

2020 No.

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment) Regulations
2020**

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	***

The Commissioners for Her Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 684(1), (2) and 688AA of the Income Tax (Earnings and Pensions) Act 2003(a).

Citation and commencement

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2020 and come into force on [6th April 2020].

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

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

3. In Part 4, after Chapter 4 (Debts of Managed Service Companies), insert the following Chapter—

“CHAPTER 4A

DEBTS ARISING UNDER CHAPTER 10, PART 2 OF ITEPA (INTERMEDIARIES)

Recovery from relevant person

97LA. Where an officer of Revenue and Customs considers there is no realistic prospect of recovery of a relevant PAYE debt from the person mentioned in regulation 97LB(a) within a reasonable period of time, the officer may recover it from a relevant person.

Relevant PAYE debt

97LB. A relevant PAYE debt is the amount of tax that—

(a) 2003 c.1.
(b) S.I. 2003/2682, amended by S.I. 2012/822, 2013/521, 2014/472, 2016/329, 2017/1263, 2019/83; there are other amending instruments but none is relevant.

- (a) is payable by the person treated as making a payment of earnings from an employment to a worker by virtue of section 61N(3) ITEPA in consequence of the payment; and
- (b) remains unpaid by the person mentioned in paragraph (a) at the time when an officer of Revenue and Customs considers there is no realistic prospect of recovery of the amount unpaid from that person within a reasonable period of time.

Conditions for recovery of relevant PAYE debt

97LC.—(1) No recovery of a relevant PAYE debt may be made pursuant to regulation 97LA—

- (a) if the tax in question relates to a tax year commencing before 6th April 2020;
- (b) if the person treated as making the payment of earnings from an employment to a worker giving rise to the relevant PAYE debt by virtue of section 61N(3) ITEPA is also “the client” described in section 61M(1)(a) ITEPA;
- (c) unless a recovery notice is given to the relevant person during the relevant period.

(2) For the purposes of this Part, a “recovery notice” is a notice which complies with regulation 97LG.

Order in which debts may be recovered

97LD. A relevant PAYE debt (or part thereof) may only be recovered from a person described in paragraph (a) of the definition of “relevant person” in section 688AA(3) ITEPA to the extent that an officer of Revenue and Customs considers there is no realistic prospect of recovery of all or part of it within a reasonable period of time from a person described in paragraph (b) of that definition.

Beginning of relevant period

97LE. The relevant period in relation to a relevant PAYE debt only begins—

- (a) upon the expiry of 30 days from the day on which the amount of the relevant PAYE debt determined in accordance with regulation 80 (determination of unpaid tax and appeal against determination) became final and conclusive (without full payment of the relevant PAYE debt having been made within that 30 day period); or
- (b) when an officer of Revenue and Customs becomes aware that the officer has sufficient information to make a determination in accordance with regulation 80 in relation to the relevant PAYE debt but that it would be impractical to make such a determination on account of the liquidation, dissolution or other incapacity of the person mentioned in regulation 97LB(a) (provided that time is not after the latest time allowed for the making of a determination in accordance with regulation 80 in relation to the relevant PAYE debt).

End of relevant period

97LF. The relevant period in relation to a relevant PAYE debt ends upon the expiry of the period of 24 months beginning with the day on which the period begins.

Contents of recovery notice

97LG.—(1) A recovery notice must contain the following information—

- (a) the name and address of the person to whom the relevant PAYE debt relates;
- (b) the amount of the relevant PAYE debt;
- (c) the tax periods to which the relevant PAYE debt relates;

- (d) 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 between those tax years;
- (e) the date on which the relevant period in relation to the relevant PAYE debt began and whether the period began in accordance with regulation 97LE(a) or (b);
- (f) the relevant person's name and address; and
- (g) whether the relevant person is a person mentioned in paragraph (a) or (b) of the definition of relevant person in section 688AA(3) of ITEPA.

(2) The recovery notice must also contain a statement, made by the officer of Revenue and Customs giving the notice, that the officer is of the view that there is no realistic prospect of recovering within a reasonable period the relevant PAYE debt—

- (a) from the person treated as making the payment of earnings from an employment to a worker by virtue of section 61N(3) ITEPA; and
- (b) in the case of a recovery notice given in accordance with regulation 97LD, from the person mentioned in paragraph (b) of the definition of relevant person in section 688AA(3) of ITEPA.

Payment of relevant PAYE debt

97LH.—(1) The relevant person must pay the amount of the relevant PAYE debt to HMRC within 30 days beginning on the date on which the notice is given.

(2) Interest accruing on the relevant PAYE debt by virtue of section 101 of the Finance Act 2009 after expiry of the period of time mentioned in paragraph (1) shall be treated as chargeable to the relevant person under that section.

Appeals

97LI.—(1) A person who is given a recovery notice in relation to a relevant PAYE debt may appeal against the notice on one or more of the grounds set out in paragraph (3).

(2) A notice of appeal must—

- (a) be given to HMRC within 30 days beginning with the day the recovery notice is given, and
- (b) specify the grounds of the appeal.

(3) The grounds of appeal are—

- (a) that all or part of the amount specified in the notice in accordance with regulation 97LG(1)(b) does not relate to a relevant PAYE debt;
- (b) that there is a realistic prospect of recovering the relevant PAYE debt from the person mentioned in regulation 97LB(a) within a reasonable period of time;
- (c) that there is a realistic prospect of recovering the relevant PAYE debt from the person described in paragraph (b) of the definition of “relevant person” in section 688AA(3) ITEPA within a reasonable period of time;
- (d) that the person is not a relevant person in respect of the relevant PAYE debt;
- (e) that the recovery notice was not given in accordance with regulation 97LC(1)(c); or
- (f) that the recovery notice does not satisfy the requirements specified in regulation 97LG.

(4) But a person may not appeal on the ground mentioned in paragraph (3)(a) if it has already been determined, on an appeal, that the amount in question is tax payable by the person treated as making the payment of earnings from an employment to a worker by virtue of section 61N(3) ITEPA giving rise to the relevant PAYE debt.

(5) Subject to paragraph (6), on an appeal that is notified to the tribunal, the tribunal may uphold or quash the recovery notice.

(6) In a case where a recovery notice would not be liable to being quashed if the amount specified in accordance with regulation 97LG(1)(b) had been a lesser amount, the tribunal must determine that amount and the notice shall then be treated for all purposes (except as the ground of appeal giving rise to that determination) as if HMRC had determined that amount as the relevant PAYE debt specified in the recovery notice giving rise to the appeal.

Withdrawal of recovery notices

97LJ.—(1) A recovery notice is withdrawn if the tribunal quashes it.

(2) An officer of Revenue and Customs may withdraw a recovery notice if the officer considers it appropriate to do so.

(3) If a recovery notice is withdrawn, HMRC must give notice of that fact to the person to whom the notice was given.

Application of Part 6 of TMA

97LK. Part 6 of TMA (collection and recovery) applies as if—

- (a) the amount of the relevant PAYE debt were income tax charged on the relevant person;
- (b) the recovery notice were an assessment; and
- (c) the giving of the recovery notice were the matter complained of for the purposes of section 65(3) TMA (Magistrates' court)."

4. In Schedule A1 (real time returns), after paragraph 14 insert—

"14AA. If applicable, an indication that the payment to which the return relates is a payment in respect of an engagement to which Chapter 10, Part 2 of ITEPA applies by virtue of section 61M(1) of that Act."

[Date] Name
Name
Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations make amendments to the Income (Pay As You Earn) Regulations 2003 ("PAYE Regulations").

Regulation 2 introduces the amendments to the PAYE Regulations.

Regulation 3 inserts new Chapter 4A into Part 4 of the PAYE Regulations, consisting of regulations 97LA to 97LK, to deal with debts of income tax arising under Chapter 10 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA").

New regulations 97LA enables an officer of Revenue and Customs to recover a "relevant PAYE debt" from a relevant person where the officer considers there is no realistic prospect of recovery within a reasonable period from the person liable for the debt by virtue of Chapter 10 of ITEPA.

New regulation 97LB outlines what amounts to a relevant PAYE debt.

New regulation 97LC sets out the conditions for recovery of a relevant PAYE debt which includes the giving of a recovery notice to a relevant person. New regulation 97LD specifies the order in which debts may be pursued from relevant persons.

New regulations 97LE and 97LF outline the beginning and end of the “relevant period” during which a recovery notice may be given.

New regulation 97LG specifies the contents of the recovery notice. New regulation 97LH contains provision relating to payment.

New regulation 97LI deals with appeals, new regulation 97LJ with the withdrawal of recovery notices and new regulation 97LK with the application of Part 6 of the Taxes Management Act 1970.

Regulation 4 inserts new paragraph 14AA into Schedule A1 to the PAYE Regulations which deals with information to be included in real time information returns. New paragraph 14AA provides that employers must identify any payments which relate to an engagement to which Chapter 10, Part 2 of ITEPA applies, when making real time information returns.

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