

2009 No. 3218

CORPORATION TAX

The Income and Corporation Taxes (Electronic Communications) (Amendment) Regulations 2009

Made - - - - - *7th December 2009*
Laid before the House of Commons *7th December 2009*
Coming into force - - - *1st January 2010*

The Commissioners for Her Majesty's Revenue and Customs^(a) make these Regulations exercising the powers conferred by section 135 of the Finance Act 2002^(b), section 204 of the Finance Act 2003^(c), and sections 95(1) and 95(3) of the Finance Act 2007^(d).

1. These Regulations may be cited as the Income and Corporation Taxes (Electronic Communications) (Amendment) Regulations 2009 and come into force on 1st January 2010.

2. They amend the Income and Corporation Taxes (Electronic Communications) Regulations 2003^(e) as described in the Schedule.

Mike Eland
Dave Hartnett

7th December 2009 Two of the Commissioners for Her Majesty's Revenue and Customs

(a) Formerly the Commissioners of Inland Revenue, but section 135(1) of the Finance Act 2002 (c. 23) was amended in this respect by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraph 95(1)(a) and S.I. 2005/1126 (C. 51). Section 204(1) of the Finance Act 2003 (c. 14) was substituted in this and other respects by the Finance Act 2007 (c. 11), section 94(2). See also footnote (d) on this page about section 95 of the Finance Act 2007 (c. 11).

(b) 2002 c. 23; section 135 was amended by the Commissioners for Revenue and Customs Act 2005, Schedule 4, paragraph 95(1) and Schedule 2, paragraph 12(1) and S.I. 2005/1126 (C. 51), and by the Finance Act 2007 (c. 11), section 93.

(c) 2003 c. 14; section 204 was amended by the Finance Act 2007 (c. 11), section 94 (which also amended the heading to section 204) and section 95(6).

(d) 2007 c. 11; "the Commissioners" in section 95(1) are those for Her Majesty's Revenue and Customs, as so provided by section 95(5)(a).

(e) S.I. 2003/282, amended by S.I. 2005/3338.

Amendments to the Income and Corporation Taxes (Electronic Communications) Regulations 2003

Regulation 1 – interpretation, etc

1. After regulation 1(2), insert—

“(2A) The provision these Regulations make for company tax returns relates to Schedule 18 to the Finance Act 1998(a) (corporation tax – company tax returns, etc), consequently where they refer to—

- (a) “company tax return”, it has the meaning in paragraph 3 of that Schedule,
- (b) “return period”, it means the period for which a company tax return is required under paragraph 5 of that Schedule,
- (c) “amendment”, it has the meaning in paragraph 15 of that Schedule, and
- (d) “filing date”, it has the meaning in paragraph 14 of that Schedule (but it has the meaning in paragraph 35(2) when in connection with a company tax return for an “outstanding period” in paragraph 35(1)).

(2B) The “extra time” in connection with the filing date mentioned in regulation 3(8)(c) refers to a stage—

- (a) for which there is an excuse for late delivery of the company tax return under paragraph 19 of Schedule 18 to the Finance Act 1998(b) (delivery of accounts to registrar of companies in time); or,
- (b) arising under section 117(2) of that Act(c) in conjunction with section 118(2) of the Management Act(d) (further time allowed by the Board(e), reasonable excuse for being late, etc).”.

2. At the end of regulation 1(3), start a new line and continue—

“Such references shall be construed in accordance with section 135(8) of the Finance Act 2002(f) (mandatory e-filing) when in connection with a company tax return.”.

Regulation 2 – scope

3. In regulation 2(1)(a)(iv), after “1998” insert “(and in connection with which they also make specific provision for mandatory e-filing of company tax returns as mentioned in regulation 1(3))”.

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- (a) 1998 c. 36; paragraphs 3 and 15 were amended by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraph 68 and S.I. 2005/1126 (C. 51). Paragraph 3 was also amended by the Income Tax Act 2007 (c. 3), Schedule 1, Part 2, paragraph 385(2). Paragraph 14 was amended by the Finance Act 2002 (c. 23), Schedule 40, Part 3(16).
 - (b) Paragraph 19 was substituted by S.I. 2008/954.
 - (c) Section 117(2) of the Finance Act 1998 (c. 36) provides that Schedule 18 to that Act and the Taxes Management Act 1970 (c. 9) shall be construed and have effect as if that Schedule were contained in the latter Act.
 - (d) Regulation 1(2) of S.I. 2003/282 abbreviates the Taxes Management Act 1970 (c. 9) to “the Management Act”. Section 118(2) of that Act was amended by the Finance Act 1970 (c. 24), Schedule 8, Part 7; the Finance (No. 2) Act 1987 (c. 51), section 94; and S.I. 2009/56.
 - (e) Regulation 1(2) of S.I. 2003/282 abbreviates “the Commissioners of Inland Revenue” to “the Board”. This must now be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs, as stipulated by the Commissioners for Revenue and Customs Act 2005 (c. 11), section 50(1).
 - (f) 2002 c. 23.

4. In regulation 2(1)(b), after “provisions” insert “, or the making of any payment in connection with the operation of section 87A of the Management Act(a) (interest on overdue corporation tax etc), and they apply in such a way that the corporation tax-related payments in regulation 3(2C) are subject to the mandatory electronic payment envisaged by section 204 of the Finance Act 2003(b)”.

Regulation 3 and its heading

5. Change regulation 3’s heading to “Use of electronic communications”.

6. After regulation 3(1), insert—

“(1A) Paragraph (1) does not apply to a company tax return delivered by, or a corporation tax-related payment made by, electronic communications under paragraphs (2A) to (2C).”.

7. After regulation 3(2), insert—

“(2A) Such a person must use electronic communications to deliver a company tax return, and in doing so need only satisfy the second to fourth of those conditions.

This paragraph only applies to a company tax return delivered on 1 April 2011 or later, relating to a return period ending on 1 April 2010 or later.

It does not apply to an amendment to such a company tax return.

(2B) The payer must use electronic communications to make the corporation tax-related payments in paragraph (2C), and in doing so need only satisfy the second and third of those conditions (excluding those in paragraphs (4)(a) (authenticating identity) and (4)(c) (authenticating information)).

This paragraph only applies to payments made on 1 April 2011 or later.

The Board need not accept such payments tendered in breach of this paragraph.

(2C) Paragraph (2B) applies to payment of each of the following—

- (a) any amount of corporation tax that must be calculated as payable under paragraph 8 of Schedule 18 to the Finance Act 1998(c) (calculation of corporation tax payable);
- (b) any amount treated as such under regulation 5 or 5A of the Corporation Tax (Instalment Payments) Regulations 1998(d);
- (c) any interest payable on overdue corporation tax etc under section 87A of the Management Act(e) and regulation 7 of those Regulations(f);
- (d) a flat-rate penalty for failing to deliver a company tax return by the filing date under paragraph 17 of that Schedule;

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- (a) See footnote (d) on page 2 about “the Management Act”. Section 87A was inserted by the Finance (No. 2) Act 1987 (c. 51), section 85. It was later amended by the Income and Corporation Taxes Act 1988 (c. 1), Schedule 29, paragraph 10(4); the Finance Act 1989 (c. 26), section 179(1); the Finance Act 1991 (c. 31), Schedule 15, paragraph 2; the Taxation of Chargeable Gains Act 1992 (c. 12), Schedule 10, paragraph 2(9); the Finance Act 1993 (c. 34), Schedule 14, paragraph 4 and Schedule 18, paragraph 1; the Finance Act 1994 (c. 9), Schedule 19, Part 1, paragraph 24; the Finance Act 1995 (c. 4), Schedule 24, Part 2, paragraphs 8 and 9; the Finance Act 1996 (c. 8), Schedule 14, paragraph 1; the Finance Act 1998 (c. 36), Schedule 3, paragraph 4 - Schedule 4, paragraph 4 - and Schedule 27, Part 3(2); the Finance Act 1999 (c. 16), section 92(5); the Finance Act 2000 (c. 17), Schedule 28, paragraph 3(4) - Schedule 29, Part 1, paragraph 9(2) - and Schedule 40, Parts 2(11) and 2(12); the Finance Act 2002 (c. 23), Schedule 29, Part 9, paragraph 69(4); the Finance Act 2008 (c. 9), Schedule 35, paragraph 1; and the Corporation Tax Act 2009 (c. 4), Schedule 1, Part 2, paragraph 305.
 - (b) 2003 c. 14; see footnote (c) on page 1 about amendments to section 204.
 - (c) 1998 c. 36; paragraph 8 was amended by the Finance Act 1999 (c. 16), section 28(5); the Finance Act 2000 (c. 17), Schedule 16, paragraph 5(2); the Finance Act 2002 (c. 23), section 92(4) and Schedule 17, paragraph 5; and the Finance Act 2006 (c. 25), section 26(7) and Schedule 26, Part 3(1).
 - (d) S.I. 1998/3175, amended by the Finance Act 2002 (c. 23), sections 92(6) and 92(7), and by S.I. 1999/1929, 2000/892, 2001/3629, 2005/889, 2008/2649, 2009/56.
 - (e) See footnote (d) on page 2 about “the Management Act”, and footnote (a) on this page about amendments to section 87A.
 - (f) See footnote (d) on this page about amendments to S.I. 1998/3175.

- (e) a tax-related penalty for failing to deliver a company tax return for an accounting period under paragraph 18 of that Schedule.”.

8. In regulation 3(5), after “Regulations” insert “, and Extensible Business Reporting Language (XBRL), Inline XBRL(a) and other electronic data handling techniques are among the forms that may be so approved”.

9. After regulation 3(7), insert—

“(8) The conditions mentioned in paragraph (2A) (company tax returns) are to be taken to be satisfied in connection with that paragraph only where the Board(b) is satisfied about one or more of the following—

- (a) there are no contraventions or failures to comply;
- (b) the accumulated contraventions or failures to comply do not undermine the purpose of that paragraph (delivery of company tax returns by approved electronic means);
- (c) at least one of the contraventions or failures to comply was necessary in order to deliver the company tax return by the filing date or within any extra time arising, despite genuine efforts not to undermine that purpose.

(9) The consequences of contravening or failing to comply with paragraph (2A) (company tax returns) are—

- (a) that the Board must accept delivery of the return, but only if satisfied about paragraph (8)(b) or (8)(c), or about both; otherwise,
- (b) the Board must disregard the return and treat it as not having been delivered.

(10) Electronic communications need not be used to deliver a company tax return while the company required to deliver it by the notice under paragraph 3(1) of Schedule 18 to the Finance Act 1998(c) is—

- (a) the subject of a winding-up order,
- (b) having its affairs, business and property managed by an administrator, or
- (c) in administrative receivership.

The expressions “winding-up order”, “administrator” and “in administrative receivership” each has the same meaning here as it does in section 81 of the Value Added Tax Act 1994(d) (insolvency procedures, etc).

(11) Paragraph (2A) (company tax returns) does not apply to the use of electronic communications in a way incompatible with the beliefs of a religious society or order of which—

- (a) all the company’s directors (and, if there is one, the company’s secretary) are practising members, or
- (b) all the individuals in the unincorporated association are such members.”.

(a) Extensible Business Reporting Language (XBRL) is an internationally recognised means for the electronic handling of business and financial data. Inline XBRL allows XBRL data to be embedded in human-readable files. More detail can be found at www.xbrl.org/uk.

(b) See footnote (e) on page 2 about “the Board”.

(c) 1998 c. 36; see footnote (a) on page 2 about amendments to paragraph 3 of Schedule 18.

(d) 1994 c. 23; the relevant amendments concern sections 81(4B), 81(4D) and 81(5), and were made by the Finance Act 1995 (c. 4), section 27; the Finance Act 2008 (c. 9), section 132; and S.I. 2003/2096.

10. After regulation 3, insert—

“Corporation tax-related payments by cheque

3A.—(1) Paragraph (2) applies instead of section 70A of the Management Act(a) to each of the corporation tax-related payments in regulation 3(2C) tendered by cheque, but only if the Board(b) receives that cheque on 1 April 2011 or later and that cheque is paid on its first presentation by the Board to the banker on whom it is drawn.

(2) The payment is to be treated as made on the second business day after the day on which the Board received that cheque.

(3) For these purposes, a “business day” is any day except—

- (a) Saturday, Sunday, Good Friday or Christmas Day(c);
- (b) a bank holiday(d) under the Banking and Financial Dealings Act 1971(e);
- (c) a day appointed by Royal proclamation as a public fast or thanksgiving day(f);
- (d) a day declared by an order under section 2 of the Banking and Financial Dealings Act 1971 to be a non-business day(g).”.

Regulation 5 – effect of delivering information by means of electronic communications

11. In regulation 5(1), after “satisfied” insert “or, but only in the case of the conditions mentioned in regulation 3(2A) (electronic delivery of company tax returns), are taken to be satisfied under regulation 3(8)”.

Regulation 10 – use of unauthorised means of electronic communications

12. In regulation 10(2)(b), after “approved” insert “, if necessary, ”.

13. After regulation 10(2), insert—

“(3) A company tax return delivered under regulation 3(2A) by means of electronic communications must meet standards of accuracy and completeness set by a specific or general direction given by the Board(h).

The Board may treat failure to meet those standards as failure to deliver that return.”.

(a) See footnote (d) on page 2 about “the Management Act”. Section 70A of that Act was inserted by the Finance Act 1994 (c. 9), Schedule 19, Part 1, paragraph 22 and provides for the payment to be treated as made on the day the cheque is received. Section 70A was later amended by the Finance Act 2007 (c. 11), section 95(7). Section 70A(3) of the 1970 Act and section 95(2) of the 2007 Act provide for the regulations to have priority.

(b) See footnote (e) on page 2 about “the Board”.

(c) This follows the Bills of Exchange Act 1882 (c. 61), section 92(a) as read with the Banking and Financial Dealings Act 1971 (c. 80), section 3(1).

(d) This follows the Bills of Exchange Act 1882 (c. 61), section 92(b), which was amended by the Banking and Financial Dealings Act 1971 (c. 80), section 4(4).

(e) 1971 c. 80; section 1 of and Schedule 1 to that Act relate to bank holidays. Schedule 1 was amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

(f) This follows the Bills of Exchange Act 1882 (c. 61), section 92(c).

(g) This follows the Bills of Exchange Act 1882 (c. 61), section 92(d), which was inserted by the Banking and Financial Dealings Act 1971 (c. 80), section 4(4). Section 4(3) of the latter Act makes further provision about such orders.

(h) See footnote (e) on page 2 about “the Board”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income and Corporation Taxes (Electronic Communications) Regulations 2003 (S.I. 2003/282) with the following effects.

Company tax returns for corporation tax return periods ending on 1 April 2010 or later must be delivered electronically as of 1 April 2011**(a)**. The means of doing so must be those approved by HM Revenue & Customs**(b)**, whose set standards of accuracy and completeness must be met**(c)**.

Corporation tax, and related interest and penalties, must be paid electronically as of 1 April 2011**(d)**. If such payments are tendered, accepted and paid by cheque, they will be treated as made on the second business day after when the cheque is received**(e)**.

The existing general rules for electronic returns and payments are unchanged**(f)**.

A full Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the HMRC website at <http://www.hmrc.gov.uk/better-regulation/ia.htm> and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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- (a)** Paragraph 7 in the Schedule inserts a new regulation 3(2A) to this effect. Paragraph 9 inserts a new regulation 3(10) which creates exceptions for companies under a winding-up order, administration or administrative receivership. Paragraph 9 also inserts a new regulation 3(11) which makes an exception when regulation 3(2A) is incompatible with the religious beliefs of all the company's directors and its secretary, or of all the individuals in an unincorporated association.
 - (b)** Paragraph 8 in the Schedule amends regulation 3(5) to confirm that HM Revenue & Customs may approve XBRL, Inline XBRL and other electronic data handling techniques for the sending of information and payment (and about which, see also footnote (a) on page 4). See too regulations 3(4), 3(5) and 3(7) of S.I. 2003/282 about HM Revenue & Customs' approved forms of electronic communications, etc.
 - (c)** Paragraph 13 in the Schedule inserts a new regulation 10(3) to this effect. Paragraph 9 in the Schedule inserts new regulations 3(8) and 3(9) which provide for HM Revenue & Customs to decide whether the conditions of the scheme are met overall, and to disregard the return if they decide otherwise.
 - (d)** Paragraph 7 in the Schedule inserts new regulations 3(2B) and 3(2C) to this effect. Under regulation 3(2B), HM Revenue & Customs need not accept other forms of payment.
 - (e)** Paragraph 10 in the Schedule inserts a new regulation 3A to this effect (which takes priority over the Taxes Management Act 1970 (c. 9), section 70A, under which such a payment by cheque would be treated as made on the day received). See also footnote (d) on this page.
 - (f)** Paragraphs 1 to 6, and 11 to 12, in the Schedule adapt S.I. 2003/282 so that the existing general rules apply to both voluntary and compulsory electronic delivery of returns and electronic payments.

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