

2007 No. 2069

INCOME TAX

**The Income Tax (Pay as You Earn) (Amendment No. 2)
Regulations 2007**

<i>Made</i> - - - -	<i>20th July 2007</i>
<i>Laid before the House of Commons</i>	<i>23rd July 2007</i>
<i>Coming into force</i> - -	<i>6th August 2007</i>

The Commissioners for Her Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 684 and 688A(1) to (4) of the Income Tax (Earnings and Pensions) Act 2003(a) and now exercisable by them(b).

Citation and commencement

1. These Regulations may be cited as the Income Tax (Pay as You Earn) (Amendment No. 2) Regulations 2007, and shall come into force on 6th August 2007.

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

2. The Income Tax (Pay as You Earn) Regulations 2003(c) are amended by inserting the following Chapter at the end of Part 4 (payments, returns and information)—

“CHAPTER 4

DEBTS OF MANAGED SERVICE COMPANIES

Interpretation of Chapter 4

97A.—(1) In this Chapter—

“HM Revenue and Customs” means Her Majesty’s Revenue and Customs;

“lower amount” means the amount mentioned in regulation 97C(5);

“managed service company” has the meaning given by section 61B of ITEPA(d);

(a) 2003 c. 1; section 684 was amended by section 145(1) and (2) of the Finance Act 2003 (c. 14), paragraph 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) and section 94(3) of the Finance Act 2006 (c. 25), and section 688A was inserted by paragraph 6 of Schedule 3 to the Finance Act 2007 (c. 11).
(b) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that in so far as it is appropriate in consequence of section 5 a reference in an enactment, however expressed, to the Commissioners of Inland Revenue is to be read as a reference to the Commissioners for Her Majesty’s Revenue and Customs.
(c) S.I. 2003/2682, to which there are amendments not relevant to these Regulations.
(d) Section 61B was inserted by paragraph 4 of Schedule 3 to the Finance Act 2007.

“paragraph (b) associate” means a person who—

- (a) is within section 688A(2)(d), and
- (b) is within that provision by virtue of a connection with a person who is within section 688A(2)(b);

“paragraph (c) associate” means a person who—

- (a) is within section 688A(2)(d), and
- (b) is within that provision by virtue of a connection with a person who is within section 688A(2)(c);

“qualifying period” means a tax period beginning on or after 6th August 2007;

“relevant PAYE debt” means a debt specified in regulation 97B;

“specified amount” means the amount mentioned in regulation 97C(1)(b);

“transfer notice” means the notice mentioned in regulation 97C(4);

“transferee” means the person mentioned in regulation 97C(4).

(2) In this Chapter references to section 688A, however expressed, are references to section 688A of ITEPA.

Relevant PAYE debts of managed service companies

97B.—(1) A managed service company has a relevant PAYE debt if—

- (a) a managed service company must pay an amount of tax for a qualifying period, and
- (b) one of conditions A to E is met.

(2) Condition A is met if—

- (a) an amount of tax for a qualifying period has been determined in accordance with regulation 80 (determination of unpaid tax and appeal against determination), and
- (b) any part of the tax determined has not been paid within 14 days from the date on which the determination became final and conclusive.

(3) Condition B is met if—

- (a) an employer delivers a return under regulation 73 (annual return of relevant payments) for the tax year 2007-08, or any later tax year, showing an amount of total net tax deducted by the employer for that tax year,
- (b) HM Revenue and Customs prepare a certificate under regulation 76 (certificate if tax in regulation 73 return is unpaid) showing how much of that amount remains unpaid, and
- (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.

(4) Condition C is met if—

- (a) HM Revenue and Customs prepare a certificate under regulation 77(6) (return and certificate if tax may be unpaid) showing an amount of tax which the employer is liable to pay for a qualifying period, and
- (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.

(5) Condition D is met if—

- (a) HM Revenue and Customs serve notice on an employer under regulation 78(4) (notice and certificate if tax may be unpaid) requiring payment of the amount of tax which they consider the employer is liable to pay, and
- (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.

(6) Condition E is met if—

- (a) HM Revenue and Customs prepare a certificate under regulation 79(2) (certificate after inspection of PAYE records) showing an amount of tax which it appears that the employer is liable to pay for a qualifying period,
- (b) HM Revenue and Customs make a written demand for payment of that amount of tax, and
- (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the written demand for payment is made.

Transfer of debt of managed service company

97C.—(1) This regulation applies if—

- (a) a managed service company has a relevant PAYE debt, and
- (b) an officer of Revenue and Customs is of the opinion that the relevant PAYE debt or a part of the relevant PAYE debt (the “specified amount”) is irrecoverable from the managed service company within a reasonable period.

(2) HM Revenue and Customs may make a direction authorising the recovery of the specified amount from the persons specified in section 688A(2) (managed service companies: recovery from other persons).

(3) Upon the making of a direction under paragraph (2), the persons specified in section 688A(2) become jointly and severally liable for the relevant PAYE debt, but subject to what follows.

(4) HM Revenue and Customs may not recover the specified amount from any person in accordance with a direction made under paragraph (2) until they have served a notice (a “transfer notice”) on the person in question (the “transferee”).

(5) If an officer of Revenue and Customs is of the opinion that it is appropriate to do so, HM Revenue and Customs may accept an amount less than the specified amount (the “lower amount”) from a transferee; but this acceptance shall not prejudice the recovery of the specified amount from any other transferee.

(6) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c), or on a paragraph (c) associate, if the relevant PAYE debt is incurred before 6th January 2008.

(7) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c), or on a paragraph (c) associate, unless an officer of Revenue and Customs certifies that, in his opinion, it is impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) and from paragraph (b) associates.

(8) In determining, for the purposes of paragraph (7), whether it is impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) and from paragraph (b) associates, the officer of Revenue and Customs may have regard to all managed service companies in relation to which a person is a person mentioned in paragraph (a) or (b) of section 688A(2) or a paragraph (b) associate.

(9) In determining which of the persons mentioned in section 688A(2)(c) and which of the paragraph (c) associates are to be served with transfer notices and the amount of those notices, HM Revenue and Customs must have regard to the degree and extent to which those persons are persons who (directly or indirectly) have encouraged or been actively involved in the provision by the managed service company of the services of the individual mentioned in that provision.

Time limits for issue of transfer notices

97D.—(1) A transfer notice must be served before the end of the period determined in accordance with this regulation.

(2) Paragraphs (3) to (7) apply if the transfer notice is served on a person mentioned in paragraph (a) or (b) of section 688A(2) or on a paragraph (b) associate.

(3) In a case in which condition A in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which the determination became final and conclusive.

(4) In a case in which condition B in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs received the return delivered under regulation 73.

(5) In a case in which condition C in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs prepare the certificate under regulation 77(6).

(6) In a case in which condition D in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs serve notice to the employer under regulation 78(4).

(7) In a case in which condition E in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs carry out the inspection of the employer's PAYE records.

(8) If the transfer notice is served on a person mentioned in paragraph (c) of section 688A(2) or on a paragraph (c) associate, the transfer notice must be served before the end of a period of 12 months beginning with the date on which the officer of Revenue and Customs certifies the matters specified in regulation 97C(7).

Contents of transfer notice

97E.—(1) A transfer notice must contain the following information—

- (a) the name of the managed service company to which the relevant PAYE debt relates;
- (b) the address of the managed service company to which the relevant PAYE debt relates;
- (c) the amount of the relevant PAYE debt;
- (d) the tax periods to which the relevant PAYE debt relates;
- (e) if the tax periods to which the relevant PAYE debt relates are comprised in more than one tax year, the apportionment of the relevant PAYE debt among those tax years;
- (f) which of the conditions A to E specified in regulation 97B is met;
- (g) the transferee's name;
- (h) the transferee's address;
- (j) whether the transferee is a person mentioned in paragraph (a), (b) or (c) of section 688A, a paragraph (b) associate or a paragraph (c) associate;
- (k) if the transferee is a person mentioned in paragraph (c) of section 688A or a paragraph (c) associate—
 - (i) the date on which the officer of Revenue and Customs certified the matters specified in regulation 97C(7), and
 - (ii) the names of the persons from whom it has been impracticable to recover the specified amount;
- (l) the specified amount;
- (m) the tax periods to which the specified amount relates;
- (n) if the tax periods to which the specified amount relates are comprised in more than one tax year, the apportionment of the specified amount among those tax years;
- (o) the address to which payment must be sent;

(p) the address to which an appeal must be sent.

(2) The transfer notice may specify the lower amount if HM Revenue and Customs are prepared to accept the lower amount from the transferee.

(3) The transfer notice must also contain a statement, made by the officer of Revenue and Customs serving the notice, that in his opinion the specified amount is irrecoverable from the managed service company within a reasonable period.

Payment of the specified amount

97F.—(1) If a transfer notice is served, the transferee must pay the specified amount to HM Revenue and Customs at the address specified in the transfer notice.

(2) The transferee must pay the specified amount within 30 days beginning with the date on which the transfer notice is served (the “specified period”).

(3) If a transfer notice is served on a person mentioned in paragraph (a) or (b) of section 688A(2), or on a paragraph (b) associate, the specified amount carries interest from the reckonable date until the date on which payment is made.

(4) If a transfer notice is served on a person mentioned in paragraph (c) of section 688A(2), or on a paragraph (c) associate, the specified amount carries interest from the day following the expiry of the specified period until the date on which payment is made.

Appeals

97G.—(1) A transferee may appeal against the transfer notice.

(2) A notice of appeal must—

- (a) be given to HM Revenue and Customs at the address specified in the transfer notice within 30 days beginning with the date on which the transfer notice was served, and
- (b) specify the grounds of the appeal.

(3) The grounds of appeal are any of the following—

- (a) that the relevant PAYE debt (or part of the relevant PAYE debt) is not due from the managed service company to HM Revenue and Customs;
- (b) that the specified amount does not relate to a company which is a managed service company;
- (c) that the specified amount is not irrecoverable from the managed service company within a reasonable period;
- (d) that the transferee is not a person mentioned in section 688A(2);
- (e) that the transferee was not a person mentioned in section 688A(2) during the tax periods to which the specified amount relates;
- (f) that the transferee was not a person mentioned in section 688A(2) during some part of the tax periods to which the specified amount relates;
- (g) that the transfer notice was not served before the end of the period specified in regulation 97D;
- (h) that the transfer notice does not satisfy the requirements specified in regulation 97E;
- (j) in the case of a transferee mentioned in section 688A(2)(c) or of a paragraph (c) associate, that it is not impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) or from paragraph (b) associates;
- (k) in the case of a transferee mentioned in section 688A(2)(c) or of a paragraph (c) associate, that the amount specified in the transfer notice does not have regard to the degree and extent to which the transferee is a person who (directly or

indirectly) has encouraged or been actively involved in the provision by the managed service company of the services of the individual mentioned in that provision.

(4) Paragraph (3)(a) is subject to regulation 97H(4).

(5) The appeal is to the Special Commissioners.

Procedure on appeals

97H.—(1) On an appeal the Special Commissioners shall uphold or quash the transfer notice.

(2) The general rule in paragraph (1) is subject to the following qualifications.

(3) In the case of the ground of appeal specified in regulation 97G(3)(a), the Special Commissioners shall investigate the matter and shall—

(a) uphold the amount of the relevant PAYE debt specified in the transfer notice, or

(b) reduce or increase the amount of the relevant PAYE debt specified in the transfer notice to such amount as in their opinion is just and reasonable.

(4) If the Special Commissioners determine the amount of the relevant PAYE debt of a managed service company under paragraph (3), that amount is conclusive as to the amount of that relevant PAYE debt in any later appeal relating to that debt.

(5) In the case of the ground of appeal specified in regulation 97G(3)(f), the Special Commissioners may reduce the amount specified in the transfer notice to an amount determined in accordance with the equation—

$$RA = \frac{P}{TP} \times AS$$

(6) In paragraph (5)—

RA means the reduced amount;

P means the number of days in the tax periods specified in the transfer notice during which the transferee was a person mentioned in section 688A(2);

TP means the number of days in the tax periods specified in the transfer notice;

AS means the amount specified in the transfer notice.

(7) In the case of the ground of appeal specified in regulation 97G(3)(k), the Special Commissioners may reduce the amount specified in the transfer notice to such amount as in their opinion is just and reasonable.

Withdrawal of transfer notices

97J.—(1) A transfer notice shall be withdrawn if the Special Commissioners quash it.

(2) A transfer notice may be withdrawn if, in the opinion of an officer of Revenue and Customs, it is appropriate to do so.

(3) If a transfer notice is withdrawn, HM Revenue and Customs must give written notice of that fact to the transferee.

Application of Part 6 of TMA

97K.—(1) For the purposes of this Chapter, Part 6 of TMA (collection and recovery) applies as if—

(a) the transfer notice were an assessment, and

(b) the amount specified in the transfer notice, and any interest payable on that amount under paragraph (3) or (4) of regulation 97F, were income tax charged on the transferee;

and that Part of that Act applies with the modification specified in paragraph (2) and any other necessary modifications.

(2) Summary proceedings for the recovery of the specified amount may be brought in England and Wales or Northern Ireland at any time before the end of a period of 12 months beginning immediately after the expiry of the period mentioned in regulation 97F(2).

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

(4) But paragraph (3) does not prevent the bringing of separate proceedings for the recovery of each of the amounts which the transferee is liable to pay for any tax period.

Repayment of surplus amounts

97L.—(1) This regulation applies if the amounts paid to HM Revenue and Customs in respect of a relevant PAYE debt exceed the specified amount.

(2) HM Revenue and Customs shall repay the difference on a just and equitable basis and without unreasonable delay.

(3) Interest on any sum repaid shall be paid in accordance with regulation 83 (interest on tax overpaid).”.

20th July 2007

Mike Eland
Dave Hartnett
Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations insert a new Chapter 4 into Part 4 of the Income Tax (Pay as You Earn) Regulations 2003 (the PAYE Regulations). The new Chapter, consisting of regulations 97A to 97L, deals with debts of managed service companies.

Regulation 97A consists of interpretative provisions, and regulation 97B sets out the circumstances in which a managed service company has a “relevant PAYE debt”.

Regulation 97C applies if a managed service company has a relevant PAYE debt, and an officer of Revenue and Customs is of the opinion that the relevant PAYE debt or a part of the relevant PAYE debt (the “specified amount”) is irrecoverable from the managed service company within a reasonable period. In these circumstances HM Revenue and Customs may make a direction authorising the recovery of the specified amount from the persons specified in section 688A(2) of the Income Tax (Earnings and Pensions) Act 2003. Before making a direction, HM Revenue and Customs must serve a notice (a “transfer notice”) on the person in question (“the transferee”).

Regulation 97D specifies the time limits within which the transfer notice must be served; and regulation 97E specifies the contents of a transfer notice. Regulation 97F contains provisions relating to the payment of the specified amount.

Regulation 97G deals with appeals, and regulation 97H with procedure on an appeal.

Regulation 97J deals with the withdrawal of transfer notices, regulation 97K with the application of Part 6 of the Taxes Management Act 1970 (c. 9), and regulation 97L with the repayment of surplus amounts.

A full regulatory impact assessment of the effect that the provisions in the Finance Act 2007 relating to managed service companies will have on the costs of business and the voluntary sector is published on HM Revenue and Customs’s website at www.hmrc.gov.uk/ria/full-ria-man-serv-coys.pdf, and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.