1)(a) from or against any income tax or corporation tax liability.

Appeal against a direction notice

72GC.—(1) A payee may appeal against a direction notice under regulation 72GB—

- (a) by notice to HMRC,
- (b) within 30 days of the issue of the direction notice, and
- (c) specifying the grounds of appeal.

(2) For the purposes of paragraph (1), the grounds of appeal are that—

- (a) the payee did not receive the deemed direct payment,
- (b) no tax has been paid or assessed on the deemed direct payment,
- (c) the amount that is treated as being recovered from the payee is incorrect, or
- (d) none of the trigger events set out in regulation 72GA occurred.

(3) On an appeal under paragraph (1) that is notified to the tribunal, the tribunal may—

- (a) if it appears that the direction should not have been made, set aside the direction,
- (b) if it appears that the amount specified in the notice is incorrect, increase or reduce the amount accordingly, or
- (c) if it appears that the direction was correctly made, uphold the direction.”.

(3) In Part 9 of the Income Tax (Pay As You Earn) Regulations 2003—

- (a) in regulation 185(6) in the definition of “direction tax”, after “72F”, insert “, regulation 72GB”, and
- (b) in regulation 188(7) in the definition of “direction”, after “72F”, insert “, or regulation 72GB”.

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11th March 2024

Two of the Commissioners for His 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 (“the PAYE Regulations”) and make provision for His Majesty’s Revenue and Customs (“HMRC”) to set off amounts of tax already paid by a worker and their intermediary on income from engagements under the off-payroll working (IR35) rules against a subsequent PAYE liability of the deemed employer in respect of the same income.

Regulation 2 adds new regulations 72GA, 72GB and 72GC to the PAYE Regulations. New regulation 72GA sets out the conditions for set off or recovery in relation to deemed direct payments made on or after 6 April 2017, and it provides for certain trigger events.

New regulation 72GB sets out provisions for the set off of the tax paid or assessed. This includes service of a direction notice.

New regulation 72GB(8) provides that neither the worker or intermediary can make a claim for repayment or relief of, or deduct or set off against, the amount of tax already paid and referred to in new regulation 72GA.

New regulations 72GC(1) and 72GC(2) provide for an appeal against a direction notice where the grounds are that the worker or intermediary did not receive the deemed direct payment referred to in the notice, no tax has been paid on that payment, the amount recovered is incorrect or no trigger event has occurred.

New regulation 72GC(3) sets out what the tribunal may do on an appeal.

Regulation 3 deals with some consequential amendments.

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>

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