

## PAYE SETTLEMENT AGREEMENTS

### *Making and effect of settlement agreement*

- 80A Board and employer may make PAYE settlement agreement
- 80AA Qualifying general earnings
- 80E Effect of settlement agreement

### *Payment of tax under agreement*

- 80F Calculation of tax payable under agreement
- 80G Payment of tax and recovery proceedings
- 80H Formal determination of tax payable by the employer

### *Form and commencement of agreement*

- 80B Form of agreement
- 80C Commencement of agreement

### *Variation, review and cancellation of agreement*

- 80D Variation of agreement
- 80L Review of agreement
- 80M Cancellation of agreement

### *Interest*

- 80J Interest on unpaid tax
- 80K Interest on overpaid tax

### *Records*

- 80N Inspection and retention of records

### *Making and effect of settlement agreement*

#### **Board and employer may make PAYE settlement agreement**

80A—(1) The Board and an employer may agree that the employer is to be accountable to the Board for a tax year in respect of income tax on [qualifying general earnings] of the employer’s employees in accordance with the terms of the agreement and this Chapter, and not in accordance with the rest of these Regulations.

(2) Such an agreement is referred to as a “PAYE settlement agreement”.

#### **Qualifying general earnings**

80AA—(1) Qualifying general earnings are those general earnings which satisfy the following conditions:

##### **Condition 1**

The general earnings consist of—

- (a) taxable benefits provided or made available by reason of the employments to which the agreement relates, or
- (b) expenses paid to persons holding those employments.

##### **Condition 2**

The employer and the Board agree that the general earnings are—

- (a) minor, as regards the amount of the sums paid or the type of benefit provided or made available,

Chapter 5 of Part 6 of the draft PAYE regulations as at 10 October 2002

- (b) irregular, as regards the frequency in which, or the times at which, the sums are paid or the benefit is provided or made available,
- (c) paid in circumstances where deduction of tax by reference to the tax tables is impracticable, or
- (d) in the case of a benefit provided or made available, shared between employees so that apportionment of the benefit between the employees is impracticable.

(2) “Taxable benefit”, in relation to an employee, means any benefit provided or made available, otherwise than in the form of a payment of money, to the employee or to a person who is a member of the employee’s family or household.

(3) General earnings to which regulation [80C](2)(a) or (b) (pre-agreement general earnings etc) apply are not qualifying general earnings.

**Effects of settlement agreement**

80E—(1) [General earnings] included in the agreement are treated as excluded from an employee’s income for the purposes of determining the amount of the employee’s liability to income tax for the tax year to which the agreement relates.

(2) But this does not affect—

- (a) the chargeability of those general earnings to income tax, or
- (b) the employer’s liability under the agreement to account for income tax in respect of those general earnings.

(3) Sums in respect of income tax for which an employer is to be accountable to the Board under a PAYE settlement agreement are not to be treated, for the purposes of these Regulations, as tax deducted from [general earnings].

(4) An employee has no right to be treated as having paid tax in respect of sums for which the employer is accountable under a PAYE settlement agreement, and accordingly is not entitled to claim or receive any refund of tax paid by the employer under the agreement.

(5) An employee is to be treated, except for the purposes of the obligations imposed on the employer under regulation 80N, as relieved from any obligations under the Income Tax Acts—

- (a) to retain records containing information relating to general earnings included in a PAYE settlement agreement, or
- (b) to [deliver] returns in respect of those general earnings.

(6) General earnings comprised in a PAYE settlement agreement are not to be included in a return by the employer under regulation [43, 44 or 45], or in particulars provided by the employer under regulation [46].

## Chapter 5 of Part 6 of the draft PAYE regulations as at 10 October 2002

*Payment of tax under agreement***Calculation of tax payable under agreement**

80F—(1) A PAYE settlement agreement is to provide for the sums in respect of income tax for which an employer is to be accountable to the Board under the agreement—

- (a) to be computed in accordance with the factors specified in paragraph (2), [and
- (b) to [include] the amount specified in paragraph (3).]

(2) The factors specified are—

(a) in the case of general earnings comprising sums paid in respect of expenses, the estimated aggregate amount of such payments on which income tax is chargeable, reduced by such amount (if any) as would have been deductible if the general earnings had not been included in the agreement;

(b) in the case of general earnings comprising benefits provided or made available, the estimated aggregate amount of the cash equivalents and other amounts on which income tax is chargeable, reduced by such amount (if any) as would have been deductible if the general earnings had not been included in the agreement;

(c) the total number of employees in receipt of general earnings comprised in the agreement;

(d) the number of those employees respectively chargeable to income tax—

- (i) only at the starting rate for the year to which the agreement relates,
- (ii) only at the starting rate and the basic rate for that year, and
- (iii) at the starting rate, the basic rate and the higher rate for that year;

(e) such other matters as are agreed by the Board and the employer to be relevant in relation to the general earnings comprised in the agreement.

[(3) The amount specified for the purposes of paragraph (1)(b) is an amount equal to income tax on the aggregate of the amounts computed in accordance with paragraph (2)(a) and (b), calculated so as to take account of the factor specified in paragraph (2)(d).]

[(4) A PAYE settlement agreement is also to provide for the employer to be accountable for a further amount reflecting an estimate of the tax on the benefit to the employees of having no tax liability on the general earnings included in the agreement.]

**Payment of tax and recovery proceedings**

80G—(1) By 19th October following the tax year to which the PAYE settlement agreement relates (“the due date”), the employer must pay to the collector the aggregate amount for which the employer is accountable to the Board under that agreement.

(2) Part VI of the TMA applies to the recovery of the aggregate amount or any part of it (“the amount of tax”) as if it were income tax charged on the employer, with the modification that summary proceedings for the recovery of the amount of tax may be brought in England, Wales or Northern Ireland at any time before the expiry of 12 months [beginning with] the due date.

*Chapter 5 of Part 6 of the draft PAYE regulations as at 10 October 2002*

(3) Proceedings may be brought for the recovery of the amount of tax without distinguishing the amounts which the employer is liable to pay in respect of each employee under the PAYE settlement agreement and without specifying the employees in question.

(4) The amount of tax is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of the TMA (magistrates' courts, county courts and inferior courts in Scotland).

**Formal determination of tax payable by the employer**

80H—(1) This regulation applies if it appears to an [inspector or other] officer of the Board that there may be an amount payable to the collector under regulation 80G(1) for any year which has not been paid by the due date.

(2) The [inspector or] officer may determine the amount payable to the best of [that officer's] judgment, and must serve notice of [any such] determination on the employer.

(3) A determination under this regulation is subject to Parts 4, 5 and 6 of the TMA as if it were an assessment, and as if the amount determined were income tax charged on the employer, and those Parts of that Act apply accordingly with any necessary modifications.

(4) If an appeal against a determination is to the General Commissioners, it is to be brought before the General Commissioners for the division [which includes] the place where the determination was made.

*Form and commencement of agreement*

**Form of agreement**

80B—(1) A PAYE settlement agreement is to be in writing, and signed and dated by the employer and by an inspector or other officer of the Board on behalf of the Board.

(2) A PAYE agreement is to incorporate, whether by specification or indirect reference—

- (a) the [general earnings] comprised in the agreement;
- (b) the method of calculation, determined in accordance with regulation 80F, of the amount of income tax for which the employer is to be accountable to the Board in respect of those general earnings for the year to which the agreement relates;
- (c) the due date on which income tax in respect of those general earnings is due and payable for the year to which the agreement relates.

**Commencement of agreement**

80C—(1) A PAYE settlement agreement may be entered into at any time before 6th July following the tax year for which it is to have effect (“the year in question”).

(2) An agreement entered into after the beginning of the year in question can not apply to—

*Chapter 5 of Part 6 of the draft PAYE regulations as at 10 October 2002*

- (a) [general earnings] which, at the date the agreement is entered into, have been, or should have been, paid earlier in the year in question under deduction of tax in accordance with Parts 3 and 4, or
- (b) [general earnings] consisting of benefits which, at the time the agreement is entered into, are or were reflected in the employee’s code for the year in question in accordance with Part 4.

*Variation, review and cancellation of agreement*

**Variation of agreement**

80D—(1) The Board and the employer may, by agreement and consistently with the provisions of this Chapter, vary the terms of a PAYE settlement agreement entered into by them.

(2) Any such agreement is to be in writing, and signed and dated by the employer and by an inspector or other officer of the Board on behalf of the Board.

(3) The last date for variation of an agreement is the 6th July in the year following the tax year to which it relates.

**Review of agreement**

80L An inspector or other officer of the Board must review the operation of a PAYE settlement agreement by 6th July following the year to which the agreement relates.

**Cancellation of agreement**

80M—(1) In the circumstances specified in paragraph (2), the Board may, by notice to an employer, cancel a PAYE settlement agreement entered into by that employer with effect from the date of the notice.

(2) The circumstances are where there has been serious or persistent failure on the part of the employer—

- (a) to account to the Board for sums for which the employer is accountable under the agreement, or otherwise to comply with the terms of the agreement,
- (b) to produce records in accordance with regulation 80N, or
- (c) with respect to the deduction of, and accounting for, tax in accordance with Parts 3 to 5, or the rendering of returns in accordance with those Parts.

(3) The obligations of the employer contained in Parts 3, 4, 5 and 8 have effect with respect to [general earnings] to which the cancelled agreement related that are paid, or (as the case may be) provided or made available, by the employer following the receipt by the employer of a notice of cancellation.

*Interest*

**Interest on unpaid tax**

80J—(1) Amounts payable by an employer by virtue of this Chapter carry interest if not paid by 19th October following the end of the tax year to which the PAYE settlement agreement relates (“the due date”).

(2) Interest at the prescribed rate runs from the due date until payment.

Chapter 5 of Part 6 of the draft PAYE regulations as at 10 October 2002

(3) Paragraph (2) applies even if the due date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882.

(4) Interest is recoverable as if it were an amount payable under the settlement agreement.

(5) “The prescribed rate” means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 86 of the TMA; and if that rate changes on an operative date within the meaning given by regulation 2 of the Taxes (Interest Rate) Regulations 1989 by virtue of those Regulations, the change has effect for periods beginning on or after the operative date in relation to interest running from before that date as well as from or from after that date.

*NB Old paras (3), (4), and (6) (collector’s certificate sufficient evidence that sums unpaid; certificate deemed to be valid; payments by cheque) to be incorporated in general regs, currently X and XX in Part 5.*

**Interest on overpaid tax**

80K—(1) If tax in respect of the year to which a PAYE agreement relates is repaid to the employer after the due date, the tax repaid carries interest at the prescribed rate from that date or, if later, from the date on which the tax was paid until the date on which the order for the repayment is issued.

(2) “The prescribed rate” means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of the Taxes Act; and if that rate changes on an operative date within the meaning given by regulation 2 of the Taxes (Interest Rate) Regulations 1989 by virtue of those Regulations, the change has effect for periods beginning on or after the operative date in relation to interest running from before that date as well as from or from after that date.

*NB Old para (3) (payments by cheque) to be swept up in general reg, currently XX in Part 5*

*Records*

**Inspection and retention of records**

80N—(1) Whenever required to do so by an inspector or other officer of the Board, every employer [who has entered into a PAYE settlement agreement] must produce the settlement agreement records to that person for inspection, at the prescribed place and at such time as that person may reasonably require.

(2) The settlement agreement records are all books, documents and other records relating to—

- (a) the general earnings comprised in the PAYE settlement agreement,
- (b) the calculation of amounts for which the employer is accountable to the Board in accordance with the agreement in respect of the years specified by the officer, and
- (c) the payment of those amounts to a collector;

or such of those books, documents and other records as may be specified by the inspector or officer.

*Chapter 5 of Part 6 of the draft PAYE regulations as at 10 October 2002*

- (3) In paragraph (1), “the prescribed place” means such place in the United Kingdom as the employer and the inspector or officer may agree upon, or in default of such agreement—
- (a) the place in the United Kingdom at which the settlement agreement records are normally kept, or
  - (b) if there is no such place, the employer’s principal place of business in the United Kingdom.
- (4) The inspector or officer may—
- (a) take copies of, or make extracts from, any records produced for inspection in accordance with paragraph (1);
  - (b) remove any records so produced if necessary to do so, at a reasonable time and for a reasonable period.
- (5) If any record is removed in accordance with paragraph (4)(b), the inspector or officer must provide—
- (a) a receipt for the record so removed, and
  - (b) a copy of the record, free of charge, within 7 days, to the person by whom it was produced or caused to be produced where the record is reasonably required for the proper conduct of a business.
- (6) If a lien is claimed on a record produced in accordance with paragraph (1), the removal of the document under paragraph (4)(b) is not to be regarded as breaking the lien.
- (7) If records are maintained by computer, the person required to make them available for inspection must provide the inspector or officer with all facilities necessary for obtaining information from them.
- (8) An employer must retain the settlement agreement records for not less than 3 years after the end of the most recent year to which they relate.