STATUTORY INSTRUMENTS

2018 No. 267

INCOME TAX

The Income Tax (Pay As You Earn) (Amendment) Regulations 2018

Made - - - -	*28th February 2018*
Laid before the House of Commons - - - -	*1st March 2018*
Coming into force - -	*6th April 2018*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 684(1)(**1**), (2) and 704(**2**) of the Income Tax (Earnings and Pensions) Act 2003 and sections 105(1), (3) and (5) of the Finance Act 2016(**3**), and now exercisable by them(**4**).

Citation and commencement

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2018 and come into force on 6th April 2018.

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

2. The Income Tax (Pay As You Earn) Regulations 2003(**5**) are amended as follows.

3. In regulation 2 (interpretation)—

(**1**) 2003 c. 1. Section 684 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") has been relevantly amended by section 145 of the Finance Act 2003 (c. 14), paragraphs 102(1), (2) and 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) ("CRCA"), section 94(3) of the Finance Act 2006 (c. 25), paragraphs 2 to 7 of Schedule 58 to the Finance Act 2009 (c. 10), section 85(2) of the Finance Act 2011 (c. 11), section 225 of, and paragraph 5(4) of Schedule 1 to, the Finance Act 2012 (c. 14), section 17(2) of the Finance Act 2015 (c. 11), section 15 of the Finance Act 2016 (c. 24) and S.I. 2014/992.

(**2**) Section 704(1)(a) was amended by section 6 of the Finance (No. 2) Act 2017 (c. 32) and the words in section 704(2) were substituted by paragraph 102(3)(k) of Schedule 4 to CRCA.

(**3**) 2016 c. 24.

(**4**) The powers of the Board of Inland Revenue under section 684 of ITEPA were transferred to the Commissioners for Revenue and Customs by paragraph 102 of Schedule 4 to CRCA.

(**5**) S.I. 2003/2682. The relevant amending instruments are S.I 2008/782, 2009/56, 2011/729, 2013/52, 2015/1667, and 2015/1927. There are other amending instruments which are not relevant to these Regulations.

(a) in the definition of "additional rate(**6**)" omit ", except where the employee is a Scottish taxpayer where it means any Scottish additional rate of income tax set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998",

(b) in the definition of "higher rate(**7**)" omit ", except where the employee is a Scottish taxpayer where it means any Scottish higher rate of income tax set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998",

(c) after the definition of "retrospective tax provision(**8**)" insert—

""Scottish basic rate" means the Scottish basic rate of income tax for a tax year set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998;

"Scottish lower rate" means any rate of income tax for a tax year set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998 which is lower than the Scottish basic rate for that tax year", and

(d) after the definition of "Scottish taxpayer" insert—

""Scottish upper rate" means any rate of income tax for a tax year set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998 which is higher than the Scottish basic rate for that tax year;".

4. In regulation 7 (meaning of "code" etc)—

(a) in paragraph (3)—

(i) after sub-paragraph (ba) insert—

"(bb) the appropriate Scottish upper rate code, which effects deductions of tax wholly at a Scottish upper rate for a Scottish taxpayer;", and

(ii) for sub-paragraph (ca) substitute—

"(ca) the 0T code, which without allowing for personal allowances, effects deductions of tax so that during the tax year the amounts subject to deductions are in accordance with section 10 of ITA (income charged at the basic, higher and additional rates: individuals) or section 11A of ITA (income charged at Scottish rates);", and

(b) in paragraph (4), before "blind person's allowance" insert—

""appropriate Scottish upper rate code" means a Scottish upper rate code which effects deductions of tax from an employee who is a Scottish taxpayer at a Scottish upper rate which is considered by HMRC to apply where they have reason to believe that the employee will be chargeable at that rate on all or a substantial part of the employee's relevant payments;".

5. In regulation 15 (flat rate codes)—

(a) after paragraph (2) insert—

"(2A) HMRC may determine that the code for use by an employer in respect of an employee who is a Scottish taxpayer is an appropriate Scottish upper rate code if they have reason to believe that the employee will be chargeable at a Scottish upper rate on all or a substantial part of the employee's relevant payments.", and

(b) after paragraph (4) insert—

"(4A) For the purposes of this regulation an "appropriate Scottish upper rate code" has the meaning given in regulation 7(4).".

(**6**) The definition of "additional rate" was amended by S.I 2015/1667 and 2017/414.
(**7**) The definition of "higher rate" was amended by S.I 2015/1667 and 2017/414.
(**8**) The definition of "retrospective tax provision" was inserted by S.I. 2007/1077.

6. After regulation 32A(**9**) (additional rate code: deductions) insert—

"**Scottish upper rate codes**

32B.—(1) If the employee's code is an appropriate Scottish upper rate code the employer must deduct tax at the Scottish upper rate specified in that code and regulations 22 and 26 (cumulative and non-cumulative basis) do not apply.

(2) For the purposes of this regulation an "appropriate Scottish upper rate code" has the meaning given in regulation 7(4).".

7. In regulation 105 (Inland Revenue and employer may make PSA)—

(a) in the heading for "Inland Revenue" substitute "HMRC",

(b) in paragraph (1)—

(i) for "The Inland Revenue" substitute "HMRC", and

(ii) after "for a tax year" insert "and for any subsequent tax years.",

(c) in paragraph (2)(a) for the words "the Board of Inland Revenue" substitute "HMRC", and

(d) after paragraph (3) insert—

"(4) A PSA will continue to have effect until cancelled.".

8. In regulation 107 (effect of PSA)(**10**)—

(a) in paragraph (1) for "year" substitute "years",

(b) in paragraph (3) for "the Board of Inland Revenue" substitute "HMRC", and

(c) in paragraph (6) for "inspection" substitute "retention".

9. In regulation 108 (calculation of tax payable under PSA)(**11**)—

(a) for paragraph (1) substitute—

"(1) A PSA must provide that the employer is accountable to HMRC for the income tax due.",

(b) after paragraph (1) insert—

"(1A) A PSA must provide for the sums due to be—

(a) computed annually in accordance with the factors specified in paragraph (2), and

(b) comprised of the amounts specified in paragraph (3)",

(c) in paragraph (2)—

(i) in sub-paragraph (d)(i), for "PSA" substitute "computation",

(ii) at the end of paragraph (iii) insert "and", and

(iii) after paragraph (iii) insert—

"(iv) at any Scottish rate(**12**) applicable for the tax year to which the computation relates;", and

(d) in paragraph (3), for "paragraph (1)(b)" substitute "paragraph (1A)(b)".

(**9**) Regulation 32A was inserted by S.I. 2011/2682.
(**10**) Regulation 107(7)(a) was amended by the Income Tax (Pay As You Earn) (Amendment) Regulations 2012, S.I. 2012/822 and paragraph (7)(b) was amended by the Income Tax (Pay As You Earn) (Amendment No.4) Regulations 2015, S.I. 2015/1927.
(**11**) Regulation 110 was amended by the Income Tax (Pay As You Earn) (Amendment) Regulations 2010, S.I. 2010/668.
(**12**) "Scottish rate" is defined for the purposes of the Income Tax Acts in section 989 of the Income Tax Act 2007 (c.3).