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STATUTORY INSTRUMENTS

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**2003 No. 2682**

**The Income Tax (Pay As You Earn) Regulations 2003**

**PART 1**

**INTRODUCTION**

*Citation and commencement*

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1. These Regulations may be cited as The Income Tax (Pay As You Earn) Regulations 2003 and shall come into force on 6th April 2004.

*Interpretation*

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“additional pay” means the appropriate amount, established from an employee’s code (where it is a K code not used on the cumulative basis) and the tax tables, to be added to the relevant payments made to an employee in order to determine the taxable payments;

“agency” has the meaning given in section 44 of ITEPA;

“agency worker” means a worker whose services are treated by section 44 of ITEPA as the duties of an employment held with the agency;

“approved method of electronic communications” has the meaning given in regulation 189;

“basic rate”, in relation to the charging of income tax for any tax year, means the rate of income tax determined under section 1(2)(a) of ICTA(1);

“Board of Inland Revenue” means the Commissioners of Inland Revenue (as to which see in particular the Inland Revenue Regulation Act 1890(2));

“code” and related expressions have the meanings given in regulation 7;

“cumulative basis” means the basis of deduction or repayment of tax provided for in regulation 23;

“deductions working sheet” means—

(a) any form of record in which are to be kept the matters required by these Regulations in connection with an employee’s relevant payments and tax;

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(1) Section 1(2)(a) was amended by section 9(3) of the Finance Act 1992 (c. 20).

(2) 1890 c. 21.

- (b) in regulations 34 and 35 (simplified deduction scheme), and regulations 142 and 143 (direct collection) the form issued by the Inland Revenue for the purpose of keeping those records;
- “earnings” has the meaning given in sections 62 and 721(7) of ITEPA;
- “electronic communications” has the meaning given in regulation 189;
- “employee’s code” has the meaning given in regulation 8(1);
- “employer reference” means the combination of letters, numbers or both used by the Inland Revenue to identify an employer for the purposes of these Regulations;
- “employer’s PAYE reference”, in relation to an employer, means the combination of the employer’s employer reference and the Inland Revenue office number;
- “employment”, subject to regulations 10 to 12, has the meaning given in sections 4 and 5 of ITEPA; and “employer” and “employee” have corresponding meanings;
- “excluded business expenses” has the meaning given in regulation 5;
- “family” and “family or household”, in relation to a person, have the meanings given in section 721(4) and (5) of ITEPA;
- “free pay” means the appropriate amount, established from an employee’s code (where not used on the cumulative basis) and the tax tables, to be subtracted from relevant payments to arrive at taxable payments (and accordingly represents an appropriate part of reliefs allowable against those payments);
- “general earnings” has the meaning given in section 7(3) of ITEPA;
- “higher rate”, in relation to the charging of income tax for any tax year, means the rate of income tax determined under section 1(2)(b) of ICTA(3);
- “ICTA” means the Income and Corporation Taxes Act 1988(4);
- “Inland Revenue” means any officer of the Board of Inland Revenue;
- “Inland Revenue office”, in relation to an employer, means the office of the Inland Revenue from which codes are normally issued to the employer;
- “Inland Revenue office number” means the number which identifies an employer’s Inland Revenue office;
- “ITEPA” means the Income Tax (Earnings and Pensions) Act 2003(5);
- “large employer” and “large or medium employer” have the meanings given in regulation 191;
- “national insurance number” means the national insurance number allocated within the meaning of regulation 9 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001(6);
- “net PAYE income” has the meaning given in regulation 3;
- “non-cumulative basis” means the basis of deduction of tax provided for in regulation 27;
- “notice” means notice in writing, or in a form authorised (in relation to the case in question) by directions under section 118 of the Finance Act 1998(7) (which allows certain claims etc to be made by telephone); and “notify” must be read accordingly;
- “notional payment” has the meaning given in section 710(2)(a) of ITEPA;
- “objects” means gives a notice of objection to the Inland Revenue;

(3) Section 1(2)(b) was substituted by section 24(2) of the Finance Act 1988 (c. 39).

(4) 1988 c. 1.

(5) 2003 c. 1. The Income Tax (Earnings and Pensions) Act 2003 is referred to in these footnotes as “ITEPA”.

(6) S.I.2001/769.

(7) 1998 c. 36.

- “official computer system” has the meaning given in regulation 189;
- “other payee” means a person receiving relevant payments in a capacity other than employee, agency worker or pensioner;
- “other payer” means a person making relevant payments in a capacity other than employer, agency or pension payer;
- “overriding limit” means the limit on the amount of tax to be deducted from a relevant payment, where the tax due in accordance with the appropriate tax tables in respect of any taxable payments or total taxable payments to date at the relevant date has been calculated by reference to additional pay or total additional pay to date, and that limit is an amount equal to 50% of the amount of the relevant payment;
- “PAYE income” has the meaning given in section 683 of ITEPA;
- “PAYE pension income” has the meaning given in section 683(3) of ITEPA;
- “PAYE threshold” must be determined in accordance with regulation 9;
- “payee” means an employee, agency worker, pensioner or other payee;
- “payer” means an employer, agency, pension payer or other payer;
- “pension” means a pension, annuity or other payments of PAYE pension income;
- “pensioner” means a person receiving PAYE pension income;
- “pension payer” means a person making payments of PAYE pension income;
- “PSA” means a PAYE settlement agreement made in accordance with regulation 105;
- “qualifying general earnings”, in relation to a PSA, has the meaning given in regulation 106;
- “reckonable date” has the meaning given in regulation 82(8);
- “relevant payments” has the meaning given in regulation 4;
- “relevant pension payments” has the meaning given in regulation 6;
- “reliefs from income tax” includes allowances and deductions;
- “specified date”, for the purposes of Chapters 3 and 4 of Part 10, has the meaning given in regulation 190;
- “starting rate”, in relation to the charging of income tax for any tax year, means the rate of income tax determined under section 1(2)(aa) of ICTA(8);
- “taxable payments” means relevant payments reduced by free pay or, as the case may be, increased by additional pay (where the employee’s code is not used on the cumulative basis);
- “tax month” means the period beginning on the 6th day of a calendar month and ending on the 5th day of the following calendar month;
- “tax not deducted because of the overriding limit” means any tax—
- (a) which is due at the relevant date in accordance with the appropriate tax tables in respect of any taxable payments or total taxable payments to date, but
  - (b) which has not been deducted because of the overriding limit;
- “tax period” means—
- (a) tax quarter, if regulation 34 (simplified deduction scheme for personal employees) or regulation 70 (quarterly tax periods) applies, or
  - (b) tax month, in every other case;
- “tax quarter” means any of the following (inclusive) periods—

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(8) Section 1(2)(aa) was substituted by section 22(1) of the Finance Act 1999.

6th April to 5th July,  
 6th July to 5th October,  
 6th October to 5th January, and  
 6th January to 5th April;

“tax tables” means the tax tables prepared by the Board of Inland Revenue under section 685 of ITEPA<sup>(9)</sup>;

“tax week” means 6th April to 12th April (inclusive) and each successive period of 7 days, except that the final tax week in a tax year (“Week 53”) is just the last day of the tax year (or last 2 days in a leap year);

“tax year” means a year for which any Act provides for income tax to be charged;

“TMA” means the Taxes Management Act 1970<sup>(10)</sup>;

“total additional pay to date” means the appropriate amount, established from an employee’s code (where it is a K code to be used on the cumulative basis) and the tax tables, to be added to the total payments to date in order to determine the total taxable payments to date;

“total free pay to date”, in relation to any date, means the appropriate amount, established from an employee’s code (where used on the cumulative basis) and the tax tables, to be subtracted from total payments to date to arrive at total taxable payments to date (and accordingly represents an appropriate part of reliefs allowable against those payments);

“total net tax deducted”, in relation to the relevant payments made to an employee during any period, means the total tax deducted from those payments plus any tax accounted for in accordance with regulation 62(5) (notional payments), less any tax repaid to the employee;

“total payments to date”, in relation to any date, means the sum of all relevant payments made by the employer to the employee from the beginning of the tax year up to and including that date;

“total tax to date” means the tax due at any date in accordance with the appropriate tax tables in respect of any total taxable payments to date;

“total taxable payments to date” means total payments to date reduced by total free pay to date or, as the case may be, increased by total additional pay to date (where the employee’s code is used on the cumulative basis);

“trade dispute” has the meaning given in section 35(1) of the Jobseekers Act 1995<sup>(11)</sup> or, in Northern Ireland, in article 2(2) of the Jobseekers (Northern Ireland) Order 1995<sup>(12)</sup>.

(2) References in these Regulations to income tax in respect of PAYE income (however expressed) are references to income tax in respect of that income if reasonable assumptions are, when necessary, made about other income.

### **Net PAYE income**

3.—(1) “Net PAYE income” means PAYE income less any—

- (a) allowable pension contributions, and
- (b) allowable donations to charity.

(2) In paragraph (1)—

<sup>(9)</sup> Section 685 was amended by section 145(3) and (4) of the Finance Act 2003.

<sup>(10)</sup> 1970 c. 9.

<sup>(11)</sup> 1995 c. 18.

<sup>(12)</sup> S.I. 1995/2705 (N.I. 15).

“allowable pension contributions” means any contribution towards a scheme which is withheld from the payment of PAYE income and for which a deduction must be allowed from employment income under section 592(7) or 594(1) of ICTA(13) (exempt approved schemes and exempt statutory schemes);

“allowable donations to charity” means any donation which is withheld from the payment of PAYE income and for which a deduction must be allowed under section 713 of ITEPA (donations to charity: payroll deduction scheme).

### **Relevant payments**

4.—(1) In these Regulations, any reference (however expressed) to relevant payments means payments of, or on account of, net PAYE income, except payments of, or on account of,—

- (a) PAYE social security income, except in so far as it is provided for in Part 8,
- (b) United Kingdom social security pensions,
- (c) excluded relocation expenses,
- (d) excluded business expenses,
- (e) excluded pecuniary liabilities, and
- (f) excluded notional payments.

(2) In paragraph (1)—

“excluded business expenses” has the meaning given in regulation 5;

“excluded notional payments” means notional payments which an employer is treated as making by section 694 or 695 of ITEPA (non-cash vouchers and credit tokens) as a result of an employee using a non-cash voucher or credit token on behalf of the employer, except where the voucher or token is used as, or as part of, any scheme or arrangement the purpose, or one of the main purposes, of which is—

- (a) to provide the employee with money or an asset, or
- (b) to avoid the making of a relevant payment;

“excluded pecuniary liabilities” means payments made to a person other than an employee to meet the employee’s liability to that other person, but which are not made—

- (a) in fulfilment (in whole or in part) of the employee’s right to a sum of money, nor
- (b) as, or as part of, any scheme or arrangement the purpose, or one of the main purposes, of which is to avoid the making of a relevant payment;

“excluded relocation expenses” means payments in respect of removal expenses, as defined by section 272 of ITEPA (removal benefits and expenses to which section 271 applies), if, and to the extent that, they are payments of net PAYE income;

“PAYE social security income” has the meaning given in section 683(5) of ITEPA;

“United Kingdom social security pensions” means income which is taxable income in accordance with section 578 of ITEPA (UK social security pensions).

### **Excluded business expenses**

5.—(1) “Excluded business expenses” means expenses within Chapter 3 of Part 3 of ITEPA (earnings and benefits treated as earnings) which the Inland Revenue have authorised the employer to exclude from relevant payments in accordance with this regulation.

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(13) Section 592(7) was substituted by paragraph 72 of Schedule 6 to ITEPA; section 594(1) was amended by paragraph 6(2) of Schedule 6 to the Finance Act 1989 and paragraph 73 of Schedule 6 to ITEPA.

(2) The Inland Revenue may authorise an employer to exclude any payment of expenses from relevant payments if the Inland Revenue are of the opinion that a deduction or relief will, or is likely to, result in no tax being payable as a result of the payment.

(3) The Inland Revenue may authorise the exclusion of—

- (a) specific expenses or a class of expenses,
- (b) expenses paid by a specific employer or a class of employers, and
- (c) expenses paid to a specific employee or a class of employees.

(4) The Inland Revenue must notify an employer of any excluded business expenses and the date from which the exclusion is to apply.

(5) The Inland Revenue may revoke the authorisation to exclude business expenses by giving notice to the employer specifying the date of the notice or a subsequent date as the date from which the revocation has effect.

### Relevant pension payments

6. In these Regulations, any reference (however expressed) to relevant pension payments means relevant payments in respect of PAYE pension income.

### Meaning of “code” etc

7.—(1) In these Regulations, “code” means—

- (a) a combination of letters, numbers or both for use in accordance with the tax tables to establish free pay, additional pay, total free pay to date or total additional pay to date;
- (b) any of the special codes (whether expressed in words or represented by a combination of letters, numbers or both) for use in accordance with the tax tables or otherwise.

(2) “K code” means a code which gives rise to additional pay or total additional pay to date.

(3) The special codes are—

- (a) the basic rate code, which effects deductions of tax wholly at the basic rate;
- (b) the higher rate code, which effects deductions of tax wholly at the higher rate;
- (c) the nil tax code, which requires no deductions of tax;
- (d) the emergency code, which, after allowing for the relief specified in section 257(1) of ICTA(14) (personal allowance), effects deductions of tax at one or more of the starting rate, basic rate and higher rate, so that during the tax year the amounts subject to deductions at the various rates are in accordance with section 1(2) of ICTA(15);
- (e) the emergency IB codes which, after allowing for the relief specified in—
  - (i) section 257(1) of ICTA (personal allowance), and
  - (ii) section 265(1) of ICTA(16) (blind person’s allowance), if claimed,

effect deductions of tax at one or both of the starting rate and basic rate, so that during the tax year the amounts subject to deductions at the various rates are in accordance with section 1(2) of ICTA.

(14) Section 257 was substituted by section 33 of the Finance Act 1988 (c. 39).

(15) Section 1(2) was amended by section 24(2) of the Finance Act 1988, section 9(2) and (3) of the Finance Act 1992 (c. 20) and section 22(1) of the Finance Act 1999 (c. 16).

(16) Section 265 was substituted by paragraph 8 of Schedule 3 to the Finance Act 1988, and subsection (1) was amended by paragraph 19 of Schedule 20 to the Finance Act 1996 (c. 8).

**Employee’s code**

- 8.—(1) An employee’s code is the code—
- (a) issued to an employer for use in respect of the employee for a tax year,
  - (b) applied by these Regulations for use by an employer in respect of the employee, or
  - (c) issued to an employee in accordance with regulation 142 (direct collection).
- (2) A code is issued to an employer if it is contained in a document that is sent—
- (a) to the employer, or
  - (b) to a person acting on behalf of the employer,

by the Inland Revenue, and any code so issued is received by the employer for the purposes of these Regulations.

**PAYE threshold**

- 9.—(1) The rules set out in Table 1 apply in order to determine whether a relevant payment made by an employer to an employee is a relevant payment which exceeds the PAYE threshold.
- (2) Rules 1 to 5 apply if the employer normally pays the employee at regular intervals.
- (3) If the employer does not normally pay the employee at regular intervals—
- (a) rule 6 applies to determine whether a relevant payment made less than a week since the previous relevant payment exceeds the PAYE threshold, and
  - (b) rule 7 applies to determine whether any other relevant payment exceeds the PAYE threshold.

**Table 1**

Determination of PAYE threshold

<i>Employee’s payment interval</i>	<i>Rule to determine whether relevant payment exceeds PAYE threshold</i>
1. Weekly	1. If the sum of the relevant payment and any other relevant payments made earlier in the same tax week is more than the weekly PAYE threshold.
2. Monthly	2. If the sum of the relevant payment and any other relevant payments made earlier in the same tax month is more than the monthly PAYE threshold.
3. Regular intervals which are multiples of a week	3. If the sum of the relevant payment and any other relevant payments made earlier in the same interval is more than the corresponding multiple of the weekly PAYE threshold.
4. Regular intervals, longer than a week, which are fractions or multiples of a month	4. If the sum of the relevant payment and any other relevant payments made earlier in the same interval is more than the corresponding fraction or multiple of the monthly PAYE threshold.

<i>Employee's payment interval</i>	<i>Rule to determine whether relevant payment exceeds PAYE threshold</i>
5. Regular intervals, longer than a week, which are not within rules 1 to 4	5. If the sum of the relevant payment and any other relevant payments made earlier in the same interval is more than the corresponding proportion of the weekly PAYE threshold.
6. Intervals shorter than a week, whether regular or irregular	6. If the sum of the relevant payment and any other relevant payments made earlier in the same tax week is more than the weekly PAYE threshold.
7. Irregular intervals longer than a week	7. If the relevant payment is more than the corresponding proportion of the weekly PAYE threshold since— <ul style="list-style-type: none"> <li>(a) any previous relevant payment in the tax year, or</li> <li>(b) if none, the start of the employment or the start of the tax year (whichever is later).</li> </ul>
(4) Regulations 24 and 30 (employee not paid weekly or monthly)— <ul style="list-style-type: none"> <li>(a) apply for the purpose of establishing an employee's normal payment interval, but</li> <li>(b) must otherwise be ignored for the purpose of determining whether a relevant payment exceeds the PAYE threshold.</li> </ul>	
(5) If an employee has more than one normal payment interval in respect of payments made by the same employer, the rules must be applied on the basis of the shorter or shortest of those intervals.	
(6) If an employee's normal payment interval is longer than a year, the rules must be applied as if the normal payment interval were a year.	
(7) "Weekly PAYE threshold" means 1/52 of the personal allowance specified in section 257(1) of ICTA, rounded to the nearest pound.	
(8) "Monthly PAYE threshold" means 1/12 of the personal allowance specified in section 257(1) of ICTA, rounded to the nearest pound.	
(9) The "corresponding proportion of the weekly PAYE threshold" is established by dividing the number of days in the payment interval by 7, and multiplying the result by the weekly PAYE threshold.	

*Application to payers and payees*

**Application to agencies and agency workers**

- 10.**—(1) For the purposes of these Regulations—
- (a) agencies are treated as employers; and
  - (b) agency workers are treated as employees.
- (2) For the purposes of the regulations listed in paragraph (3), an agency ceases to employ an agency worker at the earlier of—
- (a) the end of the relationship between the agency and agency worker, or
  - (b) the end of a period of 3 months during which the agency makes no relevant payments to the agency worker,



and not each time the agency worker stops providing services to a client of the agency.

(3) The regulations are—

regulation 36	cessation of employment: Form P45
regulation 37	PAYE income paid after employment ceased
regulation 46(6)	employer to ignore code relating to employment which has ceased
regulation 51(5) to (7)	effects of employment ceasing on Form P45 procedure
regulation 94(3) to (7)	information to former employees of other earnings.

(4) The following regulations do not apply to agencies or agency workers in their capacity as such—

regulation 34	simplified deduction scheme for personal employees
regulation 35	simplified deduction schemes: records
regulation 91	termination awards: information to be provided
regulation 92	termination awards: return if award changes
regulation 93	termination awards: return if more than one employer
regulation 96	termination awards: information to employees
Part 6	PAYE settlement agreements
regulation 167	jobseeker's allowance paid by employer
regulation 168	regulation 167 cases: application of other regulations.

### **Application to pension payers and pensioners**

**11.**—(1) For the purposes of these Regulations—

- (a) pension payers are treated as employers;
- (b) pensioners are treated as employees; and
- (c) a pensioner's "employment" with a pension payer starts when the pension starts and ends when the pension ends.

(2) The following regulations do not apply to pension payers or pensioners in their capacity as such—

regulation 25	cumulative basis: subsidiary PAYE income of employee paid weekly or at greater intervals
regulation 34	simplified deduction scheme for personal employees
regulation 35	simplified deduction schemes: records

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regulation 38	death of employee (other than pensioner)
Chapter 2 of Part 3	new employees (other than pensioners): Forms P45 and P46
regulation 63	repayment during unpaid leave
regulation 64	trade disputes
regulation 65	repayment if no longer employed
regulation 71	modification of regulation 68 in case of trade dispute
regulation 75	additional return in case of trade dispute
regulations 85 to 89	employers: annual return of other earnings
regulation 90	quarterly return if car becomes available or unavailable
regulation 91	termination awards: information to be provided
regulation 92	termination awards: return if award changes
regulation 93	termination awards: return if more than one employer
regulation 94	employers: information to employees of other earnings
regulation 95	third parties: information to employees of other earnings
regulation 96	termination awards: information to employees
regulation 100	tips: special arrangements
regulation 102(1)	succession to a business etc: employees (other than pensioners)
regulation 104	succession to a business: trade disputes
Part 6	PAYE settlement agreements
Chapter 3 of Part 7	holiday pay funds
regulation 151	obtaining the claimant's Form P45
regulation 167	jobseeker's allowance paid by employer
regulation 168	regulation 167 cases: application of other regulations.

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### **Application to other payers and payees**

- 12.—(1) For the purposes of these Regulations—
- (a) other payers are treated as employers;
  - (b) other payees are treated as employees; and
  - (c) an other payee's "employment" with an other payer starts when relevant payments start and ends when relevant payments end.

(2) The following regulations do not apply to other payers or other payees in their capacity as such—

regulation 34	simplified deduction scheme for personal employees
regulation 35	simplified deduction schemes: records
regulation 85 to 88	employers: annual return of other earnings
regulation 90	quarterly return if car becomes available or unavailable
regulation 91	termination awards: information to be provided
regulation 92	termination awards: return if award changes
regulation 93	termination awards: return if more than one employer
regulation 94	employers: information to employees of other earnings
regulation 95	third parties: information to employees of other earnings
regulation 96	termination awards: information to employees
Part 6	PAYE settlement agreements
regulation 134	interpretation of Chapter 3 (holiday pay funds)
regulation 167	jobseeker's allowance paid by employer
regulation 168	regulation 167 cases: application of other regulations.

(3) Paragraph (2) is subject to regulation 91(9) (termination awards: former employers and employees).

(4) The following regulation does not apply to other payees in their capacity as such—

regulation 64	trade disputes.
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