

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME)
(AMENDMENT) REGULATIONS 2013

2013 No. 620

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 minor amendments to the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) (“the principal Regulations”) which are necessary for the operation of HMRC’s Real Time Information (RTI) programme from April 2013.

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

3.1 None.

4. Legislative Context

4.1 The principal Regulations 2005 make provisions in relation to the construction industry scheme established by Chapter 3 of the Finance Act 2004 (c. 12) (“the 2004 Act”).

4.2 Some of the operation of CIS interacts with the Pay As You Earn system, governed by the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (the PAYE Regulations). In particular, the entitlement of a qualifying sub-contractor for the purposes of CIS to a refund from HMRC in respect of overpayments under the scheme is reliant on having made the end of year return required by the PAYE Regulations.

4.3 These Regulations amend the principal Regulations to give effect to the necessary changes and to reflect the amendments being made to the PAYE Regulations, in particular the abolition of form P35.

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*

7.1 HMRC started to pilot RTI from April 2012 and the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“the PAYE Regulations”) were amended to facilitate its introduction. During the pilot HMRC has been monitoring the impact RTI has had on employers, making changes where appropriate and these amendments are necessary to reflect changes to employers’ obligations under RTI.

7.2 Lessons have been learned from the pilot. The principal Regulations have therefore been amended for subcontractors holding gross payment status to remove the requirement inserted by the Income Tax (Construction Industry) (Amendment) Regulations 2012 (S.I. 2012/820) for RTI returns to be submitted under the PAYE Regulations as part of subcontractors’ compliance obligations. This is being done to remove the requirement that late RTI returns would lead to the loss of gross payment status for a business.

7.3 The principal Regulations have also been amended for subcontractors holding gross payment status to remove the requirement for an employer’s annual return (P35) to be submitted under the PAYE Regulations as part of the compliance obligations. This is because of the abolition of form P35 under changes being made to the PAYE Regulations.

7.4 In addition, the principal Regulations are also amended to remove the requirement for an employer’s annual return (P35) to be submitted under the PAYE Regulations, before any sum deducted from a limited company under section 61 of the 2004 Act may be repaid. This is because of the abolition of form P35 under changes being made to the PAYE Regulations.

7.5 Finally, an additional requirement has been added to the principal Regulations that, before any sum deducted from a limited company under section 61 of the 2004 Act may be repaid, the company must have paid over to H M Revenue and Customs any amounts due under the PAYE regulations in respect of the tax year in their capacity as an employer.

7.6 All of the changes described above have an implementation date of 6th April 2013. This allows for the fact that the majority of employers will still be submitting an employer’s annual return (P35) for the 2012/13 tax year.

- Consolidation

7.7 There are currently no plans to consolidate the instrument that is being amended. No free informal consolidated text is available.

8. Consultation outcome

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 drafts of

regulations amending the PAYE Regulations and the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004). The draft regulations and accompanying technical note are available here:

www.hmrc.gov.uk/drafts/draft-technote.pdf

www.hmrc.gov.uk/drafts/improving-payerti.htm

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.

10. Impact

10.1 A Tax Information and Impact Note covering this instrument was published on 15th March 2012 alongside the Income Tax (Pay As You Earn) Regulations 2012. 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>

11. Regulating small business

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 will be updated and made available for use by all employers with 9 or fewer employees.

11.4 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 on to RTI.

12. Monitoring & review

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 will consider further amendments as necessary.

13. Contact

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