

2015 No. 171

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment No. 2)
Regulations 2015**

<i>Made</i>	- - - -	<i>9th February 2015</i>
<i>Laid before the House of Commons</i>		<i>10th February 2015</i>
<i>Coming into force</i>	- -	<i>6th April 2015</i>

The Commissioners for Her Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by section 113(1) of the Taxes Management Act 1970(a), section 136 of the Finance Act 2002(b) and now exercisable by them(c) and section 716B of the Income Tax (Earnings and Pensions) Act 2003(d).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2015.

(2) These Regulations come into force on 6th April 2015 and have effect in relation to tax quarters beginning on or after that date.

(3) In this regulation tax quarter has the meaning given in regulation 2(1) of the Income Tax (Pay As You Earn) Regulations 2003(e).

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

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

(2) In regulation 2—

(a) for the definition of “agency worker” substitute—

““agency worker” means a worker who is treated by section 44 of ITEPA(f) as holding an employment with the agency for income tax purposes;”;

(b) after the definition of “Board of Inland Revenue” insert—

(a) 1970 c. 9.
(b) 2002 c. 23.
(c) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(1) 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.
(d) 2003 c. 1. Section 716B was inserted by section 18(1) of the Finance Act 2014 (c. 26).
(e) S.I. 2003/2682. Relevant amending instruments are S.I. 2009/56 and S.I. 2014/474.
(f) ITEPA has the meaning given in regulation 2(1) of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682). Section 44 was substituted by section 16 of the Finance Act 2014.

““the client” has the meaning given in section 44 of ITEPA, and cognate expressions shall be construed accordingly;”;

(c) after the definition of “employment” insert—

““employment intermediary” has the meaning given in section 716B(2) of ITEPA;”;
and

(d) after the definition of “tribunal”(a) insert—

““United Kingdom continental shelf” means the area designated under section 1(7) of the Continental Shelf Act 1964(b).”.

(3) After regulation 84D insert—

“Employment Intermediaries: return of information relating to agency workers for whom they have not operated PAYE

Specified employment intermediaries

84E. An employment intermediary is a specified employment intermediary if at any time during a tax quarter—

- (a) the employment intermediary is an agency;
- (b) more than one individual provides services to a client under or in consequence of a contract between the employment intermediary and one or more clients;
- (c) those services are not provided exclusively on the United Kingdom continental shelf; and
- (d) the employment intermediary makes one or more payments in respect of, or connected with, the services provided by one or more individuals that—
 - (i) is required by regulation 67B to be included in a return delivered to HMRC by the employment intermediary when the payment is made but has not been (“a reporting failure”); or
 - (ii) is not required by regulation 67B to be included in a return delivered to HMRC by the employment intermediary when the payment is made because the individual is not an employee or treated as an employee under regulation 10 (“no reporting requirement”).

Returns by specified employment intermediaries

84F.—(1) A specified employment intermediary must, for each tax quarter, provide to HMRC the information specified in regulation 84G no later than the end of the tax month following that quarter.

(2) The information must be included in a return in a form prescribed by HMRC and include a declaration that the information provided in the return is correct and complete to the best of the knowledge and belief of the person completing it.

(3) The return is to be made using an approved method of electronic communication.

(4) The return may be amended until the end of the tax month following the tax quarter after the tax quarter to which the return relates.

(5) Where a return is made in relation to a tax quarter, the specified employment intermediary shall continue to provide a return to HMRC in relation to every subsequent tax quarter until either—

(a) The definition of tribunal was inserted by paragraph 93 of Schedule 2 to the Transfer of Tribunal Functions and Revenue and Customs Appeals Order (S.I. 2009/56).
(b) 1964 c. 29. Section 1(7) was amended by paragraph 1 of Schedule 3 to the Oil and Gas (Enterprise) Act 1982 (c. 23) and section 103 of the Energy Act 2011 (c.16).

- (a) regulation 84E(b) to 84E(d) has not been satisfied for 4 consecutive tax quarters in respect of the specified intermediary; or
- (b) the specified employment intermediary notifies HMRC that it is no longer an employment intermediary.

Specified information

84G. The specified information is—

- (a) in respect of the specified employment intermediary making the return its—
 - (i) name;
 - (ii) address;
 - (iii) postcode;
 - (iv) employer’s PAYE reference number where it is required to have one(a);
- (b) in respect of each individual providing the services referred to in regulation 84E—
 - (i) the individual’s—
 - (aa) full name;
 - (bb) address;
 - (cc) postcode;
 - (dd) national insurance number (if the individual has one) or gender and date of birth (where the individual does not have a national insurance number);
 - (ee) Unique Taxpayer Reference issued by HMRC (if self-employed or a member of a partnership);
 - (ii) the date on which the individual began providing the services referred to in regulation 84E;
 - (iii) the date (if any) on which the individual stopped providing the services referred to in regulation 84E; and
- (c) where a payment is made to an individual in respect of, or in connection with, the services referred to in regulation 84E, but that payment is not included in a return delivered to HMRC under regulation 67B at the time the payment was made because there is no reporting requirement or there is a reporting failure—
 - (i) the full name (or if a partnership the name under which they trade) and address of the person receiving the payment made by the specified employment intermediary (if not the same as in 84G(b)(i)(aa) and (bb));
 - (ii) the total of the payments made by the specified employment intermediary to the person in the tax quarter;
 - (iii) the reason why the specified employment intermediary has not deducted income tax from those payments;
 - (iv) where the reason for the non deduction given in (iii) is that the payments made are to a limited company the full name of the company and company registration number of that company; and
 - (v) whether the payments included amounts in respect of Value Added Tax.

(a) Employer’s PAYE reference number is defined in regulation 2(1) of the Income Tax (Pay As You Earn) Regulations 2003 (S.I.2003/2682).

Retention of records

84H.—(1) A specified employment intermediary must keep and preserve non-PAYE records which are not required to be sent to HMRC under any other provision of these Regulations for not less than three years after the end of the tax year to which they relate.

(2) The duty under paragraph (1) to keep and preserve non-PAYE records may be discharged by preserving them in any form or by any means.

(3) In this regulation “non-PAYE records” means information, records and documents which evidence the specified information.”.

*Edward Troup
Simon Bowles*

9th February 2015

Two of the Commissioners for Her Majesty’s 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 Principal Regulations”) to require specified employment intermediaries to provide specified information to Her Majesty’s Revenue and Custom (“HMRC”) and to keep and preserve specified information and documents.

Regulation 2(2) inserts definitions of the client, employment intermediary and United Kingdom continental shelf into the Principal Regulations. It also amends the existing definition of agency worker in the Principal Regulations to reflect the changes to section 44 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

Regulation 2(3) inserts new regulations 84E to 84H into the Principal Regulations. New regulation 84E provides that employment agencies that place multiple workers with clients other than on the United Kingdom continental shelf and have not, or are not required to deduct income tax at source (PAYE) for some or all of those workers are specified employment intermediaries.

New regulation 84F requires specified employment intermediaries to provide specified information to HMRC at the end of the tax month following each tax quarter. The information specified in regulation 84G must be provided in a form prescribed by HMRC and sent to HMRC by an approved method of electronic communication. Once a return under regulation 84F has been made, the employment intermediary must continue to make returns until either it has not placed any workers for whom it has not, or was not required to operate PAYE for a full tax year, or it notifies HMRC that it is no longer an employment intermediary. A return can be amended until the end of the tax month after the tax quarter following the quarter to which the return relates.

New regulation 84G specifies the information that must be provided to HMRC where a specified employment agency is required to make a return.

New regulation 84H provides that specified employment intermediaries must retain documents and information which evidence the information that the specified employment intermediary is required to provide to HMRC under the new regulation 84F is correct.

A Tax Information and Impact Note covering this instrument was published on 10th December 2014 and is available at <https://www.gov.uk/government/publications/onshore-intermediaries-false-self-employment>. It remains an accurate summary of the impacts that apply to this instrument.

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