

2005 No. 826

INCOME TAX

**The Income Tax (Incentive Payments for Voluntary Electronic
Communication of PAYE Returns) (Amendment) Regulations
2005**

Made - - - - 18th March 2005

Laid before the House of Commons 18th March 2005

Coming into force in accordance with regulation 1(1)

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 143(1) of, and Schedule 38 to, the Finance Act 2000(a), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) (Amendment) Regulations 2005 and shall come into force—

- (a) for the purposes of the amendments made—
 - (i) by regulations 6(3)(b) and 6(5) to (7), and regulation 6(1) so far as it relates to those provisions, and
 - (ii) by regulation 8,
on 19th March 2005; and
- (b) for all other purposes on 8th April 2005.

(2) The amendments made by regulations the provisions listed in paragraph (1)(a) above shall have effect—

- (a) if the obligation to maintain a deductions working sheet under any of the provisions listed in paragraph (3) arises for the first time in relation to the year of assessment 2004-05 after the coming into force of these Regulations, in relation to any return delivered in respect of that year; and
- (b) except as provided by sub-paragraph (a), in relation to any return delivered in respect of the years of assessment 2005-06 to 2008-09.

(3) The provisions referred to in paragraph (2)(a) are—

- (a) paragraph 6 of Schedule 4 to the Social Security (Contributions) Regulations 2001(b);
- (b) regulation 6(6) of the Working Tax Credit (Payment by Employers) Regulations 2002(c);
and

(a) 2000 c. 17.

(b) S.I. 2001/1004: paragraph 6 has been amended: the relevant amendment are those made by regulation 3 of S.I. 2004/770.

(c) S.I. 2002/2172. Regulation 6(6) was amended by regulation 17(4)(a) of S.I. 2004/762.

(c) regulation 66 of the Income Tax (Pay As You Earn) Regulations 2003(a).

Amendment of the Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) Regulations 2003

2. The Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) Regulations 2003(b) shall be amended as follows.

3.—(1) Amend regulation 1 (citation, commencement and interpretation) as follows.

(2) In paragraph (2)—

(a) after the definition of “direction” insert—

““employee” has the meaning given in section 4 of ITEPA 2003, and cognate expressions shall be construed accordingly;”;

(b) after the definition of “incentive payment” insert—

““ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003(c);”;

(c) for the definition of “the PAYE Regulations” substitute—

““the PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003;”.

(3) In paragraph (3), in the sentence beginning “A person is treated”, in sub-paragraph (a) for “or by regulation 6(6)” substitute “, paragraph 6 of Schedule 4 to the Social Security (Contributions) Regulations 2001, or by regulation 6(6)”.

4.—(1) Amend regulation 2 (construction of references to numbers of employees) as follows.

(2) In paragraph (1)—

(a) for “regulation 3” substitute “regulation 98”;

(b) in sub-paragraph (a) for “paragraph (6) of that regulation” substitute “regulation 99 of those Regulations”

(c) in sub-paragraph (b) for “that paragraph” substitute “that regulation”.

(3) In paragraph (2) for “regulation 3(1)” substitute “regulation 98”.

5.—(1) Amend regulation 3 (scope) as follows.

(2) In paragraph (1) for “regulation 43” substitute “regulation 73”.

6.—(1) Amend regulation 4 (incentive payment — return under regulation 43 of the PAYE Regulations (d)) as follows.

(2) In the heading for “regulation 43” substitute “regulation 73”.

(3) In paragraph (1)—

(a) in sub-paragraph (a) for “regulation 43” substitute “regulation 73”

(b) for “the following qualification” substitute “paragraphs (2) and (2A)”.

(4) In paragraph (2) for “regulation 102(2)” substitute “regulation 141”.

(5) After paragraph (2) insert—

“(2A) An incentive payment shall not be made where a small employer—

(a) has been established,

(b) employs employees, or

(a) S.I. 2003/2682.

(b) S.I. 2003/2495.

(c) 2003 c. 1.

(d) The reference is to the former regulation 43 of the Income Tax (Employments) Regulations 1993 (S.I. 1993/744). This provision was re-enacted as regulation 73 of the Income Tax (Pay as You Earn) Regulations 2003 (S.I. 2003/2682).

(c) makes payments of PAYE income (within the meaning of section 683 of ITEPA 2003),
wholly or mainly for an impermissible purpose.

(2B) For the purpose of paragraph (2A)—

(a) a small employer is “established” where—

- (i) persons enter into partnership, within the meaning of section 4 of the Partnership Act 1894(a), in accordance with the principles set out in section 2 of that Act,
- (ii) a limited partnership is registered in accordance with the Limited Partnerships Act 1907(b),
- (iii) a limited liability partnership is incorporated in accordance with section 2 of the Limited Liability Partnerships Act 2000(c) or section 2 of the Limited Liability Partnerships Act (Northern Ireland) 2002(d),
- (iv) a company is incorporated under section 1 of the Companies Act 1985(e) or article 12 of the Companies (Northern Ireland) Order 1986(f), or
- (v) an unincorporated association, or a body corporate, not falling within the previous paragraphs, is created,

and it is intended at the time of incorporation, formation or creation that it should be a small employer;

(b) a small employer is established for an impermissible purpose if it is established for the purpose of—

- (i) obtaining an advantage in relation to income tax, corporation tax or national insurance contributions;
- (ii) obtaining an incentive under these Regulations; or
- (iii) avoiding an obligation to file a return by means of electronic communications under any enactment relating to income tax, corporation tax or national insurance.

(2C) For the purposes of paragraph (2B)(b)(i) “advantage”—

- (a) in relation to income tax and corporation tax, has the meaning given by section 318 of the Finance Act 2004 (interpretation for the purposes of Part 7: tax avoidance schemes); and
- (b) in relation to national insurance, has the meaning which would be given by that section were national insurance a tax to which it applied.”.

(6) After paragraph (3) insert—

“(3A) If an officer of the Board considers that, by virtue of paragraph (2A), a person will not be entitled to an incentive payment for a year of assessment, he may give notice to that effect to that person.”.

(7) In paragraph (4)(b) for “(2)” substitute “(2) or (2A)”.

7. After regulation 4 insert—

“Descriptions of incentives

4A.—(1) Any incentive under these Regulations shall take the form of—

(a) 1894 c. 39.
(b) 1907 c. 24.
(c) 2000 c. 12.
(d) 2002 c. 12 (N.I.).
(e) 1985 c. 6.
(f) S.I 1986/1032 (N.I. 6).

- (a) in the case of a person, from whom a sum of any of the descriptions mentioned in paragraph (3) has become due to the Board, a reduction in the person's liability for that sum;
- (b) in the case of a person in respect of whom an account is maintained by the Board, not falling within sub-paragraph (a), a credit to that account; or
- (c) in any other case, or at the request of a person who would be entitled to a credit to his account as mentioned in sub-paragraph (b), a payment by the Board.

(2) Where the amount of an incentive due to a person falling within paragraph (1)(a) exceeds the amount of his liability, the excess shall be credited to any account maintained in respect of that person by the Board, or, if that person so requests, paid to him by the Board

(3) The sums referred to in paragraph (1) are those which a person is liable to pay to a collector of inland revenue in pursuance of an obligation as an employer, contractor or a sub-contractor.

(4) If an incentive is given as mentioned in paragraph (1)(a) or (b) an officer of the Board shall notify the person entitled to the incentive of the form it has taken.”.

8.—(1) Amend regulation 6 (appeals) as follows.

(2) In paragraph (1)—

- (a) after “An appeal lies” insert “, subject to paragraph (1A)”;
- (b) for “regulation 4(4)” substitute “regulation 4(3A) or (4)”;
- (c) in sub-paragraph (a) after “notice” insert “in writing”.

(3) After paragraph (1) insert the following paragraph—

“(1A) A person may not appeal against a decision under regulation 4(4)(b) where he has already appealed unsuccessfully against a notice given under regulation 4(3A) in respect of the same year of assessment.”.

(4) In paragraph (2)—

- (a) for “regulation 4(4)” substitute “regulation 4(3A) or (4)”;
- (b) in sub-paragraph (b) for “regulation 4(2)” substitute “regulation 4(2) or (2A)”.

*Ann Chant
Helen Ghosh*

18th March 2005

Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Incentive Payments for Voluntary Electronic Communications of PAYE Incentive Returns) Regulations 2003 (S.I. 2003/2495).

Regulation 1 provides for the citation and commencement of these Regulations and for the effect of certain of the amendments.

Regulation 2 introduces the amendments.

Regulation 3 amends regulation 1 of the 2003 Regulations, inserting a new definition of “the PAYE Regulations” and extending the concept of a person who is treated as paying PAYE income.

Regulations 4 and 5 respectively amend regulations 2 and 3 of the 2003 Regulations to replace references to the Income Tax (Employments) Regulations 1993 (“the old PAYE Regulations”) with references to the corresponding provisions of the Income Tax (Pay as You Earn) Regulations 2003 (“the new PATE Regulations”).

Regulation 6 makes similar replacements of references to provisions in the new PAYE Regulations for references to provisions of the old PAYE Regulations in regulation 4 of the 2003 Regulations. It also adds a new paragraph (2A) in regulation 4, which provides that an incentive is not payable where a small employer has been established, employs employees or makes payments of PAYE income for an impermissible purpose. The new paragraph (2B) defines what is meant by a small employer being established, and “impermissible purpose”, and the new paragraph (2C) defines the meaning of “advantage”. It also inserts a new paragraph (3A) which provides that an officer of the Board may give a notice that a person will not be entitled to an incentive by reason of the operation of the new paragraph (2A).

Regulation 7 introduces a new regulation 4A, which prescribes the descriptions of incentives which may be provided, and how they are to be provided.

Regulation 8 amends regulation 6 to ensure that decisions cannot be the subject of more than one appeal and that notices of appeal must be in writing.

These Regulations do not impose new costs on business.

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