

2010 No. 668

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment) Regulations
2010**

<i>Made</i>	- - - -	<i>8th March 2010</i>
<i>Laid before the House of Commons</i>		<i>10th March 2010</i>
<i>Coming into force</i>	- -	<i>6th April 2010</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 136 of the Finance Act 2002(a) and now exercisable by them, section 684 of the Income Tax (Earnings and Pensions) Act 2003(b) and section 205 of the Finance Act 2003(c):

PART 1

Preliminary

Citation, commencement and application

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2010.

(2) These Regulations shall come into force on 6th April 2010.

(3) Regulations 3, 6, 7, 12(1)(b), 13 14(a) and 17(b)(iii) shall apply only in relation to the tax year 2010-11 and subsequent tax years.

(4) Regulations 4, 5, 8, 9, 10, 11, 12(1)(a) and (c), (2) and (3), 14(b), 15, 16(c), 17(b)(i), (ii) and (iv), (c) and (e) shall apply only in relation to the tax year 2011-12 and subsequent tax years.

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

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

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- (a) 2002 c.23. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c.11). Section 50(1) of that Act provides that, in so far as it is appropriate in consequence of section 5, a reference, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (b) 2003 c.1. Paragraph 102 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c.11) amended section 684 so that the Commissioners for Her Majesty's Revenue and Customs have the power to make the Regulations. Further relevant amendments were made to subsections (1) and (2) by paragraphs 2 and 3(2) of Schedule 58 to the Finance Act 2009 (c.10).
- (c) 2003 c.14. Section 94(8)(b) of the Finance Act 2007 (c.11) amended section 205(1) so that the Commissioners for Her Majesty's Revenue and Customs have the power to make the Regulations.
- (d) S.I. 2003/2682; relevant amending instruments are S.I. 2007/1077, 2007/2969, 2008/782, 2008/2601, 2009/56 and 2009/2029.

PART 2

Failure to account for deductible tax

Determinations

3. In regulation 80(5) (determination of unpaid tax and appeal against determination) and regulation 110(4) (formal determination of tax payable by the employer) after “5” insert “, 5A”.

PART 3

Communications

CHAPTER 1

Electronic communications: interpretation

Revocations

4. Omit regulations 190 (specified date) and 191 (large and medium sized employers).

CHAPTER 2

Electronic payment by large employers

Definition of large employers

5. At the beginning of Chapter 3, before regulation 199 (large employers required to make specified payments electronically) insert—

“Large employers

198A.—(1) “Large employer” means an employer treated as paying PAYE income to 250 or more employees at the specified date.

(2) An employer is treated as paying PAYE income to an employee at the specified date if the employer—

- (a) is required at that date by these Regulations to prepare or maintain a deductions working sheet in respect of that employee, and
- (b) has not sent to HMRC Part 1 of Form P45 in respect of that employee.

(3) The specified date for each tax year is 31st October.”.

Large employers required to make specified payments electronically

6.—(1) In regulation 199 (large employers required to make specified payments electronically)—

- (a) in paragraph (1) omit “to whom an e-payment notice in respect of a tax year has been issued”,
- (b) for paragraph (2) substitute—

“(2) “Specified payments”, in this regulation, means payments of tax under regulation 68 (periodic payments to and recoveries from the Revenue).”, and
- (c) after paragraph (4) insert—

“(5) A specified payment is not treated as received in full by HMRC on or before the date by which that specified payment is required in accordance with regulation 69 unless it is made in a manner which secures (in a case where the specified payment is made otherwise

than in cash) that, on or before that date, all transactions can be completed which need to be completed before the whole amount of the specified payment becomes available to the Commissioners for Her Majesty’s Revenue and Customs.”.

Revocations

7. Omit regulations 200 (e-payment notices and appeal), 201 (employer in default if specified payment not received by applicable due date) and 202 (default notice and appeal).

CHAPTER 3

Mandatory use of electronic communications

Delivery of information

8. For regulation 205 (mandatory use of electronic communication for delivering relevant annual returns), 205A (mandatory use of electronic communication for delivering specified information) and 205B (general provisions relating to this Chapter) substitute—

“Mandatory use of electronic communications

205.—(1) An employer (as to which see regulation 206) must deliver specified information by an approved method of electronic communications to HMRC.

(2) The Commissioners for Her Majesty’s Revenue and Customs may make a general or specific direction requiring an employer to deliver specified information by a particular approved method of electronic communications.

(3) Specified information may be delivered by a person on behalf of an employer.

(4) This regulation does not apply to specified information which relates to payments of tax due under a retrospective tax provision for a closed year.

(5) References in this Chapter to information and to the delivery of information must be construed in accordance with section 135(8) of the Finance Act 2002 (mandatory e-filing)(a).”.

Employers

9.—(1) For the heading to regulation 206 (employers and specified employers) substitute “Employers”.

(2) In regulation 206—

(a) omit paragraph (1),

(b) in paragraph (2), for the words before sub-paragraph (a) substitute—

“(2) For the purposes of this Chapter, the following shall not be regarded as employers—
”, and

(c) in paragraph (4)(d) for “relevant annual return” substitute “specified information”.

Specified information

10. In regulation 207(1) (specified information) after sub-paragraph (d) insert—

“(e) the return and accompanying information required by regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)).”.

(a) Section 135(8) explains what the term “delivery of information” includes.

Penalties

11.—(1) In the heading to regulation 210 (penalty for failing to deliver relevant annual returns and specified information) omit “relevant annual returns and”.

(2) In regulation 210—

(a) for paragraphs (A1) to (2) substitute—

“(1) An employer who fails to deliver specified information or any part of it in accordance with regulation 205 is liable to a penalty.

(2) Where the specified information is the return and accompanying information required by regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14) the penalty will be determined in accordance with regulation 210AA.”, and

(b) in paragraph (3), for regulation 210B substitute “regulations 210B and 210BA”.

(3) For the heading to regulation 210AA (penalty: relevant annual return for the tax year ending 5th April 2011 and subsequent years) substitute “Penalty: forms P35 and P14”.

(4) In regulation 210AA and Table 9ZA for “relevant annual return” substitute “specified information”.

(5) For the heading to regulation 210B (penalty: form P45 (Part 1 or Part 3), P46 or P46 (Pen)) substitute “Penalty: form P45 (Part 1 or Part 3), P46 or P46 (Pen); tax years ending 5th April 2012 and 5th April 2013”.

(6) In regulation 210B—

(a) for paragraph (1) substitute—

“(1) This regulation applies for the tax years ending 5th April 2012 and 5th April 2013 (the “relevant period”).”,

(b) for the heading to Table 9A substitute “Penalties: tax years ending 5th April 2012 and 5th April 2013”, and

(c) in the first column in Table 9A for the first entry substitute “1-2” and for the second entry substitute “3-49”.

(7) After regulation 210B insert—

“Penalty: form P45 (Part 1 or Part 3), P46 or P46(Pen); tax years ending 5th April 2014 and subsequent years

210BA.—(1) Table 9AA sets out penalties depending on the number of items of specified information the employer has failed to deliver in each tax quarter falling within the tax year ending 5th April 2014 and subsequent years.

Table 9AA

Penalties: tax year ending 5th April 2014 and subsequent years

1 Number of items of specified information the employer has failed to deliver in the tax quarter *2 Penalty*

1-49	£100
50-149	£300
150-299	£600
300-399	£900
400-499	£1,200
500-599	£1,500
600-699	£1,800
700-799	£2,100
800-899	£2,400

900-999	£2,700
1000+	£3,000

(2) Each of the types of specified information mentioned in sub-paragraphs (a) to (d) of regulation 207(1) counts as a separate item of specified information for this purpose.

(3) An item of specified information counts even if it relates to the same employee as one or more other items.”.

Other revocations

12.—(1) The following are omitted—

- (a) regulation 206A (relevant annual return),
- (b) regulation 208 (e-filing notice and appeals), and
- (c) regulation 210A (penalty: relevant annual return for the tax year ending 5th April 2010).

(2) In regulation 209 (standards of accuracy and completeness) omit “relevant annual return or” in both places those words occur.

(3) In regulation 210C (appeals and interest)—

- (a) omit the words “or regulation 205A” in both places they occur,
- (b) in paragraph (1), omit the words “relevant annual return or”,
- (c) in paragraph (2), omit sub paragraph (a), and
- (d) omit paragraph (3).

CHAPTER 4

Methods of providing information, etc

How information must or may be delivered by employers

13. In Table 10 in regulation 211(4) (how information must or may be delivered by employers), for the entries in relation to regulations 67(1), 132(1), 157(2)(b) and 184I(2)(b), in column 5 for “no” substitute “yes”.

How information may be delivered by Her Majesty’s Revenue and Customs

14. In regulation 213(3), in Table 11—

- (a) omit the entry relating to regulation 199(1), and
- (b) omit the entry relating to regulation 206(1).

CHAPTER 5

Consequential amendments

Interpretation

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

- (a) for the definition of “large employer” and “large or medium employer” substitute—
““large employer” has the meaning given in regulation 198A;”, and

- (b) for the definition of “specified date” substitute—

““specified date” for the purposes of Chapter 3 of Part 10, has the meaning given in regulation 198A;”.

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”).

Part 2 of these Regulations makes provision in relation to certain determinations by Her Majesty’s Revenue and Customs (“HMRC”). Regulations 80 and 110 of the PAYE Regulations provide that in certain circumstances, an officer of HMRC may determine amounts which employers are liable to pay to HMRC. Part 2 of these Regulations provides that Part 5A of Taxes Management Act 1970, which makes provision in relation to the payment of tax, applies in relation to such determinations.

Part 3 of these Regulations makes provision in relation to electronic communications and principally amends Part 10 of the PAYE Regulations.

It is already mandatory for large employers to make certain payments to HMRC using electronic means if HMRC has served an e-payment notice on them. Part 3 revokes the provisions on e-payment notices so that large employers will be required to make those payments to HMRC by electronic means in all cases.

It is also already mandatory for all employers to submit the return and accompanying information required by regulation 73 of the PAYE Regulations (Forms P35 and P14; “end of year return”) by an approved method of electronic communications. It is also mandatory that employers employing 50 or more employees deliver certain forms which are required during the tax year (“in-year forms”) by an approved method of electronic communications. Part 3 of these Regulations requires all employers to deliver in-year forms by an approved method of electronic communications.

Part 3 also makes various amendments to the penalty provisions in regulations 210 to 210C of the PAYE Regulations. In particular the penalties set out in Table 9A in relation to forms P45 (Part 1 or Part 3), P46 and P46 (Pen) now apply for the tax years ending 5th April 2012 and 5th April 2013. Also a new penalty table is inserted, Table 9AA, in respect of the same forms but for the tax year ending 5th April 2014 and subsequent years.

In addition, Part 3 of these Regulations makes some amendments to other parts of the PAYE Regulations that are consequential on the amendments detailed above; and regulation 17 includes a clarification amendment.

The amendments made by these Regulations come into force on 6th April 2010 but take effect at different times as set out in regulation 1.

A full Impact Assessment of the effect these Regulations (excluding regulations 3, 13 and 17) will have on the costs of business and the voluntary sector is available on the HMRC website and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

A full Impact Assessment has not been produced in relation to regulations 3, 13 and 17 of this instrument as no impact (regulation 17) or a negligible impact (regulations 3 and 13) on the private or voluntary sector is foreseen.

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STATUTORY INSTRUMENTS

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