



Faculty of Taxation

## **TAXREP 3/03**

### **TAX LAW REWRITE: PAYE REGULATIONS 99-108: ASSESSMENT AND DIRECT COLLECTION**

*Memorandum submitted in February 2003 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in December 2002 by the Inland Revenue*

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## **TAX LAW REWRITE: PAYE REGULATIONS 99-108: ASSESSMENT AND DIRECT COLLECTION**

### **A Introduction**

1. We welcome the opportunity to see at this stage the drafts of regulations 101A-104C, originating from Regulations 99-108 of SI 1993/744, contained in paper SC/CC(02)24 (Pay As You Earn Regulations: Sixth Progress Report) posted on 23 December 2002 onto the Revenue website, as an initial rewrite of Part VIII of SI 1993/744 (Assessment and Direct Collection).
2. We note that there will be an opportunity in April 2003 for formal consultation on the entire draft rewritten PAYE Regulations. Our comments below on draft regulations 101A-104C 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.
3. As with the review of previous draft Regulations issued for comment, in reviewing these draft regulations we found their provisional numbering, being the same as or similar to the numbers used by the corresponding material in Part VIII of SI 1993/744, very helpful. The table of origins on page 1 in Annex A, was also most helpful.

### **B General comments**

4. We agree that it is not necessary to rewrite Regulations 99, 105 and 106-108 SI 1993/744 for the reasons explained in Annex A commentary paras 13-33. We note that consideration is being given to whether a transitional provision is necessary in respect of paras 106-108, and this appears appropriate if there is any possibility of a repayment of income tax being made after 5 April 2004 in respect of tax years 1995/96 or earlier.
5. We note that the Part heading may yet be changed, subject to the final location of these Regulations in the final full version of the rewritten Regulations, to refer to something more meaningful.
6. We agree that it is inappropriate to rewrite Regulation 101(1) SI 1993/744, on the basis that Regulation 101 can following the introduction of self-assessment only apply to assessments making good to the Crown a loss of tax and will have no application to repayments of tax. We also agree that in consequence it is also unnecessary to rewrite Regulation 101(5) and the cross-references in Regulation 101(3) to Regulation 101(1) and (5), which relate to tax overpaid.
7. We agree that it is not necessary to rewrite Regulation 101(4)(b) SI 1993/744, for the reasons explained in Annex A paragraphs 99 and 100.

8. Regulation 104(1) SI 1993/744, with its use of the word 'may', empowers the inspector to issue a deductions working sheet. Rewritten Regulation 104(1) does not seem to quite capture this, referring rather to what is to happen once the deductions working sheet has been issued; without first authorising the Inland Revenue to issue it.
9. We agree the omission of Regulation 104(7) SI 1993/744, as unnecessary in order for the Inland Revenue to give a notice to an employee under s 8 TMA.
10. Although Regulation 104(9) SI 1993/744 uses the word 'forthwith', is it appropriate to use the word 'immediately' in Regulation 104B? Whilst it is clearly important that the employee should notify the Inland Revenue promptly, there would appear to be no convincing reason for not allowing say 14 days or some such to the employee within which to realistically comply.

## **C Specific comments**

11. Q1 Agreed.
12. Q2 We agree the inclusion in Regulation 101 A of an explicit calculation of the 'cap' on notional credit. We support the proposed explicit cap in rewritten Regulation 101A para (5), as a generous and simple interpretation of the 'cap'. In particular, adding back the payments on account so that they do not reduce the cap on notional credit is justifiable for the reason given in Annex A para 63.
13. Q3 As regards Qs 3 and 4, we note that Regulation 101B is rewritten on the assumption that the primary legislation will be changed to permit the practice of collecting an underpayment of tax or refunding tax overpaid that does not relate solely to Schedule E income under PAYE.

We agree that Regulation 101A(3)(a) is unnecessary and need not be rewritten, for the reason explained in Annex A para 76. We support Regulations 101B(2) to (5), reflecting practice on coding adjustments to collect underpayments. In rewritten Regulation 101B(1) the use of the words '... may take ... into account' follows the wording in Regulation 101A(3) SI 1993/744; but the use of the word 'may' sits uneasily with the words 'must' in Regulation 101B(2) and 'must not' in Regulation 101B(4). Some amendment to the drafting appears appropriate. Perhaps there should be a full stop after 'year' in the penultimate line, followed by a new sentence 'This is subject to the circumstances set out in paragraphs (2) to (4)'?

14. Q4 We support rewritten Regulation 101B(6), and in particular the inclusion of the taxpayer's right to object to an overpayment of tax being refunded by making coding adjustments in a later year.

15. Q5 Agreed. It is sensible to remove any notion of tax being deducted or repaid on each payment of PAYE income where it is the employee who has to account separately for such tax.
16. Q6 Agreed. We agree that it is appropriate and helpful to provide in Regulation 104(2) that the employer is not compelled to operate PAYE on a quarterly basis.
17. Q7 We welcome the inclusion of a provision in Regulation 104(8) that an employee may be entitled to a repayment of income tax after the end of an income tax quarter.

## **D Minor drafting points**

18. In Annex A para 65, in the third line, 'to have' is duplicated.
19. In Annex A para 66, there appears to be an inappropriate reference to 'the first bullet of paragraph 60'.
20. In Annex B in Regulation 102, at the end of the fifth line, 'regulation' should be 'regulations'.
21. In Annex A, on page 20, the following appear to require attention regarding the quotation of Regulation 47A of SI 1944/251:-
- (i) para (4)(a), second line – 'of' is omitted after 'particulars'
  - (ii) para (4)(a), penultimate line – there appears to be a word missing between 'from' and 'paid'  
and
  - (iii) para (6) – do the final two lines require amendment?
22. In Annex A para 127, in the third line of the second bullet point, the word 'of' appears to be omitted before 'tax'.
23. In Regulation 104C(2)(b) why does 'tax' appear in brackets, whereas it is excluded from the comparable wording in Regulation 104B(2)(b)?
24. In Regulation 104C(2)(e) is the cross-reference to Regulation 104(9) intended to differ from that in Regulation 104B(2)(f)?

14-13-36  
TJH/PCB  
10.2.03