

**2008 No. 782**

**INCOME TAX**

**The Income Tax (Pay As You Earn) (Amendment) Regulations  
2008**

<i>Made</i>	- - - -	<i>20th March 2008</i>
<i>Laid before the House of Commons</i>		<i>20th March 2008</i>
<i>Coming into force</i>	- -	<i>6th April 2008</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 684(1) and (2) of the Income Tax (Earnings and Pensions) Act 2003(a) and now vested in them:

**Citation and commencement**

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2008 and shall come into force on 6th April 2008.

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

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

3. In regulation 2(1) (interpretation)—

(a) insert the following definitions in the appropriate places—

““combined amount” means an amount which includes tax due under these regulations and one or more of the following—

- (a) earnings-related contributions due under the SSC Regulations(c);
- (b) amounts due under the Income Tax (Construction Industry Scheme) Regulations 2005(d);
- (c) payments of repayments of student loans due under the Student Loan Regulations;

”;  
““ITA” means the Income Tax Act 2007(e);”;

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- (a) 2003 c. 1; there have been two relevant amendments to section 684 (i) subsection (1) was amended by paragraph 102 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) so that the power to make regulations became vested in the Commissioners for Revenue and Customs, and (ii) item 4A in the list in subsection (2) was inserted by section 145(1)(b) of the Finance Act 2003 (c. 14).
  - (b) S.I. 2003/2682, amended by S.I. 2004/851, 2006/243 and 2007/1077; there are other amending instruments but none is relevant.
  - (c) Regulation 2(1) of the Income Tax (Pay As You Earn) Regulations 2003 defines “the SSC Regulations” as meaning the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).
  - (d) S.I. 2005/2045, amended by S.I. 2007/672 and 2008/740.
  - (e) 2007 c. 3.

““Student Loan Regulations” means the Education (Student Loans) (Repayment) Regulations 2000(a) or, in Northern Ireland, the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000(b);”;

(b) omit the definition of “starting rate”.

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

(a) substitute for sub-paragraphs (d) and (e) of paragraph (3)—

“(d) the emergency code, which, after allowing for the personal allowance, effects deductions of tax at either or both of the basic rate and the higher rate, so that during the tax year the amounts subject to deductions at the rate or rates concerned are in accordance with section 10 of ITA (income charged at basic and higher rates: individuals);

(e) the emergency IB codes which, after allowing for the personal allowance and the blind person’s allowance, effect deductions at the basic rate, so that during the tax year the amounts subject to deductions at that rate are in accordance with section 10 of ITA.”;

(b) insert after paragraph (3)—

“(4) In paragraph (3)—

“blind person’s allowance” means an allowance claimed under either section 265 of ICTA(c) (blind person’s allowance) or section 38 of ITA (blind person’s allowance);

“personal allowance” means an allowance claimed under either section 257(1) of ICTA(d) (personal allowance) or section 35 of ITA (personal allowances for those aged under 65).”.

5. In paragraph (4) of regulation 70 (quarterly tax periods), omit the definitions of “SSC Regulations” and “Student Loan Regulations”.

6. In paragraph (1) of regulation 72D(e) (appeals: supplementary provisions), for “72C and 81A” substitute “72C, 72G and 81A”.

7. Insert after regulation 72D—

#### “Conditions where regulation 72F applies

72E.—(1) Regulation 72F applies where—

(a) an employee has received a relevant payment;

(b) it appears to HMRC that an amount intended to represent tax on the payment—

(i) has been self-assessed, or

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- (a) S.I. 2000/944, amended by S.I. 2001/971, 2002/2087, 2002/2859, 2004/1175, 2004/2752, 2005/2690 and 2007/1683; there are other amending instruments but none is relevant.
- (b) S.R. (N.I.) 2000 No.121, amended by S.R. (N.I.) 2001 No. 162, 2003 No. 166, 2004 Nos. 444 and 478, 2006 Nos. 28 and 331 and 2007 No. 360; there are other amending instruments but none is relevant.
- (c) 1988 c. 1; section 265 was substituted by paragraph 8 of Schedule 3 to the Finance Act 1988 (c. 39) and was amended by sections 33(10) and 57(4) of the Finance Act 1989 (c. 26), section 33(4) of the Finance Act 1991 (c. 31), paragraph 8 of Schedule 5 and Part 7(1) of Schedule 18 to the Finance (No.2) Act 1992 (c. 48), paragraph 10 of Schedule 8 and Part 5(1) of Schedule 26 to the Finance Act 1994 (c. 9), paragraph 19 of Schedule 20, paragraph 6 of Schedule 21 and Part 5(10) of Schedule 41 to the Finance Act 1996 (c. 8), section 56 of the Finance Act 1997 (c. 16), Part 3(15) of Schedule 20 to the Finance Act 1999 (c. 16), paragraph 8 of Schedule 35 to the Finance Act 2004 (c.12), and paragraph 35 of Schedule 1 to the Income Tax Act 2007 (c. 3), and by S.I. 2005/3229 and 2006/3241.
- (d) Section 257 was substituted by section 33 of the Finance Act 1988 and was amended by section 33 of the Finance Act 1989, paragraph 13 of Schedule 20 and Part 5(10) of Schedule 41 to the Finance Act 1996 and paragraph 29 of Schedule 1 to the Income Tax Act 2007, and by S.I. 2006/3241.
- (e) Regulations 72A to 72D were inserted by regulation 4 of S.I. 2004/851.

(ii) has not been self-assessed, but has been paid under section 59A TMA(a) (payments on account of income tax), section 559A of ICTA(b) (treatment of sums deducted under s.559 (sub-contractors)) or section 62 of the Finance Act 2004(c) (treatment of sums deducted (sub-contractors));

(c) any of conditions A, B and C is met;

(d) a trigger event has occurred; and

(e) a trigger event did not occur before 6th April 2008.

(2) Condition A is that it appears to HMRC that the amount which the employer was liable to deduct—

(a) from the relevant payment; or

(b) in the case of a notional payment, from other relevant payments,

exceeds the amount actually deducted.

(3) Condition B is that it appears to HMRC that the amount for which the employer was required to account under regulation 62(5) (notional payments) in respect of the relevant payment exceeds the amount actually accounted for.

(4) Condition C is that—

(a) tax on the relevant payment was included in a determination under regulation 80 (determination of unpaid tax and appeal against determination); and

(b) the full amount of the determination is not paid within 30 days from the date on which the determination became final and conclusive.

(5) The following are trigger events—

(a) HMRC serve notice of a determination under regulation 80 that includes tax on the relevant payment;

(b) HMRC receive a return under section 8 of TMA(d) (personal return) which includes a self-assessment which includes tax on the relevant payment as tax treated as deducted;

(c) HMRC receive—

(i) an amended return under section 9ZA of TMA(e) (amendment of personal or trustee return by taxpayer), or

(ii) a claim under section 33 of TMA(f) (error or mistake),

which includes tax on the relevant payment as tax treated as deducted;

(d) HMRC receive a letter of offer.

(6) In paragraph (5)—

“letter of offer” means an offer in writing by the employer to agree an amount in settlement of the employer’s liability to pay an amount that includes tax on the relevant payment;

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- (a) 1970 c. 9; section 59A was inserted by section 192 of the Finance Act 1994 (c. 9) and amended by section 108 of the Finance Act 1995 (c. 4), section 126(1) of, and paragraph 2 of Schedule 18 to, the Finance Act 1996 (c. 8), section 145(7)(b) of the Finance Act 2003 (c. 14), paragraph 130 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), and paragraph 130 of Schedule 6 to the Income Tax (Trading and Other Income) Act 2005 (c. 5); there are other amendments but none is relevant.
- (b) 1988 c. 1; section 559A was inserted by section 40(1) of the Finance Act 2002 (c. 23) and repealed by paragraph 9 of Schedule 12 to the Finance Act 2004 (c. 12) in relation to payments made on or after 6th April 2007, being the day appointed by order made under section 77 of that Act (see S.I. 2006/3240), subject to transitional provisions in that section.
- (c) 2004 (c. 12); section 62 took effect at the same time as section 559A of ICTA was repealed (see footnote (b)).
- (d) Section 8 was substituted by section 90 of the Finance Act 1990 (c. 29) and amended by section 178 of the Finance Act 1994, section 121 of the Finance Act 1996 and section 88 of the Finance Act 2007 (c. 11); there are other amendments but none is relevant.
- (e) Section 9ZA was inserted by paragraph 2 of Schedule 29 to the Finance Act 2001 (c. 9) and amended by section 91 of the Finance Act 2007.
- (f) Section 33 was amended by paragraph 15 of Schedule 19 to the Finance Act 1998 (c. 36); there are other amendments but none is relevant.

“tax treated as deducted” has the meaning given by regulation 185(6).

(7) For the purposes of this regulation tax is self-assessed if—

- (a) it is included in a return under section 8 of TMA which includes a self-assessment; and
- (b) ignoring any relevant credit, the tax is or would be assessed as payable by way of income tax.

(8) In paragraph (7), “relevant credit” means—

- (a) a payment made under section 59A of TMA (payments on account of income tax) or 59B(a) (payment of income tax and capital gains tax); or
- (b) tax deducted at source or tax treated as deducted (within the meaning given by regulation 185(6)).

### **Recovery from employee of tax that has been self-assessed etc.**

**72F.**—(1) Where this regulation applies, HMRC may direct that the employer is not liable to pay an amount of tax to them.

(2) The direction may be in respect of one or more amounts that appear to HMRC to fall within regulation 72E(1)(b)(i) and (ii).

(3) A direction must be made by notice to both the employer and the employee, stating—

- (a) the date the notice was issued;
- (b) the amount (or amounts) within regulation 72E(1)(b) to which it relates; and
- (c) which of conditions A, B and C in regulation 72E have been met.

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

(5) A notice need not be issued to the employee if neither HMRC nor the employer are aware of the employee’s address or last known address.

(6) The amount specified in a notice to the employee must not be added under regulation 185(5) or 188(3)(a) (adjustments to total net tax deducted for self-assessments and other assessments) in relation to the employee.

### **Employee’s appeal against a direction notice**

**72G.**—(1) An employee may appeal against a direction notice under regulation 72F—

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

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

- (a) the employee did not receive a relevant payment;
- (b) the amount specified in the notice is incorrect, because all or part of it did not fall within regulation 72E(1)(b)(i) or (ii);
- (c) no trigger event within regulation 72E(5) occurred; or
- (d) a trigger event within regulation 72E(5) occurred before 6th April 2008.

(3) On an appeal under paragraph (1) the Commissioners may—

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(a) Section 59B was inserted by section 193 of the Finance Act 1994 (c. 9) and amended by paragraph 131 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), paragraph 377 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5) and section 126 of the Finance Act 1996 (c. 8); there are other amendments but none is relevant.

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

**8.**—(1) Regulation 78 (notice and certificate if tax may be unpaid) is amended as follows.

- (2) In paragraph (2)(b), for “the Inland Revenue” substitute “HMRC”.
- (3) In paragraph (3)(b), for “the Inland Revenue” substitute “HMRC”.
- (4) In paragraph (4)—
  - (a) for “The Inland Revenue” substitute “HMRC”;
  - (b) after the words “on consideration of the employer’s record of past payments” insert “whether of tax or of combined amounts”; and
  - (c) in sub-paragraph (a) after the words “the amount of tax” insert “or a combined amount”.
- (5) In paragraph (6)—
  - (a) in sub-paragraph (a)—
    - (i) after the words “the tax period specified in the notice is” insert “or includes”, and
    - (ii) after the words “ the full amount” insert “of tax”, and
  - (b) for each iteration of “the Inland Revenue” substitute “HMRC”.
- (6) In paragraph (7), for “the Inland Revenue” substitute “HMRC”.
- (7) In paragraph (8)—
  - (a) in the first line omit the words “of tax”;
  - (b) in sub-paragraph (a) after the words “an amount of tax” insert “or as including an amount of tax”; and
  - (c) in sub-paragraph (b)—
    - (i) for “the Inland Revenue” substitute “HMRC”, and
    - (ii) for the word “tax” substitute “amount”.
- (8) In paragraph (9)(b), for “the Inland Revenue” substitute “HMRC”.
- (9) In paragraph (10)—
  - (a) after the words “employer pays an amount” insert “of tax, whether separately or as part of a combined amount, which is”; and
  - (b) after the words “certified under this regulation” insert “and”.
- (10) In paragraph (11), after the words “set off the excess” insert “tax”.

**9.** In regulation 80 (determination of unpaid tax and appeal against determination)—

- (a) in paragraph (1), for each iteration of “the Inland Revenue” substitute “HMRC”;
- (b) in paragraph (2), for “The Inland Revenue” substitute “HMRC”; and
- (c) insert after paragraph (3)—
 

“(3A) A determination under this regulation must not include tax in respect of which a direction under regulation 72F has been made.”.

**10.** In regulation 82 (interest on tax overdue)—

- (a) in paragraph (1), for “the Inland Revenue” substitute “HMRC”; and
- (b) in paragraph (4), for “regulation 72(5)” substitute “regulation 72(5), 72F”.

**11.**—(1) Regulation 84 (recovery of tax and interest) is amended as follows.

- (2) In paragraph (2), after the words “the recovery of the unpaid amount” insert “or combined amount and any interest on it”.

(3) In paragraph (3), in paragraph (a) in column 2 of the second item in Table 4 (period relating to regulations 77(6), 78(8) and 82(2)) after the words “the date on which the unpaid amount” insert “or combined amount and any interest on it”.

(4) In paragraph (4), after the words “the unpaid amount” insert “or combined amount and any interest on it”.

(5) In paragraph (5), after the words “The unpaid amount” insert “or combined amount and any interest on it”.

**12.** In paragraph (2) of regulation 108 (calculation of tax payable under PSA)—

(a) substitute for sub-paragraph (d)—

“(d) the number of those employees respectively chargeable to income tax—

(i) at only the basic rate for the tax year to which the PSA relates, and

(ii) at both the basic rate and the higher rate for that tax year;”;

(b) in sub-paragraph (e) for “the Inland Revenue” substitute “HMRC”.

**13.** In paragraph (1) of regulation 133D(a) (social security pension lump sums: notification by recipient of notice of tax rate), omit sub-paragraph (a).

**14.** In the definition of “direction tax” in paragraph (6) of regulation 185 (adjusting total net tax deducted for purposes of sections 59A(1) and 59B(1) TMA), for “regulation 72(5)” substitute “regulation 72(5), regulation 72F”.

**15.** In regulation 188 (assessments other than self-assessments)—

(a) in paragraph (3)(c)(i), for “the Inland Revenue” substitute “HMRC”;

(b) in paragraph (6), for “the Inland Revenue” substitute “HMRC”; and

(c) in the definition of “direction” in paragraph (7), for “regulation 72(5)” substitute “regulation 72(5), regulation 72F”.

**16.—**(1) Regulation 218 (certificate that sum due) is amended as follows.

(2) In paragraph (1), for “the Inland Revenue” substitute “HMRC”.

(3) After paragraph (2) insert—

“(2A) HMRC may prepare a certificate showing the whole or any part of a combined amount which includes tax without specifying the components of the combined amount.

Paragraph (1) shall apply with any necessary modifications to the certificate.”.

(4) In paragraph (3), for “the Inland Revenue” substitute “HMRC”.

(5) After paragraph (4) insert—

“(4A) HMRC may prepare a certificate showing the total amount of interest payable in respect of the whole or any part of the combined amount without specifying which components of the combined amount the interest relates to.

Paragraph (3) shall apply with any necessary modifications to the certificate.”.

(6) In paragraph (5), for each iteration of “the Inland Revenue” substitute “HMRC”.

(7) In paragraph (6), for the words “paragraph (1) or (3)” substitute “this regulation”.

**17.** In paragraph 21(3) of Schedule 1 (interest on tax overdue: application of regulation 82 to tax years from 1992-93 to 2003-04), for “regulation 72(5)” substitute “regulation 72(5), 72F”.

*Dave Hartnett*

*Mike Hanson*

20th March 2008

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

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

## 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”). The changes form three main groups: (i) amendments consequential upon the abolition of the starting rate of income tax, (ii) amendments to provide a further case where tax may be recovered from the employee, rather than the employer, and (iii) amendments affecting the way Revenue and Customs may recover tax. In addition, the opportunity presented by these Regulations is taken to replace some of the adjacent references to the Inland Revenue with references to “HMRC”.

This note orders discussion of the amendments by group, rather than the numerical order in which the regulations appear. With one exception, only substantive amendments are explained, it being assumed that the updating of references to the Inland Revenue is self-explanatory.

Regulations 3, 4, 12 and 13 form the first group of amendments. Abolition of the starting rate of income tax was effected by a resolution having statutory effect under the Provisional Collection of Taxes Act 1968 that was passed by the House of Commons on 18th March 2008 and which amended sections 6, 10 and 20 of the Income Tax Act 2007 (“ITA”) with effect from 6th April 2008.

Regulation 3 omits the definition of “starting rate” in regulation 2(1) of the PAYE Regulations. A new definition of “ITA” is inserted to facilitate the amendments to regulation 7 of the PAYE Regulations. The other amendments to regulation 2 are made in connection with the third group of amendments (see below).

Regulation 4 amends regulation 7 of the PAYE Regulations. In addition to removing references to the starting rate, the opportunity is taken to include references to the ITA provisions establishing the personal allowance and blind person’s allowance. These allowances have largely replaced their equivalents in the Income and Corporation Taxes Act 1988, but they do not apply to Commonwealth citizens and EEA nationals. As it is under the older statute that these persons must claim these allowances, the references to the 1988 Act have not been removed.

Regulations 12 and 13 remove the references to the starting rate in regulations 108(2) and 133D(1) respectively.

Regulations 6, 7, 9, 10, 14, 15 and 17 give effect to the new power to make directions. Regulation 6 makes consequential amendments to regulation 72D of the PAYE Regulations. This means that the supplementary appeal provisions for directions made under regulation 72 (the existing case where liability for a failure to deduct PAYE on payments made by employers may be transferred to employees) will apply to the new right of appeal against directions under the new regulation 72F as well (see below).

Regulation 7 inserts new regulations 72E to 72G. Regulation 72E sets out the conditions that must be satisfied before the new power in regulation 72F may be exercised. Broadly speaking, this will be when an employer has failed to deduct or account for tax in accordance with the PAYE Regulations and the employee has included tax in a self-assessment or paid it on account, or deductions have been made as if he were an independent contractor. Often this will be where persons who have been treated as independent contractors are recategorised as employees. Regulation 72F is the new power allowing HMRC to make a direction transferring liability for the PAYE tax to the employee. Regulation 72G is a new right of appeal allowing employees to challenge directions before the General or Special Commissioners.

Regulation 9 makes a consequential amendment to regulation 80 of the PAYE Regulations, so that amounts that are the subject of a direction under the new regulation 72F are not included if HMRC make a determination of tax owed by the employer.

Regulation 10 amends regulation 82 of the PAYE Regulations. The employer will not be liable for interest on the tax that is the subject of a direction under the new regulation 72F.

Regulation 14 amends regulation 185 of the PAYE Regulations, so that credit for amounts included in the new directions cannot be claimed by employees in reduction of their liability for self-assessment tax under the Taxes Management Act 1970.

Regulation 15 amends regulation 188 of the PAYE Regulations so that amounts for which an employer is no longer liable are not double-counted in calculating the tax payable by the employee.

Regulation 17 makes a consequential amendment to the savings provisions in Schedule 1 to the PAYE Regulations, so that the particular provision that is modified is referred to correctly in light of the amendment made to regulation 82.

Regulations 3, 8, 11 and 16 make changes to the way tax is recovered. Similar changes have recently been made in relation to earnings-related contributions (by the Social Security (Contributions) (Amendment No.3) Regulations 2008) and deductions under the construction industry scheme (by the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2008). The relevant departments are expected to make similar amendments to the student loans repayment regulations applying in both Great Britain and Northern Ireland.

Regulation 8 amends regulation 78 so that HMRC may specify and certify a “combined amount”. A new definition inserted by regulation 3 defines this as an unpaid amount of tax, together with amounts of earnings-related contributions, construction industry deductions and student loan deductions that the employer is required to pay over to HMRC.

Regulation 3 also inserts a definition for “Student Loan Regulations”, which is an expression used in the definition of “combined amount”. This already appears in regulation 70(4) of the PAYE Regulations, but only applies to that regulation, rather than throughout, so it is moved. Regulation 70(4) is amended accordingly (by regulation 5). The definition in regulation 70(4) of “SSC Regulations” is omitted as well. There is a definition of that expression in regulation 2(1) of the PAYE Regulations that applies in any event.

Regulation 11 amends regulation 84 to enable HMRC to take proceedings to recover combined amounts specified under regulation 78, and interest, without the need to identify each individual component.

Regulation 16 amends regulation 218 to enable certificates to be prepared in respect of combined amounts and interest due on those combined amounts.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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