

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2008**  
**2008 No. 782**

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. This memorandum contains information for the Select Committee on Statutory Instruments.
2. **Description**
  - 2.1 This Instrument amends the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) ("the PAYE Regulations").
  - 2.2 Regulations 4, 12 and 13 make consequential amendments following the abolition of the 10 per cent starting rate of income tax with effect from the 2008-09 tax year.
  - 2.3. Regulations 6, 7, 9, 10, 14, 15 and 17 extend the circumstances where HMRC may seek recovery from an employee, instead of the employer, of a PAYE liability in relation to payments made to the employee.
  - 2.4 Regulations 8, 11 and 16 enable HMRC to specify, certify, charge interest on and enforce a single amount of employer debt which includes an unspecified sum of PAYE without having to separately identify that tax.
  - 2.5 Regulation 3 inserts new definitions in the PAYE Regulations, and omits an existing one, in connection with the changes mentioned in paragraphs 2.2 and 2.4 above.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
  - 3.1 These Regulations have been laid in breach of the 21-day rule for negative resolution instruments. They need to come into force on 6 April 2008 when the new tax year begins. Among other things, this will enable certain pensioners to be correctly taxed under PAYE on lump sum pension payments.
  - 3.2 To comply with the 21-day rule, the Regulations would have needed to have been laid by 16 March 2008. Although a clause will be included in the Finance Bill 2008, Royal Assent is unlikely to be given before July. The abolition of the starting rate of income tax takes effect from 6 April 2008 by virtue of a resolution under the Provisional Collection of Taxes Act 1968. The resolution was not passed by the House of Commons until 18 March 2008. The other amendments made by these Regulations are not dependant on that resolution, but enacting them separately would have meant two instruments amending the PAYE Regulations being made within days of each other.
4. **Legislative Background**

*Abolition of the starting rate*

  - 4.1 There are changes to the provisions in the PAYE Regulations that contain a reference to the starting rate, namely regulations 2, 7, 108 and 133D.

### *New power to make directions*

- 4.2 The PAYE Regulations are amended to allow HMRC, subject to certain conditions being met, to make a direction that an employer is not liable to pay an amount of PAYE, so that the amount may be recovered from the employee instead.
- 4.5 Regulation 7 inserts new regulations 72E to 72G, and there are consequential amendments to existing provisions in the PAYE Regulations. New regulation 72E sets out the conditions which must be met in order for HMRC to exercise the power to make a direction under new regulation 72F. Broadly, the new power to make a direction will apply where an employer has failed to deduct or account for tax in relation to a “relevant payment” (payments subject to PAYE, as defined in regulation 4 of the PAYE Regulations), while tax on that payment has been included in the employee’s self-assessment or has been paid as a self-assessment payment on account, or has been deducted as a sub-contractor deduction under the construction industry scheme (“CIS”). New regulation 72G provides employees with a right of appeal against these new directions.

### *New combined debt provisions*

- 4.6 There are amendments to regulations 78, 84 and 218 of the PAYE Regulations. Regulation 78 applies where an employer fails to pay on time the total amount of monthly PAYE due. It enables HMRC to specify and certify an amount of tax having regard to the employer’s past payments. The amount specified is treated as, or as including, the tax due.
- 4.7 The amendments will enable HMRC to specify and certify a “combined amount” of which tax comprises only one element. There will remain a requirement for HMRC to have regard to an employer’s previous payments in exercising their best judgment, but HMRC will only need to have regard to the totality of an employer’s monthly payments, rather than the PAYE element in isolation.
- 4.7 Regulation 84 of the PAYE Regulations provides for the recovery of tax and interest, including tax specified under regulation 78. The amendments will enable HMRC to recover a combined amount.
- 4.8 Regulation 218 of the PAYE Regulations includes provisions regarding the certification of an employer debt, including that specified under regulation 78 and the attendant interest (a certificate creates a rebuttable presumption that the amount concerned is owed). The amendments will enable HMRC to certify a combined amount of which PAYE comprises only one element and certify the interest on a combined amount.
- 4.9 Amendments mirroring those being made to regulations 78,84 and 218 of the PAYE Regulations, are being made to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004, by the Social Security (Contributions)(Amendment No.3) Regulations 2008) and to the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045, by the Income Tax (Construction Industry Scheme)(Amendment) Regulations 2008).
- 4.10 Also, the Department for Innovation, Universities and Skills will in due course be making corresponding changes to the Education (Student Loans) (Repayment) Regulations 2000, which provide for employers to account to HMRC for deductions

made in respect of repayments of student loans. Similar amendments will be made to the Education (Student Loans)(Repayment) Regulations (Northern Ireland) 2000 by the Department for Employment and Learning.

## **5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *Abolition of the starting rate*

7.1 In his 2007 Budget the Chancellor of the Exchequer announced proposed changes to the income tax rates structure for the 2008-09 tax year including:

- the basic rate of income tax will be cut from 22 per cent to 20 per cent,
- the 10 per cent starting rate of income tax will not be available for non-savings income

thereby reducing the main rates of income tax to two – the basic rate and higher rate.

7.2 Assuming Parliament agrees, these changes will be introduced in the 2008 Finance Act. In order for the changes to have legal effect in time for the new tax year, however, a resolution under the Provisional Collection of Taxes Act 1968 was passed on 18 March 2008 giving them statutory effect from 6 April 2008.

7.3 Changes to the main rates of income tax are given effect in relation to most employment, pension and social security income through the operation of PAYE in accordance with the PAYE Regulations. The changes introduced by these Regulations will allow the abolition of the starting rate to take effect for PAYE deductions from 6 April 2008.

### *New power to make directions*

7.4 The PAYE Regulations place an obligation on employers to make deductions of income tax from relevant payments they make to their employees, and to account for those deductions at the appropriate time to HMRC. Normally, HMRC will seek recovery of any unpaid tax from the employer.

7.5 The PAYE Regulations do however provide some limited powers for HMRC to seek recovery from the employee, rather than the employer, in specific cases. These are where:

- the employer can demonstrate that they took reasonable care to comply with the Regulations and made an error in good faith (see regulation 72);

- HMRC are of the opinion that the employee received the payment or payments in the knowledge that the employer wilfully failed to make the appropriate deductions (also regulation 72);
  - HMRC has issued a notice of determination of an amount of tax the employer is liable to pay and the tax is not paid within 30 days of the date on which the determination becomes final and conclusive (see regulation 81).
- 7.6 Where an employer has failed to deduct or account for PAYE, the employee may nevertheless have included the payment in question in a tax return and self-assessed a liability to tax in relation to the payment. Or they may have paid tax in relation to the payment as a self-assessment payment on account, or suffered sub-contractors' deductions. The conditions which must be satisfied in order for HMRC to exercise the power to make a direction to transfer the PAYE liability to the employee will not normally be met, meaning that HMRC are obliged to seek recovery from the employer.
- 7.7 These Regulations introduce a new power to make a direction to transfer a PAYE liability from an employer to an employee which will apply to prevent tax being charged on the same income twice. Typically (but not always) the power is likely to become exercisable in cases where a worker's status has been recategorised from self-employment to employment following a status review by HMRC.

#### *New combined debt provisions*

- 7.8 HMRC has concluded that requiring employers to provide an itemised payslip with their monthly remittances of tax, which may also include CIS deductions and repayments of student loans, and National Insurance contributions, is an unnecessary burden. Sums remitted during the current tax year are only reconciled to the constituent components of tax, contributions etc. at the end of the year on receipt of employers' annual returns. Until then, only the total sum due is important.
- 7.9 There remains a requirement for HMRC to specify a single amount of debt having regard to an employer's previous payments. But in arriving at the specified single amount, HMRC will only need to have regard to the total monthly payments, as opposed to just the PAYE element.
- 7.10 These amendments ensure that where a single amount is entered on a payslip (without a breakdown of the constituent parts) HMRC will be able to specify, certify and enforce a corresponding single amount of current year debt. The need for this change was raised in HMRC's January 2008 consultation document: *Modernising Powers, Deterrents and Safeguards: Payments, Repayments and Debt*. This is available on the HMRC website.

## **8. Impact**

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

## **9. Contact**

- 9.1 Pete Robinson at HM Revenue & Customs, Tel: 020 7147 2423 or e-mail: [Peter.W.Robinson@hmrc.gsi.gov.uk](mailto:Peter.W.Robinson@hmrc.gsi.gov.uk) can answer any queries regarding the abolition of the starting rate consequentials and the new power to make directions.
- 9.2 Robin Wythes at HM Revenue & Customs, Tel: 020 7147 2511 or e-mail: [Robin.Wythes@hmrc.gsi.gov.uk](mailto:Robin.Wythes@hmrc.gsi.gov.uk) can answer any queries regarding the new combined debt provisions.