

2017 No.

INCOME TAX

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

<i>Made</i>	- - - -	2017
<i>Laid before Parliament</i>		2017
<i>Coming into force</i>	- -	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(a).

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those conferred by sections 105(1) to (6), 106 and 111 of the Finance Act 2016.

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 xx 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”)(b) are amended as follows.

(2) In regulation 2(1) (interpretation)(c) in the definition of “combined amount” after paragraph (c) insert—

“(d) apprenticeship levy due under these Regulations;”.

(3) After regulation 67F(3) (additional information about payments)(d) 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).”.

(4) In regulation 97A(1) (interpretation)(e) after the interpretation of “qualifying period” insert—

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

(a) 2016 (c. 24).

(b) S.I. 2003/2682.

(c) Regulation 2(1) was amended by S.I. 2008/782. There are other amending instruments but none are relevant.

(d) Regulation 67F was inserted by S.I. 2012/822 and amended by 2013/521 and 2015/2.

(e) Regulation 97A was inserted by S.I. 2007/2069.

- (5) In regulation 97B (relevant PAYE debts of managed service companies)(a)
- (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
 - (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.”.
- (6) In regulation 97C (transfer of debt of managed service company)(b)—
- (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”.
- (7) In regulation 97D (time limits for issue of transfer notices)(c)—
- (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.”.
- (8) In regulation 97E (contents of transfer notice)(d)—
- (a) in paragraph (1)(a) after “relevant PAYE debt” insert “or the relevant apprenticeship levy debt”,
 - (b) in paragraph (1)(b) after “relevant PAYE debt” insert “or the relevant apprenticeship levy debt”,

(a) Regulation 97B was inserted by S.I. 2007/2069 and amended by S.I. 2012/822.
 (b) Regulation 97C was inserted by S.I. 2007/2069.
 (c) Regulation 97D was inserted by S.I. 2007/2069 and amended by S.I. 2012/822.
 (d) Regulation 97E was inserted by S.I. 2007/2069.

- (c) in paragraph (1)(c) after “relevant PAYE debt” insert “or the relevant apprenticeship levy debt”,
 - (d) in paragraph (1)(d) after “relevant PAYE debt” insert “or the relevant apprenticeship levy debt”,
 - (e) in paragraph (1)(e) after both occurrences of “relevant PAYE debt” insert “or the relevant apprenticeship levy debt”,
 - (f) in paragraph (1)(f) for “conditions A to E” substitute “conditions A to G”.
- (9) In regulation 97G (appeals)(a) in paragraph (3)(a) after “relevant PAYE debt” insert “or the relevant apprenticeship levy debt (or part of the relevant apprenticeship levy debt).”.
- (10) In regulation 97H (procedure on appeals)(b)—
- (a) in paragraph (3)(a) after “relevant PAYE debt” insert “or the relevant apprenticeship levy debt”,
 - (b) in paragraph (3)(b) after “relevant PAYE debt” insert “or the relevant apprenticeship levy debt”,
 - (c) in paragraph (4) after both occurrences of “relevant PAYE debt” insert “or the relevant apprenticeship levy debt”.
- (11) In regulation 97L (repayment of surplus amounts)(c)—
- (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)(d).”.
- 3.** After regulation 147A (circumstances in which payment of a lesser amount is to be treated as payment in full for the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009)(e) insert—

“Part 7A
Apprenticeship Levy

Interpretation of Part 7A

147B. In Part 7A—

“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)(f).

Due date for payment of apprenticeship levy

147C.—(1) A person must pay the amounts 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.

(a) Regulation 97G was inserted by S.I. 2007/2069 and amended by 2009/56.
 (b) Regulation 97H was inserted by S.I. 2007/2069 and amended by 2009/56.
 (c) Regulation 97L was inserted by S.I. 2007/2069.
 (d) 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).
 (e) Regulation 147A was inserted by S.I. 2014/472.
 (f) “The Contributions and Benefits Act” has the meaning given in section 120 of the Finance Act 2016. There are no relevant amending provisions for section 6(1)(b).

(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^(a) 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 would be over £3 million in the current tax year.

(2) In the case of a member of a company unit or charities unit^(b) 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) each member considers that their pay bill would be over £T where T is an amount equal to the levy allowance determined for that member divided by 0.005.

(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 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 levy liability due to date which the employer has calculated,
 - (vii) the tax month to which the return 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).

(a) “Pay Bill” has the meaning given in section 100 of the Finance Act 2016.

(b) “Company unit” and “charities unit” has the meaning given in sections 101 and 102 of the Finance Act 2016.

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 regulation 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

<i>Relevant month in the tax year</i>	<i>Monthly cumulative levy allowance</i>
Month 1	£1250 x 1
Month 2	£1250 x 2
Month 3	£1250 x 3
Month 4	£1250 x 4
Month 5	£1250 x 5
Month 6	£1250 x 6
Month 7	£1250 x 7
Month 8	£1250 x 8
Month 9	£1250 x 9
Month 10	£1250 x 10
Month 11	£1250 x 11
Month 12	£1250 x 12

Apportionment of levy allowance between employer's PAYE references

147F.—(1) This regulation applies where a person has more than one employer's PAYE reference in respect of its employees.

(2) The person may elect to apportion their annual entitlement of levy allowance amongst the employer's PAYE references mentioned in paragraph (1).

(3) The monthly levy allowance for each employer's PAYE reference is an amount equal to one twelfth of the annual apportioned entitlement for that reference.

(4) The person must notify HMRC of the election mentioned in paragraph (2) with their first return of the apprenticeship levy.

Apportionment of levy allowance between employer's PAYE references: members of a company unit or charities unit

147G.—(1) This regulation applies where—

- (a) members of a company unit or charities unit (“the relevant members”) have determined what amount of levy allowance each of them is entitled for the tax year, and
- (b) at least one of the relevant members mentioned in sub-paragraph (1)(a) has more than one employer’s PAYE reference.

(2) The relevant members may elect to apportion their share of levy allowance amongst their respective employer’s PAYE references in accordance with the proportions they choose.

(3) The relevant members must—

- (a) make the election mentioned in sub-paragraph (2) at the beginning of the tax year, and
- (b) notify HMRC of the election made with their first return of the apprenticeship levy.

Calculation of monthly apprenticeship levy for the first month of the tax year

147H. A person must calculate the amount of apprenticeship levy for the first month of the tax year in accordance with the following steps.

Step 1

Multiply the amount of the monthly pay bill by the amount of the relevant percentage of the monthly pay bill which is 0.5%.

Step 2

Deduct the monthly levy allowance for the first month as mentioned in Table 1 from the amount obtained from step 1.

If the resulting amount is positive, that amount is the apprenticeship levy payable for the first month of the tax year.

If the resulting amount is negative or zero, there will be no apprenticeship levy payable for the first month of the tax year.

Calculation of monthly apprenticeship levy for subsequent months of the tax year

147I.—(1) A person must calculate the amount of apprenticeship levy for any month following the first month of the tax year (the relevant month) in accordance with the following steps.

Step 1

Determine the cumulative amount of the monthly pay bill for the relevant months of the tax year.

Step 2

Multiply the amount obtained from step 1 by the relevant percentage of the monthly pay bill which is 0.5%.

Step 3

Determine the amount of the monthly cumulative levy allowance for the relevant month in accordance with Table 1.

Step 4

Deduct the amount obtained from step 3 from the amount obtained from step 2.

If the resulting amount is a negative amount, that amount is to be treated as nil for the purpose of the calculation in step 6.

If the resulting amount is a positive amount, that amount is to be used in the calculation mentioned in step 6.

Step 5

Determine the amount of the cumulative apprenticeship levy paid up to the month preceding the month in which the monthly apprenticeship levy falls to be calculated in the tax year and reduce that amount by any credit gained in the preceding month.

Step 6

Deduct the amount obtained from step 5 from the amount obtained from step 4.

If the resulting amount is a positive amount, that amount is the apprenticeship levy due to be paid for the relevant month in the tax year.

If the resulting amount is a negative amount, that amount is the credit gained in the relevant month in the tax year.

(2) In this regulation, “credit” means any amount which is a negative amount which can be used by a person to reduce the combined amount in the relevant month in the tax year.

Recovery of overpaid apprenticeship levy by an employer

147J.—(1) This regulation applies where a person has overpaid apprenticeship levy in a tax year.

(2) The person must set off any overpaid apprenticeship levy against any amount which that person is liable to pay under these Regulations before making a claim to HMRC for a refund of the overpaid levy.

Liability to pay and duty to make a return of apprenticeship levy: Continental shelf workers certificate holders

147K.—(1) This regulation applies to persons specified in certificates in force under section 120(4) of the Social Security Contributions and Benefits Act 1992 (employment at sea: continental shelf operations)(a).

(2) The person specified in paragraph (3) must—

- (a) pay apprenticeship levy in accordance with regulation 147C, and
- (b) make a return of apprenticeship levy under regulation 147D.

(3) The person referred to paragraph (2) is a UKCS continental shelf workers certificate holder who has obligations under regulation 114B of the SSC Regulations (UKCS continental shelf workers certificate holder: obligations and responsibilities) to make deductions, returns and repayments as are required by a secondary contributor.

(4) In this regulation a UKCS continental shelf workers certificate holder means a holder of a certificate issued under regulation 114A of the SSC Regulations (application for certificate)(b).

(a) 1992 (c. 4). There are no relevant amending instruments to section 120(4). “Continental shelf operations” has the meaning given in section 120(2) of the Social Security Contributions and Benefits Act 1992.
(b) Regulations 114A and 114B were inserted by S.I. 2014/572.

Assessment of unpaid apprenticeship levy

147L.—(1) This regulation applies if it appears to HMRC that there may be apprenticeship levy payable for a tax year under regulations 147E, 147H or 147I (calculation of apprenticeship levy) by an employer which has not been—

- (a) paid to HMRC under regulation 147C, and
- (b) reported on a return under regulation 147D.

(2) HMRC may assess the amount of apprenticeship levy which to the best of their judgement is due, and serve notice of their assessment on the employer.

(3) An assessment under this regulation may—

- (a) cover the apprenticeship levy payable by the employer under regulation 147E, 147H or 147I for any one or more tax periods in a tax year, and
- (b) extend to the whole of the apprenticeship levy, or such part of it as is payable in respect of—
 - (i) a class or classes of employees specified in the notice of assessment (without naming the individual employees), or
 - (ii) one or more named employees specified in the notice.

(4) Section 30A of the TMA (assessing procedure)(a) applies in relation to an assessment under this regulation as it applies in relation to assessment to income tax.

(5) Any amount of apprenticeship levy which is payable by virtue of an assessment made under this regulation shall be payable on the day following the end of the period of 30 days beginning with the day on which the notice of assessment is served.

Recovery of overpayment of apprenticeship levy by HMRC

147M.—(1) Where an amount of apprenticeship levy has been repaid to any person which ought not to have been repaid to that person, that amount may be assessed and recovered as if it were unpaid apprenticeship levy.

(2) An assessment under this regulation shall not be out of time under section 108 of the Finance Act 2016 (time limits for assessment) if it is made before the end of the year of assessment following that in which the amount assessed was repaid or paid as the case may be.

(3) In this regulation any reference to an amount repaid includes a reference to an amount allowed by way of a set-off.

Retention by employer of apprenticeship levy records

147N.—(1) An employer must keep and preserve for not less than three years after the end of the tax year to which they relate all apprenticeship levy records which are not required to be sent to HMRC under regulation 147D.

(2) The duty under paragraph (1) to preserve apprenticeship levy records may be discharged by preserving them in any form or by any means.

(3) In this regulation, “apprenticeship levy records” means documents relating to the calculation of the amount of apprenticeship levy payable by the employer.”.

(a) 1970 (c. 9). Section 30A was inserted by sections 196 and 199 of, and Schedule 19 to the Finance Act 1994 (c. 9) and was amended by section 882(1) of, and paragraphs 357 and 370 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

Date Two of the Commissioners of Her Majesty's Revenue and Customs *Name*

Date Two of the Lords Commissioners of Her Majesty's Treasury *Name*
Name

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for payment, collection and recovery of apprenticeship levy.

Regulation 2 amends the definition of “combined amount” in regulation 2(2) of the Income Tax (PAYE) Regulations 2003, (“the PAYE Regulations”) (S.I. 2003/2682) so as to make that definition apply to the apprenticeship levy. The effect of the amendment is that HMRC can pursue a single amount from an employer rather than having to separate out apprenticeship levy from other debt.

Regulation 2 also amends regulations 97A to 97E, 97G to 97H and 97L which relates to the recovery of debts from managed service companies so as to enable these provisions to apply to apprenticeship levy debt in the same way as they apply to PAYE debt.

Regulation 3 inserts new regulations 147B to 147N into the PAYE Regulations. In particular –

- new regulation 147B defines “monthly pay bill” for the purposes of calculation of the apprenticeship levy;
- new regulation 147C makes provision for the due date for payment of the apprenticeship levy;
- new regulation 147D places a requirement on employers to notify HMRC of the apprenticeship levy which is to be paid and makes provision for the information which the return to HMRC should include;
- new regulation 147E makes provision for the calculation of the monthly levy allowance which is to be used by the employer in calculating the monthly apprenticeship levy due to be paid;
- new regulation 147F enables the employer to elect to apportion their annual entitlement to the levy allowance between more than one PAYE reference;
- new regulation 147G enables members of a company unit or charities unit to elect to apportion their annual entitlement to the levy allowance between more than one PAYE reference held by that company or charity;
- new regulation 147H makes provision for the calculation of the apprenticeship levy due for the first month in the tax year;

- new regulation 147I makes provision for the calculation of the apprenticeship levy due for subsequent months in the tax year;
- new regulation 147J makes provision for recovery of overpaid levy by the employer;
- new regulation 147K makes provision for the liability to pay and duty to make a return of apprenticeship levy by continental shelf workers certificate holders;
- new regulation 147L makes provision for the assessment of unpaid apprenticeship levy by HMRC which is due under new regulations 147E, 147H and 147I;
- new regulation 147M makes provision for the recovery of apprenticeship levy in circumstances where the levy has been repaid to a person which ought not to have been repaid;
- new regulation 147N makes provision for the retention by the employer of apprenticeship levy records.