

PAYE REGULATIONS
SECOND DRAFT OF REGULATIONS 3-39
8th April 2002

Multiple PAYE schemes

- 3 (1) An employer may elect to divide his employees into groups for the purpose of operating separate PAYE schemes in relation to them.
- (2) An election is to be made by notice to the inspector containing—
- (a) such information as may be necessary to identify the groups of employees, and
 - (b) a certificate that every employee falls into one (and only one) of the groups.
- (3) Where the employer makes an election, these Regulations apply as if—
- (a) in respect of each group the employer were a different employer;
 - (b) each group constituted all of the employer's employees;
 - (c) each group were employed in a separate undertaking from the others; and
 - (d) an employee who moves from one group to another has left one employment and started employment with a new employer.
- (4) An employer must make an election before the tax year for which it is to have effect.
This is subject to paragraph (5).
- (5) If an employer acquires the whole or a part of any business of another employer, he may, within 90 days of the acquisition, elect to—
- (a) divide some or all of the new employees into one or more groups (whether or not an election is already in force in respect of the existing employees) for the purpose of operating separate PAYE schemes; or
 - (b) add some or all of the new employees to existing groups of employees (where an election is already in force in respect of them);
- and such an election has effect for the year in which the acquisition takes place.
- (6) In paragraph (5)—
- “business” includes any trade, concern or undertaking;
 - “new employee” means an employee who was employed in the acquired business.
- (7) An election continues in effect until revoked by notice to the inspector.
- (8) A revocation has effect for the tax year following that in which notice of it is given and any subsequent tax year.

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(9) An election which has not yet come into effect may be revoked at any time until the beginning of the tax year for which it was to have had effect.

Tips: special arrangements

5—(1) This regulation applies if an organised arrangement exists for tips to be shared among employees by a person (“the tronc-master”) [who is not the principal employer].

(2) For the purposes of these Regulations—

(a) every payment made to an employee by way of his share of tips by the tronc-master (including the retention by the tronc-master of his own share if he is also an employee) is regarded as a payment of emoluments by the tronc-master; and

(b) to the extent of any such payment, the tronc-master is regarded as the employer.

(3) But if in any case the Board are satisfied that the tronc-master has failed to comply with any of the requirements of these Regulations and they so direct, then—

(a) any tips paid to the tronc-master through the principal employer for sharing among the employees are to be dealt with in accordance with paragraph (4), and

(b) any other tips may be taken into account by the inspector under regulation 7(1)(c) in determining each employee’s code.

(4) If this paragraph applies—

(a) the principal employer is deemed to be the employer for the purposes of these Regulations in relation to the tips;

(b) the tronc-master must give the principal employer such particulars of every payment by way of the sharing of tips to be made to an employee as may be necessary to enable the principal employer to comply with these Regulations;

(c) the principal employer must, on making any payment of tips to the tronc-master, deduct or repay tax in accordance with these Regulations in respect of the amount of such tips to be paid to each employee, and notify the tronc-master of each amount so deducted or repaid.

Deduction and repayment of tax under employee’s code

6—(1) When making a payment of emoluments to an employee during a tax year, an employer must deduct or repay tax in accordance with these

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Regulations by reference to the employee's code if one has been issued by the inspector to the employer for that year.

- (2) The employer must deduct or repay tax by reference to the employee's code, even if it is the subject of an objection or appeal.
- (3) The code is issued and received for the purposes of these Regulations if either—
- (a) it is contained in a document that is sent to the employer by the inspector;
 - (b) it is transmitted to the employer electronically by the inspector; or
 - (c) if the employer has indicated that he is willing for it to be delivered in that way, it is delivered to the employer by an approved means of electronic communications from an official computer system.

Code applicable where employee's code not issued or received

8—(1) If the inspector determines that an employee's code for any year remains the same as the employee's code as at the previous 5th April, the inspector need not issue a code to the employer.

(2) If for any year the employer does not receive a code for an employee who was in his employment on the previous 5th April, the code which applied on that date is deemed to have been issued by the inspector for the year in question.

Determination of code by inspector

7—(1) In determining an employee's code, the inspector may have regard to any of the following matters—

- (a) subject to paragraph (2), the reliefs from income tax to which the employee is or will be entitled for the year for which the code is determined;
- (b) where the code is determined before the beginning of the year for which it is to have effect, any proposed alteration in the rates for that year of any of those reliefs;
- (c) any income of the employee (other than the emoluments in relation to which the code is being determined)—
 - (i) on which the tax will be reduced by any relief for the year for which the code is to have effect, or
 - (ii) which is otherwise [PAYE income];
- (d) any tax overpaid for any previous year which has not been repaid;
- (e) any tax remaining unpaid for any previous year which is not otherwise recovered;

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- (f) any tax repaid to the employee in excess of the amount properly due to him which may be recovered as if it were unpaid tax under section 30(1) of TMA 1970 (recovery of overpayment of tax etc) and which is not otherwise recovered; and
- (g) unless the employee objects, any other income of the employee.

(2) The inspector may disregard any relief referred to in paragraph (1)(a) if he is not satisfied that the employee is or will be entitled to it for the year in question.

Coding in special cases

9—(1) The inspector may determine that an employee's code is the higher rate code if the inspector has reason to believe that the employee will be chargeable at the higher rate on all or a substantial part of his income from relevant emoluments.

(2) The inspector may determine that an employee's code is the basic rate code if the inspector has reason to believe that the employee will be chargeable at the basic rate on all or a substantial part of his income from relevant emoluments.

(3) The inspector may determine that an employee's code is the nil tax code if—

- (a) the emoluments will otherwise be taken into account as taxable income in any assessment, or
- (b) the inspector is not satisfied that the emoluments will be chargeable to tax, or
- (c) the inspector has reason to believe that the employee will be entitled to a deduction under section [192A(1)] of the Taxes Act (deduction for seafarers).

Notice to employee of code

10—(1) The inspector must give notice to an employee of the code which he has determined is that employee's code for any year.

(2) But notice under paragraph (1) need not be given—

- (a) if the employee's code remains the same as the code for the preceding year; or
- (b) if the change in the code is due solely to an alteration or proposed alteration in the rates of any of the personal reliefs allowable under sections [257, 257AA and 257A] of the Taxes Act (personal allowance, children's tax credit and married couple's allowance).

Objections and appeals against code

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11—(1) The employee may object to his code as determined by the inspector, by giving notice of objection to the inspector stating the grounds of objection.

(2) On receipt of the notice of objection the inspector may amend his determination of the employee's code by agreement with the employee.

(3) If the inspector and employee do not reach an agreement, the employee may appeal against the determination of his code by giving notice to the inspector.

(4) On appeal, the General Commissioners must determine the employee's code in accordance with these Regulations.

(5) Subject to regulations 11A(3) and 12, the determination of the General Commissioners is final.

Appeals: supplementary provisions

11A—(1) An appeal under regulation 11 is to be heard by the General Commissioners for the division in which the place of employment is situated or, if there is no such place, for the division in which the employee lives.

(2) Paragraph (1) is subject to section 44(2) of the TMA (agreement by parties as to Commissioners who will hear appeal) and paragraph 3(1)(b) of Schedule 3 to that Act (employee may elect alternative Commissioners).

(3) Regulations 20 to 23 of the General Commissioners (Jurisdiction and Procedure) Regulations 1994 and section 56 of the TMA (statement of case for opinion of High Court) apply to the determination by the General Commissioners.

Amendment of code

12—(1) If an employee's code is found to be inappropriate because the actual circumstances are different from the circumstances by reference to which it was determined by the inspector or the General Commissioners, the inspector may, and if so required by the employee must, amend the code by reference to the actual circumstances.

(2) The inspector must give notice of the amended code to the employee by the date on which the notice under regulation 13(1) is issued to the employer.

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(3) But notice under paragraph (2) need not be given where the change in the code is due solely to an alteration or proposed alteration in the rates of any of the personal reliefs allowable under sections [257, 257AA and 257A] of the Taxes Act (personal allowance, children's tax credit and married couple's allowance).

(4) The provisions of regulation 11 regarding objections and appeals apply in relation to the amended code as they apply in relation to the original code.

Notice to employer of amended code

13—(1) Where an employee's code is amended after notice of his code has been issued or is deemed to have been issued to his employer, the inspector must give notice to the employer specifying the amended code.

(2) On making any payment of emoluments to the employee after the receipt of the notice mentioned in paragraph (1), the employer must deduct or repay tax by reference to the amended code.

(3) Where there is a change or proposed change in the rates of any of the personal reliefs allowable under sections [257, 257AA and 257A] of the Taxes Act (personal allowance, children's tax credit and married couple's allowance)—

- (a) if the change or proposed change relates to the current year, the inspector may give notice requiring the employer, with effect from the date specified in the notice, to amend specified codes as directed;
- (b) if the change relates to the following year, the inspector may give notice requiring the employer to carry forward to the following year certain specified codes of the current year and adjust them as directed in the notice.

(4) A code amended by virtue of paragraph (3)(a) in respect of the current year, is the employee's code for that year, and a code carried forward to the following year and adjusted by virtue of paragraph (3)(b) is deemed to have been determined and issued by the inspector as the employee's code for that year.

Deduction and repayment - cumulative basis

14—(1) In this regulation—

- (a) CT is the cumulative tax;
- (b) UT is any tax not deducted (because of the overriding limit) when the last payment of emoluments was made to the employee;
- (c) PT is the previous cumulative tax;

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and UT and PT are nil if the payment in question is the first payment of emoluments by the employer to the employee in any tax year.

(2) Unless these Regulations provide otherwise, an employer must, before making any payment of emoluments to an employee, calculate CT.

(3) If $CT + UT > PT$ —

(a) the employer must deduct the excess from the emoluments on making the payment, but

(b) the deduction is not to exceed the overriding limit, unless the deduction is of tax falling to be deducted in respect of a notional payment as defined by section [203](2) of the Taxes Act.

(4) If $CT + UT < PT$, the employer must repay the difference to the employee on making the payment, subject to regulation 36 (trade disputes).

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

Deductions in accordance with regulation 9

16—(1) If, in accordance with regulation 9, the inspector determines the higher rate code, regulation 14 does not apply, and the employer must deduct tax at the higher rate on the non-cumulative basis.

(2) If, in accordance with regulation 9, the inspector determines the nil tax code, regulation 14 does not apply, and the employer must not deduct any tax.

(3) If the nil tax code is an amended code, the employer must if the inspector so directs make any repayment of tax which may be due by reference to the employee's cumulative emoluments and the corresponding cumulative tax.

(4) This regulation applies to a code determined by the Commissioners as it applies to one determined by the inspector.

Deductions: non-cumulative basis

17—(1) This regulation applies to—

(a) any payment of emoluments made to an employee on an extra pay day, even if the cumulative basis is normally applied in his case;

(b) any payment of pension emoluments in the year in which retirement takes place, unless the inspector directs otherwise; and

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(c) any other payment of emoluments made in any year to any employee to which the inspector directs that this regulation applies for that year.

(2) If this regulation applies the cumulative basis does not apply, but the employer, on making a payment, must deduct, by reference to the code, the amount of tax which would have been deductible if the payment had been made on the first day of the tax year.

(3) The amount of tax to be deducted in any pay period is to be calculated by reference to the aggregate of the emoluments paid to an employee in that period and in the same tax year.

(4) On making a payment paragraphs (3) and (4) of regulation 38 do not apply but the employer must—

(a) record on the deductions working sheet for that employee—

(i) the date of the payment,

(ii) the amount of the emoluments, and

(iii) the amount of tax, if any, deducted on making the payment; and

(b) record the following additional information on the deductions working sheet or keep such records as enable its production—

(i) the free emoluments, or, as the case may be, the additional pay for the code,

(ii) the taxable emoluments, and

(iii) if additional pay has been added, the tax due and the overriding limit.

(5) In paragraph (1)(a), “extra pay day” means an employee’s last pay day in any tax year if—

(a) the employee is paid weekly or every two or more weeks, so that the number of his pay days varies from tax year to tax year (due solely to the number of days in a calendar year), and

(b) assuming regular payments of emoluments, the normal application of the tax tables to emoluments paid on that pay day would result in the employee being subject to a higher deduction (or lower deduction, in the case of a K code) than on previous pay days,

[for example, a pay day on 5th April (or 4th or 5th April in a leap year) if an employee is paid weekly].

Emoluments not paid weekly or monthly

18— (1) If an employee is paid at regular intervals other than weekly or monthly—

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- (a) each payment is deemed for the purposes of [Part IV of] these Regulations to be made on the date on which it would have been made if a pay day had fallen on the previous 5th April; but
- (b) the employer must record the actual date of every payment on the deductions working sheet.

(2) Paragraph (1) does not apply if the payment in question falls within regulation 17(1)(a) (extra pay days).

Subsidiary emoluments of employee paid monthly or at greater intervals

19—(1) This regulation applies to an employee whose main emoluments are paid monthly or at greater intervals if tax is deducted from those emoluments on the cumulative basis.

(2) If an employer makes a payment in respect of overtime or other extra earnings before the next date on which the main emoluments are due to be paid in the tax period—

- (a) regulation 14 has effect as if the payment were made on the same date as that on which the main emoluments are next paid, but
- (b) the employer must not repay tax to the employee when making the payment, even if tax is repayable under regulation 14.

(3) For the purposes of this regulation—

- (a) in the case of an employee who is paid monthly—
 - (i) his first tax period starts on 6th April and finishes on 5th May, and
 - (ii) subsequent tax periods start on the 6th of each month and finish on the 5th of the following month;
- (b) in the case of an employee paid at greater intervals—
 - (i) the first tax period starts on 6th April and finishes at the end of that greater interval, and
 - (ii) subsequent tax periods start the day after the previous tax period and finish at the end of that greater interval or 5th April (if earlier).

Personal employees

20—(1) The inspector may authorise the employer of a personal employee to deduct tax from each payment of emoluments on the non-cumulative basis by reference to the appropriate taxable emoluments in the simplified tax tables.

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(2) While an authorisation under paragraph (1) is in force, the employer must maintain a record on a deductions working sheet bearing the code, issued by the inspector for that purpose, of—

- (a) the date of each payment,
- (b) the amount of the emoluments,
- (c) the amount of the free emoluments,
- (d) the amount of the taxable emoluments, and
- (e) the amount of tax, if any, deducted on making the payment.

(3) The amount of tax to be deducted in any pay period is to be calculated by reference to the aggregate of the emoluments paid to the employee in that period and in the same tax year.

(4) On ceasing to employ an employee in respect of whom an authorisation under paragraph (1) is in force, the employer must return the completed deductions working sheet to the inspector.

[(5) Regulations 6, 8, 9, 14 to 19, [23], 25, 26 and 38 (1),(3) and (4) do not apply in cases to which this regulation applies.]

(6) In this regulation, “personal employee” means—

- (a) a person employed at the employer’s home to provide domestic or personal services for the employer or his family, or
- (b) a person employed to assist the employer with any business or profession which, by reason only of any physical or mental disability, the employer would not be able to carry on without the assistance of the personal employee.

Cessation of employment: Form P45

23—(1) On ceasing to employ an employee in respect of whom a code has, or is deemed to have, been issued, the employer must complete Form P45 and—

- (a) send Part 1 of that form to the inspector, and
- (b) give Parts 1A, 2 and 3 to the employee on the day on which the employment ceases.

(2) The following information is to be provided on Part 1 of Form P45—

- (a) the employee’s name,
- (b) the employee’s national insurance number,
- (c) the date on which employment ceased,
- (d) the employee’s code (or if more than one, the latest code) issued by the inspector for the tax year during which the employment ceased,

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- (e) the tax week or month in which the last payment of emoluments was made to the employee or, in a case falling within regulation 18, was deemed to have been made,
- (f) if the employee has been employed in more than one employment during the year, and if the employee's code is operated on a cumulative basis, the cumulative emoluments relating to the most recent employment, and the corresponding total net tax deducted,
- (g) the cumulative emoluments at the date of the payment referred to in sub-paragraph (e) and the corresponding total net tax deducted,
- (h) any number used by the employer to identify the employee,
- (i) details of the relevant tax district and file reference,
- (j) whether the employee's code is operated on a non-cumulative basis,
- (k) the employee's home address,
- (l) the employer's business address, and
- (m) the date the form was completed.

(3) The information listed in paragraph (2)(a) to (h) is to be provided on Part 1A of Form P45.

(4) The information listed in paragraph (2)(a) to (f) is to be provided on Parts 2 and 3 of Form P45.

Emoluments paid after employment ceased

24—(1) This regulation applies if a payment of emoluments is made to an employee after his employment has ceased—

- (a) by his former employer, or
- (b) by any other person in respect of an obligation of the former employer,

and the payment has not been included on the Form P45.

(2) If this regulation applies regulation 14 does not apply, but the person making the payment must—

- (a) deduct tax at the basic rate in force for the year in which the payment is made, and
- (b) record on a deductions working sheet (which he must prepare for the purpose unless he has already prepared one for that year)—
 - (i) the date of the payment,
 - (ii) the amount of the emoluments, and
 - (iii) the amount of tax deducted on making the payment.

Commencement of subsequent employment: Form P45

25—(1) Immediately on commencing his next employment, the employee must give Parts 2 and 3 of the Form P45 to his new employer.

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(2) If the Form P45 shows that the employment ceased in the current tax year, the employer must, subject to paragraph (9) (non-cumulative basis), comply with paragraphs (5) to (8).

(3) If—

(a) the Form P45 shows that the employment ceased in the previous tax year,
and

(b) the new employment commences on or before 17th May,
the new employer must comply with the paragraphs (5) to (8) with the modification that he must deduct or repay tax without taking into account the cumulative emoluments and cumulative tax shown on the Form P45.

(4) If, in a case not falling within paragraph (3), the Form P45 shows that the employment ceased in the previous tax year, or in any earlier tax year, the new employer must comply with paragraph (5), but deduct tax from each payment of emoluments made by him to the employee using the emergency code on the non-cumulative basis, and keep records on a deductions working sheet which he must prepare for that purpose.

(5) The employer must insert on Part 3 of the Form P45—

- (a) the employee's home address,
- (b) any number used to identify the employee,
- (c) the date on which the employment commenced, and
- (d) the employee's code in use by the employer if different from the code contained on the Form P45;

then send that copy to the employer's PAYE office.

(6) The employer must—

- (a) prepare a deductions working sheet in accordance with the information given on the Form P45, and
- (b) record on the working sheet the cumulative emoluments (if any) shown on the Form P45.

(7) If the Form P45 indicates that the cumulative basis has been applied, the employer must record the following information on the deductions working sheet or keep such records as enable its production—

- (a) if the code shown on the Form P45 is a "K" code—
 - (i) the cumulative additional pay,
 - (ii) the cumulative taxable emoluments, and
 - (iii) the lower of the cumulative tax as at the week or month shown on the Form P45 or the total net tax deducted shown on it; and

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- (b) in any other case—
- (i) the cumulative free emoluments,
 - (ii) the cumulative taxable emoluments, and
 - (iii) the corresponding cumulative tax as at the week or month shown on the Form P45.
- (8) If the Form P45 indicates that the cumulative basis has been applied, on making any payment of emoluments to the employee, the employer must—
- (a) deduct or repay tax by reference to the employee's code on the cumulative basis, and
 - (b) keep the records required by regulation 38(3) and (4), as if the cumulative emoluments and cumulative tax shown on the deductions working sheet prepared in accordance with paragraph (6) or (7) represented emoluments paid to the employee by the new employer and tax deducted by him.
- (9) If the Form P45 indicates that the non-cumulative basis has been applied, the non-cumulative basis continues to apply to payments of emoluments made by the new employer.
- (10) When an employer receives the Form P45 under paragraph (1) he is deemed, for the purposes of these Regulations to have been issued by the inspector with the code shown on that Form in respect of the employee.
- (11) If an employee objects to the disclosure of his cumulative emoluments to the new employer, he may send Parts 2 and 3 of the Form P45 to the inspector before he commences his new employment, and the inspector may issue a code in respect of the employee to the new employer and direct that the non-cumulative basis is to apply to all payments of emoluments which the new employer makes to the employee.

Pension emoluments

26—(1) Retirement on pension is not a cessation of employment for the purposes of regulation 23 if the emoluments are paid by the same employer both before and after retirement.

- (2) That employer must—
- (a) deduct tax on making payments of pension emoluments to the employee on the non-cumulative basis for the remainder of the year after retirement or until directed otherwise by the inspector; and
 - (b) within 14 days after retirement prepare a retirement statement and—
 - (i) send it to the inspector, and
 - (ii) give a copy to the employee.

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- (3) The following information is to be provided on the retirement statement—
- (a) the employee's name,
 - (b) the employee's national insurance number,
 - (c) the date of the employee's retirement,
 - (d) the cumulative emoluments at the date of retirement,
 - (e) the emoluments of the employment from the beginning of the tax year to the date of retirement,
 - (f) the corresponding total net tax deducted, and
 - (g) the amount of pension payable and the frequency of the payments.
- (4) If paragraph (1) does not apply and an employee gives Parts 2 and 3 of the Form P45 to a different employer who pays or will pay pension emoluments to that employee, the employer must—
- (a) deduct tax by reference to the code shown on the Form P45 on the non-cumulative basis for the remainder of the year after retirement or until directed otherwise by the inspector; and
 - (b) complete Part 3 of the Form P45 in accordance with regulation 25(2) and send it to his PAYE office.

Death of employee

27—(1) On the death of an employee in respect of whom a code has been, or is deemed to have been, issued by the inspector, the employer must immediately send to the inspector all parts of the completed Form P45 indicating on Part 1 that the employee has died.

- (2) Regulation 24(2) applies—
- (a) to the payment of any emoluments in respect of the employee's employment made after the date of the employee's death, which are not included on the Form P45,
 - (b) to the payment of any pension emoluments made in a year following the year in which the employee died.

(3) If the employer pays any pension emoluments after the date of the employee's death but during the same tax year he must, on making any such payment, deduct or repay tax as if the deceased employee were still alive and in receipt of a pension at the date of the payment.

Employer to provide information regarding payment of certain pensions to non-residents

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28Z—(1) Paragraph (2) applies if an employer pays a pension, which does not arise wholly from an employment carried on abroad, to [a person] who is resident outside the United Kingdom in respect of whom a code has not been issued by the inspector, and the payment exceeds the minimum amount.

(2) On making the first such payment the employer must send the inspector the following information—

- (a) the name and address of the person entitled to the pension,
- (b) the date on which the pension commenced, and
- (c) such other information as may be necessary to enable the inspector to determine the employee's code in accordance with regulation 7,

in a document provided or approved by the Board.

Information to be provided on Form P46 if code not known

28—(1) This regulation applies to an employee—

- (a) who does not give Form P45 to his employer on commencing employment, and
- (b) in respect of whom a code has not otherwise been issued or deemed to have been issued.

(2) But this regulation does not apply where the employee is resident outside the United Kingdom and the emoluments paid by the employer consist of a pension.

(3) The employee must indicate on Form P46 whether any of the following statements apply to him—

Statement A: that he is taking up employment after a period of full-time education and has not made a successful claim for benefit (as defined in regulation 81);

Statement B: that this is his only or main employment (not including any self-employment);

Statement C: that he is in receipt of a pension;

and if so he must sign and date the form.

(4) The employer must provide the following information on the Form P46—

- (a) the employee's name and address,
- (b) the employee's national insurance number,
- (c) the employee's date of birth,
- (d) the employee's sex,
- (e) the date on which the employment commenced,

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- (f) any number used by the employer to identify the employee, and
- (g) the employer's name and address and PAYE reference number.

(5) The employer must retain the P46 until required to send it to the inspector in accordance with regulations 29 to 31, and before doing so he must indicate on the Form which code he is using in respect of the employee and whether he is using the non-cumulative basis.

Form P46: application of regulations 29-31

28A—(1) Regulation 29 applies to an employee who indicates on Form P46 that only Statement A applies to him, or that only Statements A and B apply to him.

(2) Regulation 30 applies to an employee who indicates that only Statement B applies to him.

(3) Regulation 31 applies to all other employees in relation to whom a Form P46 is completed.

Employee taking up employment after full-time education

29—(1) On making the first payment of emoluments which exceeds the minimum amount to an employee to whom this regulation applies, the employer must—

- (a) send the inspector the completed Form P46,
- (b) prepare a deductions working sheet and enter the total cumulative emoluments to date and enter cumulative tax before the first payment as nil, and
- (c) deduct tax on the cumulative basis applying the emergency code.

(2) On making any subsequent payment of emoluments before the employee's code is issued, the employer must continue to deduct or repay tax on the cumulative basis applying the emergency code.

Employee taking up only or main employment

30—(1) On making the first payment of emoluments which exceeds the minimum amount to an employee to whom this regulation applies, the employer must—

- (a) send the inspector the completed Form P46,
- (b) deduct tax on the non-cumulative basis applying the emergency code, and
- (c) keep the records required by regulation 17.

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- (2) On making any subsequent payment of emoluments before the employee's code is issued, the employer must continue to—
- (a) deduct or repay tax on the non-cumulative basis applying the emergency code, and
 - (b) keep the records required by regulation 17.

Other new employees

31—(1) On making the first payment of emoluments (other than pension emoluments) to an employee to whom this regulation applies the employer must—

- (a) send the inspector the completed Form P46,
- (b) prepare a deductions working sheet and enter both the total cumulative emoluments to date and the cumulative tax before the first payment as nil,
- (c) deduct tax on the cumulative basis applying the basic rate code.

(2) On making any subsequent payment of emoluments before the employee's code is issued, the employer must continue to deduct tax on the cumulative basis applying the basic rate code.

(3) On making the first payment of pension emoluments to an employee to whom this regulation applies, the employer must—

- (a) send the inspector the completed Form P46,
- (b) deduct tax on the non-cumulative basis applying the emergency code, and
- (c) keep the records required by regulation 17.

(4) On making any subsequent payment of pension emoluments before the employee's code is issued, the employer must continue to deduct tax on the non-cumulative basis applying the emergency code.

Code deemed to have been issued by inspector

32—The emergency code or the basic rate code used by the employer in accordance with regulations 28 to 31 is deemed, for the purposes of Parts III and IV (other than regulations 11 and 28 to 34), to have been issued by the inspector as the employee's code.

Subsequent procedure on issue of employee's code

33—(1) On making any payment of emoluments to an employee falling within regulation 29 to 31 after the employee's code has been issued by the inspector, the employer must—

- (a) deduct or repay tax by reference to that code, and
- (b) keep the records required by regulation 38.

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- (2) For the purpose of paragraph (1)(b)—
- (a) any cumulative emoluments notified to the employer by the inspector are treated as if they represented emoluments paid by the employer; and
 - (b) the total net tax deducted before the first payment made in accordance with this regulation is taken to be $TN + TD$ where—
 - TN is the total net tax deducted, if any, notified to the employer by the inspector;
 - TD is any tax which the employer was liable to deduct from the employee's emoluments under regulation 29, 30 or 31.

Subsequent procedure on presentation of Form P45

34—(1) If an employee falling within regulation 28(1) gives Parts 2 and 3 of Form P45 to the employer—

- (a) before the employer is required to send the Form P46 to the inspector under regulation 29 to 31, regulation 25 applies;
- (b) after the Form P46 has been sent to the inspector but before the employee's code has been issued to the employer, this regulation applies.

(2) The Form P45 is treated as having been given on the day the employment commenced.

(3) If the Form P45 shows that the employment ended in the same tax year then, unless the employer has already ceased to employ the employee, the employer must, subject to paragraph (9) (non-cumulative basis), comply with paragraphs (5) to (8).

(4) If the Form P45 shows that the employment ended in the preceding tax year, and the employee gives the Form P45—

- (a) on or before 24th May, then, unless the employer has already ceased to employ the employee, the employer must comply with paragraph (5);
- (b) after 24th May, paragraphs (5) to (8) do not apply.

(5) The employer must insert on Part 3 of the Form P45—

- (a) the employee's home address,
- (b) any number used to identify the employee,
- (c) the date on which the employment commenced, and
- (d) the employee's code in use by the employer if different from the code contained on the Form P45;

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then send that copy to his PAYE office.

- (6) The employer must—
- (a) prepare a deductions working sheet in accordance with the information given on the Form P45 (unless he has already prepared one), and
 - (b) record on the working sheet—
 - (i) the cumulative emoluments shown on the Form P45, and
 - (ii) the emoluments which have been paid by the employer since the employment commenced which have not already been so recorded.
- (7) The employer must record the following information on the deductions working sheet or keep such records as enable its production—
- (a) if the code shown on the Form P45 is a “K” code—
 - (i) the cumulative additional pay,
 - (ii) the cumulative taxable emoluments, and
 - (iii) the lower of the cumulative tax as at the week or month shown on the Form P45 or the total net tax deducted shown on it; and
 - (b) in any other case—
 - (i) the cumulative free emoluments,
 - (ii) the cumulative taxable emoluments, and
 - (iii) the corresponding cumulative tax as at the week or month shown on the Form P45.
- (8) On making any subsequent payment of emoluments to the employee, the employer must—
- (a) deduct or repay tax by reference to the code on the cumulative basis, and
 - (b) keep the records required by regulation 38(3) and (4), as if the cumulative emoluments and cumulative tax shown on the deductions working sheet prepared in accordance with paragraph (6) represented emoluments paid to the employee by the new employer and tax deducted by him.
- (9) If the Form P45 indicates that the non-cumulative basis has been applied, references in the preceding paragraphs to cumulative emoluments, cumulative free emoluments and cumulative tax are to be disregarded, and the non-cumulative basis applies to payments of emoluments made by the new employer.

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Repayment during unpaid leave

35—(1) This regulation applies if, due to absence from work, an employee is not entitled to receive any emoluments on his usual pay day, but the cumulative basis would have applied to a payment made on that day.

(2) If this regulation applies and an application is made in person by the employee or his authorised representative to the employer, the employer must—

(a) repay any tax due to the employee, having regard to the cumulative emoluments at the date of the pay day, the corresponding cumulative tax and any tax not deducted when the preceding payment of emoluments was made, and

(b) comply with regulation 38(3) and (4),

as if the occasion were one on which emoluments had been paid.

(3) This regulation does not apply if the employee falls within regulation 36(1) (absence from work due to participation in trade dispute).

Trade disputes

36—(1) This regulation applies if an employee—

(a) is absent from work in consequence of a trade dispute at his place of work, and

(b) is participating or directly interested in the trade dispute.

(2) Subject to paragraph (6), the employer must—

(a) when making any payment of emoluments, calculate the amount of tax to be deducted or repaid, or

(b) if no emoluments are paid on the usual pay day, calculate, in accordance with regulation 14, whether any tax is due to be repaid on that day,

and comply with paragraphs (3) to (5).

(3) The employer—

(a) must not repay any tax due to be repaid and not yet set off in accordance with sub-paragraph (b) until the end of the employee's strike action, but

(b) must deduct any tax due to be deducted less any repayment for the year not yet paid or set off in accordance with this sub-paragraph.

(4) If the absence of an employee extends beyond the end of the tax year, the employer must—

(a) give notice to the employee by 31st May of the amount of any repayment of tax for the year in question calculated in accordance

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with paragraph (2) which has not been set off against any tax due to be deducted under paragraph (3)(b); and

(b) complete the certificate which is to be given under regulation 39 and the return which is to be sent under regulation 43 as if that tax had been repaid to the employee.

(5) If the employer has not made any repayment of tax withheld under paragraph (3) within 42 days after the end of the employee's strike action, the employer must instead immediately pay the tax not repaid to the collector, and regulation 42(1) (receipt where requested) applies to that payment.

(6) An employee from whom a repayment of tax has been withheld in accordance with paragraph (3) may request a benefit officer to certify that he is not disqualified from receiving jobseeker's allowance because of section 14 of the Jobseekers Act 1995 (no allowance to those involved in trade dispute), and if the benefit officer so certifies, the employer must make such repayment as may be due.

(7) In this regulation—

“benefit” has the same meaning as in regulation 81;

“benefit officer” means the appropriate officer—

(a) of the Department for Work and Pensions or,

(b) in Northern Ireland, of the Department for Social Development;

“place of work” has the meaning given by section 14(4) of the Jobseekers Act 1995 ;

“end of the employee's strike action” means any of the following—

(a) the employee is no longer absent from work in consequence of the trade dispute,

(b) the employer ceases to employ the employee,

(c) the employee has become genuinely employed elsewhere in the occupation which he usually follows or has become regularly engaged in some other occupation, or

(d) the employee dies;

“trade dispute” has the meaning given by section 35(1) of the Jobseekers Act 1995.

Repayment after becoming unemployed

37—(1) If a person who has become unemployed applies for a repayment of tax, he must produce to the inspector—

(a) Parts 2 and 3 of Form P45 or Parts 2 and 3 of the certificate delivered in accordance with regulation 89(2) [Form P45U],

(b) a certificate that he was not a benefit claimant for the relevant period, and

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(c) such evidence of his unemployment as the inspector may require.

(2) If satisfied by an application under paragraph (1), the inspector must make any repayment of tax which may be due at any date, having regard to the employee's cumulative emoluments at that date, the corresponding cumulative tax, and any other emoluments assessable for the year.

(3) For the purposes of this regulation, "benefit", "claim" and "claimant" have the meanings given by regulation 81 (meaning of benefit etc).

Repayment after ceasing to be employed in other cases

37A—(1) If a person who has ceased to be employed (other than by reason of unemployment) and who does not intend to be employed before the end of the tax year applies for a repayment of tax, he must produce to the inspector—

- (a) Parts 2 and 3 of Form P45,
- (b) a certificate that he will not claim any benefit for the rest of the tax year, and
- (c) a certificate that he will not have any taxable employment income for the rest of the tax year.

(2) If satisfied by an application under paragraph (1), the inspector must make any repayment of tax which would be due on 5th April, having regard to—

- (a) the employee's cumulative emoluments shown on the P45,
- (b) the lower of the cumulative tax shown on the P45 and shown on the tax tables for the tax period shown on the P45, and
- (c) any other income emoluments assessable for the year.

(3) For the purposes of this regulation, "benefit" has the meaning given by regulation 81.

Deductions working sheets

38—(1) If a code has been issued to an employer in respect of an employee, the employer must, on making a payment of emoluments to that employee, prepare a deductions working sheet (unless he has already done so).

(2) The employer must record on the deductions working sheet—

- (a) the employee's name,
- (b) the employee's national insurance number,
- (c) the employee's code, and
- (d) the tax year to which the deductions working sheet relates.

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- (3) The employer must record on the deductions working sheet in respect of every payment of emoluments which he makes to the employee—
- (a) the date of the payment,
 - (b) the amount of the emoluments, and
 - (c) the amount of tax, if any, deducted or repaid on making the payment.
- (4) The employer must either—
- (a) record the following information on the deductions working sheet in respect of every payment of emoluments which he makes to the employee —
 - (i) the cumulative emoluments in relation to the date of payment,
 - (ii) the cumulative free emoluments or, as the case may be, the cumulative additional pay, in relation to that date,
 - (iii) the cumulative taxable emoluments in relation to that date,
 - (iv) the corresponding cumulative tax,
 - (v) if additional pay has been added to the payment, the tax due at that date,
 - (vi) the overriding limit, if any, in relation to the payment,
 - (vii) the amount of any tax not deducted at that date as a consequence of the overriding limit, and
 - (viii) the amount of tax, if any, repayment of which is precluded by regulation 36; or
 - (b) keep such records as enable the production of that information.

Certificate of tax deducted

- 39—(1) The employer must, not later than 31st May following the end of the tax year, give a certificate to every employee—
- (a) who was in his employment on the last day of the tax year, and
 - (b) from whose emoluments any tax has been deducted during that year.
- (2) The certificate is to be in a form provided or authorised by the Board and, subject to regulation 36(4), is to show—
- (a) the tax year to which it relates,
 - (b) the total amount of the emoluments paid by the employer to the employee during the year which the employer was required to take into account for the purposes of deducting or repaying tax,
 - (c) the total net tax deducted from the emoluments,
 - (d) the employee's code,
 - (e) the employee's national insurance number,
 - (f) the employer's name and address, and

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(g) in the case of a form not provided by the Board, that it has been approved by them in substitution for such a form.

(3) In the case of an employee taken into employment after the beginning of the tax year, the certificate is to include—

(a) any emoluments paid to the employee by any previous employer (both as a separate figure and aggregated with the information required under paragraph (2)(b)), and

(b) any tax deductible from those emoluments,

which the employer giving the certificate was required to take into account for the purposes of deducting or repaying tax in the case of emoluments paid by him.