



PAYE CODE NUMBERS – HMRC’S OBLIGATION TO NOTIFY EMPLOYEES

ICAEW welcomes the opportunity to comment on the draft secondary legislation *The Income Tax (Pay As You Earn) (Amendment No. X) Regulations 2014* published by H M Revenue & Customs on 7 July 2014.

This response of 11 July 2014 has been prepared on behalf of ICAEW by the Tax Faculty.

Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty’s Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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MAJOR POINTS

1. We recommend that the proposal to delay notifying by up to 30 days or, in certain circumstances, to not notify taxpayers of changes to code numbers be withdrawn.
2. We consider that HMRC should supply tax code notifications to both employees and employers every time a code number is changed other than for the annual change in the personal allowance. There should be no delay between notifying the employer and the employee, and no exceptions to the obligation to notify the employee as well as the employer.
3. The reason for these proposed changes is to reduce workloads in HMRC's call centre operations. But the number of calls to HMRC helplines is unlikely to fall if HMRC delay or stop sending code number notifications to employees. Employees who notice that their payslip shows a code number different from that previously advised to them by HMRC will first ask their employer, who will tell them that HMRC told them to use a new code, as employers know nothing other than the new code number notified by HMRC. Employees will then call HMRC's helpline to find out whether their employer is telling the truth.
4. We welcome electronic notification, provided that alternative means remain open to both those who have not registered to deal with HMRC electronically and the digitally excluded.

COMMENTS

General points

5. Employees should be able to see their new tax code at the earliest possible time.
6. *Your Charter* states that HMRC should treat taxpayers even-handedly. It does not seem even-handed to keep taxpayers in the dark regarding how much tax they will be obliged to pay after a change is made to their code.
7. Taxpayers need to be able to get a wrong code number corrected as soon as possible. It appears strange that HMRC has imposed RTI on employers but is not wanting to reciprocate when it comes to notifying changes to code numbers. This seems contrary to encouraging even PAYE employees to take an interest in their tax affairs and enable matters to be resolved quickly so that payroll is as up to date as possible and mistakes rectified at the earliest possible opportunity.
8. Equally importantly, if an employee's net income is going to reduce as a result of the code number change, they need the opportunity to take action to deal with this so the reduced pay is not a bolt out of the blue. A person's universal credit (UC) will be calculated based on the real time information (RTI) return of income, net of PAYE deductions. If the tax code has gone down, the net pay will go down on the next payroll run. The next UC payment will go up accordingly, but this may not be until a couple of weeks later. At low levels of income, a few pounds matter. An employee needs to know immediately if the employer is given an instruction to change their PAYE code, not potentially some weeks later.
9. Given that most employers receive code notifications electronically, if HMRC takes up to 30 days to notify the employee plus one to two weeks for post delays, and there is an error in the code, it may take up to three months for the code to be corrected, to the detriment of the employee in that time. For example, pay day may be the last day of May and a coding notice sent to the employer on 28 May is implemented in the May payroll. The P2 notification is sent to the employee 30 days later on 28 June and takes ten days to arrive. On receipt in mid-July the taxpayer writes in to HMRC to query the code. The letter takes three weeks to be dealt with by HMRC.

10. On the proposals not to notify taxpayers of a change in code if no tax will be payable on their PAYE income, HMRC can never be certain as to what an employee's income is. It can change dramatically from pay period to pay period and, in the case of workers with a portfolio of jobs or zero hours contracts, codes in one year are often based on earnings in previous year which may be completely wrong because they were issued in respect of different employments.

Extension of notification period for up to 30 days and not sending notification at all

11. It is proposed to allow for notice of an amended code to be given to the employee any time up to 30 days after the date on which notice of the amended code was issued to the employer, instead of by the date that the amended code is issued to the employer. It is also proposed not to send code number notifications to employees where no tax will be payable on PAYE income.
12. We consider that HMRC should supply tax code notifications to employees and employers every time a code number is changed, other than when the annual personal allowance is changed. There should be no other delay and no exceptions to the obligation to notify the taxpayer or employer.
13. We understand that HMRC's reason for delaying or not sending copy code number notifications to taxpayers is to enable it better to allocate resources to its helplines – for example, during the July tax credit renewal peak.
14. We should welcome sight of evidence supporting the proposition that making the proposed change will have the effect on peak work that HMRC believes it will. Changes to legislation such as this should be based on evidence. The explanatory memorandum at para 10.3 says that an impact note will be published. We recommend that the impact be assessed and the impact note published before any final decision is taken on whether to proceed with these proposals.
15. We question whether 30 days' delay would be sufficient to provide HMRC with the desired flexibility to time the issue of coding notices to correspond with the resources needed to respond to enquiries. We recommend that, to take the pressure off contact centre staffing levels, bulk issues of tax codes should be timed so as not to coincide with likely call centre peaks.
16. We would draw attention to the number of code numbers that are incorrect, for example because the form P11D is not fit for purpose and does not request the information to enable HMRC correctly to issue code numbers, or section 336 expenses claims have been incorrectly or not processed, or codes are allocated to duplicate employments because of errors in the RTI system. If more tax codes were right first time, then this would reduce the number of calls to HMRC's call centres. The form P11D requires urgent amendment so that one-off benefits in kind and deductible expenses are clearly marked as such and not incorrectly as a matter of course factored into PAYE codes.
17. We also believe that the proposals to delay or not issue code numbers to taxpayers will create additional burdens for employers (contrary to the assertion in para 10.1 of the explanatory memorandum that it will have 'negligible to nil' impact on employers) without necessarily reducing calls to HMRC's helplines. In addition, it will potentially sour relations between employees and employers.
18. This is because employees who notice that the code number cited on their payslip is different from what HMRC has told them on form P2 will think that their employer has made a mistake and query it with the employer. When the employer tells the employee that they have been instructed by HMRC to apply a new code number, the taxpayer, having not received a notification from HMRC, will not know who to believe and is likely to call HMRC to find out whether their employer is telling the truth and query the new code anyway. There is a risk if

this goes ahead of the helpline being called by both employer and employee instead of just the employee.

No tax payable on employee's PAYE income

19. We understand that no tax to pay in this context means that the taxpayer's PAYE income is covered by personal allowances, not that the income is outside the charge to tax.
20. We see no reason to distinguish between employees whose pay is above or below their personal allowances. Such people may have other income, the totality of which means that tax is chargeable.
21. If there is no need to issue a coding notification where the employee does not have a liability to tax in respect of his PAYE income, there will be an increased risk of underpayments. For example, if the code number is, say, BR rather than DO, it is unlikely that anyone will question it and having not been alerted by a coding notice to review his code number and how it has been arrived at, the employee may well not realise until after the end of the tax year when he receives a P800 showing an underpayment.
22. We should welcome clarification of what happens if the employee is borderline and his pay in that employment becomes chargeable at a later date. HMRC will be aware as a full payment submission will have been received. Will HMRC then send a code notification to the employee at that later date?

Electronic notifications

23. The regulations will allow HMRC to send coding notifications electronically. We understand that this will not happen until the taxpayer has registered to use a personal tax dashboard, which is being developed. In view of the risk that it poses for those taxpayers who are digitally excluded or for whatever reason require a paper P2, especially if they are expected to check their tax codes and notify HMRC of income changes and errors, etc, we should welcome confirmation that this is not a precursor to sending out all code number notifications exclusively digitally.
24. We understand that the specification for the electronic notification of code numbers is not yet settled but it is intended to make the information more 'accessible'. We should welcome confirmation that the electronic notification will include the breakdown of the code number into its component parts and the helpful explanations currently included on form P2.

25. APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)