STATUTORY INSTRUMENTS

2011 No. 729

INCOME TAX

The Income Tax (Pay As You Earn)
(Amendment) Regulations 2011

Made - - - -		*11th March 2011*
Laid before the House of		
Commons - - - -		*11th March 2011*
Coming into force - -		*6th April 2011*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations, in exercise of the powers conferred by sections 684 and 704(2) of the Income Tax (Earnings and Pensions) Act 2003(**1**) and sections 59A(10) and 59B(8) of the Taxes Management Act 1970(**2**).

Citation and commencement

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2011 and shall come into force on 6th April 2011.

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

2. The Income Tax (Pay As You Earn) Regulations 2003(**3**) are amended as follows.

3. In regulation 2 (interpretation)—

    (a) after the definition of "additional pay" insert—

        ""additional rate" in relation to the charging of income tax for any tax year, means the rate of income tax determined under section 6(2) of ITA;"

    (b) for the definition of "notice" substitute—

(**1**) 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). Section 704(2) was amended by paragraphs 101 and 102(3)(k) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c.11).

(**2**) 1970 c.9. Section 59A was inserted by section 192 of the Finance Act 1994 (c. 9); subsection (10) was inserted by section 126(1) of the Finance Act 1996 (c.8). Section 59B was inserted by section 193 of the Finance Act 1994; subsection (8) was inserted by section 126(2) of the Finance Act 1996. Sections 59A(10) and 59B(8) were amended by paragraphs 130(b) and 131(4) respectively of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 and section 145(7)(b) of the Finance Act 2003 (c.14).

(**3**) S.I. 2003/2682; the relevant amending instruments are S.I. 2005/2691, 2006/745, 2007/1077, 2008/782, 2009/588, 2010/668.

""notice" means as follows and "notify" must be read accordingly—

(a) notice in writing, or in a form authorised (in relation to the case in question) by directions under section 118 of the Finance Act 1998 (which allows certain claims etc to be made by telephone)

(b) for the purpose of regulation 19 (Amendment of code), notice in writing or by telephone;"."

4. In paragraph (3) of regulation 7 (meaning of "code" etc)—

(a) after sub-paragraph (b) insert—

"(ba)   the additional rate code, which effects deductions of tax wholly at the additional rate;";

(b) after sub-paragraph (c) insert—

"(ca)   the 0T code, which without allowing for personal allowances, effects deductions of tax at the basic rate, higher rate and additional 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 the basic, higher and additional rates: individuals);"; and

(c) in sub-paragraph (d), for the words after "effects deductions of tax at", substitute—

"(i) the basic rate, or

(ii) the basic and higher rates, or

(iii) the basic, higher and additional rates

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 the basic, higher and additional rates: individuals);".

5. In regulation 15 (flat rate codes), before paragraph (1) insert—

"(A1)   HMRC may determine that the code for use by an employer in respect of an employee for a tax year is the additional rate code, if they have reason to believe that the employee will be chargeable at the additional rate on all or a substantial part of the employee's relevant payments.".

6. For the cross heading which appears before regulation 32 substitute "Higher rate, additional rate and nil tax codes".

7. After regulation 32 insert—

"**Additional rate code: deductions**

32A. If the employee's code is the additional rate code the employer must deduct tax at the additional rate and regulations 22 and 26 (cumulative and non-cumulative basis) do not apply.".

8. In regulation 37 (PAYE income paid after employment ceased)—

(a) in paragraph 2 for "at the basic rate in force for the tax year in which the payment is made" substitute "using the 0T code";

(b) in paragraph 4 omit—

(i) "regulations 26 and 27", and

(ii) "non-cumulative basis".

9. In regulation 37A (income paid after cessation of employment subsequently becoming subject to PAYE)—

    (a) in sub-paragraph (2)(b), for "higher" substitute "additional", and

    (b) in sub-paragraph (3)(b), for "higher" substitute "additional".

10. In paragraph (2C) of regulation 46 (Form P46 where an employer does not receive Form P45 and code not known) for "at the basic rate" substitute "on the non-cumulative basis using code 0T".

11. In the heading to regulation 49 omit ", or (c) Form P46 not signed when required".

12. For regulation 54 substitute—

    "**54.** This Chapter applies (instead of Chapter 2) when a pension starts and either—

        (a) the pensioner will be continuing in employment and will be receiving relevant pension payments in addition to relevant payments from their employer, or

        (b) the pensioner will not be receiving relevant payments other than relevant pension payments.".

13. After regulation 54 insert—

    "**Relevant pension payments and relevant payments being received by a pensioner**

    54A.—(1) This regulation applies if the pensioner begins to receive relevant pension payments whilst continuing to receive relevant payments from their employer.

    (2) On making relevant pension payments to the pensioner, the pension payer must deduct tax on the non-cumulative basis using the 0T tax code.

    (3) The pension payer must send to HMRC the following information in the Form P46(Pen)—

        (a) the pensioner's national insurance number, if known,

        (b) the pensioner's full name,

        (c) the pensioner's sex,

        (d) the pensioner's date of birth,

        (e) the pensioner's full address including postcode,

        (f) the date upon which the pension payments started,

        (g) the pensioner's work payroll number and the department or branch (if any) in which the pensioner is employed,

        (h) confirmation that the recipient of the relevant payments is a pensioner,

        (i) the pension payer's PAYE reference,

        (j) the pension payer's name,

        (k) the pension payer's full address including postcode, and

        (l) the tax code used in relation to the pension.

    (4) Before sending the Form P46(Pen), the pension payer must indicate in the form that code 0T is being used on a non-cumulative basis in respect of the pension.

    Procedure in Form P46 (Pen) cases: code treated as issued by HMRC

    54B.—(1) The 0T code used by the pension payer in accordance with regulation 54A is treated, for the purposes of Parts 2 to 4 (codes; deduction and repayment of tax; payments,

returns and information), as having been issued by HMRC as the code for use in respect of the pensioner.

(2) This does not apply for the purposes of regulation 18 (objections and appeals) and regulations 58, 60 and 61 (Form P46(Pen)) procedure, late presentation of Form P45 etc).".

14. At the end of regulation 108(2)(d)(ii) (calculation of tax payable under PSA) insert—

"and

(iii) at the basic, higher and additional rates for that tax year;".

15. For paragraph (3) of regulation 198A (Large employers) substitute—

"(3) The specified date for a particular tax year is 31st October in the preceding tax year."

Steve Lamey
Dave Hartnett
Two of the Commissioners for Her Majesty's
11th March 2011   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 (S.I. 2003/2682: "the PAYE Regulations") to define the additional rate of income tax as well as the 0T and additional rate income tax codes and also require employers to deduct income tax using the 0T rate code instead of the basic rate tax code in specified circumstances. The Regulations also clarify the meaning of "a specified date" for the purpose of regulation 198A of the PAYE Regulations.

Regulation 3 inserts the definition of "additional rate" into regulation 2 of the PAYE Regulations and amends the definition of "notice" in regulation 2 of the PAYE Regulations.

Regulation 4 inserts into regulation 7(3) of the PAYE Regulations definitions of the additional rate code and the 0T code. It also amends the definition of the emergency code.

Regulation 5 inserts a new regulation 15(A1) which allows Her Majesty's Revenue and Customs in appropriate circumstances to determine that an employer should deduct income tax at the additional rate.

Regulations 6 and 11 make consequential amendments to headings.

Regulation 7 amends regulation 32 of the PAYE Regulations. Amended regulation 32 requires the employer to deduct income tax at the additional rate in the event the employee's code is the additional rate tax code.

Regulation 8 amends regulation 37 of the PAYE Regulations, by substituting the 0T code for the basic rate code at which deduction is to be made from PAYE income paid after employment has ceased.

Regulation 9 amends regulation 37A of the PAYE Regulations, by substituting the additional tax rate for the higher tax rate at which deduction is to be made from PAYE income paid after employment has ceased and which subsequently becomes subject to PAYE.

Regulation 10 amends regulation 46(2C) of the PAYE Regulations, by substituting code 0T on the non-cumulative basis for the basic rate as the rate at which tax is deducted. Regulation 46(2C) applies where an employee commences employment without providing a P45 to the employer and where a code has not been issued by HMRC and the employee fails to provide specified information required in a P46 form.

Regulation 12 amends regulation 54 of the PAYE Regulations to extend the scope of Chapter 3 of Part 3 to the scenario where an employee receives a pension in addition to payment for employment from the same employer.

Regulation 13 inserts regulations 54A and 54B into the PAYE Regulations as a result of the extension of the scope of Chapter 3 of Part 3 of the PAYE Regulations. Regulation 54A requires tax to be deducted from the pension using the 0T tax code on the non-cumulative basis and requires the pensioner to provide specified information in the Form P46(Pen). The regulation also requires the pension payer to indicate on the form that tax is being deducted using that Code on a non-cumulative basis. Regulation 54B treats the 0T code used by the employer to be treated as being issued by HMRC for specific purposes outlined in the regulation.

Regulation 14 amends regulation 108 of the PAYE Regulations to make an employer accountable for income tax at the basic, higher and additional rate as appropriate in respect of an employee who is covered by a PAYE settlement agreement.

Regulation 15 amends regulation 198A(3) of the PAYE Regulations in order to clarify the meaning of "specified date" for the purpose of regulation 198A.

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