

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT No. 2)
REGULATIONS 2014

2014 No. 1017

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

This Instrument amends the Income Tax (Pay As You Earn) Regulations (S.I. 2003/2682) (“the 2003 Regulations”) in relation to the charging of interest on tax paid late and the payment of repayment interest on overpaid tax under sections 101 and 102 of the Finance Act 2009 (c. 10).

3. Matters of special interest to the Select Committee on Statutory Instruments

This Instrument makes reference to a direction made by HMRC under the 2003 Regulations regarding approved methods of electronic communication for the making of payments. The most recent direction was issued on 13 March 2012 and was published on the HMRC website on 16 March 2012. As there is no paper copy of the direction for inspection, the text of the relevant paragraph of that direction (paragraph 5) has been reproduced in a footnote to this Instrument for the benefit of those employers who are not able to access the direction via the internet.

4. Legislative Context

- 4.1 The 2003 Regulations govern the operation of the Pay As Your Earn (“PAYE”) system under which Income Tax is deducted at source from employees’ pay.
- 4.2 The 2003 Regulations make provision, amongst other matters, requiring a) an employer to report information about payments to employees to HMRC on or before making those payments (that is in real time); b) to calculate and pay over the tax deducted for each tax month and c) the date by which that amount must be paid to HMRC.
- 4.3 Sections 101 and 102 of the Finance Act 2009 make provision for new rules for interest on sums payable to HMRC (where tax is paid late) and by HMRC (where tax has been overpaid). These sections apply to late payments and overpayments of tax deducted under the PAYE system for the tax year 2014-15 and subsequent tax years.

- 4.4 Under the 2003 Regulations any error in a return should be corrected by amending the next return that the employer is required to submit to HMRC. This Instrument amends the 2003 Regulations to make provision for the date of payment where a correction of an error in an earlier return results in an overpayment of tax in a subsequent return.
- 4.5 This Instrument also amends regulation 69 of the 2003 Regulations to provide the due and payable date for payment in cases where the employer does not report a payment made in a month to HMRC. The tax on that amount will be due and payable on the same date that it would have been if the employer had included that payment in the appropriate return.
- 4.6 The collection of Class 1 National Insurance Contributions (NICs) relies on the PAYE system. Similar amendments are being made to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) at the same time as these Regulations.

5. Territorial Extent and Application

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

- *What is being done and why*

- 7.1 Since 6 April 2013 the majority of employers have been required to operate PAYE in real time under the real time information (“RTI”) programme.
- 7.2 RTI enables HMRC to have regard to amounts that an employer records as deducted each month and how much the employer has paid over to HMRC.
- 7.3 Although the payment obligation for employers has not changed under RTI, interest will be charged and paid in-year on sums due in relation to tax year 2014-15 and onwards, rather than after the end of the tax year.
- 7.4 Repayment interest applies a simple and consistent interest to overpayments of taxes, duties and penalties. Repayment interest is recompense for the loss of use of the money that has been overpaid.

7.5 Sections 101 and 102 of Finance Act 2009 contain provisions for late payment interest on sums due to HMRC and repayment interest on sums to be paid by HMRC.

7.6 These provide for a single set of rules for interest across the taxes and duties for which HMRC has responsibility. The intention is that the rules will apply to all new taxes and to existing taxes over time and will be switched for various taxes and duties using an Appointed Day Order.

- ***Consolidation***

7.7 There are currently no plans to consolidate the instrument that is being amended.

8. Consultation outcome

HMRC has consulted widely on the impact of employers reporting PAYE in real time. This Instrument amends the 2003 legislation to make provision for a start date from which repayment interest can be calculated in cases where an employer has made a correction to a return. It also provides a due date for tax where an employer does not report a payment to HMRC. This Instrument therefore relates to the charging of late payment interest and the payment of repayment interest in accordance with sections 101 and 102 of the Finance Act 2009 and gives effect to previously announced policy. There was no separate consultation on these Regulations.

9. Guidance

Extensive guidance has been published on HMRC's website for employers using RTI and this will be updated to reflect these changes.

10. Impact

10.1 All employers including charities or voluntary bodies are required to use RTI.

10.2 The legislation is applicable to employers and contractors who either do not make payment of the sums referred to in paragraph 2 above by the due and payable date or who overpay such sums to HMRC.

10.3 A Tax Information and Impact Note has not been prepared for this instrument as it gives effect to previously announced policy.

11 Regulating small business

11.1 The legislation applies to small business.

12 Monitoring & review

The legislation contained within this Instrument will be monitored and reviewed as appropriate within the context of the wider legislative scheme.

13 Contact

The following can answer any queries regarding the instrument:

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