

TAXREP 22/99

SCOTTISH VARIABLE RATE

*Letter from the Tax Faculty of the Institute of Chartered Accountants’
in England and Wales to the Inland Revenue and their response
following the issue of draft PAYE regulations dated 15th June 1999.*

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Letter from the Tax Faculty to the Inland Revenue dated 30th July 1999

1. We refer to your letter dated 15 June requesting comments on the draft regulations.
2. Our substantive point concerns the taxpayers' right of appeal. We are not wholly confident that the tax payer has an adequate right of appeal against the Inspector's decision that he is a Scottish taxpayer. It is essential that such a right exists.
3. Regulation 11 of the PAYE Regulations (IS 1993/744) gives the right of appeal against a notice of coding, but Regulation 11(5) merely empowers the Commissioners to determine the appropriate code. It is not being amended to give them power to determine whether the taxpayer is a Scottish taxpayer.
4. We suspect that the draftsman took the view that the prefix 'S', that will be incorporated in the code number by reason of paragraph 4(b) of these regulations to indicate a Scottish taxpayer, is part of the "appropriate code" and therefore that the Commissioners can decide whether or not a taxpayer is a Scottish taxpayer.
5. However, we are not wholly confident that this is the case. We believe that the draft Regulations should be amended to put beyond doubt that taxpayers have a right to appeal in these circumstances.

Letter from the Inland Revenue to the Tax Faculty dated 2nd August 1999

6. As you suggest in your letter, the Revenue Solicitor considers that the right of a taxpayer to object and appeal against a code determined by an Inspector, set out in regulation 11 of the main PAYE regulations (1993/744), includes the right of objection and appeal against an 'S' designation, as the designation is an integral part of the code.
7. The intention is that the Revenue will only use the 'S' indicators once a variable rate is introduced. Thereafter they will be present in code numbers even for years where there is no variable rate.
8. But the rights to object and appeal will apply even for an 'S' designation in a year for which there is no SVR.
9. Under Regulation 11(5) the Commissioners can consider the same matters as the Inspector and so can consider the Scottish taxpayer issue. Where, on appeal, the Commissioners, under Regulation 11(5), determine a code number for a year without an 'S' indicator, the Inland Revenue will accept the position so far as the notice of coding is concerned.

10. If in fact there was a variable rate for that year and the Revenue consider, despite the Commissioners' decision, that the taxpayer was a Scottish taxpayer for the year, the matter will be dealt with at the year-end when all the facts are known. If the Revenue maintain the taxpayer is a Scottish taxpayer, the route for litigation will be by way of an enquiry into self assessment made on the basis that the taxpayer is not a Scottish taxpayer.
11. In practice, as at present, it is likely that most, if not all, taxpayer enquiries about 'S' codes will be settled at the 'object' stage, with only a very few going on to appeal to the Commissioners.
12. When 'S' codes come into operation for the first time, the Inland Revenue will ensure there is adequate publicity about taxpayer rights to object and appeal.
13. In summary, the Revenue do not consider the draft regulations need amending. But it is important that taxpayers should be aware of their object and appeal rights. And the Revenue will ensure this is the case by adequate publicity when a variable rate is introduced for the first time.

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