

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2017
2017 No. 414

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument makes amendments to the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2001/1004) (the "PAYE Regulations") which make provision for the assessment, charge, collection and recovery of income tax under the PAYE system. The changes have effect from 6th April 2017. The amendments cover:-

- provisions for the calculation, reporting, payment and recovery of the apprenticeship levy;
- consequential amendments relating to the Scottish Rate of Income Tax which allows the Scottish Parliament to set Scottish basic rate and other rates of Income Tax; and
- provisions for calculating the amount deducted at source under the PAYE system when determining the amount payable following a simple assessment.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

The Apprenticeship Levy

4.1 The PAYE Regulations govern the operation of the PAYE system under which income tax is deducted from payments made to employees and pensioners.

4.2 From April 2017, the way the Government funds apprenticeships is changing, through the introduction of the apprenticeship levy.

4.3 The apprenticeship levy legislation is contained in Part 6 of Finance Act 2016 and these regulations use the powers in Part 6 of Finance Act 2016 for the first time.

Scottish Rate of Income Tax

4.4 The way the Scottish Parliament sets the Scottish rates of income tax has changed. The Scottish Parliament may by a Scottish rate resolution, set the Scottish basic rate,

and any other rates, of income tax in respect of the non-savings income of Scottish taxpayers. The first tax year for which these powers can be exercised is 2017/18.

- 4.5 The Scottish Rate of Income Tax legislation is contained in the Scotland Act 1998, as amended by the Scotland Act 2016.

Simple assessment

- 4.6 From April 2017, HMRC will be able to make an assessment of Income Tax or Capital Gains Tax (CGT) liability without the individual first being required to complete a Self Assessment tax return. This assessment is called a Simple Assessment. The Simple Assessment legislation is contained in section 167 of, and Schedule 23 to the Finance Act 2016.
- 4.7 The Simple Assessment legislation contained in Finance Act 2016 includes a new provision, section 59BA (7) which was inserted into the Taxes Management Act 1970 (“TMA”). This allows the PAYE Regulations to make provision for adjustments to be made in determining the amount of tax deducted at source for the purpose of calculating any difference, under section 59BA (2) TMA, between the amount of income tax and capital gains tax contained in a simple assessment and the aggregate of any payments on account and the amount of tax deducted at source. This instrument amends the PAYE Regulations to provide for such adjustments to be made.

5. Extent and territorial Application

- 5.1 The instrument extends to all of the United Kingdom.
- 5.2 The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 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

The Apprenticeship Levy

- 7.1 The apprenticeship levy was announced at Summer Budget 2015, and at Autumn Statement 2015 it was announced that it would come into effect in April 2017. The levy will support the government’s commitment to improving productivity by increasing the quantity and quality of apprenticeships. The government has committed to creating 3 million new apprenticeship starts by 2020.
- 7.2 The apprenticeship levy will raise around £3 billion each year. HMRC will collect the levy and the Department of Education (DfE) and the Skills Funding Agency will make funding available to employers with employees in England for apprenticeships through their apprenticeship service.
- 7.3 The apprenticeship levy will be a tax on employers operating in the UK to fund new apprenticeships. The levy will be charged at a rate of 0.5% of an employer’s pay bill. Employers (subject to the rules in respect of connected employers) will have an annual allowance of £15,000 to offset against their levy payment and this means that

employers with a pay bill over £3 million, and some employers in a group of connected companies or charities where the group's combined annual pay bill is in excess of £3 million, will be required to pay the levy. To make the payment and reporting of the levy as straightforward as possible for employers, they will report and pay the apprenticeship levy alongside their Pay as You Earn and National Insurance contributions each month.

- 7.4 In England, control of apprenticeship funding will be put in the hands of employers through the apprenticeship service. The levy will help to deliver new apprenticeships and it will support quality training by putting employers at the centre of the new system. Levy paying employers will be able to put funds raised in levy towards the training and end point costs of apprenticeships starting on, or after, 1 May 2017.

The Scottish Rate of Income Tax

- 7.5 Scottish Rate of Income Tax - The Scotland Act 2016 increased the financial accountability of the Scottish Parliament through devolution of the rates and bands of income tax.
- 7.6 Consequential changes to the Regulations are required to provide for the setting of the Scottish basic rate, and any other rates, by the Scottish Parliament.

Simple Assessment

- 7.7 At March Budget 2015 the government published 'Making Tax Easier: The end of the tax return' setting out a vision to modernise the tax system by replacing tax returns with digital tax accounts for millions of individuals and businesses. This is now called 'Making Tax Digital'.
- 7.8 At the same time the introduction of 'Making Tax Easier: Simpler Payment' was announced. This set out plans to introduce legislation to remove the need for customers to complete a tax return with information that HMRC already holds, simply to pay their tax bills. This is now called 'Simple Assessment'.
- 7.9 Simple Assessment is a new power which allows HMRC to make an assessment of Income Tax or Capital Gains Tax (CGT) liability without the individual first being required to complete a Self Assessment tax return.
- 7.10 Simple Assessment will allow HMRC to assess a person's tax liability on the basis of information held by HMRC. An example of when Simple Assessment can be used is where it is not possible to collect a person's annual Income Tax liability through PAYE (for example because the customer has ceased employment) and where HMRC has sufficient information about the individual to make the assessment.
- 7.11 The introduction of Simple Assessment has been broadly welcomed by consultation respondents, the media, representative bodies and the voluntary and community sectors.

Consolidation

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

8. Consultation outcome

The Apprenticeship Levy

- 8.1 On 4 February 2016 HMRC published a Policy Paper on GOV.UK on the apprenticeship levy alongside draft Finance Bill legislation, explanatory notes and the Tax Information and Impact Note, inviting comments and questions. 13 responses were received to this consultation and in response to representations received government amendments enabled a group of connected employers to decide what proportion of the levy allowance each employer in a group would apply.
- 8.2 Following Royal Assent of the Finance Act 2016 on 19 September 2016 draft regulations and a technical consultation paper asking for responses by 14 November 2016 was published. This was aimed at employers who were likely to be levy payers, employer advisers and payroll agencies. These draft regulations concentrated on the key areas of stakeholder interest relating to calculating, payment and recovery of the apprenticeship levy. The draft regulations specified how the levy would be reported through the PAYE process, along with Income Tax and National Insurance contributions and in the main were confirming the approach outlined by employer guidance earlier in 2016. There were just over 50 responses to this consultation. In the main the responses were around the policy (as reflected in Finance Act 2016 and how it applied to particular sectors) or asked questions around the practical operation of the levy. Drafting comments on the regulations were generally minor and the draft regulations were revised as appropriate (see paragraph 8.3 below). HMRC published further [guidance](#) in December 2016 in response to questions raised as part of the technical consultation.
- 8.3 On 14 December 2016 the full set of draft regulations and a technical paper, again aimed at levy paying employers, employer advisers and payroll agencies, sought responses by 3 February 2017. These draft regulations included the draft regulations consulted on in the autumn making provision for calculation, reporting, payment and recovery of the levy, plus some other provisions relating to the operation of the levy (for example retention of records). There were two main changes which we responded to as a result of the feedback received. The first was an increase in the reporting threshold from £2.8 million to £3 million for the preceding years pay bill and a change to regulation 147D, to make the pay bill reporting threshold clearer where there is a group of companies/charities. There were 27 responses and again the responses were generally around the practical operation of the levy and the policy (as reflected in Finance Act 2016), rather than technical drafting comments on the contents of the regulations. As a result, published guidance was updated and there was one minor amendment to the draft regulations related to clarifying reporting for groups.

Scottish Rate of Income Tax

- 8.4 Scottish Rate of Income Tax - These changes are consequential arising from the Scotland Act 2016.

Simple Assessment

- 8.5 On 9 December 2015 HMRC published a Policy Paper on GOV.UK on Simple Assessment entitled "Income Tax: simple assessment" alongside the draft Finance Bill, explanatory notes published on 24 March 2016 and the Tax Information and Impact Note, inviting comments and questions. These documents were published as

part of the draft clauses and explanatory notes for Finance Bill 2016. The closing date for comments on the draft legislation was 3 February 2017.

- 8.6 HMRC received 39 responses to this consultation. The most common theme was in relation to digital exclusion and whether it would be possible to receive Simple Assessment in paper format. The other main concerns raised were about the length of time allowed for customers to query the information contained within the Simple Assessment and questions around Making Tax Digital more widely on areas such as third party software and data security. As a result of the consultation responses HMRC increased the time available for customers to query their Simple Assessment from 30 to 60 days. There were no comments received by HMRC on section 59BA (7) of the TMA.

9. Guidance

The Apprenticeship Levy

- 9.1 Early guidance relating to calculating, reporting and paying the apprenticeship levy was made available online on GOV.UK in April 2016. Further and more detailed [guidance](#) was made available in December 2016 and this was updated to include additional information in February 2017. DfE, which is responsible for apprenticeships policy, has also published [updated guidance](#) on GOV.UK for the apprenticeship levy and apprenticeship funding.

Scottish Rate of Income Tax

- 9.2 Guidance for employers reporting information using Real Time Information will be updated to reflect changes to reporting requirements, in the event that the Scottish Parliament sets the Scottish basic rate, and any other rates.

Simple Assessment

- 9.3 Guidance relating to Simple Assessment will be provided on GOV.UK.

10. Impact

The Apprenticeship Levy

- 10.1 The apprenticeship levy will be paid by less than 2% of UK employers. The impact on UK business, charities, voluntary bodies or the public sector will occur if they have a pay bill of over £3 million and are therefore liable to pay the apprenticeship levy. Connected employers with pay bills of less than £3 million may also have to pay the levy depending on how the annual levy allowance has been shared across the group.
- 10.2 The [Tax Information and Impact Note](#) was published alongside [draft apprenticeship levy Finance Bill 2016 Clauses and Explanatory Notes](#) from 4 February 2016 on GOV.UK.

Scottish Rate of Income Tax

- 10.3 An Impact Assessment covering this amendment was published on 28 May 2015 alongside the draft clauses and explanatory notes for the Scotland Bill and is available on the website at <http://www.parliament.uk/documents/impact-assessments/IA15-004.pdf>.

- 10.4 The impact on business, charities or voluntary bodies is the same as for any other employer. The operational impact of this measure on the public sector is the same as for any other employer.

Simple Assessment

- 10.5 For Simple Assessment there will be no impact on businesses, because this measure is concerned with the interaction between individuals and HMRC. It is expected that there will be limited impact for charities and voluntary bodies.
- 10.6 There is no impact on the public sector.
- 10.7 A Tax Information and Impact Note on Simple Assessment was published on 9 December 2015 alongside Finance Bill and draft explanatory notes on clauses and is available on the website at <https://www.gov.uk/government/publications/income-tax-simple-assessment/income-tax-simple-assessment>.

11. Regulating small business

The Apprenticeship Levy

- 11.1 The apprenticeship levy legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people, the approach taken is that the legislation will only apply where a business has a pay bill in excess of £3 million (subject to the rules on connection).
- 11.3 Whilst there is no exemption from the apprenticeship levy for small business, the £15,000 annual apprenticeship levy allowance (which is offset against levy liability) for all employers (subject to the rules on connection) mitigates its impact on small business.

Scottish Rate of Income Tax

- 11.4 The Scottish Rate of Income Tax legislation applies to small businesses which are also employers and/or pension providers.
- 11.5 The legislation applies in the same way to small businesses as it does to any other business. Small businesses which are also employers are already required to deliver information to HMRC on or before making payments to their employees.

Simple Assessment

- 11.6 The Simple Assessment legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 HMRC will monitor the operation and administration of these changes through continued communication with employers and external stakeholder groups.
- 12.2 For Simple Assessment, the legislation will be monitored and assessed alongside other measures in the government's package for Making Tax Digital.

13. Contact

- 13.1 For apprenticeship levy contact Joanne Collings at HMRC Tel: 03000 575869 or email: joanne.collings@hmrc.gsi.gov.uk .
- 13.2 For the Scottish Rate of Income Tax contact Terence Brown at HMRC Tel: 03000 586418 or email: terence.brown@hmrc.gsi.gov.uk
- 13.3 For Simple Assessment contact Emma Cartledge at HMRC Tel 03000 586779 or email: emma.cartledge@hmrc.gsi.gov.uk