

2012 No.

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment) Regulations
2012**

| | |
|---|-----------------------|
| <i>Made</i> - - - - | *** |
| <i>Laid before the House of Commons</i> | *** |
| <i>Coming into force</i> - - | <i>6th April 2012</i> |

The Commissioners for Her Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by section 98A of the Taxes Management Act 1970(a), section 136 of the Finance Act 2002(b) and sections 684, 706, 707 and 710 of the Income Tax (Earnings and Pensions) Act 2003(c) and now exercisable by them(d):

PART 1

General

Citation, Commencement and Interpretation

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 and come into force on 6th April 2012.

(2) In these Regulations, “the 2003 Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(e).

Amendment of the 2003 Regulations

2. The 2003 Regulations are amended as provided for in regulations 3 to 83.

(a) 1970 c.9. Section 98A was inserted by section 165 of the Finance Act 1989 (c.26). It was amended, so far as relevant, by paragraph 138 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“ITEPA”) and paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c.11).

(b) 2002 c.23.

(c) 2003 c.1. Section 684 was amended, so far as relevant, by section 145 of the Finance Act 2003 (c.14), paragraph 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c.11) (“CRCA”), section 94 of the Finance Act 2006 (c.25) and paragraphs 2 to 7 of Schedule 58 to the Finance Act 2009 (c.10).

(d) Paragraph 102 of Schedule 4 to CRCA amended section 684 of ITEPA so that the Commissioners for Her Majesty’s Revenue and Customs have the power to make the Regulations. The functions of the Commissioners of Inland Revenue under section 136 of the Finance Act 2002 were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(1) of CRCA. Section 50(1) of CRCA provides that, in so far as is appropriate in consequence of section 5, a reference, howsoever expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

(e) S.I. 2003/2682; relevant amending instruments are S.I. 2004/851, 2005/2691, 2006/777, 2007/1077, 2007/2069, 2007/2969, 2008/782, 2008/2601, 2009/588, 2010/668, 2011/729 and 2011/1054.

PART 2

Real Time Information

Interpretation

3. In regulation 2(1) (interpretation), insert in the appropriate places—

““leaver statement” means the statement required by regulation 36ZA;”;

““non-Real Time Information employer” means an employer other than one within regulation 2A;”;

““non-Real Time Information pension payer” means a pension payer other than one within regulation 2B;”;

““Real Time Information employer” has the meaning given in regulation 2A;”;

““Real Time Information pension payer” has the meaning given in regulation 2B;”.

4. After regulation 2 insert—

“Real Time Information employers

2A.—(1) The following are Real Time Information employers—

- (a) an employer who has entered into an agreement with HMRC to comply with the provisions of these Regulations which are expressed as relating to Real Time Information employers,
- (b) an employer within paragraph (2),
- (c) on and after 6th April 2013, employers to whom regulation 67D (exceptions to regulation 67B) applies, and
- (d) on and after 6th October 2013, all employers.

(2) An employer is within this paragraph if the employer has been given a general or specific direction by the Commissioners for Her Majesty’s Revenue and Customs before 6th October 2013 to deliver to HMRC returns under regulation 67B (real time returns of information about relevant payments).

Real Time Information pension payers

2B.—(1) The following are Real Time Information pension payers—

- (a) a pension payer who has entered into an agreement with HMRC to comply with the provisions of these Regulations which are expressed as relating to Real Time Information pension payers or Real Time Information employers,
- (b) a pension payer within paragraph (2),
- (c) on and after 6th April 2013, pension payers to whom regulation 67D (exceptions to regulation 67B) applies, and
- (c) on and after 6th October 2013, all pension payers.

(2) A pension payer is within this paragraph if the pension payer has been given a general or specific direction by the Commissioners for Her Majesty’s Revenue and Customs before 6th October 2013 to deliver to HMRC returns under regulation 67B (real time returns of information about relevant payments).”.

Application of the 2003 Regulations to agencies and agency workers

5. In the list in regulation 10(3) (application to agencies and agency workers)—

- (a) after the entry relating to regulation 36 insert—

- “regulation 36ZA cessation of employment with a Real Time Information employer: leaver statement”, and
- (b) after the entry relating to regulation 51 insert—
- “regulation 53M(5) to (7) effects of employment ceasing on leaver statement procedure”.

Application of the 2003 Regulations to pension payers and pensioners

6. In the list in regulation 11(2) (application to pension payers and pensioners)—
- (a) after the entry relating to Chapter 2 of Part 3 insert—
- “Chapter 2A of Part 3 new employees (other than pensioners) of Real Time Information employers”,
- (b) in the entry relating to regulation 71, for “regulation 68” substitute “regulations 67G and 68”, and
- (c) in the entry relating to regulation 151, after “P45” insert “or leaver statement”.

Cessation of employment

7. For the heading to regulation 36 substitute “Cessation of employment with a non-Real Time Information employer: Form P45”.
8. In regulation 36(1) (cessation of employment: Form P45), for “the employer” substitute “a non-Real Time Information employer”.
9. After regulation 36 insert—

“Cessation of employment with a Real Time Information employer: leaver statement

36ZA.—(1) On ceasing to employ an employee in respect of whom a code has been issued, a Real Time Information employer must give a leaver statement to the employee.

(2) The leaver statement must be given to the employee on the day on which the employment ceases or, if that is not practicable, without unreasonable delay.

(3) Retirement on pension is not cessation of employment for the purposes of this regulation if the PAYE pension income is paid by the same employer after retirement.

(4) The leaver statement must contain the following information—

- (a) the employer’s name,
- (b) the employer’s PAYE reference,
- (c) the employee’s national insurance number, if known,
- (d) the employee’s name,
- (e) the date on which the employment ceased,
- (f) the employee’s code or, if more than one, the latest code issued by HMRC for the tax year during which the employment ceased,
- (g) whether the employee’s code is used on the cumulative basis,
- (h) if the employee’s code is used on the cumulative basis, the tax week or month in which the last relevant payment was made to the employee or, in a case falling within regulation 24, was treated as having been made,
- (i) the total payments to date and the corresponding total net tax deducted, and

- (j) if different to the information provided under sub-paragraph (h), the total payments to date relating to the employment in question and the corresponding total net tax deducted.

(5) No obligation on an employer to prepare a statement under this regulation arises on the death of an employee.”.

Income subject to retrospective tax provision – information to employee

10. In regulation 36A(1)(e) (income subject to retrospective tax provision – information to employee), after “P45” insert “or a leaver statement”.

PAYE income paid after employment ceased

11. In regulation 37 (PAYE income paid after employment ceased)—

- (a) in paragraph (1), after “P45” insert “or, as the case may be, the leaver statement”, and
- (b) in the list in paragraph (4), after “P46” insert—

“Chapters 2A and 3A of this Part

new employees of Real Time Information employers and new pensioners receiving a pension from Real Time Information pension payers”.

Income paid after cessation of employment subsequently becoming subject to PAYE

12. In regulation 37A(1)(c) (income paid after cessation of employment subsequently becoming subject to PAYE) after “P45” insert “or, as the case may be, a leaver statement”.

Death of employee of non-Real Time Information employer

13. In the heading to regulation 38, after “employee” insert “of a non-Real Time Information employer”.

14. In regulation 38(1) (death of employee), after “pensioner”, insert “of a non-Real Time Information employer”.

Death of pensioner in receipt of a pension from a non-Real Time Information pension payer

15. In the heading to regulation 39, after “pensioner” insert “in receipt of a pension from a non-Real Time Information pension payer”.

16. In regulation 39(1) (death of pensioner), after “pensioner” insert “in receipt of a pension from a non-Real Time Information pension payer”.

Employee’s duty to provide Form P45 or leaver statement

17. In—

- (a) the cross heading above regulation 40, and
- (b) the heading to regulation 40,

after “P45” insert “or a leaver statement”.

18. In regulation 40 (employee’s duty to provide Form P45)—

- (a) in paragraphs (1) and (2), after “P45” insert “or a leaver statement”,
- (b) in paragraph (3), after “employer” insert and “and the new employer is a non-Real Time Information employer”, and
- (c) after paragraph (5) insert—

“(6) Paragraphs (1) and (2) also do not apply if an employee objects to the disclosure of the total payments to date to the new employer.”.

New employees of non-Real Time Information employers

19. For the heading to Chapter 2 of Part 3 substitute “New employees (other than pensioners) of non-Real Time Information employers: Forms P45 and P46 and leaver statements”.

20. For regulation 41 (scope of Chapter 2 of Part 3 of the 2003 Regulations) substitute—

“Scope of Chapter 2

41. This Chapter applies to—

- (a) non-Real Time Information employers, and
- (b) Real Time Information employers to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee’s employment,

in cases to which Chapters 3 (new pensioners: Forms P45 and P46(Pen)) and 3A (new pensioners receiving pensions from Real Time Information pension payers) do not apply.”.

Procedure if employer receives Form P45 or a leaver statement

21. In the heading to regulation 42, after “P45” insert “or a leaver statement”.

22. In regulation 42 (procedure if employer receives Form P45)—

(a) in paragraph (1), after sub-paragraph (a) insert—

“(aa) if an employee gives a leaver statement to the employer on commencing employment and the employer is satisfied the information given is correct,”

(b) in paragraphs (2), (3), (4)(a), (5)(a), (6) and (7)(d) after “P45” insert “or the leaver statement”.

(c) for paragraph (7)(e) substitute—

“(e) any figure recorded in accordance with paragraph (5)(c) or (6)(c) of regulation 43 (Form P45 or leaver statement for current tax year), if different from the total tax to date shown on Parts 2 and 3 of Form P45 or the leaver statement,”

(d) after paragraph (8) insert—

“(9) In a case where the employee has given the new employer a leaver statement—

- (a) the new employer must comply with the obligation in paragraph (7) by completing Part 3 of a blank P45, and
- (b) paragraph (8) applies accordingly.”.

Form P45 or a leaver statement for the current tax year

23. In the heading to regulation 43, after “P45” insert “or leaver statement”.

24. In regulation 43 (Form P45 for current tax year), in paragraphs (1), (3) to (7), (11) and (12), after “P45” insert “or a leaver statement”.

Form P45 or a leaver statement for a previous tax year: employment starting on or before 24th May

25. In the heading to regulation 44, after “P45” insert “or a leaver statement”.

26. In regulation 44 (Form P45 for previous tax year: employment starting on or before 24th May), after “P45” in each place insert “or a leaver statement”.

Other Forms P45 or leaver statements

27. In the heading to regulation 45 (other Forms P45), after “P45” insert “or leaver statements”.

Form P46 where employer does not receive Form P45 or a leaver statement and code not known

28. In the heading to regulation 46, after “P45” insert “or a leaver statement”.

29. In regulation 46(1)(a) (Form P46 where employer does not receive Form P45 or a leaver statement and code not known), after “P45” insert “or a leaver statement which the employer is satisfied contains correct information”.

Procedure in P46 cases: code treated as issued by HMRC

30. In regulation 50 (Procedure in Form P46 cases: code treated as issued by HMRC)—

- (a) for “The” substitute “Code 0T, the”, and
- (b) for “47” substitute “46”.

Procedure in cases of retrospective earnings: code treated as issued by HMRC

31. In regulation 50A(3) (procedure in cases of retrospective earnings: code treated as issued by HMRC), after “P45” insert “or a leaver statement”.

Late presentation of Form P45 or a leaver statement

32. In the heading to regulation 51, after P45 insert “or a leaver statement”.

33. In regulation 51 (late presentation of Form P45)—

- (a) for paragraph (1) substitute—
 - “(1) This regulation applies if—
 - (a) an employee gives Parts 2 and 3 of Form P45 to the employer after commencing employment, or
 - (b) if an employee gives a leaver statement to the employer after commencing employment and the employer is satisfied the information given is correct.”,
- (b) in—
 - (i) the first place in paragraph (2),
 - (ii) the first place in paragraph (3),
 - (iii) paragraphs (5) and (6),after “P45” insert “or the leaver statement”,
- (c) in the second place in paragraph (2) and the second place in paragraph (3), after “P45” insert “or a leaver statement”,
- (d) after paragraph (4) insert—
 - “(4A) If the employee gives the leaver statement to the employer after the employee’s code has been issued to the employer, the leaver statement must be disregarded.”, and
- (e) in paragraph (7), after “destroyed” insert “or the leaver statement disregarded”.

Late presentation of Form P45 or a leaver statement: employer’s duties

34. In regulation 52 (late presentation of Form P45: employer’s duties)—

- (a) in paragraphs (2)(d) and (e), (4), (5)(a), (6), (7), (8), (9), (10) and (13) , after “P45” insert “or the leaver statement”, and
- (b) after paragraph (3) insert—

- “(3A) In a case where the employee has given the new employer a leaver statement—
- (a) the new employer must comply with the obligation in paragraph (2) by completing Part 3 of a blank P45, and
 - (b) paragraph (3) applies accordingly.”.

Form P46 cases: subsequent procedure on issue of employee’s code

35. In regulation 53(3) (Form P46 cases: subsequent procedure on issue of employee’s code), after sub-paragraph (a) insert—

“(aa) regulation 36ZA(4)(h) (leaver statement), and”.

New employees of Real Time Information employers

36. After regulation 53 insert—

“CHAPTER 2A

New employees (other than pensioners) of Real Time Information employers

Scope and interpretation of Chapter 2A

53A.—(1) This Chapter applies to Real Time Information employers for deductions and repayments in cases to which Chapters 2 (new employees (other than pensioners): Forms P45 and P46), 3 (new pensioners: Forms P45 and P46(Pen) and 3A (new pensioners receiving pensions from Real Time Information pension payers) do not apply.

(2) In this Chapter, unless the context requires otherwise, a reference to a leaver statement includes a reference to Parts 2 and 3 of Form P45.

Information to be given to HMRC in returns under regulations 67B and 67D

53B.—(1) An employee who commences employment with a Real Time Information employer must provide the information required to allow the employer to complete the new employee fields in the first return required by regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) to include information in respect of the employee.

(2) The employer must verify the information given under paragraph (1) before making that return.

(3) If, despite the requirements of paragraphs (1) and (2) and regulations 67B and 67D, a return is sent to HMRC under those regulations without the new employee fields being completed in respect of the employee, the employer must deduct tax on the non-cumulative basis using code 0T.

(4) In this regulation, “the new employee fields” means the information required under paragraphs 36 to 44 of Schedule A1.

Procedure if employer receives a leaver statement

53C.—(1) This regulation applies—

- (a) if an employee gives a leaver statement to the employer on commencing employment and the employer is satisfied the information given is correct, and
- (b) in the circumstances mentioned in regulation 53M (late presentation of leaver statement).

(2) The new employer must prepare a deductions working sheet and record on it the following information shown in the leaver statement—

- (a) the employee’s name, and

(b) the employee's national insurance number.

(3) If the leaver statement shows that the earlier employment ended in the current tax year, the new employer must comply with regulation 53D (leaver statement for current year).

(4) If—

(a) the leaver statement shows that the earlier employment ended in the previous tax year, and

(b) the new employment commences on or before 24th May,

the new employer must comply with regulation 53E (leaver statement: employment starting on or before 24th May).

(5) If—

(a) the leaver statement shows that the employment ended in the previous tax year, and

(b) the employment commences after 24th May,

the new employer must comply with regulation 53F (other leaver statements).

(6) If the leaver statement shows that the employment ended in any earlier tax year, the new employer must comply with regulation 53F.

Leaver statement for current year

53D.—(1) The new employer must record in the deductions working sheet the code shown in the leaver statement as the employee's code.

(2) Paragraphs (3) to (10) apply if the leaver statement shows that the cumulative basis was used.

(3) The employer must record in the deductions working sheet the total payments to date (if any) shown in the leaver statement.

(4) The employer must record in the deductions working sheet the following additional information, or keep such records as enable its production.

(5) If the code shown in the leaver statement is a K code, the additional information is—

(a) the total additional pay to date,

(b) the total taxable payments to date, and

(c) the lower of the total tax to date as at the week or month shown in the leaver statement and the total net tax deducted shown in it.

(6) In any other case, the additional information is—

(a) the total free pay to date,

(b) the total taxable payments to date, and

(c) the corresponding total tax to date as at the week or month shown in the leaver statement.

(7) The amounts required by paragraphs (5)(a) and (b) and (6)(a) and (b) must be arrived at by the employer by reference to the information shown in the leaver statement.

(8) On making any relevant payment to the employee, the employer must deduct or repay tax by reference to the employee's code on the cumulative basis.

(9) For the purposes of—

(a) paragraph (8), and

(b) regulation 36ZA(4)(h) (leaver statement),

the total payments to date recorded in the deductions working sheet in accordance with paragraph (3), and the figure recorded in accordance with paragraph (5)(c) or (6)(c) must be

treated as if they were relevant payments made to the employee by, and tax deducted by, the new employer.

(10) For the purposes of regulation 23(8) (cumulative basis: meaning of previous total tax to date) the figure recorded in accordance with paragraph (5)(c) or (6)(c) must be treated as the previous total tax to date when the employer next makes a relevant payment to the employee.

(11) If the leaver statement shows that the non-cumulative basis has been used, on making any relevant payment to the employee the employer must, subject to regulation 32 (higher rate code: deductions), deduct or repay tax by reference to the employee's code on the non-cumulative basis.

(12) The receipt by the employer of the leaver statement is treated as the issue by HMRC of the code shown in the leaver statement as the code for use in respect of the employee.

Leaver statement: employment starting on or before 24th May

53E.—(1) The new employer must—

- (a) record in the deductions working sheet the code shown in the leaver statement as the employee's code, and
- (b) deduct or repay tax by reference to that code on the cumulative basis, subject to regulation 32.

(2) The receipt by the employer of the leaver statement is treated as the issue by HMRC of the code shown in the leaver statement as the code for use in respect of the employee.

Other leaver statements

53F.—(1) The new employer must—

- (a) record in the deductions working sheet the emergency code as the employee's code, and
- (b) deduct tax from each relevant payment using the emergency code on the non-cumulative basis.

(2) The emergency code is treated as having been issued to the employer by HMRC as the code for use in respect of the employee.

Application of regulations 53H to 53J: procedure where no leaver statement

53G.—(1) Regulations 53H to 53J (procedure where no leaver statement) apply if—

- (a) an employee commences employment without giving the employer a leaver statement,
- (b) an employee commences employment and gives the employer a leaver statement but the employer is not satisfied the information in the statement is correct, and
- (b) a code in respect of the employee has not otherwise been issued to the employer.

(2) For the purposes of paragraph (1)(b), the employer must ignore any code issued to the employer in respect of an employee's earlier employment which has ceased.

(3) This regulation ceases to apply in the circumstances mentioned in regulation 53M(2) (late presentation of leaver statement: before employer required to make return under regulation 67B or 67D).

Procedure where no leaver statement and: (a) employee is not a seconded expatriate and paragraph 41(a) of Schedule A1 applies; or (b) seconded expatriate is national of EEA state

53H.—(1) This regulation applies where—

- (a) the employee is not a seconded expatriate and has indicated in accordance with regulation 53B(1) (information to be given to HMRC in returns under regulations 67B and 67D) that the statement in paragraph 41(a) of Schedule A1 (real time returns) is correct, or
 - (b) the employee is a seconded expatriate and has confirmed in accordance with regulation 53B(1) being a national of an EEA state.
- (2) On making the first relevant payment which equals or exceeds the lower earnings limit to the employee, the employer must—
- (a) prepare a deductions working sheet and enter the total payments to date, and
 - (b) deduct tax on the cumulative basis using the emergency code.
- (3) On making any subsequent relevant payment before HMRC issue a code for use in respect of the employee, the employer must continue to deduct or repay tax on the cumulative basis using the emergency code.

Procedure where no leaver statement and: (a) employee is a not seconded expatriate and paragraph 41(b) of Schedule A1 applies; or (b) employee is a seconded expatriate and paragraph 43(b) or 43(c) of Schedule A1 applies

- 53I.**—(1) This regulation applies where—
- (a) the employee is not a seconded expatriate and has indicated in accordance with regulation 53B(1) that the statement in paragraph 41(b) of Schedule A1 is correct, or
 - (b) the employee is a seconded expatriate to whom regulation 53C does not apply and has indicated in accordance with regulation 53B(1) that the statement in paragraph 43(b) or 43(c) of Schedule A1 is correct.
- (2) On making the first relevant payment which equals or exceeds the lower earnings limit to the employee, the employer must—
- (a) prepare a deductions working sheet and enter the total payments to date, and
 - (b) deduct tax on the non-cumulative basis using the emergency code.
- (3) On making any subsequent relevant payment before the employee's code is issued, the employer must continue to deduct or repay tax on the non-cumulative basis using the emergency code.

Procedure where no leaver statement and: (a) employee is a not seconded expatriate and paragraph 41(c) of Schedule A1 applies; or (b) employee is a seconded expatriate and paragraph 43(a) of Schedule A1 applies

- 53J.**—(1) This regulation applies in any case which is not dealt with by regulation 53H or 53I.
- (2) On making the first relevant payment to the employee, the employer must—
- (a) prepare a deductions working sheet and enter both the total payments to date and the total tax to date before the first payment as nil,
 - (b) deduct tax on the cumulative basis using the basic rate code.
- (3) On making any subsequent relevant payment before the employee's code is issued, the employer must continue to deduct tax on the cumulative basis using the basic rate code.
- (4) In the case of a seconded expatriate, the emergency code must be used instead of the basic rate code mentioned in paragraphs (2)(b) and (3).

Code treated as issued by HMRC

- 53K.**—(1) Code 0T, the emergency code or the basic rate code used by the employer in accordance with regulations 53B (information to be given to HMRC in returns under

regulation 67B and 67D) and 53H to 53J (procedure where no leaver statement) is treated, for the purposes of Parts 2 to 4 (codes; deduction and repayment of tax; payments, returns and information) as having been issued by HMRC as the code for use in respect of the employee.

(2) This does not apply for the purposes of regulation 18 (objections and appeals) and regulations 53B, 53H to 53J and 53M to 53O (late presentation of leaver statement).

Procedure in cases of retrospective earnings: code treated as issued by HMRC

53L.—(1) If—

- (a) as a result of a retrospective tax provision, a qualifying payment was made in a year (whether open or closed) to a person, and
- (b) a code has never been issued to the employer in respect of employment with whom that qualifying payment was made,

paragraph (2) applies.

(2) Where this paragraph applies the higher rate code applicable to the year in which the qualifying payment was made is treated, for the purposes of Parts 2 to 4 (codes, deductions and repayment of tax, payments, information and returns) as having been issued by HMRC as the code for use in relation to that year.

(3) Paragraph (2) does not apply for the purposes of regulation 18 and regulations 53B, 53H to 53J and 53M to 53O.

Late presentation of leaver statement

53M.—(1) This regulation applies if an employee gives a leaver statement to the employer after commencing employment and the employer is satisfied the information in the leaver statement is correct.

(2) If the employee gives the leaver statement to the employer before the employer is required to deliver the first return required by regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) in respect of the employee, regulation 53C (procedure if employer receives leaver statement) applies.

(3) If the employee gives the leaver statement to the employer—

- (a) after the employer is required to deliver the first return required by regulation 67B or 67D containing information in respect of the employee, but
- (b) before the employee's code has been issued to the employer,

this regulation and regulation 53N (late presentation of leaver statement: employer's duties) apply.

(4) If the employee gives the leaver statement to the employer after the employee's code has been issued to the employer, the leaver statement must be disregarded.

(5) If the leaver statement shows that the employment ended in the current tax year then, unless the employer has already ceased to employ the employee—

- (a) the code shown in the leaver statement is treated as having been issued by HMRC to the employer on the day the employee gives them to the employer, and
- (b) the employer must comply with regulation 53N.

(6) If the leaver statement shows that the employment ended in the previous tax year and the employee gives them to the employer on or before 24th May then, unless the employer has already ceased to employ the employee—

- (a) the code shown in the leaver statement is treated as having been issued by HMRC to the employer on the day the employee gives them to the employer, and
- (b) the employer must deduct or repay tax by reference to that code using the cumulative basis, subject to regulation 32 (higher rate code: deductions).

- (7) The leaver statement must be disregarded—
- (a) if it shows that the employment ended in the previous tax year and the employee gives it to the employer after 24th May, or
 - (b) if it shows that the employment ended in an earlier tax year.

Late presentation of leaver statement: employer's duties

53N.—(1) The employer must prepare a deductions working sheet (unless the employer has already prepared one) in accordance with the following information shown in the leaver statement—

- (a) the employee's name,
 - (b) the employee's national insurance number, and
 - (c) the employee's code.
- (2) The employer must record in the deductions working sheet the sum of—
- (a) the total payments to date (if any) shown in the leaver statement, and
 - (b) the relevant payments which have been made by the employer since the employment commenced which have not already been recorded in the deductions working sheet.
- (3) If the leaver statement shows that the cumulative basis has been used, the employer must also record the following additional information in the deductions working sheet, or keep such records as enable its production.
- (4) If the code shown in the leaver statement is a K code, the additional information is—
- (a) the total additional pay to date,
 - (b) the total taxable payments to date, and
 - (c) the lower of the total tax to date as at the week or month shown in the leaver statement or the total net tax deducted shown in it.
- (5) In any other case, the additional information is—
- (a) the total free pay to date,
 - (b) the total taxable payments to date, and
 - (c) the corresponding total tax to date as at the week or month shown in the leaver statement.
- (6) The employer must ascertain the amounts required by paragraphs (4)(a) and (b) and (5)(a) and (b) by reference solely to the information shown in the leaver statement.
- (7) If the leaver statement shows that the cumulative basis has been used, the employer, on making any subsequent relevant payment to the employee, must deduct or repay tax by reference to the code shown in the leaver statement on the cumulative basis.
- (8) For the purposes of—
- (a) paragraph (7), and
 - (b) regulation 36ZA(4)(h) (leaver statement),
- the total payments to date recorded in the deductions working sheet in accordance with paragraph (2) and the figure recorded in accordance with paragraph (4)(c) or (5)(c) must be treated as if they were relevant payments made to the employee by, and tax deducted by, the new employer.
- (9) For the purposes of regulation 23(8) (cumulative basis: meaning of previous total tax to date), the figure recorded in accordance with paragraph (4)(c) or (5)(c) must be added to any actual previous total tax to date, and the total treated as the previous total tax to date when the employer next makes a relevant payment to the employee.
- (10) If the leaver statement shows that the non-cumulative basis has been used, on making any relevant payment to the employee, the employer must, subject to regulation 32

(higher rate code: deductions), deduct tax by reference to the code shown in the leaver statement on the non-cumulative basis.

No leaver statement: subsequent procedure on issue of employee’s code

530.—(1) On making any relevant payment to an employee falling within regulations 53H to 53J (procedure where no leaver statement) after HMRC have issued a code to the employer for use in respect of the employee, the employer must deduct or repay tax by reference to that code.

(2) For the purposes of paragraph (1) and regulation 66 (deductions working sheets)—

- (a) any total payments to date notified to the employer by HMRC are treated as if they represented relevant payments made by the employer, and
- (b) the total net tax deducted before the first payment made in accordance with this regulation is taken to be the sum of—
 - (i) the total net tax deducted, if any, notified to the employer by HMRC, and
 - (ii) any tax which the employer was liable to deduct from the employee’s relevant payments under regulations 53H, 53I or 53J.

(3) For the purposes of regulation 36ZA(4)(h), any total payments to date and total net tax deducted which are notified to the employer by HMRC must be treated as if they were relevant payments made to the employee by, and tax deducted by, the employer.

(4) If the employee’s previous code was used on the cumulative basis, any amount notified to the employer under paragraph (2)(b)(i) must be added to the previous total tax to date for the purposes of regulation 23(8) (cumulative basis: meaning of previous total tax to date).”.

New pensioners receiving a pension from non-Real Time Information pension payers

37. For the heading to Chapter 3 of Part 3 substitute “New pensioners receiving a pension from a non-Real Time Information pension payer: Forms P45 and P46(Pen) and leaver statements”.

38. For regulation 54 (scope of Chapter 3 of Part 3 of the 2003 Regulations), substitute—

“Scope of Chapter 3

54. This Chapter applies when a pension starts and—

- (a) the pension payer is—
 - (i) a non-Real Time Information pension payer, or
 - (ii) a Real Time Information pension payer to whom HMRC has given a notice requiring the pension payer to send to HMRC Form P45 or Form P46 on the commencement of a pension, and
 - (b) the pensioner—
 - (i) will be continuing in employment and will be receiving relevant pension payments in addition to relevant payments from their employer, or
 - (ii) will not be receiving relevant payments other than relevant pension payments.
- ”.

PAYE pension income paid by former employer

39. In regulation 55(1) (PAYE pension income paid by former employer), after “P45” insert “or leaver statement”.

PAYE pension income paid by other pension payer

40. In regulation 56 (PAYE pension income paid by other pension payer)—

(a) for paragraph (1) substitute—

“(1) This regulation applies—

(a) if the pensioner gives Parts 2 and 3 of Form P45 to the pension payer when a pension starts, and

(b) if the pensioner gives a leaver statement to the pension payer when a pension starts and the pension payer is satisfied the information given in the leaver statement is correct.”,

(b) after paragraph (3) insert—

“(3A) In a case where the employee has given the new employer a leaver statement—

(a) the new employer must comply with the obligation in paragraph (2) by completing Part 3 of a blank P45, and

(b) paragraph (3) applies accordingly.”, and

(c) in paragraphs (4) and (5), after “P45” insert “or the leaver statement”.

Information to be provided in Form P46(Pen) if code not known: non UK residents

41. In regulation 57(1)(b) (information to be provided in Form P46(Pen) if code not known: non UK residents), after “P45” insert “or a leaver statement that the pension payer is satisfied gives information which is correct”.

Information (Form P46(Pen)) and procedure if code not known: UK residents

42. In regulation 58(1)(c) (information (Form P46(Pen)) and procedure if code not known: UK residents), after “P45” insert “or a leaver statement that the pension payer is satisfied gives information which is correct”.

Late presentation of Form P45 or leaver statement

43. In regulation 60 (late presentation of Form P45)—

(a) in paragraph (1), after “P45” insert “or a leaver statement that the pension payer is satisfied gives information which is correct”,

(b) after paragraph (3) insert—

“(3A) In a case where the employee has given the pension payer a leaver statement—

(a) the pension payer must comply with the obligation in paragraph (2) by completing Part 3 of a blank P45, and

(b) paragraph (3) applies accordingly.”,

(c) in paragraphs (4) and (5)(a), after “P45” insert “or the leaver statement”, and

(d) after paragraph (7) insert—

“(8) If a leaver statement is given to the pension payer after the pension has started and after a code has been issued by HMRC, the leaver statement must be disregarded.”.

New pensioners receiving a pension from Real Time Information pension payers

44. After regulation 61 insert—

“CHAPTER 3A

New pensioners receiving pensions from Real Time Information pension payers

Scope and interpretation of Chapter 3A

61A.—(1) This Chapter applies when a pension starts and—

- (a) the pension payer is a Real Time Information pension payer other than one to whom Chapter 3 applies,
- (b) the pensioner will be continuing in employment and will be receiving relevant pension payments in addition to relevant payments from their employer, or
- (c) the pensioner will not be receiving relevant payments other than relevant pension payments.

(2) In this Chapter a reference to a leaver statement includes a reference to Parts 2 and 3 of Form P45.

Relevant pension payments and relevant payments being received by a pensioner

61B.—(1) This regulation applies if the pensioner begins to receive relevant pension payments whilst continuing to receive relevant payments from their employer.

(2) On making relevant pension payments to the pensioner, the pension payer must deduct tax on the non-cumulative basis using the OT tax code.

PAYE pension income paid by former employer

61C.—(1) This regulation applies if the pension payer was, immediately before the pensioner’s retirement, the pensioner’s employer and so, in accordance with regulation 36ZA(3) (cessation of employment with a Real Time Information employer: leaver statement), no leaver statement was completed.

(2) On making relevant pension payments to the pensioner, the pension payer must deduct tax on the non-cumulative basis, subject to regulation 32 (higher rate code: deductions), for the remainder of the tax year in which the pension starts or until directed otherwise by HMRC.

PAYE pension income paid by other pension payer: leaver statement given to the pension payer at any time before a pension starts and a code has been issued

61D.—(1) This regulation applies if the pensioner gives a leaver statement to the pension payer at any time before a pension starts and a code has been issued and the pension payer believes the information given to be correct.

(2) The receipt by the pension payer of the leaver statement is treated as the issue by HMRC of the code shown in the leaver statement as the code for use in respect of the pensioner.

(3) On making relevant pension payments to the pensioner, the pension payer must, subject to regulation 32 (higher rate code: deductions), deduct or repay tax—

- (a) on the non-cumulative basis, for the remainder of the tax year to which the leaver statement relates,
- (b) on the cumulative basis, for subsequent tax years.

(4) Paragraph (3) applies until the pension payer is directed otherwise by HMRC.

(5) If the leaver statement is given to the pension payer after the pension has started and after a code has been issued by HMRC, it must be disregarded.

Procedure if code not known: UK residents

61E.—(1) This regulation applies if—

- (a) a pension payer starts to make relevant pension payments to a pensioner,
- (b) the pensioner is resident in the United Kingdom,
- (c) the pensioner does not give to the pension payer a leaver statement that the pension payer is satisfied contains information which is correct, and
- (d) a code in respect of the pensioner has not otherwise been issued to the pension payer.

(2) On making any relevant pension payments to the pensioner before HMRC issue a code for use in respect of the pensioner, the pension payer must deduct tax on the non-cumulative basis applying the emergency code.

Codes treated as issued by HMRC

61F.—(1) The 0T code used by the pension payer in accordance with regulation 61B (relevant pension payments and relevant payments being received by a pensioner) and the emergency code used in accordance with regulation 61E (procedure if code not known: UK residents) are treated, for the purposes of Parts 2 to 4 (codes; deduction and repayment of tax; payments, returns and information), as having been issued by HMRC as the code for use in respect of the pensioner.

(2) This does not apply for the purposes of regulation 18 (objections and appeals) and regulations 61B, 61E and 61G (subsequent procedure on issue of UK resident pensioner's code).

Subsequent procedure on issue of UK resident pensioner's code

61G.—(1) On making any relevant pension payment to a pensioner falling within regulation 61E after HMRC have issued a code to the pension payer for use in respect of the pensioner, the pension payer must deduct or repay tax by reference to that code.

(2) For the purposes of paragraph (1) and regulation 66 (deductions working sheets)—

- (a) any total payments to date notified to the pension payer by HMRC are treated as if they represented relevant pension payments made by pension payer, and
- (b) the total net tax deducted before the first payment made in accordance with this regulation is taken to be the sum of—
 - (i) the total net tax deducted, if any, notified to the pension payer by HMRC, and
 - (ii) any tax which the pension payer was liable to deduct from the pensioner's relevant pension payments under regulation 61E.

(3) For the purposes of regulation 36ZA(4)(h) (leaver statement) any total payments to date and total net tax deducted which are notified to the employer by HMRC must be treated as if they were relevant pension payments made to the pensioner by, and tax deducted by, the pension payer.

(4) If the pensioner's previous code was used on the cumulative basis, any amount notified to the pension payer under paragraph (2)(b)(i) must be added to the previous total tax to date for the purposes of regulation 23(8) (meaning of previous total tax to date)."

Repayment if no longer employed

45. In regulation 65 (repayment if no longer employed)—

- (a) in paragraph (2)(a), after "P45" insert "or a leaver statement",
- (b) in paragraphs (6)(a) and (7)(a), after "P45" insert "or the leaver statement".

Information to employees about payments and tax deducted (Form P60)

46. In regulation 67(3)(a) (information to employees about payments and tax deducted (Form P60), for “regulation 43(9), 52(11), 53(3) or 61(3)” substitute “regulation 43(9), 52(11), 53(3), 53D(9), 53N(8), 53O(3), 61(3) or 61G(3)”.

Real time returns, payments and associated matters

47. In Chapter 1 of Part 4—

- (a) omit the cross heading “Payment and recovery of tax by employer” which appears before regulation 68, and
- (b) before regulation 68 insert—

“Real time returns

Real time returns of information about relevant payments

67B.—(1) On or before making a relevant payment to an employee, a Real Time Information employer must deliver to HMRC the information specified in Schedule A1 in accordance with this regulation unless the employer is not required by regulation 66 (deductions working sheets) to maintain a deductions working sheet for any employees.

(2) The information must be included in a return.

(3) Subject to paragraph (4), if relevant payments are made to more than one employee at the same time, the return under paragraph (2) must include the information required by Schedule A1 in respect of each employee to whom a relevant payment is made at that time.

(4) If relevant payments are made to more than one employee at the same time but the employer operates more than one payroll, the employer must make a return in respect of each payroll.

(5) The return is to be made using an approved method of electronic communications.

(6) Section 98A of TMA (special penalties in case of certain returns) applies to returns within paragraph (7).

(7) A return is within this paragraph if it is one of the following—

- (a) a return under this regulation which relates to the relevant payments made on the final normal pay day in the tax year 2012-13 for any of the employees in respect of whom information is included in the return, or
- (b) a return under this regulation which contains information about the final relevant payment made to any employee in the tax year 2012-13 where—
 - (i) the relevant payment is made after the employee’s final normal pay day in the tax year, or
 - (ii) the employee is paid at irregular intervals.

Notifications of relevant payments to and by providers of specified electronic payment methods

67C.—(1) A Real Time Information employer who either—

- (a) uses a specified electronic payment method for the purposes of making relevant payments, or
- (b) is unaware of whether they use a specified electronic payment method for the purposes of making relevant payments,

must notify HMRC of that.

(2) A Real Time Information employer who makes a relevant payment using a specified electronic payment method must—

- (a) notify the service provider that the payment is a relevant payment,
- (b) generate a reference in respect of the relevant payment and notify the service provider of that reference,
- (c) generate a related reference and include it in the return required by regulation 67B in respect of the relevant payment.

(3) A service provider who receives a notification under paragraph (2)(a) and (b) must generate a related reference that corresponds to the related reference generated by the Real Time Information employer under paragraph (2)(c) and notify HMRC of that corresponding related reference.

(4) For the purposes of paragraphs (1) and (2), a relevant payment is made using a specified electronic payment method if it falls within a description set out in a direction made under this regulation by the Commissioners for Her Majesty's Revenue and Customs.

(5) In paragraphs (2) and (3) "the service provider" means the provider of the electronic payment service using which the payment is made.

(6) A direction under paragraph (4) may—

- (a) include provision specifying the form of, and particulars to be included in, a direction under paragraph (1),
- (b) include provision specifying the form and method of the notifications required by paragraphs (2)(a) and (b) and (3), and
- (c) include provision specifying the method of generating, or the contents of, the reference required by paragraph (2)(b) and the related reference required by paragraphs (2)(c) and (3).

Exceptions to regulation 67B

67D.—(1) This regulation applies to—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications,
- (b) a partnership, if all the partners fall within sub-paragraph (a),
- (c) a company, if all the directors and the company secretary fall within sub-paragraph (a), and
- (d) a care and support employer.

(2) A Real Time Information employer to whom this regulation applies may proceed in accordance this regulation instead of regulation 67B.

(3) A Real Time Information employer must deliver to HMRC the information specified in Schedule A1 in respect of each employee to whom relevant payments are made in a tax month unless the employer is not required by regulation 66 (deductions working sheets) to maintain a deductions working sheet for any employees and, for the purposes of this regulation, references in Schedule A1 to a relevant payment shall be read as if they were references to all the relevant payments made to the employee in the tax month.

(4) The information must be included in a return.

(5) The return required under paragraph (4) must be delivered within 14 days after the end of the tax month the return relates to.

(6) If relevant payments have been made to more than one employee in the tax month, the return under paragraph (3) must include the information required by Schedule A1 in respect of each employee to whom a relevant payment has been made.

(7) Section 98A of TMA (special penalties in case of certain returns) applies to returns within paragraph (8).

(8) A return is within this paragraph if it is one of the following—

- (a) a return under this regulation which contains information about the relevant payments made on the final normal pay day in the tax year 2012-13 for any of the employees in respect of whom information is included in the return, or
- (b) a return under this regulation which contains information about the final relevant payment made to any employee in the tax year 2012-13 where—
 - (i) the relevant payment is made after the employee’s final normal pay day in the tax year, or
 - (ii) the employee is paid at irregular intervals.

(9) In paragraph (1)(c), “company” means a body corporate or unincorporated association but does not include a partnership.

(10) In paragraph (1)(d), “a care and support employer” means an individual (“the employer”) who employs a person to provide domestic or personal services at or from the employer’s home where—

- (a) the services are provided to the employer or a member of the employer’s family,
- (b) the recipient of the services has a physical or mental disability, or is elderly or infirm, and
- (c) it is the employer who delivers the Real Time Information Return (and not some other person on the employer’s behalf).

Returns under regulations 67B and 67D: amendments

67E.—(1) This regulation applies where an employer discovers an error in a return made under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) and paragraph (2), (3) or (4) applies.

(2) This paragraph applies where the error relates to the information given in the return in respect of an employee under paragraph 16 or 17 of Schedule A1 (real time returns).

(3) This paragraph applies where the error was the omission of details of a relevant payment to an employee.

(4) This paragraph applies where the error arises because, as a result of a retrospective tax provision, the total amount of the relevant payments made by an employer to an employee increases for any tax year in which the employer was a Real Time Information employer.

(5) The employer must provide the correct information in the first return made after the discovery of the error under regulation 67B or 67D for the tax year in question.

(6) But if the information has not been corrected before 20th April following the end of the tax year in question, the employer must make a return under this paragraph.

(7) A return under paragraph (6)—

- (a) must include the following—
 - (i) the information specified in paragraphs 2 to 4, 8 to 13 and 15 of Schedule A1,
 - (ii) the tax year to which the return relates,
 - (iii) the value of the adjustment to the information given under paragraphs 16 or 17 of Schedule A1 in the final return under regulation 67B or 67D containing information in respect of the employee in the tax year in question,
 - (iv) in any case where information given under paragraph 17 of Schedule A1 is corrected, the tax code operated in arriving at the value of the correction, and
 - (v) if paragraph (8) applies, the information specified in paragraphs 36 to 44 of Schedule A1,
- (b) must be made as soon as reasonably practicable after the discovery of the error, and
- (c) must be made by an appropriate method of electronic communications.

(8) This paragraph applies if—

- (a) the error is within paragraph (3),
- (b) the relevant payment was the first relevant payment to the employee in the employment, and
- (c) the information specified in paragraphs 36 to 44 of Schedule A1 has not otherwise been provided.

(9) In the application of paragraphs (6) and (7) to cases within paragraph (3), if no information was given in any returns under regulation 67B or 67D in respect of the employee in the tax year, the value of the adjustments required must be calculated as if there was a final return containing information for the employee in the year and the figure requiring adjustment was zero.

(10) Paragraph (7)(c) does not apply if the employer is one to whom regulation 67D applies.

Additional information about payments

67F.—(1) A Real Time Information employer may send to HMRC a notification using an approved method of electronic communications if, for a tax period, the employer was not required to make any returns in accordance with regulation 67B or 67D because no relevant payments were made during the tax period.

(2) A notification under this paragraph must state—

- (a) the tax year to which the return relates,
- (b) the employer’s HMRC office number,
- (c) the employer’s PAYE reference, and
- (d) the employer’s accounts office reference.

(3) The requirement to use an approved method of electronic communications does not apply if the employer is one to whom regulation 67D applies.

Payment and recovery of tax by employer

Payments to and recoveries from HMRC for each tax period by Real Time Information employers

67G.—(1) For each tax period, a Real Time Information employer must pay to, or may recover from, HMRC the amount arrived under the formula in paragraph (4).

(2) If the amount arrived at under the formula in paragraph (4) is a positive amount, the employer must pay the excess to HMRC.

(3) If the amount arrived at under the formula in paragraph (4) is a negative amount, the employer may recover that amount either—

- (a) by deducting it from the amount which the employer is liable to pay under paragraph (2) for a later period in the tax year, or
- (b) from the Commissioners for Her Majesty’s Revenue and Customs.

(4) The formula in this paragraph is $A - B$, where—

- A is the sum total of the relevant amounts for each of the employer’s employees, and
- B is amount A for the previous tax period in the tax year, if any.

(5) For the purposes of paragraph (4), a “relevant amount” is the amount shown under paragraph 17 of Schedule A1 (real time returns) for an employee in the most recent return made in the tax year by the employer under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) which contains information about that employee.

(6) In paragraph (5) “the most recent return” means the return which, as at the end of the tax period, contains the most up to date information under paragraph 17 of Schedule A1 about the employee.

(7) This regulation is subject to regulations 67H (payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under regulation 67G(6) correcting errors in earlier tax years), 71 (modification of regulations 67G and 68 in case of trade dispute) and 75C (certificates under regulations 75A: excess payments).

Payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under regulation 67E(6)

67H.—(1) This regulation applies if, during any tax period, an employer makes a return under regulation 67E(6) (returns under regulation 67B and 67D: amendments).

(2) The amount arrived at by the employer under regulation 67G for the final tax period of the tax year covered by the return is to be adjusted to take account of the information in the return.

(3) If the value of the adjustment required by paragraph (2) is a positive amount, the employer must pay the excess to HMRC on making the return.

(4) If the value of the adjustment required by paragraph (2) is a negative amount, the employer may recover that amount—

- (a) by setting it off against the amount the employer is liable to pay under regulation 67G for the tax period the return was made in, or
- (b) from the Commissioners for Her Majesty’s Revenue and Customs.”.

48. For the heading to regulation 68, substitute “Periodic payments to and recoveries from HMRC: non-Real Time Information employers”.

49. In regulation 68(1) (periodic payments to and recoveries from HMRC), for “an employer” in the first place it appears substitute “a non-Real Time Information employer”.

Due date and receipts for payment of tax

50. In regulation 69(1) and regulation 69(2) (due date and receipts for payment of tax), before “68(2)” insert “67G(2), 67H(3) or”.

Quarterly tax periods

51. In regulation 70(3) (quarterly tax periods), in the definition of “P”, before “68” insert “67G or”.

Modification of regulations 67G and 68 in case of trade dispute

52. In the heading to regulation 71, for “regulation 68” substitute “regulations 67G and 68”.

53. In regulation 71 (modification of regulation 68 in case of trade dispute)—

- (a) in paragraph (1), for “regulation 68” substitute “regulations 67G and 68”,
- (b) in paragraph (3)—
 - (i) before “68(2)”, insert “67G(2) or, as the case may be,”,
 - (ii) in the heading to table (3), before “68” insert “67G or”, and
- (c) in paragraph (4), before “68(3)” insert “67G or, as the case may be,”.

Annual returns

54. Before regulation 73 and below the cross heading “Annual returns of relevant payments of tax” insert—

“Application of regulations 73 to 75

72H. Regulations 73 to 75 apply to—

- (a) non-Real Time Information employers,
- (b) Real Time Information employers in relation to tax years in which they were, for the whole of the tax year, non-Real Time Information employers, and
- (c) Real Time Information employers to whom HMRC has given a notice requiring a return under regulation 73 in respect of a tax year.”.

Failure to account for deductible tax

55. Before regulation 76 and below the cross heading “Failure to account for deductible tax” insert—

“Power of HMRC to issue a notice and certificate in cases where regulation 67B or 67D returns are not made, etc

75A.—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B or C is met.

(2) Condition A is that a Real Time Information employer—

- (a) has not paid to HMRC any tax for that tax period,
- (b) has not made any returns under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) in respect of the tax period,
- (c) has not sent HMRC a notification under regulation 67F (additional information about payments), and
- (d) HMRC are not satisfied that no relevant payments have been made in the tax period.

(3) Condition B is that a Real Time Information employer—

- (a) has paid an amount of tax for that tax period, whether or not the amount is the amount due under regulation 67G (payments to recoveries from HMRC for each tax period by Real Time Information employers), but
- (b) HMRC are not satisfied, after seeking the employer’s explanation, that the amount due under regulation 67G is the amount which would have been due had the tax returned under regulation 67B or 67D as deducted from each of the employer’s employees during the period been the amount that the employer was liable to deduct.

(4) Condition C is that a Real Time Information employer has not paid to HMRC the amount of tax due under regulation 67G or any amount due under regulation 67H.

(5) HMRC, on consideration of the matters specified in paragraph (6), may—

- (a) specify to the best of their judgment, the amount of tax, or a combined amount, they consider the employer is liable to pay, and
- (b) serve notice on the employer requiring payment of that amount within 7 days of the issue of the notice (“the notice period”).

(6) The matters specified in this paragraph are—

- (a) the employer’s record of past payments, whether of tax or combined amounts,
- (b) any returns made by the employer under regulation 67B or 67D in respect of the tax period,
- (c) any returns made by the employer under regulation 67B or 67D in respect of earlier tax periods,
- (d) any returns made by the employer under regulation 67E(6),

- (e) any returns made by the employer under regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14) in relation to previous tax years.

(7) If the notice extends to two or more consecutive tax periods in a tax year, this regulation has effect as if they were the latest period specified in the notice.

(8) If, during the notice period, the employer—

- (a) claims that the amount paid in respect of the tax period specified in the notice represents the full amount of tax the employer was liable to deduct from each of the employer's employees during the period, but
- (b) does not satisfy HMRC that this is the case,

the employer may require HMRC to inspect the employer's PAYE records as if the employer had been required to produce those records under Schedule 36 to the Finance Act 2008(a) (information and inspection powers).

(9) If there is an inspection by virtue of paragraph (8), the notice given by HMRC under paragraph (5) must be disregarded.

(10) If the amount specified in the notice, or any part of it, is not paid during the notice period—

- (a) the amount unpaid is treated as an amount of tax or as including an amount of tax which the employer was liable to pay for that tax period under regulation 67G, and
- (b) HMRC may prepare a certificate showing how much of that amount remains unpaid.

(11) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Interaction between amounts certified under regulation 75A and returns under regulation 67E(6)

75B.—(1) This regulation applies where HMRC has certified an amount under regulation 75A and the notice period has elapsed in respect of one or more tax periods.

(2) If the employer makes a return under regulation 67E(6) the subject of which is one or more of those tax periods, the amount certified remains valid notwithstanding that return.

Certificates under regulations 75A: excess payments

75C.—(1) This regulation applies if, as a consequence of paying a certified amount of tax under regulation 75A in relation to the tax year, the total amount of tax paid to HMRC for the tax year under these Regulations by an employer exceeds the amount which would have been paid had it not been necessary for HMRC to prepare the certificate.

(2) The employer is entitled to set off the excess tax against any amount which the employer is liable to pay under regulation 67G for any subsequent tax period or, if the tax year in question has ended, the excess of tax paid may be repaid.”.

56. In the heading to regulation 77 (return and certificate if tax may be unpaid), after “unpaid” insert “: amounts due under regulation 68”.

57. In the heading to regulation 78 (notice and certificate if tax may be unpaid), after “unpaid” insert “: amounts due under regulation 68”.

(a) 2008 c.9. Schedule 36 was amended by Schedules 47 and 48 to the Finance Act 2009 (c.10) and S.I. 2009/56 and 2009/3054. It has been prospectively amended by Schedule 6 to the Finance Act 2010 (c.13) and by Schedules 23 and 24 to the Finance Act 2011 (c.11).

Determination of unpaid tax and appeal against determination

58. In regulation 80 (determination of unpaid tax and appeal against determination)—

- (a) in paragraph (1)—
 - (i) before “68” insert “67G or”, and
 - (ii) before “76,” insert “75A,” and
- (b) in paragraph (4), before “68” insert “67G or”.

Interest on tax overdue

59. In regulation 82(6)—

- (a) in sub-paragraph (a), before “68” insert “67G or”, and
- (b) in sub-paragraph (b), before “68(3)(b)” insert “67G(3)(b) or”.

Recovery of tax and interest

60. In regulation 84 (recovery of tax and interest)—

- (a) in paragraph (1)(a) before “76(2)” insert “75A(10),”, and
- (b) in Table 4 in paragraph (3), before “77(6)” insert “75A(10),”.

Retention by employer of PAYE records

61. In regulation 97(3)(a) (retention by employer of PAYE records), after “46)” insert “, information provided under regulation 53B(1)”.

Relevant debts of managed service companies

62. In regulation 97B (debts of managed service companies), after paragraph (2) insert—

“(2A) Condition A2 is met if—

- (a) HMRC serve a notice on an employer under regulation 75A(5) (power of HMRC to issue a notice and certificate in cases where regulation 67B or 67D returns are not made, etc) requiring payment of the amount of tax they consider the employer is liable to pay, and
- (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.”.

Time limits for issue of transfer notices: managed service companies

63. In regulation 97D (time limits for issue of transfer notices), after paragraph (3) insert—

“(3A) In a case in which condition A2 in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HMRC serve notice to the employer under regulation 75A(5).”.

Succession to a business etc

64. In regulation 102(3) (succession to a business etc), after “P45)” insert “or 36ZA (cessation of employment with a Real Time Information employer: leaver statement)”.

Succession to a business: trade disputes

65. In regulation 104 (succession to a business: trade disputes)—

- (a) in paragraph (4), before “68(3)(b)” insert “67G(3)(b) (payments to and recoveries from HMRC for each tax period by Real Time Information employers) or, as the case may be,”, and
- (b) in paragraph (5), before “68” insert “67G or”.

Effect of PAYE settlement agreement

66. In regulation 107(7)(a) (effect of PSA), before “73” insert “67B, 67D, 67E,”.

Jobseeker’s allowance

67. After regulation 150 (Chapter 1 of Part 8: application of other regulations) insert—

“Parts 2 and 3 of Form P45

150A.—(1) In this Chapter, the references in the following provisions to Parts 2 and 3 of Form P45 shall be read as including a reference to a leaver statement—

- (a) regulation 151 (obtaining the claimant’s Form P45),
- (b) regulation 152 (deductions working sheet for claimants awarded taxable jobseeker’s allowance),
- (c) regulation 153 (Form P45: deductions working sheet and return), and
- (d) regulation 162 (no tax calculation required in certain cases).

(2) If the Department receives a leaver statement but is not satisfied the information given in it is correct, the Department must proceed as if it had not received the leaver statement.”.

Employment and support allowance

68. After regulation 184A (Chapter 5 of Part 8: application of other regulations) insert—

“Parts 2 and 3 of Form P45

184AA.—(1) In this Chapter, the references in the following provisions to Parts 2 and 3 of Form P45 shall be read as including a reference to a leaver statement—

- (a) regulation 184C (obtaining the claimant’s P45),
- (b) regulation 184D (deductions working sheet for claimants awarded taxable employment and support allowance),
- (c) regulation 184E (Form P45: deductions working sheet and return), and
- (d) regulation 184O (no tax calculation required in certain cases).

(2) If the Department receives a leaver statement but is not satisfied the information given in it is correct, the Department must proceed as if it had not received the leaver statement.”.

Electronic payment by large employers: meaning of “large employer”

69. In regulation 198A(2)(b) (large employers), after “employee” insert “or, as the case may be, has not indicated in a return under regulation 67B or 67D that the employee’s employment has ceased”.

Large employers required to make specified payments electronically

70. In regulation 199(2) (large employers required to make specified payments electronically), for “68” substitute “67G (periodic payments to and recoveries from HMRC: Real Time Information employers) or 68 (periodic payments to and recoveries from HMRC: non-Real Time Information employers)”.

Electronic communications

71. In the heading to Chapter 4 of Part 10 (mandatory use of electronic communications), after “communications” insert “: specified information”.

72. After Chapter 4 of Part 10 insert—

“CHAPTER 4A

Mandatory use of electronic communications: real time returns of information about relevant payments of tax and associated matters

Application of Chapter 4 to real time returns of information about relevant payments of tax and associated matters

210D. Regulation 205(3) applies to the delivery of the following as if they were specified information within the meaning given by regulation 207—

- (a) returns under regulation 67B (real time returns of information about relevant payments),
- (b) returns under regulation 67E(6) (returns under regulation 67B and 67D: amendments), unless the employer is one to whom regulation 67D (exceptions to regulation 67B) applies, and
- (c) notices under regulation 67F (additional information about payments) unless the employer is one to whom regulation 67D applies.”.

Certificate that sum due

73. In the list in regulation 218(2) (certificate that sum due), before the entry relating to regulation 76 insert—

“regulation 75A(5) unpaid amounts from regulation 75A specification”.

Payment by cheque

74. In the list in regulation 219(2) (payment by cheque), after the entry relating to regulation 72 insert—

“regulation 75A notice and certificate in cases where regulation 67B or 67D returns are not made”.

New Schedule: information to be included in returns under regulations 67B and 67D

75. Before Schedule 1 insert Schedule A1 as set out in the Schedule to these Regulations.

PART 3

Other amendments

Interpretation and related matters

76. In regulation 2(1) (interpretation)—

- (a) insert in the appropriate places—

““lower earnings limit” means the lower earnings limit for Class 1 contributions for the purposes of section 5(1) of the Social Security Contributions and Benefits Act 1992(a);”;

““seconded expatriate” means an employee meeting one of the following descriptions—

- (a) an employee in section 689 ITEPA (employee of non-UK employer); or
- (b) an employee in a branch of an employer where—
 - (i) these Regulations would not apply to that employer but for that branch,
 - (ii) the employer seconded the employee to that branch, and
 - (iii) the employee was not employed in the United Kingdom immediately before the secondment;”, and

(b) for the definition of “Student Loan Regulations” substitute—

““Student Loan Regulations” means the Education (Student Loans) (Repayment) Regulations 2009(b) or, in Northern Ireland, the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009(c);”.

77. Omit regulation 46(1C) (Form P46 where employer does not receive Form P45 and code not known).

78. In regulations 47 and 48 (procedure in Form P46 cases), omit paragraph (4).

79. In regulation 70(3) (quarterly tax periods)—

- (a) in the definition of “L”, for “39(1)” substitute “54(1) or, in Northern Ireland, 49(1)”, and
- (b) in sub-paragraph (a), for “that regulation” substitute “those regulations”.

Simplified deduction scheme for personal employees

80. In regulation 34 (simplified deduction scheme for personal employees)—

- (a) in paragraph (1) after “may” insert “, subject to paragraph (1A),” and
- (b) after paragraph (1) insert—

“(1A) But authorisation under paragraph (1) must not be given on or after 6th April 2012.”.

Commonwealth citizens

81. In regulation 46(1B) omit the words “, or is a Commonwealth citizen (see section 278(2)(a) of ICTA),”.

82. In regulation 47(1) omit the words “or being a Commonwealth citizen”.

How information must or may be delivered by employers

83. In Table 10 in regulation 211 (how information must or may be delivered by employers)—

- (a) in the entries relating to regulations 67(1), 132(1), 157(2)(b) and 184I(2)(b), in column 5 for “yes” substitute “not applicable”, and
- (b) in the entry referring to regulation 184(G)(1) in column 1, for “184(G)(1)” substitute “184G(1)”.

(a) 1992 c.4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c.30) and subsection (1) was amended by section 1(1)(a) of the National Insurance Contributions Act 2008 (c.16).

(b) S.I. 2009/470, to which there are amendments not relevant to these Regulations.

(c) S.R. (NI) 2009 No. 128, to which there are amendments not relevant to these Regulations.

PART 4

Transitional provisions

Information about employees

84. Subject to regulation 86, on becoming a Real Time Information employer, an employer must provide to HMRC the following information—

- (a) the information specified in paragraphs 2 to 4 of Schedule A1 to the 2003 Regulations, as inserted by these Regulations,
- (b) the income tax year in which the employer became a Real Time Information employer,
- (c) the following information about each of the employer's employees during the tax year in which the employer became a Real Time Information employer—
 - (i) the employee's name,
 - (ii) the employee's date of birth,
 - (iii) the employee's current gender,
 - (iv) if known, the employee's national insurance number,
 - (v) the employee's address,
 - (vi) the number used by the employer to identify the employee, if any,
 - (vii) the date on which the employee's employment commenced, if that date is in the tax year in which the employer became a Real Time Information employer,
 - (viii) if applicable, the date on which the employee's employment ceased,
 - (ix) if applicable, an indication that an occupational pension is being paid to the employee and that the employer is the pension payer,
 - (x) if applicable, an indication that the employee is a seconded expatriate,
 - (xi) if applicable, an indication that relevant payments are made in respect of the employee to a person other than the employee,
 - (xii) if applicable, an indication that relevant payments are made to the employee on an irregular basis,
 - (xiii) the tax code operated on relevant payments made to the employee, and
 - (xiv) if applicable, an indication that that the tax code operated on relevant payments made to the employee is operated on the non-cumulative basis.

Information about payments to employees

85.—(1) Within one month of making the first return under regulation 67B or 67D of the 2003 Regulations, as inserted by these Regulations, a Real Time Information employer must provide to HMRC the information specified in paragraph (2) in respect of—

- (a) each employee who has been employed in the tax year the return was made in but whose employment had ceased before the date on which the return was made, and
- (b) each employee to whom relevant payments are made on an irregular basis and—
 - (i) in respect of whom information was not included on that return, and
 - (ii) to whom the employer does not expect to make a relevant payment with one month of making the return.

(2) The information specified in this paragraph is the information specified in paragraphs 2 to 4, 8 to 13, 15 to 17 and 45 of Schedule A1 to the 2003 Regulations, as inserted by these Regulations.

Provision of information under regulations 84 and 85

86.—(1) If an employer is one to whom paragraph (3) applies, the information required by regulation 84 must be provided before the employer makes any returns under regulation 67B or 67D of the 2003 Regulations, as inserted by these Regulations.

(2) Any other employer may provide the information required by regulation 84 as part of the first return the employer makes under regulation 67B or 67D of the 2003 Regulations, as inserted by these Regulations.

(3) This paragraph applies to an employer who, on the day the employer becomes a Real Time Information employer, employs 250 or more employees.

(4) The information required by regulation 84 and 85 must be provided using an approved method of electronic communications unless the employer is one to whom regulation 67D of the 2003 Regulations, as inserted by these Regulations, applies in which case the information must be provided in the form specified by HMRC.

Postponement of first return under regulation 67B or 67D of the 2003 Regulations

87.—(1) This regulation applies if a return due under regulation 67B or 67D of the 2003 Regulations, as inserted by these Regulations, is the first return made under either of those provisions by an employer.

(2) HMRC may notify the employer that the return must not be sent until such a date as HMRC notifies.

(3) If a second or subsequent return falls to be made by the employer under either of those provisions before the date notified by HMRC, it is also to be made on that date.

Regulations 84 to 87: interpretation

88. Terms used in regulations 84 to 87 have the same meaning as they have in the 2003 Regulations, as amended by these Regulations.

| | |
|------|--|
| | <i>Name</i> |
| | <i>Name</i> |
| Date | Two of the Commissioners for Her Majesty's Revenue and Customs |

SCHEDULE

Regulation 75

“SCHEDULE A1

Regulation 67B
Regulation 67D(a)

Real time returns

1. The information specified in this Schedule is as follows.

Information about the employer

2. The employer's HMRC office number.
3. The employer's PAYE reference.
4. The employer's accounts office reference.

(a) Regulations 67B and 67D are inserted by regulation 47 of these Regulations.

5. If applicable, an indication that this is the final return under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) that the employer expects to make because this PAYE scheme has ceased.

6. If applicable, an indication that this is the final return under regulation 67B or 67D that the employer expects to make for the tax year.

7. If either paragraph 5 or 6 applies details of the following—

- (a) whether the employer made any taxable payments to an employee in respect of which the employer has borne the tax liability,
- (b) whether any person other than the employer paid expenses or provided benefits to any employees during their employment with the employer in the year,
- (c) whether anyone employed by a non-UK employer has undertaken work for the employer for 30 days or more in a row in the tax year,
- (d) whether any payments of employment income in respect of an employee have been paid directly to a person other than the employee,
- (e) whether the employer is required to make a return under regulation 85 (employers: annual return of other earnings (Forms P11D and P9D) for the tax year,
- (f) whether, the return is being made by a managed service company.

Information about the employee

8. The employee's name.

9. The employee's date of birth.

10. The employee's current gender.

11. If known, the employee's national insurance number.

12. If the employee's national insurance is not known, the employee's address.

13. The number used by the employer to identify the employee, if any.

14. If the number used by the employer to identify the employee is different to that shown on the previous return for the employee (if any), an indication of that and the number shown on the previous return.

Information about payments to the employee, etc

15. The tax year to which the return relates.

16. The total payments to date in this employment.

17. The total net tax deducted in relation to those payments.

18. The employee's pay frequency or an indication that payments are made to the employee on an irregular basis.

19. The date of the payment the return relates to.

20. The tax week number or tax month number in which the payment is made.

21. An indication of which of the following bands the number of normal hours worked each week by the employee falls into—

- (a) up to 15.99,
- (b) 16 to 29.99,
- (c) 30 or more,

or an indication that none of the bands is applicable.

22. The value of the payment the return relates to.

23. The tax code operated on the payment the return relates to.

24. If applicable, an indication that the employee's tax code is being operated on a non-cumulative basis.

25. The total net tax deducted from the payment the return relates to.

26. The value of any amount comprised within the payment made to the employee which falls to be reported under regulation 85 and in respect of which tax has been deducted.

27. The value of any amount which is not subject to tax or national insurance paid to the employee at the same time as the payment.

28. The value of any deductions made from the payment which do not otherwise fall to be reported under this Schedule.

29. The value of the payment after the deduction of tax, national insurance and deductions due under the Student Loan Regulations.

30. The value, if any, of allowable pension contributions within the meaning given by regulation 3(2) (net PAYE income) deducted from the payment of PAYE income comprising the payment.

31. The value, if any, of employee pension contributions other than allowable pension contributions within the meaning given by regulation 3(2) deducted from the payment.

32. The value of any earnings for the purposes of the Social Security Contributions and Benefits Act 1992 comprised within the total payment which are included in the gross earnings from the employment for the purpose of calculating liability to Class 1 contributions under that Act but in respect of which tax is not deducted under these Regulations, excluding allowable pension contributions.

33. In paragraphs 15 to 31, "payment" means the relevant payment the information being given in accordance with this Schedule relates to.

34. In paragraph 32, "total payment" means the relevant payment the information being given in accordance with this Schedule relates to plus any other amount paid to the employee at the same time as the relevant payment.

Information on the commencement of employment

35. If the return is the first return in respect of the employee in this employment the information by paragraphs 36 to 44.

36. The date on which the employment commenced or will commence.

37. The employee's address.

38. If known, the employee's passport number.

39. An indication of which of the statements in paragraph 41 applies to the employee.

40. If the employee is a seconded expatriate, the information required by paragraph 42 applies and an indication of which of the statements in paragraph 43 applies to the employee.

41. The statements in this paragraph are—

- (a) the employment is the employee's first employment since the preceding 6th April, and the employee has not since that date received—
 - (i) jobseeker's allowance or incapacity benefit which is subject to income tax, or
 - (ii) a retirement pension or an occupational pension,

- (b) the employee is not receiving a retirement pension or an occupational pension and since the preceding 6th April—
 - (i) has had another employment, but is not now in receipt of employment income from it, or
 - (ii) has received jobseeker’s allowance or incapacity benefit which is subject to income tax, but payment of that allowance or benefit has ceased,
- (c) the employee either has another employment (which is continuing) or is in receipt of a retirement pension or an occupational pension.

42. An indication of whether the employee is a seconded expatriate who is a national of an EEA state.

43. The statements in this paragraph are—

- (a) the employee intends to live in the UK for six months or more,
- (b) the employee intends to live in the UK for less than six months, or
- (c) the employee will work both inside and outside the United Kingdom, but will live outside.

44. An indication of whether a pension is being paid and, if so—

- (a) the amount of the pension, and
- (b) an indication of whether the pension is being paid because the pensioner is a bereaved spouse or civil partner.

Information on the cessation of employment

45. If the employment has ceased, the date of cessation.

46. If applicable, an indication that the payment the details under this Schedule relate to was made after cessation of the employment.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (“the 2003 Regulations”).

The amendments contained in Part 2 of these Regulations deal with the way that employers report information under the Pay As You Earn system to HM Revenue and Customs (“HMRC”) when employees commence and cease employment and about the payments made to employees and the tax deducted from those payments. There are also consequential changes to the provisions dealing with the amount of tax that employers must account to HMRC for in respect of each tax period and the information that employees must receive when they cease employment.

The amendments in Part 2 come into force on 6th April 2012 but will apply to different employers at different times. Employers to whom the new reporting arrangements apply are referred to in the amendments as Real Time Information employers. The definition of a Real Time Information employer is contained in new regulation 2A of the 2003 Regulations, which is inserted by regulation 4 of these Regulations. New regulation 2B of the 2003 Regulations, which is also inserted by regulation 4, contains the definition of “Real Time Information pension payer”, for the purposes of the provisions which apply specifically to pension payers when payment of a pension commences or ceases.

The principal amendments dealing with the cessation of employment are contained in regulations 7 to 18. The principal amendments dealing with the commencement of employment are contained in regulation 19 to 44. In particular, these amendments insert new Chapters 2A and 3A into Part 3 of the 2003 Regulations which deal with the procedures a Real Time Information employer and

Real Time Information pension payer must go through when a new employee commences employment or a new pensioner first receives a pension.

The principal amendments dealing with the information a Real Time Information employer must send to HMRC in relation to payments made to their employees and the tax deducted from those payments and the amount of tax the employer must accordingly pay to HMRC are in regulations 47 to 55. In particular, regulation 47 inserts new regulations 67B to 67H into Part 4 of the 2003 Regulations.

Of these, new regulations 67B and 67D contain the principal new reporting obligations. Regulation 67B requires employers to provide information to HMRC each time a payment is made to an employee and for this to be done using an approved method of electronic communications. "Approved method of electronic communications" is defined in regulation 189 of the 2003 Regulations, which is not amended by these Regulations.

Regulation 67D contains exceptions from the obligation in regulation 67B for certain employers. It allows those employers to report to HMRC at the end of each tax period and does not require the reporting to be done an approved method of electronic communications.

The information to be reported to HMRC under regulations 67B and 67D is set out in new Schedule A1 to the 2003 Regulations. This is inserted by regulation 75 of, and the Schedule to, these Regulations.

New regulations 67G and 67H of the 2003 Regulations contain the provisions dealing with how much tax a Real Time Information employer must pay to HMRC for a tax period. Regulation 55 inserts new regulation 75A to 75C dealing with the enforcement of unpaid sums.

Part 3 of these Regulations contains other minor amendments to the 2003 Regulations dealing, in particular with the treatment of Commonwealth citizens on the commencement of employment.

Part 4 of these regulations contains transitional provisions dealing with information that an employer must provide to HMRC when they become a Real Time Information employer and under which HMRC can delay the obligation on a Real Time Information employer to comply with regulation 67B or 67D, as the case may be, for the first time.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.