

## **Explanatory Memorandum To**

### **The Income Tax (Pay As You Earn) (Amendment No. X) Regulations 2015**

#### **1. Background**

In the Autumn Statement 2013 the government announced they would tackle the use of employment intermediaries to facilitate false self-employment of workers in order to avoid employment taxes. The Autumn Statement text said:

‘The government will legislate in Finance Bill 2014 to prevent employment intermediaries being used to avoid employment taxes by disguising employment as self-employment. The government will consult on strengthening existing legislation to ensure the correct amount of tax and National Insurance Contributions (NICs) are paid where the worker is, in effect, employed, with effect from April 2014.’

A period of consultation followed (10 December 2013 to 4 February 2014) which set out the government’s intended changes to strengthen the existing Income Tax and National Insurance legislation, commonly known as the “Agency Legislation,” which can apply to employment arrangements involving employment intermediaries (Agencies) when certain conditions are satisfied. The consultation was titled “Onshore Employment Intermediaries: false self employment.”

The Income Tax and National Insurance limbs of the “agency legislation” are contained within the following legislation:-

- Income Tax - Chapter 7 Part 2 section 44 of the Income tax (Earnings and Pensions) Act 2003
- National Insurance- Schedule 1 Regulation 2 Part 1 of the Social Security (Categorisation of Earners) Regulations 1978

Where the qualifying conditions are found to apply, the Intermediary (agency) must treat the “agency worker” as holding an employment with the agency with all remuneration received by the worker in consequence of providing the services being treated for income tax purposes as earnings from that employment. For National Insurance purposes the worker is treated as an employed earner and the agency is treated as the

secondary contributor for Class 1 NICs. Accordingly, the employment intermediary must operate Pay As You Earn (PAYE) when paying the workers.

The “agency legislation” as written prior to 6 April 2014, enabled some employment intermediaries to include certain clauses within agency workers contracts, which they argued prevented the legislation from applying and removed any obligation upon them to operate Pay As You Earn and pay secondary Class 1 NIC when paying the workers. However, HM Revenue and Customs (HMRC) did not accept that argument when it considered those clauses did not accurately reflect the workers true arrangements.

Following the consultation, to address this issue, from 6 April 2014 the government strengthened the Income Tax and National Insurance limbs of the agency legislation by amending the qualifying conditions that are contained within both :-

- (1) Chapter 7 Part 2 section 44 of the Income tax (Earnings and Pensions) Act 2003, and
- (2) Schedule 1 Regulation 2 Part 1 of the Social Security (Categorisation of Earners) Regulations 1978.

Those amendments were implemented via:-

- Finance Act 2014, sections 16 to 21.
- Statutory Instrument 2014 Number 635- The Social Security (Categorisation of Earners) (Amendment) Regulations 2014.

Section 18 of the Finance Act 2014 introduced new procedures, as contained at section 716B of the Income Tax (Earnings and Pensions) Act 2003, which now require the relevant employment intermediary (defined below) to report specific information to HM Revenue and Customs about themselves and any workers they have been involved in the supply of to end clients, where the workers have been treated as self employed for income tax and National Insurance purposes and paid outside of PAYE.

Employment intermediaries were not previously required to provide this information to HMRC.

## **2. Purpose of these Regulations**

A copy of the draft regulations is attached, which set out:

(i) The following definitions for the purpose of the Income Tax (Pay As You Earn) Regulations 2003:-

- **“the client”** -is a person who is in receipt of personal services from another person; as defined at section 44 of the Income TAX (Earnings and Pensions) Act 2003.
- **“employment intermediary”** – is a person who makes arrangements under, or in consequence of which:- (i) an individual works, or is to work, for a third person, or (ii) an individual is, or is to be, remunerated for work done for a third person; as defined at section 716(B) of the Income TAX (Earnings and Pensions) Act 2003
- **“United Kingdom continental shelf”** -means the area designated under section 1(7) of the Continental Shelf Act 1964(a).

Those definitions are inserted into the Income Tax (PAY As You Earn) Regulations 2003 for the purpose of applying the reporting requirements it is intended will be introduced by these draft regulations.

(ii) Employment Intermediaries- reporting requirements under section 716B of the Income Tax (Earnings and Pensions) Act 2003.

These draft regulations explain:-

- **the specific information the employment intermediary is required to report to HMRC**

The employment intermediary is required to provide specific personal details about themselves and those workers who have been paid outside of the operation of PAYE. In addition, the employment intermediary must provide details of the dates and hours worked by each of those workers and the payments they have received.

- **the format under which the specific information must be provided to HMRC**

The employment intermediary must provide this information upon standard quarterly returns, covering the previous tax quarter. These

quarterly returns must be submitted in an electronic format that has previously been approved by HM Revenue and Customs.

- **the regularity for submitting the returns to HMRC**

The following table shows the applicable dates for sending HMRC the completed quarterly return and the permitted deadline for sending HMRC an amended quarterly return.

<b>Quarterly return reporting period</b>	<b>Dates when the quarterly return can be sent to HMRC.</b>	<b>Deadline to replace a quarterly return.</b>
6 April to 5 July	within 30 calendar days from 5 July	within 30 calendar days from 5 October
6 July to 5 October	within 30 calendar days from 5 October	within 30 calendar days from 5 January
6 October to 5 January	within 30 calendar days from 5 January	within 30 calendar days from 5 April
6 January to 5 April	within 30 calendar days from 5 April	within 30 calendar days from 5 July

(ii) Information to be retained by the employment intermediary.

Under these draft regulations the employment intermediary must keep and preserve “non PAYE records” which are not required to be sent to HM Revenue and Customs. The “non PAYE records” shall be information, records and documents which evidence the information that has been provided to HM Revenue & Customs upon the quarterly returns mentioned above. This evidence must then be retained by the employment intermediary for a period of 3 tax years following the end of the tax year to which they relate.

### **3. Guidance.**

HMRC has produced guidance on the revised “Agency Legislation.” It is contained within the Employment Status Manual, located on the HMRC website and on the government’s own Gov.UK website. Both guidance will contain information for our customers on the reporting requirements these draft regulations are intended to introduce.

### **4. Technical Consultation.**

These draft regulations are now subject to a technical consultation which commenced on 1 October 2014 and will end on 25 November 2014. Responses to the consultation should be sent to HMRC by 25 November 2014 and this can be done via:-

- e-mail to [Employment.Intermediaries@hmrc.gsi.gov.uk](mailto:Employment.Intermediaries@hmrc.gsi.gov.uk) or
- post to: Robert Burton, 1E/10 100 Parliament Street, London, SW1A 2BQ or
- Telephone: 03000 526 659 (from a text phone prefix this number with 18001)