
STATUTORY INSTRUMENTS

2020 No. 1150

INCOME TAX

**The Income Tax (Pay As You Earn)
(Amendment No. 3) Regulations 2020**

<i>Made</i>	- - - -	<i>22nd October 2020</i>
<i>Laid before the House of Commons</i>	- - - -	<i>26th October 2020</i>
<i>Coming into force</i>	- -	<i>6th April 2021</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 684(1), (2) and 688AA of the Income Tax (Earnings and Pensions) Act 2003(1).

Citation and commencement

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No. 3) Regulations 2020 and come into force on 6th April 2021.

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

2. The Income Tax (Pay As You Earn) Regulations 2003(2) are amended as follows.
3. In Part 4, after Chapter 4, insert the following Chapter—

“CHAPTER 5

DEBTS ARISING UNDER CHAPTER 10 OF PART 2 OF ITEPA (INTERMEDIARIES)

Recovery from relevant persons

97LA.—(1) In this Chapter, references to a “PAYE debt” must be construed as references to a deemed employer PAYE debt.

(1) 2003 c. 1. Section 684 was amended by paragraph 102 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) with the effect that the Commissioners for Her Majesty's Revenue and Customs have the power to make the Regulations. Further relevant amendments were also made by section 145(1) and (2) of the Finance Act 2003 (c. 14), paragraph 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11), paragraphs 2, 3(1), 3(2) and 7 of Schedule 58 to the Finance Act 2009 (c. 10) and section 225(1) and (2) of the Finance Act 2012 (c. 14). Section 688AA was inserted by paragraph 19 of Schedule 1 to the Finance Act 2020 (c. 14).

(2) S.I. 2003/2682, relevant amending instruments are S.I. 2007/2069, 2012/822, 2013/521.

(2) A PAYE debt may be recovered from a relevant person⁽³⁾ but this is subject to paragraph (3).

(3) A PAYE debt may only be recovered from a person described in section 688AA(3) (a) ITEPA if an officer of Revenue and Customs considers there is no realistic prospect of recovery of all or part of it within a reasonable period of time from a person described in section 688AA(3)(b).

Recovery of PAYE debt

97LB.—(1) HMRC may not recover a PAYE debt in accordance with regulation 97LA(2) unless it has given a recovery notice to the relevant person during the relevant period.

(2) No recovery of a PAYE debt may be made—

- (a) if the PAYE debt relates to tax payable in a tax year commencing before 6th April 2021, or
- (b) if the deemed employer⁽⁴⁾ is also “the client” described in section 61M(1)(a) of ITEPA⁽⁵⁾.

(2) In this Chapter, a “recovery notice” means a notice which complies with regulation 97LD.

The relevant period

97LC.—(1) In this Chapter, the “relevant period” in relation to a PAYE debt means the period beginning in accordance with paragraph (2) and ending in accordance with paragraph (3).

(2) The relevant period begins—

- (a) upon the expiry of the period of 30 days beginning with the day on which the determination made in accordance with regulation 80 of the amount referred to in section 688AA(2)(a) of ITEPA becomes final and conclusive, or
- (b) when an officer of Revenue and Customs becomes aware of sufficient information to make a determination in accordance with regulation 80 in relation to the amount referred to in section 688AA(2)(a) of ITEPA but considers that it would be impractical to make such a determination on account of the liquidation, dissolution or other incapacity of the deemed employer, provided that time is not after the latest time allowed for the making of a determination in accordance with regulation 80 in relation to the PAYE debt.

(3) The relevant period ends upon the expiry of the period of 12 months beginning with the day on which the period begins.

Contents of recovery notice

97LD.—(1) A recovery notice must contain the following information—

- (a) the name and address of the deemed employer to whom the PAYE debt relates;
- (b) the name of “the worker” for the purposes of section 61M(1)(a) ITEPA to whom the PAYE debt relates;

(3) Section 688AA(2) and (3) define “a deemed employer PAYE debt” and “relevant person”.

(4) Section 688AA(2)(a) provides that the deemed employer in relation to a deemed employer PAYE debt is the person liable to the amount of that debt under PAYE regulations in consequence of being treated under section 61N(3) as having made a deemed direct payment to a worker.

(5) Section 61M was inserted by paragraph 9 of Schedule 1 to the Finance Act 2017 (c. 10).

- (c) the amount of the PAYE debt;
- (d) the tax periods to which the PAYE debt relates;
- (e) if the tax periods to which the PAYE debt relates are comprised in more than one tax year, the apportionment of the PAYE debt between those tax years;
- (f) the date on which the relevant period in relation to the PAYE debt began and whether the period began in accordance with regulation 97LC(2)(a) or (b);
- (g) the relevant person's name and address;
- (h) whether the relevant person is a person described in paragraph (a) or (b) of the definition of relevant person in section 688AA(3) of ITEPA.

(2) The recovery notice must also contain a statement, made by the officer of Revenue and Customs giving the notice, that the officer is of the view that there is no realistic prospect of recovering the PAYE debt within a reasonable period from—

- (a) the deemed employer;
- (b) the person mentioned in section 688AA(3)(b) of ITEPA in the case of a recovery notice given to a person mentioned in section 688AA(3)(a) of that Act.

Payment of deemed employer PAYE debt and interest

97LE.—(1) The relevant person must pay the amount of the PAYE debt to HMRC within 30 days beginning with the date on which the notice is given.

(2) Interest accruing on the PAYE debt by virtue of section 101 of the Finance Act 2009(6) after expiry of the period of time mentioned in paragraph (1) shall be treated as chargeable to the relevant person under that section.

Appeals

97LF.—(1) A person who is given a recovery notice in relation to a PAYE debt may appeal against the notice on one or more of the grounds set out in paragraph (3).

(2) A notice of appeal must—

- (a) be given to HMRC within 30 days beginning with the day the recovery notice is given, and
- (b) specify the grounds of the appeal.

(3) The grounds of appeal are—

- (a) that all or part of the amount specified in the notice in accordance with regulation 97LD(1)(c) does not relate to a PAYE debt;
- (b) that there is a realistic prospect of recovering the PAYE debt from the deemed employer within a reasonable period of time;
- (c) that there is a realistic prospect of recovering the relevant PAYE debt from the person described in section 688AA(3)(b) of ITEPA within a reasonable period of time;
- (d) that the person is not a relevant person in respect of the PAYE debt;
- (e) that the recovery notice was not given within the relevant period;
- (f) that the recovery notice does not satisfy the requirements specified in regulation 97LD.

(6) Section 101 was amended by paragraph 20(2) of Schedule 22 to the Finance Act 2014 (c. 26).

(4) But a person may not appeal on the ground mentioned in paragraph (3)(a) if it has already been determined, on an appeal, that the PAYE debt is payable by the deemed employer.

(5) Subject to paragraph (6), on an appeal that is notified to the tribunal, the tribunal may uphold or quash the recovery notice.

(6) In a case in which the ground of appeal mentioned in paragraph (3)(a) is raised, the tribunal may also reduce or increase the amount specified in accordance with regulation 97LD(1)(c) so that it does relate to a PAYE debt.

Withdrawal of recovery notices

97LG.—(1) A recovery notice is withdrawn if the tribunal quashes it.

(2) An officer of Revenue and Customs may withdraw a recovery notice if the officer considers it appropriate to do so.

(3) If a recovery notice is withdrawn in accordance with paragraph (2), HMRC must give notice of that fact to the person to whom the notice was given.

Application of Part 6 of TMA

97LH. Part 6 of TMA (collection and recovery) applies as if—

- (a) the amount of the PAYE debt were income tax charged on the relevant person,
- (b) the recovery notice were an assessment, and
- (c) the giving of the recovery notice were the matter complained of for the purposes of section 65(3) TMA(7) (Magistrates' court).⁷

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22nd October 2020

(7) 1970 c. 9; section 65(3) was amended by paragraph 1 of Schedule 27 to the Finance Act 1998 (c. 36).

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations which come into force on 6th April 2021 amend the Income (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“PAYE Regulations”).

Regulations 2 and 3 insert Chapter 5 into Part 4 of the PAYE Regulations to provide for the recovery of an amount of income tax arising under Chapter 10 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) from a person other than the person treated as making a payment of earnings from an employment to a worker by virtue of section 61N(3) ITEPA.

Regulation 97LA enables an officer of Revenue and Customs to recover a “deemed employer PAYE debt” from a “relevant person” where the officer considers there is no realistic prospect of recovery within a reasonable period from the person liable for the debt by virtue of Chapter 10 of ITEPA. The regulation also specifies the order in which debts may be pursued from relevant persons.

Regulation 97LB sets out the circumstances in which a deemed employer PAYE debt may not be recovered.

Regulations 97LC defines the beginning and end of the “relevant period” during which a recovery notice may be given.

Regulation 97LD specifies the contents of the recovery notice. Regulation 97LE specifies the time by which a relevant person must pay a deemed employer PAYE debt and the time from which that person is liable to pay any interest accruing on that amount.

Regulation 97LF specifies the grounds on which an appeal against a recovery notice may be made, the time limits for doing so and the determinations that may be made by a tribunal.

Regulation 97LG specifies the circumstances in which a recovery notice may be withdrawn.

Regulation 97LH provides for recovery of an amount of deemed employer PAYE debt in accordance with Part 6 of the Taxes Management Act 1970 (c.9).

A Tax Information and Impact Note covering this instrument was published on 11 July 2019 alongside draft legislation on the reform of the off-payroll working rules and is available on the website at: <https://www.gov.uk/government/publications/rules-for-off-payroll-working-from-april-2020>. Due to the delay to the implementation of the reform, an updated Tax Information and Impact Note will be published at the next fiscal event.