EXPLANATORY MEMORANDUM TO

THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2013

2013 No. 521

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make amendments to the Income Tax (Pay As You Earn) Regulations (S.I. 2003/2682) (the 2003 Regulations) necessary for the operation of HMRC's Real Time Information programme (RTI) for the majority of employers from April 2013 and to allow the Simplified PAYE Deduction Scheme (SPDS) to continue until 5th April 2014 for those employers who are existing care and support employers for the purposes of the 2003 Regulations.

2.2 These Regulations also amend the 2003 Regulations to ensure that certain payments made from a registered pension scheme will be taxed using the basic rate tax code on a non-cumulative basis.

2.3 Additionally, these Regulations amend the 2003 Regulations to allow HMRC to use PAYE coding to collect the new High Income Child Benefit Charge (HICBC).

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Context

RTI

4.1 The 2003 Regulations govern the operation of the Pay As You Earn (PAYE) system under which Income tax is deducted at source from employee's pay. Certain other deductions are also made under the PAYE system.

4.2 Under the 2003 Regulations, RTI employers are required to report payments to employees and the deduction of tax to HMRC each time a payment is made. This is done using a return. Each return is required to contain certain information about the employee's pay and tax. These returns will also be used to report changes in employment.

4.3 These Regulations make amendments to the 2003 Regulations that allow for changes in the operation of RTI from 6 April 2013. In particular, they insert into the 2003 Regulations provisions that relax the requirement, in specific circumstances, that employers should send a return on or before they make a relevant payment to their employee.

4.4 The collection of National Insurance contributions (NICs) and student loan repayments rely on the PAYE system, as does the Income Tax Construction Industry Scheme (CIS). Amendments to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) and the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I 2005/2045) are being made by HMRC at the same time as these Regulations to reflect the introduction of RTI. The Department for Business, Innovation and Skills is similarly making regulations amending the Education (Student Loans) (Repayment) Regulations 2009 (S.I. 2009/470).

SPDS

4.5 These Regulations also amend the provision that allows certain employers to use the SPDS, closing the scheme to the majority of participants from 6th April 2013. Existing users who are care and support employers who wish to file their PAYE returns on paper will be able to continue using the scheme until 6th April 2014 when it will be closed to all users.

Relevant lump sum pension payments

4.6 Regulation 58 of the 2003 Regulations provides that where a tax code is not known by a pension payer then the pension payer should apply the emergency code (on the non-cumulative basis) to pension payments. These include certain one-off lump sum pension payments.

4.7 These Regulations amend regulation 58 to provide that relevant lump sum payments will, subject to certain conditions, be excluded from regulation 58. They also insert a new regulation 58A that provides that where a pension payer makes a relevant lump sum payment to a pensioner then the pension payer must deduct tax using the basic rate tax code on the non-cumulative basis.

HICBC

4.8 Legislation was introduced in Finance Bill 2012 that applies a new charge to Income tax on taxpayers whose income is £50,000 or more for the tax year and where they or their partner receive Child Benefit. The charge applies from 7 January 2013.

4.9 These Regulations insert new regulation 14B into the 2003 Regulations, to enable both the collection of the charge during the tax year in which it is due, and the repayment of amounts overpaid in respect of the charge in a tax year.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

RTI

7.1 HMRC started to pilot RTI from April 2012 and the 2003 Regulations were amended to facilitate its introduction. These amendments are necessary to reflect changes to employers' obligations under RTI from 6th April 2013.

7.2 There are some specific circumstances where employers may not be able to fulfil the requirement to send in a return on or before they make a payment to an employee. The 2003 Regulations have therefore been amended to allow in specific circumstances employers to submit a return up to 7 days after the payment is made to the employee.

7.3 An example could be where someone works for a day or does piecework and is paid in cash but the employer won't know the amount actually due until the shift is completed.

7.4 Other amendments to the 2003 Regulations take into account changes to information an employer is required to report when they submit their return to HMRC. For example employers will be required to indicate whether the employee the return relates to has been absent from work also where a PAYE scheme is closed the date on which the scheme closed.

7.5 Certain employers (schemes covered by regulation 141 of the principal Regulations which relate to examiners and election employees) will not be required to become RTI employers by October 2013. This will allow HMRC to work with those employers participating in these schemes to develop a process whereby they can submit returns from April 2014.

7.6 Employers who may have difficulty in meeting the requirement to file their returns by means of electronic communications will be permitted to file their returns on paper.

7.7 Although HMRC has the power to charge employers who do not file their returns required by the 2003 Regulations on time a penalty, for 2013-14 the only late filing penalty that will be charged is in relation to the final return of the year, which will attract a late penalty if it is not filed before 20th May 2014. The decision not to charge late penalties during the year 2013-14 is to give employers an opportunity to become used to returning information in Real Time as it is recognised that this is a significant change from the PAYE system as it is operated at the present time.

SPDS

7.8 The scheme was closed to new employers from 6th April 2012 with the intention that it would be closed completely from 6th April 2013. However to allow more time for HMRC to thoroughly test the new paper forms and guidance with customers who will use them, the introduction of RTI reporting on paper returns has been deferred to April 2014. As a result, the SPDS will remain open for 2013-14, for existing users who are care and support employers and wish to file on paper only. SPDS employers reporting RTI electronically will do so, as planned, from April 2013. The SPDS will close after 5th April 2014.

Relevant lump sum pension payments

7.9 PAYE tax is deducted throughout the year by pension payers from pension payments made to pensioners. The system is designed to help ensure that pensioners pay the right amount of tax during the year and do not under or over pay tax.

7.10 However, HMRC were made aware by external representative bodies that the existing tax code, used in relation to one-off lump sum pension payments, resulted in the majority of pensioners temporarily overpaying tax which then had to be refunded.

7.11 This is because the emergency code operated on the non-cumulative basis results in many lump sum pension payments being taxed not only at the basic rate, but also the higher (40%) and even additional (50%) rates of tax, when in the vast majority of cases the payment recipient (the pensioner) would be a basic rate taxpayer.

7.12 Changes are being made to the tax code pension payers are required to operate on certain relevant lump sum pension payments. This change to the basic rate tax code (BR) is to ensure the tax paid by the pensioner at the time the lump sum pension payment is made is correct in more cases, reducing the number, and the value of overpayments of tax as a whole.

HICBC

7.13 In order to address the fiscal deficit the Government announced that it would be withdrawing Child Benefit from those on higher incomes. This was done by introducing a new charge to income tax in the Finance Bill 2012 which became effective from 7 January 2013.

7.14 The new income tax charge will apply to those taxpayers who are in receipt of Child Benefit and on a higher income. For taxpayers with income between £50,000 and £60,000, the amount of the charge will be a proportion of the Child Benefit received. For taxpayers with income above £60,000, the amount of the charge will equal the amount of Child Benefit received. The charge will be collected through self assessment (SA) but can be coded where there is a PAYE income.

7.15 Child Benefit itself is not being made liable to tax and the amount that can be claimed is unaffected by the new charge. It can continue to be paid in full to the claimant even if they or their partner have a liability to the new charge.

7.16 Child Benefit claimants will be able to elect not to receive the Child Benefit to which they are entitled if they or their partner do not wish to pay the new charge. The claimant may subsequently decide to withdraw that election if they or their partner are no longer liable to pay the charge.

- ***Consolidation***

7.17 There are currently no plans to consolidate the instrument that is being amended.

8. Consultation outcome

RTI

8.1 In accordance with the Government's Tax Consultation Framework, a draft of these Regulations was published on the HMRC website for comment from 15th November 2012 to 11th January 2013 together with draft CIS and NICs regulations. The draft regulations and accompanying technical note are available here:
http://www.hmrc.gov.uk/drafts/draft-technote.pdf
http://www.hmrc.gov.uk/drafts/draft-leg-paye.pdf

SPDS

8.2 We continue to communicate with those employers affected by the closure of the SPDS ensuring that they are aware of their obligations under RTI and those who are permitted to continue using SPDS are aware that they can.

Relevant lump sum pension payments

8.3 Representations were made to HMRC by bodies representing the elderly and those on lower incomes who advised that the tax code currently used in relation to one-off lump sum pension payments could result in a large number of pensioners overpaying tax which then had to be refunded. HMRC then informally consulted with a number of large pension payers, who agreed that a change in code operated would result in more individuals paying the right amount of tax at the time the lump sum pension payments is made.

9. Guidance

9.1 Extensive guidance has been published on HMRC's website for employers using RTI, this will be updated to reflect these changes.

9.2 Guidance is available on the tax treatment of lump sum pensions payments and this will be updated following the introduction of these changes.

9.3 HMRC offers extensive guidance for those affected by the HICBC on its website, detailing options available and including factsheets available to download.

10. Impact

RTI

10.1 All employers including charities or voluntary bodies will be required to use RTI.

10.2 The impact of RTI on the public sector is the same as for any other employer.

10.3 A Tax Information and Impact Note was published on 15th March 2012 alongside the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (SI 2012. No 822). This has been updated as a result of changes to the impacts as a result of the year long RTI pilot and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm

SPDS

10.4 Closing the SPDS to non care and support employers will have no impact on the voluntary sector.

10.5 When the SPDS is closed to non care and support employers they will be required to operate standard PAYE. The Basic PAYE Tools free payroll software will be available for all employers with 9 or fewer employees to use. HMRC recognises this may prove difficult for some who employ staff to provide them with care and support. These employers will be given the option to submit their returns to HMRC on paper.

10.6 Closing the SPDS will have no impact on the public sector.

10.7 A Tax Information and Impact Note was published on 15th March 2012 alongside the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (SI 2012. No 822) and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

Relevant lump sum pension payments

10.8 Pension payers, employers operating employee pension schemes and the payroll software industry will be affected by this from 6th April 2013.

10.9 There is no impact expected on charities, voluntary bodies or the public sector.

10.10 Tax Information and Impact Notes covering this change was published on the HMRC website alongside a draft of these Regulations on 15th November 2012 it can be found at: http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

HICBC

10.11 The charge will apply to individuals so there will be no direct impact on business or civil society organisations.

10.12 All employers including charities or voluntary bodies will be required to use amended code numbers to affect the recovery of the charge through the tax code their pay where a taxpayer has requested that their code number should be amended.

10.13 A Tax Information and Impact Note covering HICBC was published on 21 March 2012 alongside clause 8 and Schedule 1 to the Finance (No. 4) Bill 2012 and can also be found at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

11 Regulating small business

RTI & SPDS

11.1 The legislation applies to small business.

11.2 RTI aims to reduce administrative burdens for all employers, including small employers (upon whom the current burden of PAYE currently falls disproportionately). The aim is to achieve this by integrating employee payment and reporting to HMRC into a single payroll process.

11.3 Small employers are already required to submit returns to HMRC electronically, but those who do not currently use payroll software are expected to find the move to RTI most difficult. However, HMRC's existing free Basic PAYE Tools software has been updated and can be used by all employers with 9 or fewer employees.

11.4 This software will also be available for employers unable to use the SPDS.

11.5 A number of small firms have taken part in the RTI pilot and HMRC's research into employer impacts. The resulting findings have informed the support HMRC needs to offer to small employers to migrate to RTI.

Relevant lump sum pension payments

11.6 This measure is expected to have a negligible impact on businesses and civil society organisations.

11.7 Pension payers and/or their software suppliers may incur negligible one-off costs as a result of small changes in payroll software. This measure will cause no change in ongoing administrative burdens.

HICBC

11.8 The charge will be collected through PAYE, with all employers required to operate amended tax codes as required to effect the collection.

11.9 No new employer processes are introduced for the collection of the charge and thus implementation of the measure will no direct impact on administrative burden.

12 Monitoring & review

RTI

12.1 RTI has been piloted from April 2012 and HMRC will continue to monitor the operation of RTI, in particular when the interaction with Universal Credit commences and consider further amendments as necessary.

SPDS

12.2 HMRC will continue to work with taxpayer representative bodies to develop a robust process to enable care and support employers to send their returns on paper and to better understand the impact on affected employers.

Relevant lump sum pension payments

12.3 HMRC continue to monitor the operation and administration of this change through communication with external stakeholder groups affected by it.

HICBC

12.4 HMRC will monitor this change through information collected from tax returns and ongoing employer engagement.

13 Contact

The following can answer any queries regarding the instrument:

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