
STATUTORY INSTRUMENTS

2003 No. 2682

The Income Tax (Pay As You Earn) Regulations 2003

PART 2

CODES

Determination of code

Determination of code by Inland Revenue

13. The Inland Revenue must determine the code for use by an employer in respect of an employee for a tax year.

Matters relevant to determination of code

14.—(1) If the Inland Revenue determine a code under this regulation, they must have regard to the following matters so far as known to them—

- (a) the reliefs from income tax to which the employee is entitled for the tax year in which the code is determined, so far as the employee's title to those reliefs has been established at the time of the determination;
- (b) any PAYE income of the employee (other than the relevant payments in relation to which the code is being determined);
- (c) any tax overpaid for any previous tax year which has not been repaid;
- (d) any tax remaining unpaid for any previous tax year which is not otherwise recovered;
- (e) any tax repaid to the employee in excess of the amount properly due to the employee which may be recovered as if it were unpaid tax under section 30(1) of TMA(1) (recovery of overpayment of tax etc) and which is not otherwise recovered;
- (f) unless the employee objects, any other income of the employee which is not PAYE income; and
- (g) such other adjustments as may be necessary to secure that, so far as possible, the tax in respect of the employee's income in relation to which the code is determined will be deducted from the relevant payments made during that tax year.

(2) If the Inland Revenue determine the code before the beginning of the tax year for which it is determined, the Inland Revenue—

- (a) must have regard to any expected change in the amount of any relief referred to in paragraph (1)(a), but
- (b) may disregard any such relief if they are not satisfied that the employee will be entitled to it for the tax year for which the code is determined.

(1) Section 30 was substituted by section 149(1) of the Finance Act 1982 (c. 39), and subsection (1) was amended by paragraph 13(2) of Schedule 19 to the Finance Act 1998 (c. 36).

(3) Paragraphs (1)(c) and (d) are subject to regulations 186 and 187 (recovery and repayment: adjustment of employee's code).

Flat rate codes

15.—(1) The Inland Revenue may determine that the code for use by an employer in respect of an employee for a tax year is the higher rate code, if they have reason to believe that the employee will be chargeable at the higher rate on all or a substantial part of the employee's relevant payments.

(2) The Inland Revenue may determine that the code for use by an employer in respect of an employee for a tax year is the basic rate code, if they have reason to believe that the employee will be chargeable at the basic rate on all or a substantial part of the employee's relevant payments.

(3) The Inland Revenue may determine that the code for use by an employer in respect of an employee for a tax year is the nil tax code, if—

- (a) the employee's PAYE income will be taken into account as taxable income other than PAYE income in any assessment,
- (b) the Inland Revenue are not satisfied that the employee's income will be chargeable, or
- (c) the Inland Revenue have reason to believe that the employee will be entitled to a deduction under Chapter 6 of Part 5 of ITEPA (deductions from seafarers' earnings) in respect of the employee's PAYE income or so much of it as remains after any deductions under section 592(7) or 594(1) of ICTA(2) (exempt approved schemes and exempt statutory schemes).

(4) References in this regulation to an employee's relevant payments, PAYE income and income are references to the payments or income in respect of which the employee's code is being determined for the purposes of the employment in question.

Continued application of employee's code

16.—(1) If the Inland Revenue determine that the code for use by an employer in respect of an employee for a tax year remains the same as at the previous 5th April, the Inland Revenue need not issue a code to the employer.

(2) If for any tax year the employer does not receive a code for an employee who was in that employer's employment on the previous 5th April, the code which applied on that date is treated as having been issued by the Inland Revenue for the tax year in question.

Notice to employee of code

17.—(1) The Inland Revenue must give notice to an employee of the code which they have determined for use in respect of that employee for any tax year.

(2) But notice need not be given if—

- (a) the code for use in respect of the employee remains the same as at the previous 5th April; or
- (b) the change in the code is solely because of an alteration or proposed alteration in the rates of any of the personal reliefs allowable under sections 257 and 257A of ICTA(3) (personal allowance and married couple's allowance) or in the tax tables.

(2) Section 592(7) was substituted by paragraph 72 of Schedule 6 to ITEPA; section 594(1) was amended by paragraph 6(2) of Schedule 6 to the Finance Act 1989 (c. 26) and paragraph 73 of Schedule 6 to ITEPA.

(3) Section 257 was substituted, and section 257A inserted, by section 33 of the Finance Act 1988 (c. 39). Section 257 was amended by section 33(4)(a) and (5)(b) of the Finance Act 1989 and paragraph 13 of Schedule 20 to the Finance Act 1996 (c. 8); section 257A was amended by section 33(8)(a) and (9)(b) of the Finance Act 1989, section 77(2) of, and paragraph 1 of Schedule 8 to, the Finance Act 1994 (c. 9), paragraph 14 of Schedule 20 to the Finance Act 1996 and section 31(1) to (8) of the Finance Act 1999 (c. 16).

Appeals and amendment

Objections and appeals against employee's code

18.—(1) An employee who objects to the determination of a code must state the grounds of objection.

(2) On receiving the notice of objection the Inland Revenue may amend the determination of the code by agreement with the employee.

(3) If the Inland Revenue and employee do not reach agreement, the employee may appeal to the General Commissioners against the determination of the code by giving notice to the Inland Revenue.

(4) On appeal, the General Commissioners must determine the code in accordance with these Regulations.

(5) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA(4) (rules for assigning proceedings to General Commissioners), the relevant place for an appeal under this regulation is—

- (a) the place where the employment is situated, or
- (b) if there is no such place, the place where the employee lives.

Amendment of code

19.—(1) Paragraph (2) applies if the code for use by an employer in respect of an employee is found to be inappropriate because the actual circumstances are different from the circumstances by reference to which it was determined, whether by the Inland Revenue or the General Commissioners.

(2) The Inland Revenue may, and if required by the employee must, amend the code by reference to the actual circumstances.

(3) The Inland Revenue must give notice of the amended code to the employee by the date on which the notice under regulation 20(1) is issued to the employer.

(4) But notice need not be given where the change in the code is solely because of an alteration or proposed alteration in the rates of any of the personal reliefs allowable under sections 257 and 257A of ICTA (personal allowance and married couple's allowance) or in the tax tables.

(5) Regulation 18 (objections and appeals) applies in relation to the amended code as it applies in relation to the original code.

(6) Regulation 18 also applies if the Inland Revenue do not agree that the circumstances have changed and so refuse to amend the code in accordance with paragraph (2).

Notice to employer of amended code

20.—(1) If the code for use by an employer in respect of an employee is amended after notice of it has been issued to the employer, the Inland Revenue must issue the amended code to the employer.

(2) An amended code is issued to an employer if it is contained in a document that is sent to the employer or a person acting on behalf of the employer by the Inland Revenue, and any code so issued is received by the employer for the purposes of these Regulations.

(3) On making any subsequent relevant payment to the employee, the employer must deduct or repay tax by reference to the amended code.

(4) Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8) and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

(4) Paragraphs (5) and (6) apply if there is a change or proposed change in the rates of any of the personal reliefs allowable under sections 257 and 257A of ICTA (personal allowance and married couple's allowance).

(5) If the change or proposed change relates to the current tax year, the Inland Revenue may give notice requiring the employer, with effect from the date specified in the notice, to amend specified codes as directed.

(6) If the change relates to the following tax year, the Inland Revenue may give notice requiring the employer to carry forward to the following tax year specified codes of the current tax year and adjust them as directed in the notice.

(7) A code which has—

(a) been amended by virtue of paragraph (5) in respect of the current tax year, or

(b) been carried forward to the following tax year and adjusted by virtue of paragraph (6),

is treated as having been determined and issued by the Inland Revenue as the employee's code for that tax year.

(8) A notice under paragraphs (5) and (6) may be issued to the employer or to a person acting on behalf of the employer.