

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT No. 3)**  
**REGULATIONS 2007**

**2007 No. 2296**

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**

This instrument corrects an error in the Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2007 (S.I. 2007/2069) (“the MSC Regulations”).

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

This instrument comes into force on 6 August 2007 immediately after the MSC Regulations, and the 21 Day rule will therefore be breached. But Government considers it essential, in order to protect the Exchequer, that the MSC Regulations come into force at the earliest possible suitable date following the Finance Act 2007 receiving the Royal Assent. That date is 6 August 2007, being the start of the first tax month following Royal Assent. It is considered appropriate that this instrument, which corrects an error in the MSC Regulations, should come into force at the same time.

**4. Legislative Background**

4.1 Schedule 3 to the Finance Act 2007 contains provisions dealing with Managed Service Companies. As part of the provision made, a new section 688A is inserted in the Income Tax (Earnings and Pensions) Act 2003. The new section provides that PAYE regulations may make provision authorising the recovery of a Managed Service Company’s unpaid PAYE debts from the various categories of person specified in section 688A(2).

4.2. The MSC Regulations make the provision envisaged in the new section 688A. They authorise the recovery of unpaid PAYE debts of Managed Service Companies from certain specified categories of persons in certain circumstances. They also set out the process under which such recovery will take place; the grounds of appeal against directions authorising such recovery; and the procedure on appeals.

4.3. The MSC Regulations insert a new Chapter 4 into Part 4 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“the PAYE Regulations”). The new Chapter consists of regulations 97A to 97L. Within that Chapter, regulation 97D deals with the time limits within which a transfer notice must be served. The time limits for such a transfer differ depending on which category within section 688A(2) of the Income Tax (Earnings and Pensions) Act 2003 a person falls. The limits are intended to be either 12 months or 3 months from a specified event. Regulation 97D, as inserted by the MSC Regulations, specifies a time limit of 12 months in all cases. However, in regulation 97D(8) it was intended to refer to a time limit of 3 months and not 12 months. This instrument corrects that error.

## **5. Extent**

This instrument applies to all of the United Kingdom.

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

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

## **7. Policy Background**

7.1 In December 2006 HM Treasury and HM Revenue and Customs 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 (“NICs”)) 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 HM Revenue and Customs had successfully taken action against such companies, the Department invariably had been unable to recover the resultant PAYE and NICs because such companies had no assets.

7.2 A further Consultation Document: “Managed Service Companies Transfer of PAYE and National Insurance contributions”, was published by HM Treasury and HM Revenue and Customs in February 2007. This further Consultation Document made it clear that, in addition to legislation to ensure Managed Service Companies operated PAYE (and Class 1 NICs), legislation would be introduced to ensure that should such companies fail to pay the resultant PAYE (and NICs) due, recovery could also be sought from certain other persons. The persons in question are either persons directly involved with the company, or persons who (directly or indirectly) have encouraged or been actively involved in the provision by the company of the worker’s services.

## **8. Impact**

A full regulatory impact assessment of the effect that the provisions in the Finance Act 2007 relating to managed service companies will have on the costs of business and the voluntary sector is published on HM Revenue and Customs' website at [www.hmrc.gov.uk/ria/full-ria-man-serv-coys.pdf](http://www.hmrc.gov.uk/ria/full-ria-man-serv-coys.pdf). That assessment is also annexed to the Explanatory Memorandum for the MSC Regulations which is available alongside those Regulations on the OPSI website.

## **9. Contact**

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