

**2014 No. 2396**

**INCOME TAX**

**The Income Tax (Pay As You Earn) (Amendment No. 3)  
Regulations 2014**

*Made* - - - - 11.15 a.m on 11th September 2014

*Laid before the House of Commons*      12th September 2014

*Coming into force* - - -                      6th October 2014

The Commissioners for Her Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by section 684(1) and (2) of the Income Tax (Earnings and Pensions) Act 2003 (a) and by paragraph 6C(5), (7), (8)(a), (9) and (11) of Schedule 55(b) to the Finance Act 2009.

**Citation, commencement, effect and interpretation**

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No. 3) Regulations 2014 and come into force on 6th October 2014.

(2) Regulation 2 has effect in relation to a failure to deliver a return to Her Majesty’s Revenue and Customs in relation to relevant payments made—

- (a) on or after 6th October 2014, where the employer is a large existing Real Time Information employer; and
- (b) on or after 6th March 2015 where—
  - (i) the employer is a small existing Real Time Information employer; or
  - (ii) a person becomes a new Real Time Information employer after 6th October 2014.

(3) In this regulation—

“large existing Real Time Information employer” means a Real Time Information employer which as at 6th October 2014 employs at least 50 employees;

“new Real Time Information employer” means a Real Time Information employer to which HMRC issues an employer’s PAYE reference after 6th October 2014;

“Real Time Information employer” means a person who is within regulation 2A (real time information employers) of the Income Tax (Pay As You Earn) Regulations 2003(c) or who is

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- (a) 2003 c. 1. Section 684 has been relevantly amended by section 145 of the Finance Act 2003 (c. 14), paragraphs 102(2) and 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (so that the Commissioners for Her Majesty’s Revenue and Customs have the power to make the Regulations), section 94(3) of the Finance Act 2006 (c. 25), paragraphs 2 to 7 of Schedule 58 to the Finance Act 2009 (c. 10), section 85 of Finance Act 2011 (c. 11) and by section 225 of, and paragraph 5 of Schedule 1 to, the Finance Act 2012 (c. 14).
  - (b) 2009 c. 10. Paragraph 6C of Schedule 55 to the Finance Act 2009 was inserted by paragraph 6 of Schedule 50 to the Finance Act 2013 (c. 29).
  - (c) S.I. 2003/2682 amended by S.I. 2007/1077, 2012/822, 2013/521, 2013/2300 and 2014/472; there are other amending instruments but none are relevant. Regulation 2A was inserted by regulation 4 of S.I. 2012/822 and has been amended by regulation 14 of S.I. 2013/521.

treated by regulation 10 (application to agencies and agency workers), regulation 11 (application to pension payers and pensioners) or regulation 12 (application to other payers and payees)(a) as an employer for the purposes of those Regulations;

“relevant payments” has the meaning given by regulation 4 of the Income Tax (Pay As You Earn) Regulations 2003 (relevant payments);

“small existing Real Time Information employer” means a Real Time Information employer which as at 6th October 2014 employs no more than 49 employees.

(4) For the purposes of paragraph (3) “employer’s PAYE reference” in relation to a Real Time Information employer means the combination of letters, numbers, or both, used by HMRC to identify a Real Time Information employer for the purposes of the Income Tax (Pay As You Earn) Regulations 2003 and the number which identifies that employer’s HMRC office.

### **Amendment of the Income Tax (Pay As You Earn) Regulations 2003**

2. The Income Tax (Pay As You Earn) Regulations 2003 are amended by inserting after regulation 67H (payments and recoveries)(b)—

*“Penalties under Schedule 55 to the Finance Act 2009*

#### **Penalty: failure to comply with regulation 67B or 67D**

**67I.**—(1) For the purposes of paragraph 6C of Schedule 55 to the Finance Act 2009 (amount of penalty: real time information for PAYE)(c), a Real Time Information employer which fails to deliver a return falling within item 4 in the Table in paragraph 1 of that Schedule in accordance with—

- (a) regulation 67B (real time returns of information about relevant payments)(d);
- (b) regulation 67BA (employees in respect of whom employer is not required to maintain a deductions working sheet)(e);
- (c) regulation 67BB (employees paid in specific circumstances)(f);
- (d) regulation 67C (modification of the requirements of regulation 67B: notional payments)(g); or
- (e) regulation 67D (exceptions to regulation 67B)(h)

as the case may be, is liable to a penalty of the amount set out in paragraph (2).

(2) Where a Real Time Information employer fails to deliver such a return and the number of persons employed in the period to which the return relates is—

- (a) no more than 9, the penalty is £100;
- (b) at least 10 but no more than 49, the penalty is £200;
- (c) at least 50 but no more than 249, the penalty is £300; and
- (d) at least 250, the penalty is £400.

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(a) Regulations 10, 11 and 12 were amended by regulation 7 of S.I. 2013/521 and regulation 11 has also been amended by regulation 5 of S.I. 2012/822.

(b) Regulation 67H was inserted by regulation 27 of S.I. 2012/822 and amended by regulation 26 of S.I. 2013/521.

(c) 2009 c. 10. Paragraph 6C was inserted by paragraph 6 of Schedule 50 to the Finance Act 2013 (c. 29).

(d) Regulation 67B was inserted by regulation 27 of S.I. 2012/822 and has been amended by regulation 18 of S.I. 2013/521, regulation 2 of S.I. 2013/2300 and regulation 4 of S.I. 2014/472.

(e) Regulation 67BA was inserted by regulation 19 of S.I. 2013/521.

(f) Regulation 67BB was inserted by regulation 19 of S.I. 2013/521.

(g) Regulation 67C was inserted by regulation 27 of S.I. 2012/822.

(h) Regulation 67D was inserted by regulation 27 of S.I. 2012/822 and has been amended by regulation 21 of S.I. 2013/521 and regulation 5 of S.I. 2014/472.

### **Penalty: initial period**

**67J.** For the purposes of paragraph 6C(3), (4) and (5) of Schedule 55 to the Finance Act 2009 (initial period), the duration of the initial period is thirty days.

### **Penalty: first failure to deliver a return in a tax year**

**67K.**—(1) Paragraph 6C(4) of Schedule 55 to the Finance Act 2009 (unpenalised default) does not apply to any failure to deliver a return falling within item 4 in the Table in paragraph 1 of that Schedule in accordance with regulation 67B, regulation 67BA, regulation 67BB, regulation 67C or regulation 67D, as the case may be,—

- (a) by a small existing Real Time Information employer or a new Real Time Information employer in the period 6th March 2015 to 5th April 2015; or
- (b) for any tax year for which a Real Time Information employer operates an annual PAYE Scheme.

(2) For the purposes of paragraph (1)(a)—

- (a) an employer is a small existing Real Time Information employer if at 6th October 2014 that employer employed no more than 49 employees; and
- (b) an employer is a new Real Time Information employer if it is issued with an employer's PAYE reference after 6th October 2014.

(3) For the purposes of paragraph (1)(b), a Real Time Information employer operates an annual PAYE Scheme for a tax year if for that year—

- (a) all the employees are paid annually;
- (b) all the employees are paid on the same date; and
- (c) the Real Time Information employer is only required under regulation 69 (due date and receipts for payment of tax)(a) to pay HMRC annually.”.

*Jim Harra  
Edward Troup*

At 11.15.a.m on 11th September 2014 Two of the Commissioners for Her Majesty's Revenue and Customs

### **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

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(a) Regulation 69 has been amended by regulation 13 of S.I. 2007/1077, regulation 30 of S.I. 2012/822 and by regulation 27 of S.I. 2013/521.

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 disapples 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.

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