

These notes refer to Part 5 of the draft PAYE Regulations as at 16 July 2002

PAYE REGULATIONS

EXPLANATORY NOTES

The commentary below covers the draft regulations in Annex B. The following table lists those draft regulations and indicates their origin.

<i>Draft Regulation</i>	<i>Heading</i>	<i>Based on Regulation</i>
<i>Payment and recovery of tax</i>		
40	Periodic payments to and recoveries from the Revenue	40; 41(1),(2); 42(1),(6)
40A	Quarterly income tax periods	41(1),(3)
40B	Modification of regulation 40 in case of trade dispute	40(2); 41(2); 42(6)
42A	Recovery from employee of tax not deducted by employer	42(2)-(4)
<i>Annual returns of [payments of emoluments] and tax</i>		
43	Annual return of [payments of emoluments] liable to deduction of tax	43(1)-(7),(12)
44	Annual return of [payments of emoluments] not liable to deduction of tax	44(1)
45	Additional return in case of trade dispute	45
<i>Failure to account for deductible tax</i>		
43A	Certificate if tax on regulation 43 return is unpaid	43(8)
47	Return and certificate if tax may be unpaid	47(1)-(5)
48	Notice and certificate if tax may be unpaid	48(1)-(7),(11),(12)
55A	Certificate after inspection of PAYE records	55(8)
49	Determination of tax unpaid and not otherwise certified	49, except(5),(6)
49A	Employee's liability if tax unpaid after regulation 49 determination	49(5),(6)
<i>Interest</i>		
51	Interest on tax overdue	51(1),(2); 52(1)
53A	Interest on tax overpaid	53A
<i>Recovery</i>		
54	Recovery of tax and interest	54(1)-(5); 43(9); 47(6); 52(3); 55(9)
<i>Returns involving [emoluments] other than payments</i>		
46	Employers: annual return of [other emoluments]	46, except (7)
46B	Moving expenses and notional payments: exceptions from returns under regulation 46	46(7)

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Draft Regulation	Heading	Based on Regulation
46A	Quarterly return if a car becomes available or unavailable	46A
46ZA	Termination payments and non-cash benefits: information to be provided	46ZA(1)-(4),(11), and (12)
46ZC	Termination payments: return where award changes	46ZA(5),(6),(9)
46ZE	Termination payments: return where more than one employer	46ZA(10)
Information to be given to employees		
46AA	Employers: information to employees of [other emoluments]	46AA(part)
46AB	Third parties: information to employees of [other emoluments]	46AB
46ZD	Termination payments and non-cash benefits: information to employees	46ZA(7),(8)
PAYE records: retention and inspection		
55	Inspection of employer's PAYE records	55(1)-(7),(12)
General		
46ZB	Methods of providing information	43(1),(1C),(3A); 44(2); 46(1),(1A), (7A),(7B); 46A(1); 46ZB
X	Collector's certificate that sum due	42(8),(9); 43(10), (11); 47(7),(8); 48(6),(9),(10); 49(9),(10); 51(4), (5); 55(10),(11).
XX	Payment by cheque	42(7A); 48(7A); 52(4); 53(5)
Other		
2(part)	Insert into regulation 2	
FPCS	FPCS arrangement—information to be provided to employee by employer	46AA(part)
50	Interest on unpaid tax which has been formally determined	50
53	Interest on tax overpaid by employer	53(1)-(4)

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GLOSSARY

ICTA	the Income and Corporation Taxes Act 1988
draft Bill	the draft Income Tax (Earnings and Pensions) Bill published on 2 July 2002 for comments by 27 September 2002
TMA	the Taxes Management Act 1970

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PART 5: PAYMENT AND RECOVERY OF TAX, ETC

Overview

1. This Part deals with:
 - regular payments by the employer to the Inland Revenue in relation to amounts of income tax deductible from employees by the employer (and recoveries from the Inland Revenue where more tax is repayable by the employer to employees than is deductible from them) (regulations 40 to 42A);
 - returns, to the Inland Revenue, by the employer relating to PAYE income paid to, and income tax deductible from or repayable to, employees (regulations 43 to 45);
 - when there is non-compliance with the regulations, procedures for determining and recovering tax, issues of liability between employers and employees and provisions for interest (regulations 43A to 54);
 - provision of information to the Inland Revenue principally relating to PAYE income being provided to employees in a manner that does not require PAYE deductions (regulations 46 to 46ZE);
 - provision of information to employees principally relating to PAYE income being provided to employees in a manner that does not require PAYE deductions (regulations 46AA to 46ZD);
 - the maintenance of records by an employer and their inspection (regulations 55).
2. The numbers used for the draft regulations are purely provisional. For the most part those provisional numbers are the same as, or similar to, numbers used by corresponding material in Part V of SI 1993/744.

meaning of “employer”, “employee”, “emoluments” etc

3. The words “employer” and “employee” in paragraph 1 above, and in much of the rest of this commentary, are used with the extended meaning given to them in Regulation 2 of SI 1993/744. We shall be looking at whether alternative labels would be feasible and more helpful.

4. The term “PAYE income” is used in this commentary interchangeably with Schedule E income (or variants). The draft Income Tax (Earnings and Pensions) Bill published on 2 July 2002 for comments by 27 September 2002 defines “PAYE income” in clause {j4200}. It takes the place of references in ICTA to “income assessable under Schedule E”.

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5. The PAYE regulations define “emoluments” to mean

“the full amount of any income to be taken into account in assessing liability under Schedule E after the deduction of—

(a) allowable superannuation contributions, and

(b) any sum withheld from an employee in accordance with section 202 of the Taxes Act,”

6. The draft regulations in Annex B continue to use the term “emoluments”. But later drafts will reflect the terminology in the draft Bill or (if different) whatever is enacted to replace Schedule E income.

7. The draft regulations in Annex B contain a number of references to provisions of ICTA. Later drafts will naturally refer to the corresponding provisions in the draft Bill and in due course the subsequent Act.

Use of “collector” and “inspector” in the regulations

8. This draft provisionally follows SI 1993/744 in using the terms “collector” and “inspector”. But we think it might be more helpful to users if these expressions were replaced by “the Inland Revenue” – with that meaning any officer of the Board.

9. Since the 1993 consolidation of the PAYE regulations, the terms “collector” and “inspector” have normally been avoided in tax legislation. In 1995 this was explained, under the heading “Statutory References”, in “SAT2 (1995) : Self Assessment: the legal framework” as follows:

Meaning of ‘Officer of the Board’

The term ‘Officer of the Board’ is used in the new legislation in place of the more traditional terms ‘Inspector’ and ‘Collector’. This is because the introduction of Self Assessment coincides with a change programme within the Inland Revenue that includes a very extensive internal reorganisation. New ways of working will mean that people in the Revenue will not be restricted to working within the old specialisms. But the officers of the Board who perform the work will be of similar rank and training to those who perform analogous tasks today.

10. Earlier references to “inspector”, in legislation dealing with capital allowances, were omitted from CAA 2001 in favour of “the Inland Revenue” (defined in section 576 of that Act). This was explained in Annex 1 to explanatory notes to that Act as follows:

Change 64 The Inland Revenue and tax inspectors: section 576(1)

Section 576(1) provides that “the Inland Revenue” means any officer of the Board of Inland Revenue.

The effect of this, in relation to some provisions in the Act, is to enable things to be done by or in relation to an officer of the Board instead of (as would be the case under the corresponding provisions of CAA 1990) by or in relation to an inspector. (The change does not affect what can be done by or in relation to the Board of Inland Revenue.)

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This change is a minor one because a similar result could in many cases be achieved by a different means under section 1(2B) of TMA 1970. Under section 1(2B), a person who is not an inspector may exercise functions conferred on inspectors, if, in accordance with the Board's administrative practices, he has been authorised to act as an inspector for specific purposes.

11. Section 1(2B) of TMA applies to collectors in the same way as it applies to inspectors.

12. A similar change is proposed in the draft Bill. At page 511 of the introduction and commentary accompanying the draft Bill the proposal is described as follows:

We propose to replace references to "an inspector" throughout this Exposure Draft [12] with references to "the Inland Revenue" which will in turn be defined to mean any officer of the Board of Inland Revenue. This is reflected throughout this draft Bill.

13. Rewriting the PAYE regulations provides an obvious opportunity to remove the dated references to "collector" and "inspector" that currently exist. That would also make the regulations more transparent for users who are not familiar with section 1 of TMA.

<p>Q1. We welcome comments on the possible further change in the law to replace references to "collector" and "inspector" by "the Inland Revenue" – defined to mean an officer of the Board.</p>

headings and organisation of these regulations

14. Some of the headings of regulations differ from those used for corresponding material in Part V of SI 1993/744. The changes are intended to convey better what the regulation is about.

15. The material in this Part has also been provisionally reorganised under italic subheadings that differ from those in SI 1993/744. Further reorganisation will be possible if readers would find that helpful.

PAYMENT AND RECOVERY OF TAX

16. The four regulations under this italic heading deal with aspects of accounting between the employer and the Inland Revenue in relation to tax that the employer should deduct from payments, or repay, to employees.

Regulation 40: Periodic payments to and recoveries from the Revenue

17. This regulation deals with payments employers must make to the Inland Revenue if, in an income tax period, they were liable to deduct from their employees more tax than they were liable to pay to their employees. It also deals with the way in which employers can recover amounts from the Inland Revenue if, in an income tax period, they were liable to pay to their employees more tax than they were liable to

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deduct from their employees. It is based on regulation 40, regulation 41(1) and (2), and regulation 42(1) and (6) of SI 1993/744.

18. This regulation does not deal with the complications that arise in certain cases where the provisions of regulation 36 dealing with trade disputes apply. Such complications are likely to affect only a small minority of employers at any one time and are therefore dealt with separately in Regulation 40B.

19. This regulation also does not deal with the complications that can arise from “notional payments” (within the meaning of section 203J of ICTA – see clause {j4219} of the draft Bill). Such complications are also likely to affect only a small minority of employers at any one time and are therefore likely to be dealt with in a separate regulation.

Background

20. From the first regulations in SI 1944/251, the PAYE regulations have contained provisions about how to account to the Inland Revenue for income tax that is deductible by employers from payments to employees; and how to recover from the Inland Revenue income tax that is repayable by employers to employees.

21. The accounting between employer and Inland Revenue was relatively simple from regulation 27 of SI 1944/251 through successive consolidations up to 1973 (regulation 26 of SI 1973/344). Someone dealing with PAYE regulations for the first time therefore had a reasonable prospect, just by reading the regulations, of grasping how these regular payments between the employer and the Inland Revenue fitted into the overall scheme of PAYE.

22. Regulation 9 of SI 1982/66 amended the system of payments between the employer and the Inland Revenue to cope with a different way of dealing with repayments of income tax by an employer to employees involved in trade disputes. It inserted an amended regulation 26 of SI 1973/344. This single regulation was necessarily more complex as it had to cater for employers who had employees involved in trade disputes. That made it difficult for new readers to grasp how payments between the employer and the Inland Revenue generally fitted into the overall scheme of PAYE.

23. Regulation 4 of SI 1991/1080 introduced the facility for “small employers” to make quarterly payments to the Inland Revenue. It resulted in three regulations (26, 26A and 26B of SI 1973/344) dealing with an employer’s payments to, and recoveries from, the Inland Revenue. That arguably further increased, for new readers, the difficulty of understanding how payments between the employer and the Inland Revenue fitted into the overall scheme of PAYE.

24. These accounting provisions, between the employer and the Inland Revenue, were consolidated as regulations 40, 41 and 42(1) and (6) of SI 1993/744.

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approach taken in these regulations

25. These draft regulations give readers an easier introduction to the legislation. The draft regulations:

- separate the general provisions from the special provisions for trade disputes; and
- remove repetition to make clearer how the provisions for quarterly payments do and don't differ from the general rules

26. This allows regulation 40 to provide:

- in *paragraphs (1) to (3)* the basic rule which decides if an employer must account to the Inland Revenue for tax deducted or may recover from the Inland Revenue tax repaid, and if so how much; and
- in *paragraphs (4) to (6)* supporting material about the meaning of "income tax period", receipts for payments and signposts to other provisions which may apply in relation to this accounting procedure.

separate general and special provisions

27. Regulations 40(2) and 41(2) of SI 1993/744 appear fairly simple. But that is deceptive. They are heavily compressed. They do not make it easy to see that:

- an employer who has never had any employees involved in a trade dispute may ignore "B" and "C" and the words after "that income tax month/quarter" in the definition of "D" (see paragraph 53);
- an employer who has had to consider "B" and "C", because of a trade dispute, can ignore them after there are no longer any amounts which the employer has to withhold, under regulation 36(3)(a) of SI 1993/744, from any employee (see paragraph 53);
- the result of the formula must not be a negative number — so, by deduction, the amount "(C + D)" in the second brackets must not exceed the amount of the first brackets "(A + B)" (see paragraph 48);
- "D" should be deducted before "C" in cases where the amount in the second bracket, (C + D), would exceed the amount in the first bracket, (A + B) (see paragraph 49);
- "B" and the modifications to the definition of "D" are concerned with preventing the employer from getting relief a second time for things for which the employer has had relief in an earlier period (see paragraph 56);

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- “C” is concerned with the amount of relief, if any, that the employer can get in relation to amounts that the employer would have been liable to repay in the current period but for regulation 36 of SI 1993/744 (and in relation to which there are modifications to ensure that relief is not obtained twice) (see paragraph 43).

28. These draft regulations make it easier for readers by dealing in regulation 40 with the basic provisions that apply for the majority of employers who do not have employees involved in a trade dispute. This allows this regulation to deal also with the repayment provisions in that “base case”. This should help new readers to get a better feel for how payments to (and recoveries from) the Inland Revenue fit into the overall scheme of PAYE.

29. A separate regulation 40B deals with the modifications that are needed when an employer does have employees involved in a trade dispute.

Eliminating repetition in regulations 40 and 41 of SI 1993/744.

30. This regulation gives the amount an employer must pay to, or can recover from, the Inland Revenue whether dealing with PAYE monthly or, as a “small employer”, quarterly. This is possible because of the way the complexities of trade disputes are dealt with separately in regulation 40B. It avoids the substantial repetition that currently exists between regulation 40(2) and 41(2) of SI 1993/744 (itself leading to numerous other references to both regulation 40 and 41 whenever payments from the employer to the Inland Revenue are involved).

recovery from the Inland Revenue

31. By combining material from regulations 40, 41 and 42 of SI 1993/744 this regulation deals also with recovery from the Inland Revenue (where an employer makes repayments which exceed the deductions). The heading of this regulation makes clear this possibility.

should this regulation deal explicitly with “A = D”?

32. Paragraphs (1) to (3) deal with the base case setting out what an employer is to pay to, or may recover from, the Inland Revenue and when and how to do it.

33. The regulation does not deal with the case where $A = D$. It is reasonably obvious from the context that there is nothing to pay or recover in such a case; so an employer need do nothing. Explicit provision for the case of “ $A = D$ ” would then make this regulation longer and, more importantly, might make it seem more complicated.

34. On the other hand there will be situations in which $A = D$; and anyone writing software for PAYE will need to cater for them. That is why, for example, the working draft of regulation 14 (Deduction and repayment - cumulative basis) included the provision:

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(5) If $CT + UT = PT$, the employer must neither deduct nor repay tax when making the payment.

Q2. We welcome comments on whether regulation 40 should also deal with the case where $A = D$ (regulation 40).

symbols

35. The symbols “A” and “D” are used here solely because they are the symbols currently used in SI 1993/744. (Regulation 40B uses “B” and “C” for the same reasons.) This is intended to help readers see how this working draft relates to SI 1993/744. For the final regulations we propose to use in this regulation either “A” and “B” (or “X” and “Y”) or something like “D” and “R” (standing for “deductible” and “repayable” to an employee).

Regulation 40A: Quarterly income tax periods

36. This regulation sets out when a person is regarded as a “small employer” and can therefore use an income tax period of an income tax quarter rather than an income tax month. It supports the definition of “income tax period” in regulation 40(4).

37. This regulation is based on regulation 41(1) and (3) of SI 1993/744.

Background

38. This regulation had its origins in regulation 4 of SI 1991/1080 which inserted a new “regulation 26A — Payment of tax quarterly by employer” into SI 1973/344. Changes to it were subsequently made as to the monetary average to use and to the various amounts which are to be taken in arriving at monetary totals.

Consolidation of social security regulations in 2001

39. The definition of “N” in this regulation does not currently reflect the above consolidation. That is because the provisions, of the 1993 regulations, on which it is based are likely to change as a result of proposals in the 2002 Finance Bill. This regulation will be amended to take account of any changes that result and which will likely reflect the consolidation.

Regulation 40B: Modification of Regulation 40 in case of trade dispute

40. This regulation sets out the modifications of the calculations determining whether payments need to be made to, or recoveries may be made from, the Inland Revenue where an employer has employees that are involved in a trade dispute. It is based on regulations 40(2), 41(2) and 42(6) of SI 1973/744.

Background

41. The commentary on regulation 40 sets out the background to these provisions and why they are brought together in this new regulation.

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42. This draft regulation also tries to give a better indication of:
- the fact that it is dealing both with:
 - giving relief to an employer in advance of a liability to repay an employee; and
 - preventing relief being given more than once; and
 - when an employer needs to consider it and when such an employer can go back to the “base case” in regulation 40.

Advance relief — “C”

43. Paragraphs (2) and (3) provide for the amounts an employer pays the Inland Revenue to be reduced by C. Paragraph (5) defines C as the amounts the employer would have repaid to employees, in the income tax period, but for the trade dispute. Deducting “C” in this way may have the effect of giving the employer relief (“advance relief”) for a payment to the employee in advance of the employer being liable to make the payment to the employee. But it is necessary to make sure the employer has the funds to repay the employees as soon as the dispute ends.

44. There are provisions in paragraph (3) and (4) to ensure that the advance relief does not overall result in the employer making, over the period of the trade dispute, net payments to the Inland Revenue which are less than the net deductions which the employer makes from employees.

The definition of “B”

45. Something appears to have gone wrong with the definition of “B” as part of the process of the 1993 consolidation of the regulations. Taken literally, the formula “(A + B) – (C + D)”, in regulations 40(2) and 41(2) of SI 1993/744, could result in a requirement to pay to the Inland Revenue more than the employer deducts from payments to employees. This comes about because the definition of “B” has lost the condition, present from 1982 to 1993, that it only includes amounts for which relief was effectively obtained in earlier periods.

46. This “slip” has not attracted comment. This may indicate that the formula in regulations 40(2) and 41(2) of SI 1993/744 is not used in practice. It may also indicate that the provisions for trade disputes are rarely a cause of concern in practice.

47. This regulation is based on the way in which the predecessor of “B” was defined from 1982 to 1993. That accords with the practice of the Inland Revenue. Whether it is a change in the law depends on how the courts would deal with the matter if it was put before them.

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Q3. We welcome comments on the proposed rewrite change to define “B” in paragraph (5) in the way it was originally expressed in 1982: (regulation 40B).

provision that payments cannot be less than nothing

48. Paragraphs (2) and (3) provide that the payment an employer must make to the Inland Revenue cannot be less than nothing. There is no such limit in regulations 40 and 41 of SI 1993/744. But it would be odd to require an employer to make “negative payments” to the Inland Revenue. It would be even odder to do so if the purpose was to provide for repayments in regulations 40 and 41 when payments from the Inland Revenue to the employer are dealt with specifically by regulation 42(6) of SI 1993/744. It therefore seems safe to conclude that there is an implied condition, in the formulas in regulations 40(2) and 41(2) of SI 1993/744, that $(C + D)$ must not exceed $(A + B)$. That is the approach taken in this regulation.

priority of credit for actual repayments (D) over repayments not made (C)

49. Some rule is then needed to decide the priority of set-off between tax actually repaid to employees (D) and tax which would have been repaid but was not (C). “Advance relief” is intended to be given against payments that would otherwise be made to the Inland Revenue. That points to “C” being the final amount that is deducted.

50. That conclusion is supported by the result if C were to be offset before D. That could mean that the employer had in effect no credit for amounts actually repaid to employees. Which would result in the employer paying to the Inland Revenue, over a period, more tax than the employer can deduct from payments to employees. That would be contrary to the purpose of the provisions.

51. This regulation is written on the basis that D is deducted first and then as much of C as is necessary to reduce payments to nil.

Q4. We welcome comments on the proposed rewrite change to make explicit that the payment an employer must make to the Inland Revenue cannot be a negative amount; and that credit for actual repayments is given in priority to credit for repayments withheld. (Regulation 40B(2) and (3))

When this regulation begins to apply and stops applying

52. As this regulation is more complicated than regulation 40, employers may want to know when this regulation applies to them and when it stops applying to them.

53. *Paragraph (1)* is new and sets out when an employer may need to consider these modifications. And it tells such an employer when it is safe to revert to the “base case” of regulation 40.

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54. It is only once there is an amount first being withheld by an employer, as a result of regulation 36(3) of SI 1993/744, that “C” or, in later income tax periods, “B” might be positive. And it is only then that the asymmetries introduced into the calculations (of how much an employer must pay to, or may recover from, the Inland Revenue) can cause the extended meaning of “D” in this regulation to differ from the way in which “D” is defined in regulation 40.

55. It is safe to revert to the base case when there is no longer any amount withheld from any employee under regulation 36(3) of SI 1993/744. This is because “B” and “C” will clearly be zero in such a case. And it will not be possible to include in “D” anything for which relief was given in an earlier period. Nor will it be possible to include in “D” anything which is being recovered under regulation 40(2).

Advance relief but not double relief

56. Paragraphs (2) and (3) deal separately with the first and subsequent income tax periods in which there is a trade dispute. This allows the regulation to make clearer the way relief for repayments withheld is given only once. The two stage procedure in these paragraphs is intended to make clearer that relief is given for D in priority to C

57. *Paragraph (2)* deals with the first income tax period of a trade dispute. As it is the first period there is no need to include in the formula amounts relieved in previous periods.

58. *Paragraph (3)* deals with income tax periods after the first one in which the employer has to consider this regulation. It introduces B into the formula to take account of repayments withheld in previous income tax periods which have already been taken into account.

59. *Paragraph (4)* deals separately with the modifications to calculate the amount, if any, recoverable by the employer from the Inland Revenue when this regulation applies.

60. *Paragraph (5)* defines the symbols used in paragraphs (2) and (3).

Regulation 42A: Recovery from employee of tax not deducted by employer

61. This regulation deals with two cases in which the employer can be relieved of liability to pay tax that the employer did not deduct, but should have deducted. It is based on regulation 42(2)-(4) of SI 1993/744.

Background

62. The two cases referred to are dealt with in paragraphs 42(2) and (3) of SI 1993/744.

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63. The origin of regulation 42(2) of SI 1993/744 is regulation 27(3) of the first regulations, SI 1944/251. That dealt with cases where the Board of Inland Revenue were:

“satisfied by the employer that he took reasonable care to comply with the provisions of the these Regulations and that the underdeduction was due to an error made in good faith”

64. The origin of regulation 42(3) of SI 1993/744 is regulation 6 of SI 1954/577. That was introduced to deal with cases in which it was considered that an employee:

“acquiesced in a wilful omission by the employer to deduct the tax”.

65. The other substantive provision in this regulation provides for interest on tax recoverable from employees who are considered to have acquiesced a wilful failure by the employer to deduct the right tax. It is regulation 42(4) of SI 1993/744. Its origin is regulation 3(a) of SI 1993/725. It ensures that interest can run from 14 days after the end of the tax year concerned where tax is recovered from an employee.

Decompression and reorganisation of regulation 42 of SI 1993/744

66. Regulation 42 of SI 1993/744 contains a number of provisions that bear little relationship to each other. That is unhelpful. For that reason, regulation 42(2) and (3) of SI 1993/744, which share the common feature of eliminating the employer’s liability for an underdeduction of tax, have been separated out into this regulation.

Reposition this regulation?

67. The reason for placing this material close to regulation 40, dealing with accounting between the employer and the Inland Revenue, is first that this is the (familiar) current position and second that these provisions do have a relationship to the amount the employer must pay to the Inland Revenue.

68. But it might be thought appropriate to move this regulation so that it sits with other Regulations having a common theme of what happens if something goes wrong (with suitable signposting from regulation 40). And that might involve it sitting closer to a “related provision” in regulation 49A.

Q5. We welcome comments on whether it would be helpful to reposition regulation 42A with other material dealing with what happens if something has gone wrong. (Regulation 42A)

Recovery in respect of individual employees

69. Paragraph (1) defines X and Y in order to reduce the length of the next two paragraphs and make them easier to understand.

70. Paragraph (1) includes the words “paid to an employee” and “paid to that employee” in the definitions of “X” and “Y” respectively. There are no corresponding words in regulation 42(2) or 42(3) of SI 1993/744. These extra words

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are inserted to clarify what seems implicit. This regulation is only intended to recover from an individual employee the tax that the employer failed to deduct from that employee.

Q6. We welcome comments on the use of extra words to clarify that regulation 42A operates on an employee by employee basis. (Regulation 42A(1)).

Amount deductible from an individual unlikely to be specified

71. The amount deductible from an individual employee is rarely likely to be literally the amount specified in regulation 40(2) or 41(2) of SI 1993/744. The amounts specified there will usually be totals for more than one employee. It seems reasonably clear that regulations 42(2) and 42(3) of SI 1993/744 are looking at cases where less tax is deducted from an employee than should have been deducted during the income tax period concerned from that employee. This regulation makes this more explicit by omitting the references, in regulations 42(2) and (3) of SI 1993/744, to “amount specified in regulation 40(2) or 41(2)” and refers instead to “amount included in A in regulation 40”.

Q7. We welcome comments on regulation 42A referring explicitly to “amount included in A” rather than “amount specified”: (regulation 42A).

Omission of reference to section 88 TMA

72. Paragraph (4) omits the opening words of regulation 42(4) referring to section 88 of TMA. Section 88 cannot have effect for any tax year after 5 April 1998.

Q8. We welcome comments on the proposal that regulation 42A omit the reference to section 88 TMA on the basis that the reference is no longer needed: (regulation 42A).

ANNUAL RETURNS OF [PAYMENTS OF EMOLUMENTS] AND TAX

73. The three regulations under this italic heading deal with information that the employer must give to the Inland Revenue. This information is largely about payments of PAYE income and the tax, if any, deducted from such payments.

Regulation 43: Annual return of [payments of emoluments] liable to deduction of tax

74. This regulation deals with the return [P35] which employers must make after the end of the tax year giving, amongst other things, total payments made and total tax deducted together with certain information relating to each employee [P14] for whom a deductions working sheet was required in the tax year. It is based on regulation 43(1)–(7) and (12) of SI 1973/744.

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Background

75. Regulation 30(1) and (2) of the first regulations, SI 1944/251, required a return giving, among other things, details of payments to and tax deducted from individual employees.

76. Regulation 11 of SI 1945/365 inserted regulation 30(1A) into SI 1944/251. That required a statement giving a list of all the deduction cards issued – in effect a list of all the individual employees – and a certificate of the total net tax deducted by the employer.

77. This material, with subsequent changes not detailed here, was in due course consolidated as regulation 30 of SI 1973/334.

78. Regulation 8 of SI 1990/79 altered regulation 30 of SI 1973/334. Two of the changes it made were to provide that:

- a single return was made in respect of all employees (the statement, declaration and certificate accompanying it being part of that return); and
- the penalty provisions of section 98A TMA applied to a late or incorrect return.

79. This material, with subsequent changes not detailed here, was consolidated as regulation 43 of SI 1993/744.

80. Regulation 14 of SI 1998/2484 made various changes, including the insertion of new paragraphs (1A) to (1C), to regulation 43 of SI 1993/744 so that regulation 43 could cope with detailed information relating to each employee being sent by electronic data interchange rather than on paper. But details of totals of payments made and tax deducted still had to be sent on paper (on form P35). The changes made in 1998 masked the clarification made in 1990 that all of the information required by regulation 43 (in fact regulation 30 of 1973/334 in 1990) amounted to a single return.

81. Regulation 15 of SI 2001/1081 made further changes to regulation 43 of 1993/744 to allow certain information to be delivered over the internet as well as by electronic data interchange.

Removing “render”

82. The word “render” in regulation 43(1)(a) of SI 1993/744 has been replaced in paragraph (1) of this regulation by “deliver” which is more modern.

Methods of delivery

83. The fact that piecemeal amendments have been needed to cope with technological developments since 1993 is particularly evident in regulation 43 of SI 1993/744. A reader coming new to the regulation could be forgiven for thinking that

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how information is sent is at least as important as *what* is sent. And also forgiven for wondering whether there is a single return and if so what it consists of.

84. These draft regulations deal with the various methods of providing information in new regulation 46ZB. Readers can then see more clearly in this regulation what information is required from employers.

A “single return” of information

85. This regulation tries to make it easier for readers to see that a “single return” is required – albeit a return which may be on multiple pieces of paper (or in non-paper form).

Forms P35 and P14

86. Our second progress report with draft regulations rewriting Parts II to IV of SI 1993/744 (paper SC/CC(02)(05) incorporated reference to form P45. This regulation does not refer to the forms used for end of year returns. The reasons for this are:

- the information required by this regulation does not have to be given on a form now. Legislation in the Finance Bill 2002 envisages electronic delivery becoming the norm. So it would not be helpful to introduce potentially misleading, reference to “forms”;
- there is not one single form. This regulation requires a mixture of things which are presently given (if on paper) on a Form P35, Form P35CS or P14
- none of these form has entered the national consciousness to anything like the same extent as a P45.

Q9. We welcome comments on the proposal not to refer to “forms” or references to individual form numbers in regulation 43 or in its heading: (regulation 43).

Information only needed in relation to employees for whom deductions working sheets were required.

87. Paragraph (2) of this regulation is explicit on this point. That is a point that is implicit in regulation 43(1B) and (2) of SI 1993/744.

More informative heading

88. In contrast to regulation 43 of SI 1993/744, the heading does not mention “deductions working sheets”. The heading is intended to be more helpful to those users that do not have at their fingertips the association between deductions working sheets and payments being liable to deduction of tax.

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Regulation 44: Annual return of [payments of emoluments] not liable to deduction of tax

89. This Regulation deals with the information that an employer must return of payments during a tax year to employees for whom deductions working sheets were not required. It is based on regulation 44 of SI 1973/744 but part of it is new.

Background

90. The regulation has its origins in regulation 30 of the first regulations, 1944/251 (which was also the origin of regulation 43).

91. The material in this regulation remained in the same regulation as the material in regulation 43 through the 1973 consolidation of the regulations (and later changes to the 1973 regulations). So regulation 30(5) of SI 1973/334 (as amended by regulation 13 of SI 1981/44), after setting out the need for the return under regulation 30 to cover employees for whom deductions working sheets were required, said:

“and in respect of every employee to whom the employer at any time during the year paid emoluments at a rate exceeding ... but in respect of whom the employer was not required under these Regulations to prepare a deductions working sheet.”

92. In the 1993 consolidation of the regulations the material in the previous paragraph became a separate regulation 44.

93. Regulation 44(2) of SI 1993/744 was effectively inserted by regulation 16 of SI 2001/1081 to permit electronic delivery of the information required.

94. The regulation requires returns relating to certain students working during vacations and certain casual workers in relation to whom special arrangements are in place removing the requirement to prepare deductions working sheets.

When to make the return and what should be in it.

95. Regulation 44 of SI 1993/744 does not say when the return should be made or what should be in it. That is unsatisfactory.

96. This regulation therefore gives a date for submission and contains a new paragraph (2) which sets out the information that is currently required in practice. The formulation used in regulation 44(2)(a) avoids being too prescriptive as to whether names, addresses, national insurance numbers or a combination or some other mechanism must be used for such identification.

Q10. We welcome comments on the proposal that regulation 44 sets out what information is required and when it should be given: (regulation 44).

Q11. We welcome comments on the information that is suggested for regulation 44: (regulation 44).

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How to make the return

97. The material on methods of delivering the information required is dealt with separately in regulation 46ZB.

Regulation 45: Additional return in case of trade dispute

98. This regulation is limited to cases where a year end return under regulation 43 has been completed on the basis that an amount has been repaid to an employee even though repayment of that amount was deferred under the trade disputes provisions of regulation 36. If the deferred repayment is, in due course, made to the employee there is no problem with that year end return. But if it later turns out that regulation 36 prevents the amount being repaid to the employee, the employer has to send a further return and statement to the Inland Revenue so that the Revenue can take any necessary action.

99. This regulation is based on regulation 45 of SI 1973/744.

Background

100. Regulation 30(7) of SI 1973/334 (inserted by regulation 11 of SI 1982/66) is the origin of this regulation. Minor changes to regulation 30(7) were made by regulation 8 of SI 1990/79. It became a separate regulation 45 in the 1993 consolidation of the regulations.

When a return must be made

101. *Paragraph (1)* sets out when a return must be made. It:

- combines what are paragraphs (1) and (2) in regulation 45 of SI 1993/744 to bring out better the circumstances which require a return;
- uses the expression “immediately deliver” in place of the archaic expression “forthwith render” in regulation 45(1) of SI 1993/744;
- provides to whom the return must be made. Regulation 45 of SI 1993/744 is silent on this. Paragraph (1) provisionally says that the return must go to the “inspector”. That is based on the likelihood that an inspector will use the information to take appropriate action (whether relating to assessment, coding or repayment). But there seems no reason why this paragraph should not just specify “the Inland Revenue” as the traditional divide that should exist between collectors and inspectors is not as wide as it used to be.

Q12. We welcome comments on the proposal to say to whom returns under regulation 45 should be made. (Regulation 45(1))

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Information required

102. Paragraph (2)(c) omits the word “total” which occurs in regulation 45(3)(c) of SI 1993/744. That allows the same words to be used in paragraph (2)(c) as are used in paragraph (3)(b) which also refers to amounts of tax not repaid to individual employees.

FAILURE TO ACCOUNT FOR DEDUCTIBLE TAX

103. The six regulations under this italic heading deal with actions that may be taken where there is or may be a failure by an employer to account for tax due under these regulations. They bring together determinations that may be made and the certificates that can be issued as part of the process of recovering tax that an employer owes but has not paid.

Regulation 43A: Certificate if tax on regulation 43 return is unpaid

104. This regulation allows a collector to certify that there is unpaid tax for which the employer is liable. It is based on regulation 43(8) of SI 1993/744.

105. A certificate under this regulation cannot be given until 14 days after the tax year concerned.

106. Regulation 54 sets out the procedures that can be used to recover the amount shown in the certificate.

Background

107. The origin of this provision is regulation 30(4) of the first regulations, SI 1944/251.

108. Paragraphs (8) to (11) of regulation 43 of SI 1993/744 are of a different nature from earlier paragraphs of that regulation. Paragraphs (8) to (11) deal with what happens if something has gone wrong. They are separated from a later group of provisions (starting at regulation 47 of SI 1993/744) dealing with what happens if something has gone wrong.

109. This draft regulation 43A puts the material in regulation 43(8) of SI 1993/744 with the other material dealing with what happens when things go wrong. Draft regulations 54 and X similarly put the material in paragraphs (9) to (11) of regulation 43 of SI 1993/744 with other provisions about failures to operate PAYE.

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Regulation 47: Return and certificate if tax may be unpaid

110. This regulation allows a collector to require a return from an employer in the cases set out. It is based on regulation 47(1)–(5) of SI 1993/744.

111. Paragraph (1) sets out the cases where the regulation applies. These are where it seems an employer has paid for an income tax period less than was due.

112. Paragraphs (2) and (3) allow the collector to require a return from the employer to confirm that less has been paid than was due.

113. The collector may then certify under paragraph (4) the unpaid tax for which the employer is liable.

114. Regulation 54 sets out the procedures that can be used to recover the amount shown in the certificate.

Background

115. This regulation has its origins in regulation 28 of the first regulations, SI 1944/251. That eventually became regulation 27 of SI 1973/334. Regulation 4 of SI 1990/79 substituted a new regulation 27 of SI 1973/334 and regulation 9 of SI 1993/727 amended that new regulation 27. Regulation 27 of SI 1973/334, as amended, was consolidated as regulation 47 of SI 1993/744.

Stating at the beginning the cases in which the regulation can apply

116. Regulation 47 of SI 1993/744 sets out a case in which it can apply in paragraph (1) and “buries” the second case in which it applies in paragraph (4) in the middle of that regulation. This regulation sets out in paragraph (1) both of the cases in which it can apply.

Deeming income tax periods to be one period solely for this regulation

117. Regulation 47(3) of SI 1993/744 refers to a notice extending to consecutive income tax periods as having effect for “these regulations” as if the consecutive income tax periods were one income tax period. Taken literally, that means that a notice could affect the amounts that would otherwise be due for those consecutive income tax periods — for instance the amounts “B” and “C” for a deemed single income tax period need not be the same as the sum of the amounts “B” and “C” for the consecutive income tax periods concerned (see regulations 40(2) and 41(2) of SI 1993/744).

118. The giving of notices to make returns is not intended to affect the amounts that are payable to/from the Inland Revenue. Paragraph (3) of this regulation therefore limits the deeming to “this regulation”.

<p>Q13. We welcome comments on the proposed rewrite change to limit the deeming required by regulation 47 explicitly to this regulation. (Regulation 47(3))</p>
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Regulation 48: Notice and certificate if tax may be unpaid

119. This regulation allows a collector, on considering the employer's past payments, to specify the tax due from an employer in the cases where the collector believes the employer has paid less than was due. It is based on regulation 48(1)–(7), (11) and (12) of SI 1993/744.

120. *Paragraph (1)* sets out the cases in which the regulation applies.

121. *Paragraphs (2) and (3)* allow the collector to notify the employer of the amount judged underpaid. That amount will, to the extent that it is unpaid, be payable unless, within seven days, the employer (in accordance with *paragraph (4)*) either:

- persuades the collector that the full amount due has been paid; or
- requires the collector to inspect the employer's PAYE records under regulation 55.

122. *Paragraph (6)* allows the collector to certify amounts that are payable under the specification but which have not been paid. Regulation 54 sets out the procedures that can be used to recover the amount shown in the certificate.

123. *Paragraph (8)* allows an employer who has overpaid tax, as a result of this regulation, to recover the excess by setting it against subsequent PAYE payments.

Background

124. This regulation has its origins in regulation 27A of SI 1973/334, inserted by regulation 5 of SI 1985/350. And, following a minor later amendment, regulation 27A was consolidated as regulation 48 of SI 1993/744. There have been later amendments to regulation 48 of SI 1993/744, in regulation 4 of SI 1995/447 and regulation 4 of SI 1996/980.

Stating at the beginning the cases in which the regulation can apply

125. Regulation 48 of SI 1993/744 sets out a case in which it can apply in paragraph (1) and "buries" the second case in which it applies in paragraph (4) of that regulation. This regulation sets out in paragraph (1) both of the cases in which it can apply.

Seven day period to pay

126. Regulation 48(5) of SI 1993/744 refers to the "period allowed in a notice". Regulation 48(6) explicitly gives that notice period as "seven days". Regulation 48(7) reverts to "period allowed in the notice". It seems more helpful for the first encounter with the "period allowed" to say how long the period is. Paragraph (2) of this regulation therefore sets out the length of the period and introduces a label for the period itself.

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Deeming income tax periods to be one period solely for this regulation

127. Regulation 48(3) of SI 1993/744 deems consecutive income tax periods to be one income tax period for “these Regulations”. That is not intended to alter the amounts of tax that would otherwise be due to/from the Inland Revenue (see the commentary on regulation 47). Paragraph (3) of this regulation therefore limits the deeming to “this regulation”.

Q14. We welcome comments on the proposed rewrite change to limit the deeming of consecutive income tax periods to be one period required by regulation 48(3) of SI 1993/744 explicitly to this regulation. (Regulation 48(3))

Notice only extending to consecutive periods if nothing paid

128. Paragraph (3) of this regulation provides that a notice can extend to consecutive income tax periods only in cases where nothing has been paid in relation to them. There seems no good reason for preventing aggregation of income tax periods in a case where, at an extreme, £1 has been paid for each such period. And removing this distinction would simplify this regulation.

Q15. We welcome comments on the proposed rewrite change to simplify this regulation by permitting a notice to cover consecutive income tax periods within regulation 48(1), even if a payment has been made in relation to one or more of them. (Regulation 48(3))

Replacing “renders”

129. Paragraph (8) of this regulation uses the word “delivers” where regulation 48(12) of SI 1993/744 uses the word “renders”.

Dealing with parts of regulation 48 of SI 1993/744 in “general regulations”

130. The deeming in regulation 48(10) SI 1993/744 concerning documents purporting to be certificates has been moved to a general regulation X. That means that this deeming does not have to be set out both here and in the other regulations to which it applies.

131. The provision in regulation 48(9) of SI 1993/744 about the sufficiency of a certificate as evidence of liability has also been moved to the general regulation X. That removes the need to repeat this provision in each of the regulations to which it applies.

132. The provision in regulation 48(7A) of SI 1993/744 about the date of payment, where a cheque is used to make payment, has been moved to a general regulation XX; for the same reason as in the previous paragraph.

133. Dealing with certain matters in general regulations means that this regulation is shorter and easier to grasp.

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Regulation 55A: Certificate after inspection of PAYE records

134. This regulation allows a collector, based on an inspection of the employer's PAYE records, to certify the amount due from an employer but unpaid. It is based on regulation 55(8) of SI 1993/744.

135. Regulation 54 sets out the procedures that can be used to recover the amount shown in the certificate.

Background

136. Provisions for inspecting PAYE records go back to regulation 32 of the first PAYE regulations, SI 1944/251.

137. The consolidation of the PAYE regulations in 1962 made clear (in regulation 34(2)-(4) of 1962/1003 (inspection of employer's records)) the power of the collector to certify unpaid tax based on an inspection of PAYE records.

Grouping related material

138. Regulation 55(8),(9) of SI 1993/744 deals with certification and recovery of tax. The rest of regulation 55 of SI 1993/744 deals with inspection and retention of records. And certification and recovery of tax does not automatically follow an inspection of records.

139. This regulation deals with the material currently in regulation 55(8) of SI 1993/744. It may appear unhelpful to readers to put it before the regulation which provides for the inspection of an employer's records. But it is on balance better to put it with the other provisions about unpaid tax which can be certified. There is a clear signpost to regulation 55 in the opening words.

Regulation 49: Determination of tax unpaid and not otherwise certified

140. This regulation allows an inspector to use best judgement to determine an amount of tax that is considered unpaid. It is based on regulation 49(1)-(4) and (7)-(10) of SI 1993/744.

141. The amount determined must not include sums which have been certified under any of the earlier regulations. Nor may it include sums which are recoverable from employees under regulation 42A (and regulation 42A cannot be used for sums that are included in the amount determined under this regulation).

142. The amount so determined is notified to the employer and is payable unless the employer uses the appeal rights that are available.

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Background

143. This regulation has its origins in regulation 29 of SI 1973/334. That extended the arrangements for recovery of PAYE tax from an employer. It permitted a formal determination of the tax with rights of appeal. There were some later amendments of regulation 29 of SI 1973/334. They included the addition, by regulation 5 of SI 1993/725, of paragraphs relating to interest to be recovered from employees and to matters relating to certificates.

144. Regulation 29 of SI 1973/334 was consolidated as regulation 49 of SI 1993/744. There have been some later amendments to regulation 49.

Paragraph (1): tax payable... "by an employer"

145. Regulation 49(1) of SI 1993/744 does not mention that it is the employer who would be liable for unpaid tax although that is reasonably apparent from later paragraphs of that regulation. Paragraph (1) makes this explicit.

Paragraph (5): signpost to Schedule 3 TMA

146. Paragraph (5) of this regulation contains an explicit reference to paragraph 3 Schedule 3 TMA. This makes it easier (compared to regulation 49(8) of SI 1993/744) for a reader to see that there may be a choice about where an appeal is heard.

Moving material to general regulations

147. The material in regulation 49 of SI 1993/744 about certificates has been moved into a separate general regulation (see regulation X). This is for the same reasons as set out in the commentary on regulation 48.

Dealing separately with cases where tax may be recovered from employees

148. The provisions in regulation 49(5),(6) SI 1993/744 dealing with the limited cases in which sums can be recovered from employees has been moved into a separate regulation 49A immediately after this regulation. That shortens this regulation and makes clearer the distinction between the two sets of cases.

Regulation 49A: Employee liability if tax unpaid after regulation 49 determination

149. This regulation provides for tax which the employer should have paid under regulation 49 to be recovered instead from the employee if the employee is believed to have known the employer wilfully failed to deduct the tax. It also provides for interest on the tax. It is based on regulation 49(5) and (6) of SI 1993/744.

Background and approach

150. See the commentary under regulation 49

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Omission of reference to section 88 TMA 1970

151. Regulation 49(6) of SI 1993/744's application is conditional on section 88 TMA 1970 not applying. Section 88 TMA 1970, repealed by Finance Act 1996, cannot apply for assessments made after 5 April 1998. Section 88 TMA will not be relevant for periods to which rewritten PAYE regulations apply; this regulation therefore omits the condition relating to section 88 TMA 1970.

Q16. We welcome comments on the proposal to omit references to section 88 TMA 1970 from regulation 49A: (regulation 49A).

INTEREST

152. The two regulations under this italic heading deal with interest payable by or to the employer. The provisions dealing with interest for tax years that are no longer current will be dealt with elsewhere. That enables regulations under this heading to deal with interest in relation to tax years that are "current". It makes the regulations easier for the majority of users who will not be concerned with details of what the position used to be in relation to tax years ended over six years ago.

Regulation 51: Interest on tax overdue

153. This regulation charges interest where an employer has not, by 14 days after the end of a tax year, paid to the Inland Revenue the net PAYE deductions that should have been made from employees during that year. It also deals with the rate of interest, the recovery of interest and cases in which interest is not applied. It is based on regulations 51(1) and (2) and 52(1) of SI 1993/744.

Background

154. The regulation has its origins mainly in regulation 26C of SI 1973/334, inserted by regulation 4 of SI 1993/725. That, and parts of regulation 29A SI 1973/334, became regulations 51 and 52 of SI 1993/744.

Bringing the definition of "prescribed rate" into this regulation

155. The definition of "prescribed rate" is given in this regulation, rather than in a separate regulation (regulation 52) as in SI 1993/744. The passage of time since 1993 means that this definition is in practice only needed for this regulation because the vast majority of readers will not need to consider regulation 50.

Dealing with "the reckonable date" and "certificates" in separate regulations

156. The material in regulation 51(3)-(5) of SI 1993/744 dealing with "the reckonable date" and "certificates" and in regulation 52(2) and (4) dealing with "non-business days" and "payments by cheque" will then be dealt with in regulations 2, X and XX; which apply for other regulations as well as this one. A draft of regulation 2 will be made available later but the draft definition of reckonable date is:

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“reckonable date”, in relation to any tax year, means the 14th day after the end of that year [and includes a non-business day within the meaning of the Bills of Exchange Act 1882];

157. That avoids repetition and keeps this regulation short so that its substantive effect is easier to grasp.

Regulation 53A: Interest on tax overpaid

158. This regulation provides for interest to be paid to an employer where tax is repaid to the employer more than 14 days after the end of the tax year concerned; but interest cannot run before the date on which the employer originally paid the tax which is repaid. It is based on regulation 53A of SI 1993/744.

Background

159. Regulation 53A of SI 1993/744 was inserted by regulation 10 of SI 1996/1312. It applies for tax years from 1996-97 onwards.

When interest stops running

160. Regulation 53A of SI 1993/744 sets out when interest starts but it does not say when interest ceases. That appears to be an oversight — the corresponding regulation for tax years before 1996/97 explicitly provided that interest ceased when the order for the repayment was issued. This regulation proposes to adopt the same approach to when interest ceases to run.

Q17. We welcome comments on the proposed rewrite change to specify in regulation 53A when interest ceases to run as was done previously in the regulations. (Regulation 53A)

RECOVERY

161. The one regulation under this italic heading deals with aspects of how tax and interest due under these regulations may be recovered.

Regulation 54: Recovery of tax and interest

162. This regulation sets out the way in which amounts of tax and interest payable under these PAYE regulations but unpaid can be recovered using certain provisions of TMA 1970. It brings together in one place and sets out explicitly the regulations to which these recovery procedures can be applied. It is based primarily on regulation 54 of SI 1993/744. It is also based on parts of regulations 43(9), 47(6), 52(3) and 55(9) of SI 1993/744.

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Background

163. From the outset in 1944, mechanisms were needed to recover unpaid amounts that were due under the PAYE regulations (rather than due under some provision other than the regulations). The origin of this regulation is in regulation 29 of the first regulations, SI 1944/251. There have of course been a number of detailed changes over the years.

“provision of any enactment relating to the recovery of income tax under Schedule E”

164. The words “provision of any enactment relating to the recovery of income tax under Schedule E” in regulation 54(1) of SI 1993/744 can be traced back to the first regulations in 1944. The tax system has obviously moved on since 1944. In particular, from 1995/96, self assessment for income tax essentially eliminated the making by the Inland Revenue of schedular assessments — including schedular assessments charging income tax under Schedule E. This means that the concept of “income tax under Schedule E” is less appropriate than before self assessment; and possibly hard for new users to get to grips with. And the label Schedule E is dropped in the draft Bill. This regulation therefore omits any reference to “income tax under Schedule E”. It needs no replacement as the regulation makes clear what tax is involved.

Q18. We welcome comments on the proposal to avoid any reference in regulation 54 to “income tax under Schedule E”: (regulation 54).

165. The words “any enactment” also leave open the issue of whether there are Acts other than TMA (and Part VI in particular) which need to be considered in terms of how this regulation permits recovery to be affected. This draft regulation explicitly narrows the scope of recovery methods to Part VI of TMA 1970.

Q19. We welcome comments on the proposed rewrite change to limit regulation 54 to recovery procedures under Part VI of TMA: (regulation 54).

List of amounts and persons to which regulation 54 applies

166. Paragraph (1) lists the regulations under which amounts, subject to this regulation, can arise. It also lists who is subject to recovery procedures.

167. This material is currently scattered in various regulations in SI 1993/744. And those scattered SI 1993/744 regulation are not consistent in how they lead to the recovery procedures of regulation 54 of SI 1993/744.

168. Sometimes the route to regulation 54 of SI 1993/744 is explicit. For instance regulations 43(9), 47(6) and 55(9) of SI 1993/744:

“Paragraphs (1) to (5) of regulation 54 shall apply ...”

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169. Sometimes the route to regulation 54 of SI 1993/744 is circuitous. For instance for interest under regulations 48 and 51 of SI 1993/744:

“...an amount of tax which an employer is liable under regulation 40 or 41 to pay to the collector.”
(regulations 48(6)(a) and 52(3));

feeds into

“... tax which an employer is liable under regulation 40 or 41, ..., to pay to the collector ...”
(regulation 54(2))

thereby bringing regulation 54 of SI 1993/744 into play.

170. The route to regulation 54 of SI 1993/744 is even more circuitous in the case of interest payable by employees under regulations 42(4) and 49(6) of SI 1993/744. It goes first to regulation 51 and then follows the path set out in the previous paragraph.

171. These differences in routes seem difficult to follow. Paragraph (1) of this draft regulation therefore sets out explicitly a comprehensive list of the amounts to which the regulation can be applied.

Q20. We welcome comments on the proposal that regulation 54(1) set out an explicit list of the amounts to which the regulation may be applied: (regulation 54).

amounts charged “by way of an assessment”

172. The words “had been charged under Schedule E by way of an assessment on the employer” in regulation 54(1) of SI 1993/744 can also be traced back to the first regulations in 1944. The words “by way of an assessment” go back to 1965. Much of this wording has, like the earlier reference to income tax under Schedule E, been overtaken by subsequent legislation and will be even less appropriate if the term “Schedule E” disappears (see paragraph 164).

173. Paragraph (2) of this draft regulation therefore refers to tax being treated as if it were “income tax charged on the employer”. That is sufficient to bring the recovery provisions of Part VI of TMA into play .

Q21. We welcome comments on the proposal that regulation 54(2) uses the words “were income tax charged on the employer” to bring the recovery provisions of Part VI of TMA into play. (Regulation 54(2))

List of variations in time limits for summary proceedings

174. Paragraph (3) lists the variations that exist in the time limits for summary proceedings in relation to certain amounts covered by this regulation.

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175. These variations in time limits reflect differences in the times at which the amounts to be recovered are likely to become known to the Inland Revenue. For instance a certificate under regulation 55(8) of SI 1993/744 may be prepared some years after the tax was due to be paid. So regulation 55(9) of SI 1993/744 provides that summary proceedings can take place within a year of preparing the certificate.

176. Paragraph (3) brings together and sets out in a table the variations in time limits for summary proceedings that are currently scattered about SI 1993/744.

177. The time limits for summary proceedings that are being varied are those that would otherwise apply under section 65 of TMA. Section 65 of TMA does not apply in Scotland (section 67(2) of TMA). That is the reason that the varied time limits are not expressed to apply to Scotland.

RETURNS INVOLVING [EMOLUMENTS] OTHER THAN PAYMENTS

178. The six regulations under this italic heading deal with information that the employer must give to the Inland Revenue. Most of the information is about PAYE income from which tax is not deductible by the employer.

179. Moving this material here avoids breaking the flow of the preceding regulations relating to the payment and recovery of tax.

180. The square brackets in the heading signal that we shall be replacing the word "emoluments" in due course after (among other things) comments on the new label "PAYE income" proposed in the draft Bill.

Regulation 46: Employers: annual return of [other emoluments]

181. This regulation requires an employer to give information about expenses and benefits of employees who are in "benefits employment" and other information concerning other employees. It is based on regulation 46, except paragraph (7), of SI 1993/744.

182. The information is mainly provided by employers on forms P11D and P9D. The information is then used by the Inland Revenue to set the employees' codes and to check they have paid the right amount of tax.

Background

183. The origins of this regulation go back to regulation 29A of SI 1950/453 which was inserted by regulation 8 of SI 1954/1577. That broadly required "P11D information" (benefits and expenses etc for employees earning more than a set amount). Regulation 3 of 1961/1596 amended regulation 29 of SI 1950/453 so that it also required "P9D information" ("non-cash" earnings of employees for whom P11D not required).

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184. Regulation 31 of 1973/334 first brought the requirements for such information into a single regulation. That single regulation approach was continued by regulation 46 of SI 1993/744.

185. There were many other changes after 1950 including those in 1998 and 2001 to deal with the electronic submission of information.

Separating out methods of delivering the information required by this regulation

186. As with regulation 43 of SI 1993/744, the material on methods of delivery has gradually developed to the point where it seems an unhelpful distraction from material on what must be delivered and by when. The material in regulation 46 of SI 1993/744 on methods of delivery has therefore been moved to regulation 46ZB. See the commentary on regulation 46ZB at paragraph 241.

Use of label “related third party”

187. Regulation 46 of SI 1993/744 uses the colourless label “relevant person”. This is in order to deal with emoluments provided by someone other than the employer, but which the employer must report.. This regulation uses the label “related third party”. The qualification “related” has been used so that the label does not suggest that the employer’s reporting obligations go wider than they actually are.

Provisional references to “employee in benefits employment” and sections of ICTA

188. The reference to “employee in benefits employment” is used in place of “employee who is employed in employments to which Chapter II of Part V of the Taxes Act applies” (the expression in regulation 46(1)(b) of SI 1993/744). That is provisional and will be revisited in the light of progress on the draft Bill. The term would be defined in regulation 2 by reference to the rewritten legislation in the draft Bill.

189. The references to ICTA will be revised (assuming the draft Bill is enacted as planned later in 2002-03).

Forms P9D and P11D

190. This regulation does not refer to forms or form numbers. The reasons for this are essentially the same as set out in the commentary on regulation 43 – see paragraph 86.

Regulation 46B: Moving expenses and notional payments: exceptions from returns under regulation 46

191. This regulation sets out two exceptions from the requirement to provide information under regulation 46. It is based on regulation 46(7) of SI 1993/744.

Background

192. The exception relating to removal payments and benefits has its origins in regulation 8 of SI 1993/2276 (which itself followed Section 76 and Schedule 5 of Finance Act 1993 putting the tax treatment of removal expenses on a statutory

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footing). It removes the need to report items that will not result in PAYE income for the employee.

193. The exception relating to notional payments has its origins in regulations 10-12 of SI 1994/1212 (which itself followed sections 125 and 126 of Finance Act 1994 treating certain income as if it were the payment of PAYE income – and therefore subject to PAYE deductions). It removes the need to report notional income since it should have been treated as income subject to PAYE. In short, it avoids the risk of double-counting.

More explicit separation of distinct cases in which information not needed

194. These two exceptions are not related to each other even though they are in the same paragraph of regulation 46 of SI 1993/744. Neither is relevant to the majority of employers. But they are important to a sizeable minority of employers. For them the exceptions are not very easy to spot as they are “buried” towards the end of regulation 46 of SI 1993/744.

195. These exceptions are separated into this regulation so:

- employers who are not affected by them can move on; and
- employers who are affected can more easily see the provisions – and that they deal with two different subjects.

Regulation 46A: Quarterly return if a car becomes available or unavailable

196. This regulation requires an employer to return details of cars giving rise to taxable benefits on employees and cars that cease to give rise to such taxable benefits. Those details allow the employee’s code number to be adjusted so that PAYE has a better chance of collecting the “right” amount of tax. This regulation is based on regulation 46A of SI 1973/744.

Background

197. Regulation 46A of SI 1993/744 was inserted by regulation 4 of SI 1994/775. There were later changes in 1998 and 2001 dealing with electronic transmission of the details required.

Methods of delivering information

198. As with regulation 43 of SI 1993/744, it appears that the method of delivering information is a distraction from what must be delivered. The material about methods of delivery has therefore been separated out into a separate regulation 46ZB leaving this regulation to deal with what must be returned and by when.

Provisional references to “employee in benefits employment” and sections of ICTA

199. These are provisional: see paragraphs 188–189.

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References to “the car”

200. Regulation 46A(2) of SI 1993/744 consistently refers to “a car”. That arguably makes it ambiguous as to whether the car(s) in regulation 46A(2)(b) is (are) the same car as the one in regulation 46A(2)(a); and, if not, what relationship exists between the cars mentioned in (a) and (b) respectively.

201. Paragraph (1) of this regulation refers to “the car” after the first mention of “a car”. That makes it clearer that the car in question is the one in relation to which a “taxable benefit” arises.

Q22. We welcome comments on regulation 46A referring to “the” car in certain cases where regulation 46A(2) of SI 1993/744 refers to “a” car. (Regulation 46A)

Omission of superfluous words

202. Regulation 46A(2)(b)(iii) of SI 1993/744 gives as one of the events triggering a return:

“where a car is available to an employee, or to others being members of his family or household, by reason of the employee’s employment, the employee becomes a relevant employee which are presently used in.

203. The emphasised words are part of the condition for the employee to be taxable under section 157 of ICTA. That is covered by regulation 46A(2)(a) of SI 1993/744. So these words seem to add nothing to regulation 46A(2)(b)(iii) [and could equally have been added to (b)(i) and (ii)].

204. The emphasised words appear to attempt to clarify that the availability of a car need not be reported before the quarter in which the employee first becomes a “relevant employee”. But that seems to be done just as well by regulation 46A(2)(b)(iii) of SI 1993/744 without the emphasised words. So this regulation omits them.

Q23. We welcome comments on the proposal to omit from regulation 46A(1)(c) the words “where a car is available to an employee, or to others being members of his family or household, by reason of the employee’s employment”. (Regulation 46A(1))

Regulation 46ZA: Termination payments and non-cash benefits: information to be provided

205. This regulation requires a person to give the Inland Revenue information about non-cash benefits in termination packages. It is based on regulation 46ZA(1)-(4), (11) and (12) of SI 1993/744.

206. Termination packages may give rise to tax liability under section 148 of ICTA. Taxable payments are dealt with broadly like other payments of PAYE income. But

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non-cash benefits need to be reported to the Inland Revenue like benefits in kind for employees. This regulation requires that information. Regulation 46ZD requires that the employee or former employee be given the same information.

Background

207. Regulation 46ZA of SI 1993/744 was inserted by regulation 3 of SI 1999/70. It followed the insertion of a new section 148 ICTA (termination of employment or changes in duties of employment) by section 58 of the Finance Act 1998.

208. Regulation 46ZA of SI 1993/744 deals with reports to the Inland Revenue, reports to the (former) employee, what happens if more than one employer exists and certain changes to awards. That compresses a great deal into one regulation – some of which will affect a small minority of employers.

Decompression

209. The material in regulation 46ZA of SI 1993/744 has been broken up between:

- this regulation which deals with the “core material” contained in regulation 46ZA of SI 1993/744;
- regulation 46ZC which deals with returns where an award changes;
- regulation 46ZE which deals with packages from more than one employer; and
- regulation 46ZD which requires information for employees.

The term “non-cash benefits”

210. Regulation 46ZA of SI 1993/744 uses the expressions “other benefits” and “non-cash benefits” for what seems to be the same concept. This regulation has settled on the more colourful label “non-cash benefit” in all cases.

Q24. We welcome comments on the proposal to refer in regulation 46ZA only to “non-cash benefits” instead of also referring to “other benefits”. (Regulation 46ZA)

Reducing incidence of “former”

211. The use of the expressions “employer or former employer” and “employee or former employee” on several occasions in regulation 46ZA of SI 1993/744 has been reduced by the definition introduced in paragraph (6).

Regulation 46ZC: Termination payments: return where award changes

212. This regulation requires an employer who did not make a return under regulation 46ZA to make a return if a change to the package takes the total over the

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£30,000 threshold for tax or adds non-cash benefits. It is based on regulation 46ZA(5),(6),(9) of SI 1993/744.

Background

213. This is a relatively minor aspect of the provisions discussed in the commentary on regulation 46ZA. It requires a return if a return was not required at the time of the termination but the package changes so that it is of the kind which would have required a return.

Return not required if the £30,000 limit will not be breached

214. Regulation 46ZA(5)(b)(ii) of SI 1993/744 requires a return to be made even if the £30,000 limit will not be breached. That would be pointless as there is no PAYE income unless the total is more than £30,000. Looking at it another way, a return would not have been required if the changed circumstances had applied originally. So regulation 46ZC(1)(b)(ii) applies the £30,000 limit in such a case. In principle this removes a reporting requirement from some cases.

Q25. We welcome comments on the proposed rewrite change to introduce the £30,000 limit to the reporting requirement for changes to termination packages where it does not presently apply. (Regulation 46ZC)

How to deal with changes in awards made up to 6 July after the year in which the award is made.

215. Regulation 46ZA(5)(a) and (b) of SI 1993/744 refer to particular dates:

(a) information has not been furnished by the employer or former employer under paragraph (1) by the date referred to in that paragraph solely because either...

(b) at some time after that date either...

216. This leaves it unclear whether:

- the award should be monitored up to 6 July of the following year to see if a return is required under regulation 46ZA(1) by that 6 July: that could be onerous for employers as they might have, at the extreme, no time between changing a package and reporting the information the Inland Revenue;
- changes in an award are ignored if they occur from 6 April to 6 July following the tax year in which the award was made: that would be illogical; or
- a report may be required of changes to an award where the change takes place before 6 July following the year in which the award was made.

217. Regulation 46ZC(1)(b) clarifies the position. It comes down in favour of the third option: that changes are taken into account by this regulation where they are

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made from 6 April to 6 July following the tax year in which the award is made (just as changes in an award made after 6 July would have to be taken into account).

Q26. We welcome comments on the proposed rewrite change to make clear that changes, to an award made in the previous tax year, from 6 April to 6 July may give rise to a requirement to make a return under regulation 46ZC. (Regulation 46ZC)

Regulation 46ZE: Termination payments: return where more than one employer
218. This regulation deals with the minority of cases where more than one employer would have to give information about an award to an employee or former employee. It identifies which (former) employer should give the information. This regulation is based on regulation 46ZA(10) of SI 1993/744.

Background

219. See the commentary on regulation 46ZA.

INFORMATION TO BE GIVEN TO EMPLOYEES

220. The three regulations under this italic heading bring together provisions about information that must be given to employees. This is mainly information about PAYE income such as benefits in kind from which tax is not deductible.

Regulation 39 of SI 1993/744 (P60's)

221. There is a case for moving the material in regulation 39 of SI 1993/744 (currently in Part IV) under this heading (containing material in Part V). Regulation 39 of SI 1993/744 deals with form P60's, provided by employers to employees, giving details of PAYE income paid and tax deducted.

222. Information to be given to employees under Part V shares, with the material in regulation 39 of SI 1993/744, the characteristic that it can be provided after the year to which it relates. And P60's contain similar information to that given under Part V by the employer to the Inland Revenue (regulation 43 of SI 1993/744)

223. There are some differences between regulations 39 and 43 of SI 1993/744 which suggest that the alternative of placing the two regulations together is not compelling. The information under regulation 43 will increasingly be given in electronic form whereas a form is used for regulation 39. There are also separate time limits for providing information under these two regulations. And putting the material in regulations 39 and 43 of SI 1993/744 together would mean more than one run of provisions dealing with information to employees in this Part.

224. On balance it may be better to move the material under regulation 39 of SI 1993/744 under this heading.

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Q27. We welcome comments on the suggestion that the material in regulation 39 of SI 1993/744 be repositioned so that it appears with material under the heading “Information to be given to employees”.

Regulation 46AA: Employers: information to employees of [other emoluments]

225. This regulation requires an employer to provide to an employee information about the employee's income – eg a Form P11D giving the same information as the employer sends to the Inland Revenue – so employees can make a tax return and/or check their tax affairs. It is based on part of regulation 46AA of SI 1993/744.

Background

226. This regulation has its origins in regulation 46AA of SI 1993/744, inserted by regulation 4 of SI 1995/1284. That was related to the introduction of self assessment for income tax. Self assessment brought a clear need for employees to have information in good time for any tax return they were required to make. There were minor alterations in 1998 and 2001 related to facilitating electronic submission of information.

Separating material of a transitional nature

227. Regulation 46AA of SI 1993/744 contains a significant amount of material relating to the possibility that information is to be given under a Fixed Profit Car Scheme (FPCS) in relation to the employee. There can be no FPCS after 5 April 2002. Most employees who are due statements under regulation 46AA of SI 1993/744 will have received them before SI 1993/744 is replaced.

228. But there could be cases where an employee has not received a statement and could request one as a result of being covered by a FPCS. It is necessary to preserve that right. This has provisionally been done by separating out the necessary provisions into a separate regulation FPCS. The majority of users are then not distracted by that essentially transitional provision.

Regulation 46AB: Third parties: information to employees of [other emoluments]

229. This regulation requires third parties to give an employee information about certain payments made by them or benefits they have provided which are not covered by the information the employer gives the employee. It is based on regulation 46AB of SI 1993/744.

Background

230. The regulation has its origins in regulation 46AB of SI 1993/744, inserted by regulation 4 of SI 1995/1284. This was related to the introduction of self assessment for income tax; which meant that employees needed information, on a timely basis, to

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complete their self assessments. There were minor alterations in 1998 related to facilitating electronic submission of information.

Use of “third party” label

231. This regulation uses the label “third party” on the basis that it is more descriptive than “relevant person” which is used regulation 46AB of SI 1993/744.

Regulation 46ZD: Termination payments and non-cash benefits: information to employees

232. This regulation requires the employer to give the employee a copy of any information the employer has provided to the Inland Revenue under regulations 46ZA or 46ZC. It is based on regulation 46ZA(7),(8) of SI 1993/744.

Background

233. See the commentary on regulation 46ZA.

PAYE RECORDS: RETENTION AND INSPECTION

234. The one regulation under this italic heading deals with records that must be retained by an employer and inspections that can be made of those records.

Regulation 55: Inspection of employer’s PAYE records

235. This regulation allows inspections of an employer’s PAYE records by the Inland Revenue. It deals with what PAYE records are, where inspections take place, retention periods for the records, removal and copying of the records and associated matters. It is based on regulation 55(1)–(7) and (12) of SI 1993/744.

Background

236. The origins of this regulation go back to regulation 32 of the first regulations, SI 1944/251. PAYE provided from the outset for the Inland Revenue to check that employers were complying with the regulations

The default place at which certain records are inspected

237. Where agreement cannot be reached on the place at which PAYE records are to be inspected, regulation 55(3)(b) of SI 1993/744 defaults to the place at which the records in regulation 55(2)(a) of SI 1993/744 are normally kept (if that is in the United Kingdom). That does not seem to deal satisfactorily with the records mentioned in regulation 55(2)(aa) of SI 1993/744 which might be kept somewhere else in the United Kingdom.

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238. This regulation provides that in such a case the records mentioned in regulation 55(2)(aa) of SI 1993/744 should also be inspected at the place in the United Kingdom at which they are normally kept.

Q28. We welcome comments on the proposal that regulation 55 increase the number of PAYE records which, as a default, are subject to inspection at the place where they are normally kept: (regulation 55).

“PAYE records”

239. This regulation introduces the label "PAYE records" so that a user is more likely to get a feeling for what the regulation is about than is conveyed by regulation 55(1) of SI 1993/744's reference to "the records specified in paragraph (2)".

GENERAL

240. The three regulations under this italic heading deal with matters that affect more than one regulation of SI 1993/744 and are often repeated in those regulations.

Regulation 46ZB: Methods of providing information

241. This regulation deals with the different ways in which information required under certain regulations can be provided:

- on paper;
- over the internet; or
- by electronic data interchange (EDI).

242. The regulation also provides a presumption that applies where information is delivered electronically to the Inland Revenue.

243. The regulation does not deal with all information requirements. For example it does not deal with "termination reports" under regulation 46ZA where there is no prescribed form or format for their submission.

244. The first two paragraphs of this regulation are based on parts of regulation 43(1), (1C) and (3A), regulation 44(2), regulation 46(1), (1A), (7A) and (7B) and regulation 46A(1) of SI 1993/744. The third paragraph is based on regulation 46ZB of SI 1993/744.

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Background

245. Electronic submission of information to the Inland Revenue has gradually been allowed and encouraged. It now includes both EDI and the internet. Over time the amount of information that can be supplied by such electronic means has increased.

246. This has led to piecemeal amendments to certain regulations and which often seems to distract from the main content of the regulations concerned.

List setting out information that can be delivered electronically

247. Paragraph (2) of this regulation provides a list of the means by which information can be delivered under certain regulations. That allows those regulations to deal more clearly with what they require. And the list gives both the regulation number and a brief narrative indicating the nature of the information required by that regulation.

Q29. We welcome comments on whether listing, in regulation 46ZB, methods of delivering information under other regulations makes the information requirements of those other regulations easier to grasp: (regulation 46ZB).

Regulation X: Collectors certificate that sum due

248. This regulation deals with the evidential value of certificates issued by the Inland Revenue under certain regulations and a presumption of validity of documents purporting to be such certificates. It is based on regulations 42(8) and (9); 43(10) and (11); 47(7) and (8); 48(6), (9), and (10); 49(9) and (10); 51(4) and (5); and 55(10) and (11) of SI 1993/744.

Background

249. Provisions dealing with the evidential value of certificates and the presumption of validity of documents purporting to be such certificates go back to the first PAYE regulations – for example regulation 29(3) of SI 1944/251. Similar provisions are found in other legislation – for example section 70(2) of TMA.

250. This regulation provides that certificates are *sufficient* evidence. That is not the same thing as *conclusive* evidence — other evidence can displace a certificate.

Eliminating repetition

251. Dealing with these provisions generally, like section 70(2) TMA, eliminates repetition. That allows the regulations from which repetition has been eliminated to be shorter. Which in turn tends to make the regulations in question easier to grasp.

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what is certified

252. Each of the regulations of SI 1993/744 on which this regulation is based include a specific form of words emphasised below:

any amount of such tax which has not been paid to him or, to the best of his knowledge and belief, to any other collector or to any person acting on his behalf or on behalf of another collector

253. That seems to stem from a desire to cover the possibility that payment may have been made to another collector or possibly to someone acting on behalf of one or other of them.

254. This regulation takes a different approach; and one that produces a shorter form of words. It asks that the collector certify that an amount is unpaid. That should automatically prevent the collector from certifying an amount if he has knowledge or belief that someone (whether a collector or not) in the Inland Revenue or a person acting on their behalf has received payment. So there appears to be no danger of amounts being certified under this regulation but which would not have been certified under the corresponding regulations of SI 1993/744; and it remains the case that a certificate is only sufficient evidence — not conclusive.

255. We may need to revisit this provisional proposal for various reasons. They include whether the certificate should be to the best of the collectors knowledge and belief – bearing in mind that the certificate is not conclusive. And whether it is worth making such a change in the absence of changes to similar wording currently used in section 70(1) of TMA.

Q30. We welcome comments on the proposal that regulation X use a shorter form of words than “to him or, to the best of his knowledge and belief, to any other collector or to any person acting on his behalf or on behalf of another collector”. (Regulation X)

Regulation XX: Payment by cheque

256. This regulation deals with the date on which a payment by cheque is treated as made (which can affect the date from or to which interest runs under various provisions). It is based on regulation 42(7A); 48(7A); 52(4); and 53(5) of SI 1993/744.

Background

257. Most of the provisions on which this regulation is based were inserted by SI 1996/80. Those insertions took account of the fact that section 70A of TMA, which has similar provisions, came into effect from 6 April 1996.

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Eliminating repetition

258. This single regulation, like section 70A of TMA, eliminates repetition. That allows other regulations to be shorter. That in turn tends to make the regulations in question easier to understand.

Application to regulation 53A

259. The provision about payments by cheque does not apply to regulation 53A in SI 1993/744. There seems no reason why this should be the case. It appears that this aspect was overlooked when regulation 53A of SI 1993/744 was inserted in 1996. It is proposed to correct this apparent oversight concerning the date to which interest runs under regulation 53A of SI 1993/744 in the same manner as that discussed in paragraph 160.

<p>Q31. We welcome comments on the proposed rewrite change to apply this regulation to regulation 53A. (Regulation XX)</p>

OTHER

260. The draft regulations under this heading are of a consequential or transitional nature which is unlikely to be in the rewritten Part V. They are included in Annex B so readers can see the current proposals for Part 5 of SI 1993/744.

Regulation FPCS: FPCS arrangement—information to be provided to employee by employer

261. This regulation provisionally provides for information to be given to employees about payments to them under an FPCS arrangement. It is based on part of regulation 46AA of SI 1993/744.

262. Legislation for approved mileage allowances in Finance Act 2001 means there are no fixed profit car schemes (FPCS) for tax years after 2001-02. But information may need to be given for that or an earlier tax year if the employee is still in the employment concerned at the end of 2001-02. And an employee who has left the employment during a tax year has 3 years in which to ask for such information.

Background

263. Information that is “automatically” due to employees under regulation 46AA, about FPCS payments, should be given to them by 6 July 2002. That is before the new PAYE regulations will come into force.

264. But a person leaving employment during the year ended 5 April 2002 can give a notice up to 5 April 2005 requiring information about FPCS payments. That is one

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year after rewritten PAYE regulations should come into force. Something needs to be done to preserve this entitlement but it will be of only transitional interest.

Transitional saving

265. This regulation deals with FPCS information that is required by regulation 46AA of SI 1993/744.

266. It has been separated because it will affect only a small minority of users of the PAYE regulations. That effect will last only for a short time.

“Equivalence” with regulation 46AA of SI 1993/744.

267. At present a former employee giving notice under regulation 46AA(3) of SI 1993/744 will get information about both expenses/benefits and FPCS payments.

268. Under these regulations such an employee would have to give separate notices to get this information. That is a change from the existing situation but it does not remove an employee's rights. It simply makes this regulation simpler – and perhaps makes clearer what the employee can ask for.

Q32. We welcome comments on whether regulation FPCS should be further modified to achieve strict equivalence with regulation 46AA of SI 1993/744: (regulation FPCS).

Regulation 50: Interest on unpaid tax which has been formally determined

269. This regulation provisionally deals with interest on unpaid tax relating to tax years ending no later than 5 April 1992. It is based on regulation 50 of SI 1993/744.

Background

270. This regulation provides for interest to be paid by employers in limited circumstances. It has been effectively superseded by a more general provision for tax years from 1992-93 onwards.

Transitional saving

271. It will have limited, if any, application. It has therefore been separated from the other regulations and will be dealt with as a transitional matter. That should make the “current” provisions easier to follow.

Regulation 53: Interest on tax overpaid by employer

272. This regulation provisionally deals with interest on overpaid tax relating to tax years ending no later than 5 April 1996.

273. It is based on regulation 53(1)-(4) of SI 1993/744.

These notes refer to Part 5 of the draft PAYE Regulations as at 16 July 2002

Background

274. This regulation provides for interest to be paid to employers but it has been effectively superseded by a more generous provision for tax years from 1996-97 onwards.

Transitional saving

275. It will have limited, if any, application. It has therefore been separated from the other regulations and will be dealt with as a transitional matter. That should make the “current” provisions easier to follow.

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