



## Legislative change to tax code

Payments of share-based earnings made after an employment has ceased that have not been included in Form P45

Draft legislation for comment

Publication date: 19 January 2012

Closing date for comments: 16 February 2012

# Technical note

## Introduction

1. On 6<sup>th</sup> April 2011 HMRC changed the tax code that applies to certain payments of PAYE income made to an employee after cessation of employment which have not been included in the Form P45. The tax code to be operated against cash based payments changed from the basic rate (BR) tax code to zero T (0T). However, payments of PAYE income made in the form of share-based payments (those in the form of securities, interests in securities and securities options) continued to be taxed at BR whilst we reviewed the operational effects a change to code 0T would have on such payments.
2. Code 0T is a progressive tax rate which deducts tax at basic, higher and additional rates depending on the level of PAYE income paid. The BR tax code deducts tax at a flat rate of 20%.
3. HMRC has engaged with a number of different groups of employers, share scheme administrators and representative bodies. Most favoured a process that was simple to understand and operate. Some requested that a single tax code be applied to all payments of PAYE income, whether cash or share-based, made after cessation of employment which have not been included in the Form P45.
4. From 6 April 2012 the 0T tax code, and not code BR, should be used on a non-cumulative basis to deduct tax on share-based payments made to an employee after cessation of employment and which have not been included in the Form P45. This change will align all post-employment earnings under the same tax code.

## Regulatory amendments

5. In readiness for the introduction of this tax code change, this document presents amendments to Regulation 37 of the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682) ("the PAYE Regulations").
6. HMRC welcomes comments on the draft amending regulations.
7. HMRC does not anticipate that there will be significant costs to employers with the introduction of this tax code change, but would welcome any evidence about the likely level of costs.

## Next steps and how to comment

8. These amending draft regulations are open for comment until 16 February 2012. All comments should be emailed to: [pa.harris@hmrc.gsi.gov.uk](mailto:pa.harris@hmrc.gsi.gov.uk).
9. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to

information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

10. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
11. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

### **Regulatory amendments**

12. Draft legislation for comment is contained on the following pages.

**2012 No.**

**INCOME TAX**

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

*Made* - - - -

*Laid before the House of Commons*

*Coming into force* - -

*6th April 2012*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations, in exercise of the powers conferred by sections 684(1) and (3) of the Income Tax (Earnings and Pensions) Act 2003<sup>(a)</sup> and sections 59A(10) and 59B(8) of the Taxes Management Act 1970<sup>(b)</sup>.

**Citation and commencement**

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

**Amendment of the Income Tax (Pay As You Earn) Regulations 2003**

2.—a) Regulation 37 (PAYE income paid after employment ceased) of the Income Tax (Pay As You Earn) Regulations 2003<sup>(c)</sup> is amended as follows.

- (2) In paragraph (2) for “Subject to paragraph (2A), the” substitute “The”.
- (3) Omit paragraph (2A).
- (4) Omit paragraph (2B).

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Date

Two of the Commissioners for Her Majesty's Revenue and Customs

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<sup>(a)</sup> 2003 c.1. Paragraph 102 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c.11) amended section 684 so that the Commissioners for Her Majesty's Revenue and Customs have the power to make the Regulations. Further relevant amendments were made by paragraph 2 of Schedule 58 to the Finance Act 2009 (c.10).

<sup>(b)</sup> 1970 c.9. Section 59A was inserted by section 192 of the Finance Act 1994 (c.9); subsection (10) was inserted by section 126(1) of the Finance Act 1996 (c.8). Section 59B was inserted by section 193 of the Finance Act 1994; subsection (8) was inserted by section 126(2) of the Finance Act 1996. Sections 59A(10) and 59B(8) were amended by paragraphs 130(b) and 131(4) respectively of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1) and section 145(7)(b) of the Finance Act 2003 (c.14).

<sup>(c)</sup> S.I. 2003/2682, amended by S.I. 2011/1054; there are other amending instruments but none is relevant.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Income Tax (Pay As You Earn) (Amendment) Regulations 2012 amend the Income Tax (Pay As You Earn) Regulations 2003 (“the 2003 Regulations”) and revoke the Income Tax (Pay As You Earn) (Amendment) (No.2) Regulations 2011 (“the 2011 Regulations”). These regulations come into force on 6th April 2012.

Regulation 2 amends regulation 37 of the 2003 Regulations by omitting the reference in regulation 37(2) to paragraph 2A and deleting paragraphs 2A and 2B to regulation 37. Paragraphs 2A and 2B were inserted into regulation 37 by the 2011 Regulations and created an exception to the requirement in paragraph 2 that tax must be deducted from relevant payments made after the employment has ceased by the former employer or another on the employer’s behalf on the non-cumulative basis using the OT code. The exception related to payments in the form of securities, interest in securities and securities options and provided that such payments must be taxed using the basic rate. Paragraph 2B defined securities, interest in securities and securities options. As a result of these regulations all relevant payments made after employment has ceased will be taxed on the non-cumulative basis using the OT Code.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at [http://www.hmrc.gov.uk/the\\_library/tiins.htm](http://www.hmrc.gov.uk/the_library/tiins.htm).