

2009 No. ****

CORPORATION TAX

The Income and Corporation Taxes (Electronic Communications) (Amendment) Regulations 2009

Made - - - - ****
Laid before the House of Commons ****
Coming into force - - ****

The Commissioners for Her Majesty’s Revenue and Customs(a) make these Regulations exercising the powers conferred by section 135 of the Finance Act 2002(b), section 204 of the Finance Act 2003(c), and sections 95(1) and 95(3) of the Finance Act 2007(d).

1. These Regulations may be cited as the Income and Corporation Taxes (Electronic Communications) (Amendment) Regulations 2009 and come into force on ****.

2. They amend the Income and Corporation Taxes (Electronic Communications) Regulations 2003(e) as described in the Schedule.

Date *Name 1*
Name 2
Two of the Commissioners for Her Majesty’s Revenue and Customs

SCHEDULE Regulation 2

Amendments to the Income and Corporation Taxes (Electronic Communications) Regulations 2003

Regulation 1(3) – references to information and delivery of information

1. In regulation 1(3), after “1999” insert “or, in context, section 135(8) of the Finance Act 2002”.

Regulation 2 – scope

2. In regulation 2(1), after “apply to” insert “(as suited to context)”.

(a) Formerly the Commissioners of Inland Revenue, until the Finance Act 2002 (c. 23) section 135 was amended by the Commissioners for Revenue and Customs Act 2005 (c. 11) Schedule 4 paragraph 95 and Schedule 2 paragraph 12 (and S.I. 2005/1126 (C. 51)); similarly for the Finance Act 2003 (c. 14) section 204, see the amendments made by the Finance Act 2007 (c. 11) section 94.
(b) 2002 c. 23; section 135 was amended as described in footnote (a), and also by the Finance Act 2007 section 93.
(c) 2003 c. 14; section 204 was amended as described in footnote (a), and also by the Finance Act 2007 section 95(6).
(d) 2007 c. 11; “the Commissioners” in section 95(1) refers to those for Her Majesty’s Revenue and Customs, see section 95(5)(a).
(e) S.I. 2003/282, amended by S.I. 2005/3338.

3. After regulation 2(1), insert—

“(1A) Paragraph (1) does not prevent regulations 3(2B) and 3A(2) applying to payments of interest on overdue corporation tax etc in connection with the operation of section 87A of the Management Act(a).”.

Regulation 3 and its heading

4. Change regulation 3’s heading to “**Use of electronic communications**”.

5. In regulation 3(1), start a new line and continue—

“This does not apply to company tax returns that must be delivered, or corporation tax-related payments that must be made, using electronic communications (see paragraphs (2A) to (2C)).”.

6. After regulation 3(2), insert—

“(2A) Companies must use electronic communications to deliver company tax returns, and in doing so must satisfy the second to fourth of those conditions.

This only applies to company tax returns delivered on 1 April 2011 or later, relating to periods ending on 1 April 2010 or later.

It does not apply to amendments to those company tax returns.

Failure to comply with this paragraph means that the company tax return in question must be disregarded and treated as not having been delivered.

(See the Finance Act 1998 Schedule 18 paragraphs 3, 5 and 15(b) for, respectively, “company tax return”, “period” and “amendment”.)

(2B) The payer must use electronic communications to make the corporation tax-related payments in paragraph (2C), and in doing so must satisfy the second and third of those conditions.

This only applies to payments made on 1 April 2011 or later.

The Board(c) need not accept such payments tendered in breach of this paragraph.

(The payer need not satisfy the conditions in paragraphs (4)(a) and (4)(c) – authenticating identity and information.)

(2C) Paragraph (2B) applies to payment of each of the following—

- (a) any amount of corporation tax payable (see paragraph 8 of Schedule 18 to the Finance Act 1998(d));

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- (a) S.I. 2003/282 regulation 1(2) abbreviates the Taxes Management Act 1970 (c. 9) to “the Management Act”. Section 87A of that Act was inserted by the Finance (No 2) Act 1987 (c. 51) section 85. It was later amended by the Income and Corporation Taxes Act 1988 (c. 1) Schedule 29 paragraph 10(4); the Finance Act 1989 (c. 26) section 179(1); the Finance Act 1991 (c. 31) Schedule 15 paragraph 2; the Taxation of Chargeable Gains Act 1992 (c. 12) Schedule 10 paragraph 2(9); the Finance Act 1993 (c. 34) Schedule 14 paragraph 4 and Schedule 18 paragraph 1; the Finance Act 1994 (c. 9) Schedule 19 Part 1 paragraph 24; the Finance Act 1995 (c. 4) Schedule 24 Part 2 paragraphs 8 and 9; the Finance Act 1996 (c. 8) Schedule 14 paragraph 1; the Finance Act 1998 (c. 36) Schedule 3 paragraph 4, Schedule 4 paragraph 4 and Schedule 27 Part 3(2); the Finance Act 1999 (c. 16) section 92(5); the Finance Act 2000 (c. 17) Schedule 28 paragraph 3(4), Schedule 29 Part 1 paragraph 9(2), and Schedule 40 Parts 2(11) and 2(12); the Finance Act 2002 (c. 23) Schedule 29 Part 9 paragraph 69(4); the Finance Act 2008 (c. 9) Schedule 35 paragraph 1; and the Corporation Tax Act 2009 (c. 4) Schedule 1 Part 1 paragraph 305.
 - (b) 1998 c. 36; these paragraphs were amended by the Commissioners for Revenue and Customs Act 2005 (c. 11) Schedule 4 paragraph 68 and S.I. 2005/1126 (C. 51). Paragraph 3 was also amended by the Income Tax Act 2007 (c. 3) Schedule 1 Part 2 paragraph 385(2).
 - (c) S.I. 2003/282 abbreviates the “Commissioners of Inland Revenue” to the “Board”, see especially regulation 1(2). This must now be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs, as stipulated by the Commissioners for Revenue and Customs Act 2005 (c. 11) section 50(1).
 - (d) 1998 c. 36; paragraph 8 was amended by the Finance Act 1999 (c. 16) section 28(5), the Finance Act 2000 (c. 17) Schedule 16 paragraph 5(2), the Finance Act 2002 (c. 23) section 92(4) and Schedule 17 paragraph 5, and the Finance Act 2006 (c. 25) section 26(7) and Schedule 26 Part 3(1).

- (b) any amount treated as such under regulation 5 or 5A of the Corporation Tax (Instalment Payments) Regulations 1998(a);
- (c) any interest payable on overdue corporation tax etc (see section 87A of the Management Act and regulation 7 of those Regulations);
- (d) a flat-rate penalty for failing to deliver a company tax return by the filing date (see paragraph 17 of that Schedule);
- (e) a tax-related penalty for failing to deliver a company tax return for an accounting period (see paragraph 18 of that Schedule).”.

7. In regulation 3(5), after “presented” insert—

“(for example, company tax returns in paragraph (2A) presented in any version of XBRL (Extensible Business Reporting Language))”.

8. After regulation 3(7), insert—

“(8) Paragraph (2A) (company tax returns) does not apply to the use of electronic communications in a way incompatible with the beliefs of a religious society or order of which—

- (a) all the company’s directors (and, if there is one, the company’s secretary) are practising members, or
- (b) all the individuals in the unincorporated association are such members.”.

9. After regulation 3, insert—

“Corporation tax-related payments by cheque

3A.—(1) Paragraph (2) applies to each of the corporation tax-related payments in regulation 3(2C) tendered by cheque.

This is only so if the Board receives that cheque on 1 April 2011 or later and that cheque is paid on its first presentation by the Board to the banker on whom it is drawn.

Where paragraph (2) applies, section 70A of the Management Act(b) does not (under that section, payments by cheque are treated as made on the day received).

(2) The payment is to be treated as made on the second business day after the day on which the Board received that cheque.

(3) For these purposes, a “business day” is any day except—

- (a) Saturday, Sunday, Good Friday or Christmas Day;
- (b) a bank holiday under the Banking and Financial Dealings Act 1971(c);
- (c) a day appointed by Royal proclamation as a public fast or thanksgiving day(d);
- (d) a day declared by an order under section 2(1) of the Banking and Financial Dealings Act 1971 to be a non-business day(e).”.

Regulation 10 – use of unauthorised means of electronic communications

10. In regulation 10(2)(a), after “and” insert “, if necessary, ”.

(a) S.I. 1998/3175, amended by the Finance Act 2002 (c. 23) sections 92(6) and 92(7), and by S.I. 1999/1929, 2000/892, 2001/3629, 2005/889, 2008/2649.

(b) S.I. 2003/282 regulation 1(2) abbreviates the Taxes Management Act 1970 (c. 9) to “the Management Act”. Section 70A of that Act was inserted by the Finance Act 1994 (c. 9) Schedule 19 Part 1 paragraph 22, and later amended by the Finance Act 2007 (c. 11) section 95(7). (See in particular section 70A(3) of the 1970 Act and section 95(2) of the 2007 Act.)

(c) 1971 c. 80; section 1 of and Schedule 1 to that Act relate to bank holidays. Schedule 1 was amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

(d) This follows the Bills of Exchange Act 1882 (c. 61) section 92(c). For amendments, etc to section 92, see the Banking and Financial Dealings Act 1971 sections 3(1), 4(1) and 4(4).

(e) This follows the Bills of Exchange Act 1882 section 92(d), inserted by the Banking and Financial Dealings Act 1971 section 4(4) (and see also section 4(3) of the latter Act).

11. After regulation 10(2), insert—

“(3) A company tax return delivered under regulation 3(2A) by means of electronic communications must meet standards of accuracy and completeness set by a specific or general direction given by the Board.

The Board may treat failure to meet those standards as failure to deliver that return.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations mean**(a)** that company tax returns (corporation tax) for periods ending on 1 April 2010 or later must be delivered, as of 1 April 2011, using electronic communications**(b)**. They must meet standards of accuracy and completeness set by HM Revenue & Customs**(c)**.

Corporation tax (and related interest and penalties) must be paid electronically as of 1 April 2011**(d)**.

If such payments are paid by cheque, they will be treated as made on the second business day after when the cheque is received**(e)**.

The existing general rules for voluntary electronic returns and payments continue applying**(f)**.

A full Impact Assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from www.hmrc.gov.uk and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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- (a)** By amending the Income and Corporation Taxes (Electronic Communications) Regulations 2003 (S.I. 2003/282).
 - (b)** Item 6 in the Schedule, which inserts a new regulation 3(2A). (This does not apply if it is incompatible with the religious beliefs of all the company’s directors and its secretary, or of all the individuals in an unincorporated association – Item 8 in the Schedule inserts a new regulation 3(8) to this effect.)
 - (c)** Item 11 in the Schedule, which inserts a new regulation 10(3).
 - (d)** Item 6 in the Schedule, which inserts new regulations 3(2B) and 3(2C).
 - (e)** Item 9 in the Schedule, which inserts a new regulation 3A (taking priority over the Taxes Management Act 1970 (c. 9) section 70A, under which such a payment by cheque would be treated as made on the day received).
 - (f)** Items 1 to 5, 7 and 10 in the Schedule so adapt S.I. 2003/282.