

## EXPLANATORY MEMORANDUM TO

### THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2019

2019 No. 83

#### 1. Introduction

- 1.1 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 Pay As You Earn (PAYE) is the system used to collect income tax and National Insurance contributions (NICs) from employees. Employers normally have to operate PAYE as part of their payroll. Under the PAYE Real Time Information (RTI) system, the employer must report PAYE information to HMRC on or before the date they pay their employees.
- 2.2 Where an employer does not pay over an amount of PAYE tax that is due to HMRC, HMRC has a formal means of collecting that amount. Determinations are served on the employer to recover the tax payable.
- 2.3 An employer may make a ‘notional payment’ of income for the purposes of PAYE. A notional payment does not involve the actual transfer of money from the employer to the employee. This instrument clarifies that determinations can include tax that employers must account for on a notional payment, where the employer has been unable to deduct all the tax due from any actual payment made to an employee at the same time.
- 2.4 In 2017, anti-avoidance legislation was introduced which brings about a new charge to tax on employment income provided through third parties in the form of loans. Amounts caught by the new charge to tax are treated as notional payments for the purposes of PAYE.
- 2.5 This instrument also amends the information requirements that employers must comply with when they operate PAYE to include the amount of employment income provided through third parties. This will enable HMRC to ensure that employers comply with the legislation introduced in 2017, paying the income tax and NICs that is due.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 None.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

#### **5. European Convention on Human Rights**

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

#### **6. Legislative Context**

- 6.1 The Income Tax (Pay As You Earn) Regulations 2003 govern the operation of the PAYE system under which income tax is deducted from payments made to employees and pensioners.
- 6.2 Part 7A of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 treats employment income provided through third parties as employment income of the employee when a 'relevant step' is taken. A relevant step includes the earmarking (setting aside) of or the payment of a sum of money.
- 6.3 Schedule 11 of Finance (No. 2) Act 2017 introduced a charge to tax on employment income provided through a third party in the form of loans. It treats a person as taking a relevant step for the purposes of Part 7A of ITEPA 2003 where there is such a loan made on or after 6 April 1999, which is outstanding on 5 April 2019.
- 6.4 Under section 687A or 695A of ITEPA 2003, income that is treated as employment income of the employee by Part 7A of ITEPA 2003 is deemed to be PAYE income paid by the employer. This means that PAYE must be operated when a relevant step is taken under Part 7A of ITEPA 2003.
- 6.5 Under section 710 of ITEPA 2003, where an employer makes a notional payment of PAYE income to an employee, the employer must deduct income tax from any actual payments made. If the actual payments made are insufficient for this purpose, the employer must account to HMRC for the amount it is unable to deduct.
- 6.6 Under regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003, where an employer has not accounted for an amount of tax not deducted, HMRC may serve notice of a determination on the employer to collect the amount due.
- 6.7 Schedule A1 to the Income Tax (Pay As You Earn) Regulations 2003 specifies the information that is to be reported to HMRC when payments are made to employees.

#### **7. Policy background**

##### *What is being done and why?*

- 7.1 Firstly, regulation 80 determinations are served on employers as a formal means of recovering tax due that is unpaid. Such determinations include tax that the employer must account for on notional payments where the employer has been unable to deduct all the tax due from any actual payments made to an employee at the same time.
- 7.2 In 2012, HMRC introduced PAYE RTI in order to require employers to report information to HMRC every time an employee is paid. This instrument clarifies that regulation 80 determinations can be served where an employer reports a notional

payment using RTI, but does not account for an amount which is not deducted from an actual payment.

- 7.3 Secondly, in 2011, the Government introduced anti-avoidance legislation to tackle abusive arrangements where employment income is provided through third parties, such as offshore trusts, often in the form of loans.
- 7.4 This legislation was strengthened in 2017 by the introduction of a charge to tax on employment income provided through a third party in the form of loans. This charge will apply to such loans made on or after 6 April 1999 if they are still outstanding on 5 April 2019 and an agreement has not been made with HMRC to settle the income tax and NICs due on the loans.
- 7.5 HMRC is currently unable to identify employers who report employment income that is provided through third parties, including these outstanding loan balances. This is because the income is included with other payments and is not separately reported. This instrument will require separate identification of these payments, enabling HMRC to use this information for ensuring that employers comply with the law and pay the income tax and NICs that is due.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

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

## **10. Consultation outcome**

- 10.1 No consultation was carried out on this instrument because it introduces a minor reporting change and clarifies an existing position.

## **11. Guidance**

- 11.1 HMRC has also published its internal guidance on regulation 80 determinations contained within the PAYE Manual. This can be found here:  
<https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee54000>.
- 11.2 Guidance for employers reporting PAYE using RTI has been published on the GOV.UK website and will be updated to reflect the change to the reporting requirements.

## **12. Impact**

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because it introduces a minor reporting change of the type which HMRC make year on year as well as clarifying an existing position regarding regulation 80 determinations.
- 12.4 The change in these regulations affects all employers who are required to provide information to HMRC about employment income provided through third parties. These employers make up a very small proportion of the overall number of employers

and will be able to use HMRC's free payroll software 'Basic PAYE Tools' to report this information if necessary.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the effect on small businesses (employing up to 50 people) the approach taken is to update HMRC's free payroll software 'Basic PAYE Tools' to enable all affected businesses to report this income.
- 13.3 The basis for the final decision on what action to take to assist small businesses, is to minimise the employer burden. The new reporting requirement has been incorporated with other information that employers must already deliver to HMRC on or before making any payments to their employees. This instrument applies to small businesses that have provided employment income through third parties in the same way it does to any other business which has provided employment income in such a way.

### **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is to consider the new reporting requirement during the regular updates made to the RTI reporting requirements.
- 14.2 In accordance with section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015, this instrument does not include a statutory review clause because it is made in relation to the imposition of a tax, duty, levy or other charge.

### **15. Contact**

- 15.1 Craig Maffey at HMRC Telephone: 03000 517956 or email: [tap@hmrc.gsi.gov.uk](mailto:tap@hmrc.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Barbara Conroy, Deputy Director for Tax Administration Policy & Strategy, at HMRC can confirm that this explanatory memorandum meets the required standard.
- 15.3 Mel Stride, the Financial Secretary to the Treasury can confirm that this explanatory memorandum meets the required standard.