STATUTORY INSTRUMENTS

2017 No. 414

INCOME TAX

The Income Tax (Pay As You Earn) (Amendment) Regulations 2017

Made - - - -	*15th March 2017*
Laid before the House of Commons - - - -	*16th March 2017*
Coming into force - -	*6th April 2017*

These Regulations are made by the Treasury and the Commissioners for Her Majesty's Revenue and Customs.

The powers exercised by the Treasury are those conferred by section 100(4) of the Finance Act 2016(**1**).

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those conferred by section 59BA(7) of the Taxes Management Act 1970(**2**), section 684(1) and (2) of the Income Tax (Earnings and Pensions) Act 2003(**3**) and sections 105(1) to (6), 106 and 111 of the Finance Act 2016 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 2017 and come into force on 6th April 2017.

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

2.—(1) The Income Tax (Pay As You Earn) Regulations 2003 ("the PAYE Regulations")(**5**) are amended as follows.

(**1**) 2016 c. 24.
(**2**) 1970 c. 9. Section 59BA was inserted by section 167 of, and Schedule 23 to the Finance Act 2016 (c. 24).
(**3**) 2003 c. 1. Section 684 was amended, so far as is relevant by paragraph 102 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11), section 94 of the Finance Act 2006 (c. 25) and paragraphs 2 to 7 of Schedule 58 to the Finance Act 2009 (c. 10).
(**4**) Paragraph 102 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 amended section 684 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) so that the Commissioners for Her Majesty's Revenue and Customs have the power to make the Regulations.
(**5**) S.I. 2003/2682. The relevant amending instruments are S.I. 2008/782, 2009/56, 2009/588, 2010/688, 2011/729, 2013/52, 2015/2 and 2015/1667.

(2) In regulation 2(1) (interpretation)(**6**)—

(a) in the definition of "additional rate"(**7**) for "the Scottish additional rate of income tax determined under section 6A of that Act" substitute "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"(**8**);

(b) in the definition of "basic rate"(**9**) for "determined under section 6A of that Act" substitute "set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998;

(c) in the definition of "combined amount"(**10**) after paragraph (c) insert "(d) apprenticeship levy due under these Regulations;" and

(d) in the definition of "higher rate"(**11**) for "the Scottish higher rate of income tax determined under section 6A of that Act" substitute "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".

(3) In regulation 7 (meaning of "code" etc) in paragraph (2A)(**12**), for "determined under section 6A of ITA" substitute "set by a Scottish rate resolution of the Scottish Parliament under section 80C of the Scotland Act 1998".

(4) After regulation 67F(3) (additional information about payments)(**13**) insert—

"(4) This regulation applies in addition to the provisions set out in regulation 147D (duty to report amount of apprenticeship levy to be paid).".

(5) In regulation 97A(1) (interpretation)(**14**) after the interpretation of "qualifying period" insert —

""relevant apprenticeship levy debt" means a debt specified in regulation 97B;".

(6) In regulation 97B (relevant PAYE debts of managed service companies)

(a) in the heading, after "relevant PAYE" insert "and apprenticeship levy",

(b) for paragraph (1) substitute—

"(1) A managed service company has a relevant PAYE debt or a relevant apprenticeship levy debt if a managed service company must pay an amount of tax or apprenticeship levy for a qualifying period, and—

(a) in the case of a relevant PAYE debt one of conditions A to E is met, and

(b) in the case of a relevant apprenticeship levy debt one of conditions F or G is met.",

(c) after paragraph (6) add—

"(7) Condition F is met if—

(a) an amount of apprenticeship levy for a qualifying period has been assessed in accordance with regulation 147L (assessment of unpaid apprenticeship levy), and

(**6**) Regulation 2(1) was amended by S.I. 2008/782, 2009/56, 2011/729, 2013/52, 2015/2 and 2015/1667. There are other amending instruments which are not relevant to these Regulations.
(**7**) The definition of "additional rate" was inserted by S.I. 2011/729 and amended by S.I. 2015/1667.
(**8**) Section 80C of the Scotland Act 1998 (c. 46) was inserted by section 25 of the Scotland Act 2012 (c. 11) and amended by section 13 of the Scotland Act 2016 (c. 11).
(**9**) The definition of "basic rate" was amended by S.I. 2015/1667.
(**10**) The definition of "combined amount" was amended by S.I. 2008/782.
(**11**) The definition of "higher rate" was amended by S.I. 2015/1667.
(**12**) Paragraph (2A) was inserted by S.I. 2015/1667. There are other amendments to regulation 7 which are not relevant to these Regulations.
(**13**) Regulation 67F was inserted by S.I. 2012/822 and amended by S.I. 2013/521 and 2015/2.
(**14**) Regulation 97A to 97H were inserted by S.I. 2007/2069 and amended by S.I. 2009/56.

(b) any part of the apprenticeship levy assessed has not been paid within 14 days beginning with the date on which the assessment is served.

(8) Condition G is met if—

(a) an employer delivers a return under regulation 147D (duty to report the amount of apprenticeship levy to be paid), showing an amount of apprenticeship levy payable by the employer for the tax year,

(b) HM Revenue and Customs assesses the amount of apprenticeship levy under regulation 147L 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 assessment is served.".

(7) In regulation 97C (transfer of debt of managed service company)—

(a) in paragraph (1)(a) after "relevant PAYE debt" insert "or a relevant apprenticeship levy debt",

(b) in paragraph (1)(b) after the first occurrence of "relevant PAYE debt" insert "or the relevant apprenticeship levy debt" and after the second occurrence of "relevant PAYE debt" insert "or part of the relevant apprenticeship levy debt",

(c) in paragraph (3) after "relevant PAYE debt" insert "or the relevant apprenticeship levy debt".

(8) In regulation 97D (time limits for issue of transfer notices)—

(a) in paragraph (2) for "(3) to (7)" substitute "(3) to (7B)",

(b) after paragraph (7) insert—

"(7A) In a case in which condition F 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 assessment became final and conclusive.

(7B) In a case in which condition G 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 serves the assessment under regulation 147L.".

(9) In regulation 97E (contents of transfer notice)—

(a) in paragraph (1)(a) to (e) after each occurrence of "relevant PAYE debt" insert "or the relevant apprenticeship levy debt",

(b) in paragraph (1)(f) for "conditions A to E" substitute "conditions A to G".

(10) In regulation 97G (appeals) in paragraph (3)(a) after "relevant PAYE debt)" insert "or the relevant apprenticeship levy debt (or part of the relevant apprenticeship levy debt).".

(11) In regulation 97H (procedure on appeals) in paragraphs (3)(a), (3)(b) and (4) after each occurrence of "relevant PAYE debt" insert "or the relevant apprenticeship levy debt".

(12) In regulation 97L (repayment of surplus amounts)(**15**)—

(a) in paragraph (1) after "relevant PAYE debt" insert "or a relevant apprenticeship levy debt",

(b) in paragraph (3) for the words "regulation 83" to the end substitute "section 102 of the Finance Act 2009 (repayment interest on sums to be paid by HMRC)(**16**).".

3. After regulation 147A(**17**) insert—

(**15**) Regulation 97L was inserted by S.I. 2007/2069.
(**16**) 2009 c. 10. Section 102 was amended by section 25 of, and paragraphs 3 and 15 of Schedule 9 to, the Finance (No. 3) Act 2010 (c. 33).
(**17**) Regulation 147A was inserted by S.I. 2014/472.

"Part 7A

Apprenticeship Levy

Interpretation of Part 7A

147B. In this Part—

"monthly pay bill" means the total amount of earnings paid by a person in a tax month on which Class 1 secondary contributions are payable but for the condition in section 6(1)(b) of the Contributions and Benefits Act (liability for Class 1 contributions)(**18**).

Due date for payment of apprenticeship levy

147C.—(1) A person must pay the amount of apprenticeship levy due under this Part within—

(a) 17 days after the end of the tax month, where the payment is made by an approved method of electronic communications, or

(b) 14 days after the end of the tax month, in any other case.

(2) The person must pay the apprenticeship levy mentioned in paragraph (1) at the same time as the amount of tax and any earnings-related contributions due and in accordance with Part 4 and Chapter 1 of these Regulations (payment, returns and information).

(3) In this regulation, "earnings-related contributions" means any contributions other than Class 1A and 1B contributions payable under the Contributions and Benefits Act in respect of earnings paid to or for the benefit of an earner in respect of employed earners employment.

Duty to report amount of apprenticeship levy to be paid

147D.—(1) Subject to paragraph (2) this regulation applies where—

(a) a person's pay bill(**19**) in the tax year preceding the year in which the apprenticeship levy liability falls to be reported was over £3 million, or

(b) a person considers that their pay bill will be over £3 million in the current tax year.

(2) In the case of a member of a company unit or charities unit(**20**) this regulation applies where—

(a) the total amount of the pay bill for the company unit or the charities unit in the tax year preceding the year in which the apprenticeship levy liability falls to be reported was over £3 million, or

(b) (i) the annual entitlement to levy allowance has been determined for each member of the company unit or charities unit in the current tax year in accordance with sections 101 or 102 of the Finance Act 2016, and

(ii) a member considers that their annual pay bill will be over £T where T is an amount equal to the levy allowance determined for that member divided by 0.005.

(**18**) "The Contributions and Benefits Act" is defined in section 120 of the Finance Act 2016 to which there are amendments not relevant to these Regulations.
(**19**) "Pay bill" is defined in section 100 of the Finance Act 2016.
(**20**) "Company unit" and "charities unit" is defined in sections 101 and 102 of the Finance Act 2016.

(3) A Real Time Information employer must inform HMRC of their apprenticeship levy liability after deducting any amount of levy allowance to which they are entitled for the tax month from it.

(4) The information must be given in a return.

(5) The return mentioned under paragraph (4) must be sent within 14 days after the end of the tax month.

(6) A return under this regulation must—

(a) state—

(i) the tax year to which it relates,

(ii) the employer's HMRC office number,

(iii) the employer's PAYE reference to which the return of the apprenticeship levy relates,

(iv) the employer's accounts office reference,

(v) the amount of annual levy allowance the employer is allocating to the employer's PAYE reference,

(vi) the amount of apprenticeship levy due to date which the employer has calculated, and

(vii) the tax month to which it relates, and

(b) be sent using an approved method of electronic communications unless the employer is one to whom regulation 67D applies.

(7) This regulation applies in addition to the provisions set out in regulation 67F (additional information about payments).

Calculation of monthly levy allowance

147E.—(1) This regulation applies where the monthly levy allowance falls to be calculated by a person.

(2) Subject to regulations 147F and 147G, the monthly levy allowance is an amount equal to—

$$\frac{N}{P}$$

where—

N is the levy allowance for the tax year, and

P is twelve.

(3) Subject to regulations 147F and 147G, the monthly cumulative levy allowance is an amount equal to the monthly levy allowance aggregated in accordance with the tax month within the tax year as shown in the table below.

Table 1

Relevant month in the tax year	*Monthly cumulative levy allowance*
Month 1	£1,250
Month 2	£2,500
Month 3	£3,750