

TAXREP 20/02

TAX LAW REWRITE: PAYE REGULATIONS 3-39

Memorandum submitted in July 2002 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in April 2002 by the Revenue

CONTENTS

	Section
INTRODUCTION	A
GENERAL POINTS	B
SPECIFIC POINTS	C

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A Introduction

1. We welcome the opportunity to see at this stage the drafts of regulations 3-39, contained in paper CC/SC(02)05 (Pay As You Earn Regulations: Second progress report), as an initial rewrite of part of the PAYE Regulations.
2. We have also had the opportunity to consider these draft regulations in the context of the contents of Minutes 35-50 of the 37th meeting of the Consultative Committee held on 11 June 2002, where they were the subject of discussion.
3. We note that there will be an opportunity later for formal consultation on the entire draft rewritten PAYE Regulations. Our comments below on draft regulations 3-39 should therefore be regarded as initial comments only, and without prejudice to our review of these regulations when part of the completely rewritten draft regulations.

B General comments

4. As an overall comment, we are at this stage generally content with the approach taken to and with the resultant rewritten regulations 3-39 as foreshadowing the entire rewritten PAYE Regulations. We generally support the approach of aligning the regulations with the guidance and the use of necessary minor rewrite changes, both to effect this and to make the regulations clearer and easier to understand, within the broader approach of reproducing the current law in a better structure and in better language.

We appreciate that at this early stage no attempt has been made at wholesale reorganisation of the material; but that you may well in future decide on a more radical rearrangement of it. We will reserve any comments on this until after we have been able to review any such reordering, and accordingly do not comment on the present order of regulations 3-39.

Our preference is currently towards having a single set of regulations, rather than separate codes for employers, pension payers and social security benefits, for the reasons set out in paragraphs 47-48 of the Minutes of the 11 June Consultative Committee meeting.

C Specific comments

We have considered all of the Questions raised in Annex A of CC/SC(02)05. We are content with the proposals, but make the following particular comments:

- Q20 We agree that it is appropriate to omit regulation 15 of SI 1993/744, for the reasons set out in paragraphs 180 – 183 Annex A.

- Q22 We agree that it is appropriate to omit the record-keeping requirements from the provision rewriting regulation 16 of SI 1993/744, to avoid duplication as explained in paragraphs 198-201 Annex A.
- Q25 As a ‘week 53’ situation where no deduction should be made at all, we would prefer the regulations to include a specific exception to the ‘week 53’ basis for employees whose total pay is less than a year’s worth of free pay.
- Q30 The example of payment half-monthly is given in Annex A paragraph 260; but it is not otherwise clear how many other payment intervals are not envisaged by the tax tables and guidance given. In principle the regulations should be applicable to all payment intervals. If however, this would lead to unduly lengthy regulations and to payroll system complications, then it might be contended that the minority of employers who choose to adopt such unusual payment intervals should be given guidance only rather than providing specific regulations applicable to their circumstances.
- Q33 and 34 It is difficult to see how any significant exploitation of tax repayments, as explained in Commentary 262, would be likely to occur in ‘week 53’ situations; given the short timescale between the payment of the subsidiary emoluments and the subsequent normal payment of the main emoluments and the tax year end. Our inclination is not to deal explicitly with those cases.
- Q40 On balance we consider that the rules dealing with simplified schemes should not be placed into a separate part of the rewritten provisions.

Users are already familiar with the Regulation 20(4) SI 1993/744 approach of listing those Regulations which do not apply, and we anticipate that draft Regulation 20(5) should prove equally acceptable as drafted on the same basis.

If the simplified scheme were to be put into a separate Part we agree that a necessary duplication of provisions common to both the normal operation of PAYE and to simplified schemes would result. Whilst this would clearly make it easier for a simplified scheme user to refer to the Regulations applicable only to him, as a set of Regulations complete in itself (and there is a case for it on this ground of greater convenience, despite the amount of duplication involved) it would appear from past experience that relevant users should be able to cope with Regulation 20(5) in the same way as they have coped with Regulation 20(4) SI 1993/744.

- Q44 The former employee can reasonably be expected to be aware that he has received the post-cessation emoluments; but he may not always know the amount of tax deducted.

In a self-assessment context, it would appear appropriate that the payer (whether the former employer or any other person) ought to be required to notify the employee of the amount of the post-cessation emoluments paid and of the amount of the tax deducted.

Regulation 24(2)(b) requires the person making the payment to record the details on a deductions working sheet. The additional task of notifying the employee, of the deductions, when making the payment, should not present a problem. There might, of course, be a difficulty if the former employee had changed his address; but, in practice, as this would affect both the payment and the notification it is to be expected that the former employee's self-interest would result in this being an exceptional situation

Q55 and 56 We consider that it will be helpful to provide statutory guidance dealing with the extra-statutory practice of including posthumous payments on the P45. Whilst draft Regulation 27(2)(a) provides that Regulation 24(2) will not apply to posthumous payments that are included on the Form P45, it does not limit this exclusion to income not exceeding £1500 as does the present extra-statutory practice. Whilst we have no objection to this drafting of Regulation 27(2)(a), is it in fact intended no longer to apply this £1500 restriction? We do not see how the extra-statutory practice limit of £1500 could still be applicable if Regulation 27(2) was applied as now drafted.

It follows that, on the assumption that Regulation 27(2) merges with Regulation 24, we believe it would be helpful to disapply the latter provision in respect of payments already reflected on the P45.

Q60 There was presumably a purpose to paragraphs (2) and (3) of Regulation 34 of SI 1993/744 (deeming the employee's code to have been issued on the day that the employment actually commenced); but if this deeming has proved unnecessary in practice, then there can be no reasonable objection to the omission of the same deeming provision from draft Regulation 34; although we note that you will be looking at this proposal further in due course.

Q73 It is reasonable to impose a time limit on the issue of a notice of tax repayment withheld and the choice of 31 May following the end of the tax year concerned, as identical with the time limit for P60s to be sent to employees, appears appropriate.

Q74 We agree that it should be made explicit that a tax repayment to an unemployed person should be conditional on an application being made by the former employee.

Q80 On the basis that only approved substitute P60 forms could be used, it would appear acceptable to omit a statement on the substitute form that it bears the Board's approval.

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