
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“the principal Regulations”) which make provision for the assessment, charge, collection and recovery of income tax in respect of all pay as you earn (“PAYE”) income.

These Regulations are made as a consequence of the introduction of in year late filing penalties in Schedule 55 to the Finance Act 2009 (c. 10) for employers who fail to deliver returns in accordance with regulation 67B or regulation 67D of the principal Regulations. In year late filing penalties have been introduced by the Finance Act 2009, Schedule 55 (Penalties for failure to make returns) (Appointed Days and Consequential Provision) Order 2014 (S.I. 2014/2395) (C105). This is the first exercise of the powers in paragraph 6C of Schedule 55 to the Finance Act 2009.

The general rule, as set out in regulation 67B(1) of the principal Regulations, is that an employer is required to deliver a return on or before making a payment to an employee. This general rule is overridden in a number of cases (for example where the employer meets the conditions in regulation 67B(1A) in which case the employer is permitted to deliver all the returns in the tax month by the date of the last payment in that month, and regulations 67BA and 67BB which permit an employer to deliver a return within seven days following the date of payment in certain circumstances). Employers who satisfy the conditions in regulation 67D of the principal Regulations are permitted to deliver one return for a tax quarter and that return must be delivered no more than 14 days after the end of the quarter to which it relates.

Regulation 2 inserts new regulations 67I to 67K into the principal Regulations. New regulation 67I sets out the quantum of the penalty where an employer fails to file a return by the filing date. The quantum of the penalty is set by reference to the number of persons employed by the employer in the period to which the return relates.

New regulation 67J provides that the initial period referred to in paragraph 6C(3), 6C(4) and 6C(5) of Schedule 55 to the Finance Act 2009 is thirty days. A new employer which does not file a return on or before making the relevant payment to an employee will not be liable to a late filing penalty providing that the return is made within 30 days of the date on which the employer made the first relevant payment to an employee.

New regulation 67K disapplies the unpenalised default provision in paragraph 6C(4) of Schedule 55 to the Finance Act 2009 in two instances. The first instance relates only to employers who are “small existing Real Time Information employers” or “new Real Time Information employers” (which terms are defined in new regulation 67K) and only to returns which have a filing date in the period 6th March to 5th April 2015. As a consequence if either a small existing Real Time Information employer or a new Real Time Information employer does not make a return on or before making the last relevant payment in the tax year 2014-15, that employer will be liable to a late filing penalty. The second instance is where an employer operates an annual PAYE scheme (which term is defined in new regulation 67K). As a consequence, if that employer fails to make the return in respect of that scheme or it is made late, that employer will be liable to a late filing penalty in respect of that return.

A Tax Information and Impact Note covering this instrument was published on 20 March 2013 alongside the Budget documentation and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.