

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT No.2)
REGULATIONS 2007

2007 No. 2069

1. This Explanatory Memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty. This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

Under section 688A Income Tax (Earnings and Pensions) Act 2003, unpaid PAYE debts of Managed Service Companies may be transferred to certain prescribed persons where certain criteria are met. This instrument sets the process by which such transfers will take place and sets out the grounds of appeal against such transfers. These Regulations take effect from 6 August 2007.

3. Matters of Special Interest to the Select Committee on Statutory Instruments

These Regulations are laid in breach of the 21 Day rule, which is unavoidable in order that the transfer of debt provision can come into force on 6 August 2007. Government considers a key part of the measures to tackle Managed Service Companies is the ability to recover from prescribed persons unpaid PAYE debts of Managed Service Companies. In order to protect the Exchequer, it is desirable that this provision has effect at the earliest possible date following Royal Assent of the Finance Act. The earliest date will be 6 August 2007, being the start of the first tax month following Royal Assent.

4. Legislative Background

4.1. Paragraph 4 of Schedule 3 to the Finance Act 2007 inserted Chapter 9 in Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). Chapter 9 relates to the taxation of payments received by workers in Managed Service Companies. Schedule 3 to Finance Act 2007 also inserted section 688A in Part 11 of ITEPA and provides that PAYE regulations may make provision authorising the transfer of a Managed Service Company's unpaid PAYE to various persons set out in section 688A where certain criteria are met.

4.2. This instrument deals with the identification of a Managed Service Company's PAYE debt, the circumstances under which the debt may be transferred, the persons to whom the debt may be transferred, how such a debt is transferred, and the time limits for such a transfer.

4.3. It also deals with how, and by when, such transferred debts must be paid, the interest consequences of late payment, and the application of the Taxes Acts in terms of enforcing payment.

4.4 It provides for how persons to whom a debt has been transferred may appeal against such a transfer, the grounds for such an appeal and the procedure on appeal.

4.5 It also provides for the withdrawal of debt transfers and for the repayment of excess sums paid.

5. Extent

These Regulations apply throughout the United Kingdom.

6. European Convention on Human Rights

These Regulations are subject to annulment and do not amend Primary legislation. Accordingly no Statement of Compatibility is required.

7. Policy Background

7.1 In December 2006 the Government published a Consultation Document: “Tackling Managed Service Companies”, which set out the growing problem of workers seeking to avoid employed levels of income tax (and National Insurance contributions) by providing their services through Managed Service Companies, so enabling employment income to be drawn as dividends. The Consultation Document highlighted the fact that where HMRC had successfully taken action against such companies using Chapter 8 ITEPA, it invariably had been unable to recover the resultant PAYE and NICs because such companies have no assets.

7.2 A further Consultation Document: “ Managed Service Companies Transfer of PAYE and National Insurance contributions”, was published in February 2007 which made clear that in addition to legislation to ensure Managed Service Companies operate PAYE (and Class 1 NICs), legislation would be introduced to ensure that should such companies fail to pay the resultant PAYE (and NICs) due, debts could be transferred to certain persons. These are either persons directly involved with the company, or persons who have encouraged the use of the company or who have been actively involved in the worker’s provision of their services through the company.

7.3 These Regulations do not create PAYE debts. Debts will continue to arise by virtue of one of the existing provisions within the Income Tax (Pay as You Earn) Regulations 2003.

8. Impact

These Regulations give practical effect to the transfer of unpaid PAYE debts of Managed Service Companies. They will only have effect where Managed

Service Companies' PAYE debts are irrecoverable and affect firstly those persons directly involved with the defaulting companies: the companies' officers and the companies' Providers. Only where it is impracticable for HMRC to recover debts from such persons would transfer to other persons be considered.

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