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STATUTORY INSTRUMENTS

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**2019 No. 83**

**INCOME TAX**

**The Income Tax (Pay As You Earn)  
(Amendment) Regulations 2019**

*Made* - - - - 21st January 2019  
*Laid before the House of  
Commons* - - - - 23rd January 2019  
*Coming into force* - - 13th February 2019

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 710(5) of the Income Tax (Earnings and Pensions) Act 2003(1).

**Citation and commencement**

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2019 and come into force on 13th February 2019.

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

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

3. In regulation 80 (determination of unpaid tax and appeal against determination)—

(a) for paragraph (1A)(3) substitute—

“((1A)) In paragraph (1), the reference to tax payable for a tax year under regulation 67G includes references to—

(a) any amount the employer was liable to deduct from employees during the tax year, and

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(1) 2003 c. 1. Section 684 was amended by paragraph 102 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) with the effect that the Commissioners for Her Majesty's Revenue and Customs have the power to make the Regulations. Further relevant amendments were made to subsection (1) by paragraph 2 of Schedule 58 to the Finance Act 2009 (c. 10) and to subsection (2) by paragraph 3 of Schedule 58 to the Finance Act 2009 and section 225(1) and (2) of the Finance Act 2012 (c. 14). Section 710(5) was amended by section 145(6) of the Finance Act 2003 (c. 14).

(2) S.I. 2003/2682; relevant amending instruments are S.I. 2008/782, S.I. 2012/822 and S.I. 2013/521; there are other amending instruments but none is relevant.

(3) Paragraph (1A) was inserted by S.I. 2012/822.

- (b) any amount the employer must account for under regulation 62(5) (notional payments) in respect of notional payments made by the employer during the tax year,  
whether or not those amounts were included in any return under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B).”, and
- (b) in paragraph (4)(4)—
  - (i) in sub-paragraph (a) omit “the tax payable by the employer under regulation 67G, as adjusted by regulation 67H(2) where appropriate, or 68 for”, and
  - (ii) in sub-paragraph (b) for “that tax” substitute “the amount of tax determined by HMRC under paragraph (2)”.
- 4. In Schedule A1(5) (real time returns)—
  - (a) after paragraph 16 insert—

“**16A.** The value of any relevant payments(6) to date in this employment that are treated as payments of PAYE income for the purposes of the PAYE regulations by virtue of sections 687A or 695A of ITEPA(7).”, and
  - (b) in paragraph 17 for “those payments” substitute “the total payments to date in this employment”.

*Melissa Tatton  
Justin Holliday*

Two of the Commissioners for Her Majesty’s  
Revenue and Customs

21st January 2019

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(4) Paragraph (4) was amended by [S.I. 2012/822](#) and [S.I. 2013/521](#).  
(5) Schedule A1 was inserted by [S.I. 2012/822](#).  
(6) See regulation 4 of [S.I. 2003/2682](#) for the meaning of “relevant payments”.  
(7) See regulation 2 of [S.I. 2003/2682](#) which defines “ITEPA” as meaning The Income Tax (Earnings and Pensions) Act 2003 (c. 1). Section 687A was inserted by paragraph 29 of Schedule 2 to the Finance Act 2011 (c. 11). Section 695A was inserted by paragraph 31 of Schedule 2 to the Finance Act 2011.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (the “PAYE Regulations”).

Regulation 2 introduces the amendments to the PAYE Regulations.

Regulation 3 amends regulation 80 of the PAYE Regulations which provides for HMRC to determine tax payable by an employer and serve notice of its determination on the employer.

Regulation 3(a) substitutes a new paragraph (1A) which provides that for the purposes of paragraph (1) (which deals with the application of regulation 80) regulation 80 applies where it appears to HMRC that the employer was liable to deduct an amount from employees during the tax year or account for an amount under regulation 62(5) of the PAYE Regulations during the tax year. Regulation 62(5) deals with the situation where an employer is unable to deduct the full amount of tax due in respect of a notional payment and must instead account for the amount it is unable to deduct.

Regulation 3(b) makes consequential amendments to regulation 80(4)(a) and (b) of the PAYE Regulations.

Regulation 4 amends Schedule A1 to the PAYE Regulations which deals with information to be included in real time returns.

Regulation 4(a) inserts a new paragraph 16A in Schedule A1. New paragraph 16A provides that when making real time returns employers must provide the value of any payments made to an employee that are treated as payments of PAYE income under sections 687A or 695A of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA”). Sections 687A and 695A of ITEPA deal with the circumstances in which a relevant step for the purposes of Part 7A of ITEPA is treated as giving rise to a payment of PAYE income for the purposes of PAYE regulations. Part 7A of ITEPA deals with the taxation of employment income provided through third parties.

Regulation 4(b) makes a consequential amendment to paragraph 17 of Schedule A1.

A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.