

**EXPLANATORY MEMORANDUM TO**  
**THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) (NO. 2)**  
**REGULATIONS 2024**

**2024 No. 355**

**1. Introduction**

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

**2. Declaration**

- 2.1 Nigel Huddleston MP, Financial Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Peter Downing, Deputy Director for Employment Status and Intermediaries at HMRC confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 Beatrice Awodipe at HMRC Telephone: 03000594663 or email: [beatrice.awodipe@hmrc.gov.uk](mailto:beatrice.awodipe@hmrc.gov.uk) can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 The statutory instrument amends the Income Tax (Pay As You Earn) Regulations 2003 (PAYE Regulations), inserting new provisions regarding the recovery of income tax most likely to arise following a compliance check into the application of the off-payroll working rules.
- 4.2 Where the deemed employer (which could be a client or an agency) has failed to make income tax deductions under PAYE from payments made to an off-payroll worker, this instrument sets out the mechanism by which HMRC will be able to account for taxes already paid by individuals and their intermediary on income received from an off-payroll working engagement thereby reducing the amount due from the deemed employer.
- 4.3 This mechanism will apply where HMRC establishes that income tax or corporation tax has been paid, or assessed, by the worker or the intermediary on income received from an off-payroll working engagement, which has subsequently been recategorised as earnings from employment under the off-payroll working rules.
- 4.4 This instrument also allows HMRC to calculate this amount of income tax or corporation tax that has been paid or assessed using the best estimate that can reasonably be made by HMRC, recognising that HMRC will not always have complete information on the tax affairs of the worker and their intermediary.

*Where does the legislation extend to, and apply?*

- 4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

**5. Policy Context**

*What is being done and why?*

- 5.1 The off-payroll working rules (commonly known as IR35) were first introduced by the Finance Act 2000 and are now contained in Chapter 8 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003). They are designed to ensure that where an individual is working like an employee, they pay tax like an employee – regardless of whether they are working through their own intermediary (for example, a personal service company).
- 5.2 Administrative reforms to improve compliance with the existing rules were introduced, first for client organisations in the public sector with effect from 6 April 2017, and then to medium and large-sized client organisations in the private and voluntary sectors with effect from 6 April 2021. This legislation is contained in Chapter 10 of ITEPA 2003. These reforms shift the responsibility for determining the employment status, and for ensuring the right amount of tax is paid to HMRC, from the worker’s intermediary to the client engaging them.
- 5.3 Under the reformed rules, where HMRC finds a client organisation has incorrectly determined an off-payroll worker as self-employed, rather than employed, the deemed employer becomes liable for the full amount of income tax that should have been deducted via PAYE from the fee paid to the worker. However, the worker and their intermediary may have already paid income tax and corporation tax on the engagement as if they were self-employed.
- 5.4 Current legislation does not allow HMRC to set off amounts of tax already paid by a worker and their intermediary against the PAYE liability of the deemed employer. Instead, where a worker and their intermediary have paid tax on income that should have been subject to the off-payroll working rules, they may be entitled to claim a repayment for amounts they have paid in error. The current process results in the deemed employer bearing the full cost of the tax liability.
- 5.5 This instrument aims to deliver on the recommendations made by the Public Accounts Committee (PAC)<sup>1</sup> to address the likely overcollection of tax in the current off-payroll working rules by allowing the income tax liability under PAYE of the deemed employer to be reduced by the income tax and corporation tax that HMRC estimate has already been paid by a worker and their intermediary on the same income.

*What was the previous policy, how is this different?*

- 5.6 The previous non-legislative approach to addressing the issue of over collection of tax was to notify workers and their intermediaries of their entitlement to a tax refund of any over-paid tax, where sufficient information was available to HMRC. This process was ineffective as there was not always sufficient information to identify an individual whose engagement had been wrongly classified outside the off-payroll working rules.

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<sup>1</sup> PAC recommendations: <https://publications.parliament.uk/pa/cm5803/cmselect/cmpubacc/60/report.html>

- 5.7 This instrument will be more effective in addressing the issue of overcollection of tax. It provides a functional mechanism that will allow HMRC to account for amounts of tax already paid by the worker and their intermediary to reduce the amount owed by the deemed employer. The regulations will also prevent the worker and intermediary from making a subsequent claim for a repayment, relief or deduction against any tax liability in respect of the tax paid on the off-payroll working income where this mechanism is applied. This ensures the tax burden is shared more fairly between the deemed employer and workers.

## **6. Legislative and Legal Context**

### *How has the law changed?*

- 6.1 The current law is included in Chapter 3 of Part 11 of ITEPA 2003 and in the PAYE Regulations.
- 6.2 Provision was introduced in the Finance Act 2024 to amend Chapter 3 of Part 11 of ITEPA 2003 to give HMRC the power to make regulations that will enable it to set off an amount of income tax or corporation tax estimated to have already been paid or assessed by a worker and their intermediary on income from engagements under the off-payroll working rules. Under the regulations, that amount will be treated as having been recovered from the individual or intermediary, and that amount will not be recoverable from the deemed employer.
- 6.3 The provision allows for the amount treated as having been recovered to be the best estimate that can reasonably be made by an officer of HMRC in respect of the income tax or corporation tax already paid or assessed.
- 6.4 The provision prevents a person making a claim for the repayment of, or a claim for relief in respect of, deducting, or setting off the amount treated as having been recovered.
- 6.5 The provision will apply to PAYE assessments or settlements, that arise as a result of an error in the applications of the off-payroll working rules, from 6 April 2024 and be available in respect of deemed direct payments made on or after 6 April 2017.
- 6.6 This is the first time the power in Section 688AB of Chapter 3 of Part 11 of ITEPA 2003 has been used.

### *Why was this approach taken to change the law?*

- 6.7 This is considered the most effective approach to make the necessary changes that achieve the policy outcome.

## **7. Consultation**

### *Summary of consultation outcome and methodology*

- 7.1 The Government launched a consultation on 27 April 2023 seeking views on a potential legislative change to allow HMRC to account for tax already paid by a worker and their intermediary against the deemed employer's PAYE liability.

- 7.2 There were 45 responses to the consultation and most responses were supportive of a legislative change. The Government published its response to the consultation<sup>2</sup> on GOV.UK.
- 7.3 Following feedback on this consultation, the Government announced at Autumn Statement on 22 November 2023 that this legislative change would be introduced from 6 April 2024.
- 7.4 A draft version of the PAYE Regulations and draft supporting guidance<sup>3</sup> was subject to a 4-week technical consultation, which closed on 22 February 2024.
- 7.5 There were 13 responses to the technical consultation and responses included constructive drafting suggestions and questions, some of which related to HMRC's estimation methodology, direction notices and application of the regulations.

## **8. Applicable Guidance**

- 8.1 HMRC published draft guidance during the technical consultation for this measure to assist those preparing for the implementation of this legislation. The draft guidance has been published in the form of additions to HMRC's Employment Status Manual and contains the conditions under which the legislation can apply, the mechanics of the recovery and the appeal rights associated with it. The guidance will be republished following the technical consultation with any necessary changes on 13 March 2024 on GOV.UK

## **Part Two: Impact and the Better Regulation Framework**

### **9. Impact Assessment**

- 9.1 A Tax Information and Impact Note<sup>4</sup> covering this instrument was published at Autumn Statement 2023 on 22 November following an announcement to introduce a legislative solution to resolve the issue of HMRC over-collecting tax in cases of non-compliance with the off-payroll working rules. This Tax Information and Impact Note is up to date and reflects the impacts of the statutory instrument.

#### *Impact on businesses, charities and voluntary bodies*

- 9.2 The impact on business, charities or voluntary bodies is expected to be negligible. If medium or large-sized, then an organisation that has made errors in respect of the Chapter 10 rules, and has additional liabilities, would be able to claim a set-off, if available. One-off costs could include familiarisation with the changes. Continuing costs could include recording more information on the contractors they engage with. Whilst this information will be required to enable a business to benefit from a set-off, it will not be a legal requirement. There are not expected to be any further continuing costs.
- 9.3 The legislation does not impact small or micro businesses that are engaging workers through an intermediary as they do not fall within the off-payroll working rules.

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<sup>2</sup> Government's Response to Consultation: <https://www.gov.uk/government/consultations/off-payroll-working-calculation-of-payee-liability-in-cases-of-non-compliance/outcome/off-payroll-working-calculation-of-payee-liability-in-cases-of-non-compliance-summary-of-responses>

<sup>3</sup> Technical Consultation: <https://www.gov.uk/government/consultations/calculating-payee-liabilities-in-cases-of-non-compliance-for-off-payroll-working-ir35>

<sup>4</sup> Tax Information and Impact Note: <https://www.gov.uk/government/publications/calculation-of-payee-liability-in-cases-of-non-compliance-with-off-payroll-working/off-payroll-working-ir35-calculation-of-payee-liability-in-cases-of-non-compliance>

9.4 The impact on the public sector organisations is expected to negligible as they would be able to claim a set-off if available. One-off costs could include familiarisation with the changes. They may have continuing costs related to recording information of those they engage, although this is not a legal requirement. There are not expected to be any further continuing costs.

## **10. Monitoring and review**

### *What is the approach to monitoring and reviewing this legislation?*

10.1 The approach to monitoring this legislation is through regular communication with affected taxpayer groups.

10.2 The instrument does not include a statutory review clause. None is required in line with the requirements of the Small Business, Enterprise and Employment Act 2015.

## **Part Three: Statements and Matters of Particular Interest to Parliament**

### **11. Matters of special interest to Parliament**

11.1 None.

### **12. European Convention on Human Rights**

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

### **13. The Relevant European Union Acts**

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).