
STATUTORY INSTRUMENTS

2003 No.

INCOME TAX

**The Income Tax (Employments) (Amendment No.)
Regulations 2003**

<i>Made</i> - - - -	2003
<i>Laid before the House of Commons</i>	2003
<i>Coming into force</i> - -	2003

The Commissioners of Inland Revenue in exercise of the powers conferred upon them by section 684 of the Income Tax (Earnings and Pensions) Act 2003(a) as extended by section 202 of the Finance Act 2003(b) hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Employments) (Amendment No.) Regulations 2003 and shall come into force on 2003.

Amendment of the Income Tax (Employments) Regulations 1993

2. The Income Tax (Employments) Regulations 1993(c) are amended as follows.

3. In regulation 2D after paragraph (3) insert—

“(4) Any payment under these Regulations made electronically must use a means of electronic payment approved by means of a specific or general direction given by the Board.”

4. In regulation 3(d)—

(a) in paragraph 7(a) delete “or”; and

(b) at the end of paragraph (7)(b) add—

“; or

(c) avoiding the requirement imposed by regulation 42A of these Regulations.”.

5. At the end of regulation 40(1) add “or, where payment is made by an approved method of electronic communications, within 17 days of the end of every tax month”.

(a) 2003 c. 1.

(b) 2003 c. .

(c) S.I. 1993/744.

(d) Regulation 3(7) was inserted by the Income Tax (Employments) (Amendment) Regulations 2003 (S.I. 2003/).

6. In regulation 41(1) after “income tax quarter” insert “or, where payment is made by an approved method of electronic communications, within 17 days of the end of every income tax quarter.”.

7. After regulation 42 insert—

“ Mandatory electronic payment

42A.—(1) A large employer to whom an e-payment notice has been issued is required to use an approved method of electronic communications for the making of specified payments.

(2) For the purposes of this regulation and regulation 42B—

- (a) specified payments are payments of tax under regulation 40;
- (b) a large employer is an employer paying PAYE income to 250 or more recipients at the specified date.

(3) An employer is treated as paying PAYE income to a recipient at the specified date where—

- (a) he is required at that date by these Regulations or by regulation 6(6) of the Working Tax Credit (Payment by Employers) Regulations 2002(a) to prepare or maintain a deductions working sheet in respect of the recipient, and
- (b) he has not ceased to employ the recipient.

(4) For the purposes of this regulation—

- (a) “e-payment notice” means a notice by an officer of the Board that the employer is a large employer and accordingly is required to use an approved method of electronic communications for the making of specified payments;
- (b) “the specified date” means such date in the year preceding that to which the specified payment relates (“the preceding year”) as is announced annually by means of a direction given by the Board not later than 31st January of the preceding year.

(5) An employer may appeal against an e-payment notice—

- (a) by notice to the officer of the Board who issued the e-payment notice,
- (b) within 30 days of the issue of the e-payment notice,
- (c) on the grounds that the employer is not a large employer,

and if the appeal is successful the e-payment notice shall be withdrawn.

(6) The Board may give specific or general directions—

- (a) suspending, for any period during which the use of an approved method of electronic communications for the making of payments is impossible or impractical, any requirement imposed by these Regulations relating to the use of such means;
- (b) substituting alternative requirements for the suspended ones; and
- (c) making any provision that is necessary in consequence of the imposition of the substituted requirements.

Default surcharge

42B.—(1) Subject to paragraph (4), an employer is in default in respect of a specified payment required to be made by an approved method of electronic communications in accordance with regulation 42A where the payment is not received in full by the collector on or before the applicable due date.

(a) S.I. 2002/2172.

(2) For the purpose of this regulation the applicable due date in relation to any specified payment is the date on which payment is required in accordance with regulation 40.

(3) For the purposes of paragraph (1) and (4), a payment is not treated as received in full by the collector on or before the applicable due date unless it is made in such manner as secures (in a case where the payment is made otherwise than in cash) that, on or before the applicable date for payment of that amount, all transactions can be completed that need to be completed before the whole amount of the payment becomes available to the collector.

(4) Subject to paragraph (5), paragraph (1) does not apply if the employer had a reasonable excuse for failing to make the specified payment in such manner as secures it is received in full by the collector on or before the applicable due date and the payment is received in full by the collector without unreasonable delay after the excuse ceased.

(5) Inability to pay the specified payment is not a reasonable excuse for the purposes of paragraph (4).

(6) The an officer of the Board shall issue a default notice to any employer in default in respect of a specified payment.

(7) An employer may appeal against a default notice—

- (a) by notice to the officer of the Board who issued the default notice,
- (b) within 30 days of the issue of the default notice,
- (c) on the grounds that—
 - (i) the employer is not in default; or
 - (ii) subject to paragraph (8), the employer is not a large employer,

and if the appeal is successful the default notice shall be withdrawn.

(8) Paragraph (7)(c)(ii) does not apply where following an appeal under regulation 42A(5) the notice was not withdrawn.

(9) An employer in default in respect of any specified payment to whom a default notice and a surcharge notice have been issued is liable to a surcharge equal to the aggregate of the surcharges in respect of every default in the year in which the specified payment was due, calculated in accordance with paragraph (10).

(10) For the purpose of paragraph (9), the surcharge in respect of each default is equal to a specified percentage of the total amount of tax due for the year in which the specified payment was due, where—

- (a) the specified percentage is determined by reference to the number of the default during the surcharge period in accordance with the table below;

Table

<i>Default number (within the surcharge period)</i>	<i>Specified percentage</i>
First	0%
Second	0%
Third	0.17%
Fourth	0.17%
Fifth	0.17%
Sixth	0.33%
Seventh	0.33%
Eighth	0.33%
Ninth	0.58%
Tenth	0.58%
Eleventh	0.58%
Twelfth and subsequent defaults	0.83%

and

- (b) the surcharge period is a period which—

- (i) begins on the day following the applicable due date for the first specified payment in respect of which the employer is in default, and
- (ii) ends at the end of a year in which the employer has not been in default in respect of any specified payment.

(11) For the purposes of this regulation, a surcharge notice is a notice issued by an officer of the Board after the end of the year to an employer liable to a surcharge in respect of a default made during that year showing the total surcharge liability for that year.

(12) An employer may appeal against a surcharge notice—

- (a) by notice to the officer of the Board who issued the surcharge notice,
- (b) within 30 days of the issue of the surcharge notice,
- (c) on the grounds that—
 - (i) subject to paragraph (13), the number of defaults stated in the notice is incorrect; or
 - (ii) the amount of the surcharge is incorrect,

and if the appeal is successful the surcharge notice shall be withdrawn.

(13) Paragraph (12)(c)(i) does not apply where the disputed default has already been the subject of an appeal under paragraph (7) following which the notice was not withdrawn.

(14) A surcharge payable under this regulation is payable 30 days after the issue of the surcharge notice.

(15) A surcharge payable under this regulation is recoverable as if it were an amount of tax which an employer is liable under regulation 40 or 41 to pay to the collector.

(16) The Board may in their discretion—

- (a) mitigate any surcharge under this regulation, or
- (b) stay or compound any proceedings for the recovery of any such surcharge, and may also, after judgment, further mitigate or entirely remit the surcharge.”.

8. In regulation 46ZI(a)—

- (a) in paragraph (1) after “regulations 3(8)” insert “, 42A(5), 42B(5) and (12),”; and
- (b) in paragraph (2) after “regulations 3(8)” insert “, 42A(5), 42B(5) and (12),”.

9.—(1) Amend regulation 51 as follows.

(2) In paragraph (1) after “14 days” insert “, or 17 days where payment is made by an approved method of electronic communications,”.

(3) At the end of paragraph (3) add “or the 17th day after the end of that year where payment is made by an approved method of electronic communications”.

10. In regulation 47(1) for “14 days” substitute “17 days”.

11. In regulation 48(1)(b) for “14 days” substitute “17 days”.

(a) Regulation 46ZI was inserted by the Income Tax (Employments) (Amendment) Regulations 2003 (S.I. 2003/).
(b) Regulation 48(1) was amended by regulation 4 (a) of the Income Tax (Employments) (Amendment No. 2) Regulations 1995(S.I. 1995/447).

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Income Tax (Employments) Regulations 1993 (SI 1993/744) to provide for mandatory electronic payment of tax by large employers.

Regulation 1 provides for citation and commencement.

Regulation 2 inserts a new provision in regulation 2D of the PAYE Regulations requiring that any payment under those Regulations made electronically must use a means of electronic payment approved by means of a specific or general direction given by the Board

Regulation 4 amends regulation 3 of the PAYE Regulations to provide that an election under regulation 3 shall be disregarded if it is made wholly or mainly for the purpose of avoiding a requirement to make electronic payment.

Regulation 5 and 6 amend regulations 40 and 41 of the PAYE Regulations respectively to provide for a later due date for electronic payments.

Regulation 7 inserts new regulations 42A and 42B. New regulation 42A imposes a requirement on large employers to use an approved method of electronic communications for making specified payments. The directions referred to will be published on the Inland Revenue website at www.inlandrevenue.gov.uk and available from the [Press Office]. New regulation 42B imposes a default surcharge where a payment required to be made by an approved method of electronic communications is not received in full by the Inland Revenue on or before the relevant due date.

Regulation 8 amends regulation 46ZI of the PAYE Regulations to provide for provisions of the Taxes Management Act 1970 (c. 9) and the General Commissioners (Jurisdiction and Procedure) Regulations 1994 (S.I. 1994/1812) and the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 (S.I. 1994/1811) to apply to appeals under the new regulations.

Regulation 9 amends regulation 51 of the PAYE Regulations to provide a later date from which interest runs on unpaid tax where payment is due by an approved method of electronic communications.

Regulations 9 and 10 amend regulations 47 and 48 of the PAYE Regulations respectively to provide a later date for the issue by the collector of a notice relating to unpaid tax.