

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT No. X)
REGULATIONS 2013

2013 No.

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations make amendments to the Income Tax (Pay As You Earn) Regulations (S.I. 2003/2682) (the 2003 Regulations). These Regulations are necessary to amend regulation 72F of the 2003 Regulations from 6 April 2014.

3. Matters of special interest to the Select Committee on Statutory Instruments

None.

4. Legislative Context

- 4.1 The Income Tax (Pay As You Earn) Regulations 2003 make provision, amongst other things, for the recovery of tax from an employee rather than an employer where it appears an amount intended to represent tax on the PAYE income has been self-assessed or paid on account.
- 4.2 Under the 2003 Regulations, HMRC can, if certain requirements are met, transfer the liability for payment of tax from the employer to the employee. In order to do this HMRC must, currently, serve a notice on the employer and each individual concerned. The Notice to the individual must specify each year concerned and the tax paid for each year. Where large numbers of individuals are affected, this creates a substantial administrative burden on HMRC with no material advantage for the individuals.
- 4.3 This instrument reduces the burden on employers and HMRC by permitting the serving of notices on individuals but providing an option as to whether to include details of the amounts offset and the tax years they refer to or to only state the employment to which the notice applies. This instrument will also enable HMRC, in certain circumstances, to undertake a sampling exercise to extrapolate an amount by which the tax due from the employer will be reduced.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

- 7.1 Regulation 72F was introduced on 6th April 2008 following a tax case involving the re-categorisation of a worker from self-employed to employed. As a self-employed worker, the individual had declared and paid tax on his income by means of his Self Assessment (SA) tax returns. In his decision the Special Commissioner noted that it would be preferable for the tax paid by the worker, now categorised as an employee, to be set off against the PAYE obligation of the employer.
- 7.2 The effect of this regulation allows HMRC to transfer the PAYE tax liability from the employer to employee by the amount accounted for or paid on account by the individual. This regulation also prevents the employee from claiming a repayment of the tax paid. In other words, the Regulation ensures that HMRC does not receive tax twice from the same relevant payment of income. HMRC does this by issuing a 'Direction notice' to both parties.
- 7.3 In arriving at an accurate tax figure in the Direction notice, Regulation 72F obliges HMRC to check the SA returns of all affected individuals. Whilst this isn't burdensome where the numbers affected are low, it can be burdensome on both employers and HMRC where the numbers are large. The amendment to Regulation 72E enables HMRC to undertake a sampling exercise to extrapolate an amount by which the tax due from the employer will be reduced.
- 7.4 HMRC are currently required to issue a notice advising the employer and all employees that a Direction has been made: setting out for each employee for each affected year, full details of tax paid, tax due relating to the recategorised employment, and tax credited to the employer.
- 7.5 Regulation 72F in its present form places substantial administrative burdens on employers and HMRC. We believe that a more targeted approach that allows HMRC to decide what information should be included in the notices whilst retaining the employees' appeal rights is the best way forward.
- 7.6 The amendment still requires the serving of a notice on an individual but provides HMRC with the option of either specifying the tax due or

payable by the employee for each tax year affected or limiting it to the employment covered by the notice.

- ***Consolidation***

7.7 There are currently no plans to consolidate the instrument that is being amended.

8. Consultation outcome

8.1 [Publishing the draft regs and EM is our consultation and will update this section once closed.]

9. Guidance

9.1 Guidance will be published on HMRC's website for employers affected by this change.

10. Impact

10.1 Only those employers with large numbers of employees who are re-categorised will be affected by this change.

10.2 It is unlikely that the public sector will be affected.

10.3 [A Tax Information and Impact Note covering this instrument was published on [] and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.]

11 Regulating small business

11.1 The legislation applies to small business in the same way as any other.

12 Monitoring & review

12.1 HMRC will monitor this change and consider further amendments as necessary

13 Contact

The following can answer any queries regarding the instrument:

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