



Faculty of Taxation

TAXREP 4/03

TAX LAW REWRITE: PAYE REGULATIONS 56-80A: PART 6: SPECIAL PROVISIONS

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 January 2003 by the Inland Revenue

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A Introduction

1. We welcome the opportunity to see at this stage the drafts of regulations 56-80A, contained in paper SC/CC(03)01 (Pay As You Earn Regulations: Seventh Progress Report) posted on 9 January onto the Revenue's website, as an initial rewrite of Part VI, Chapters 1-4 of SI 1993/744 (Special Provisions).
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 56-68, 70-76, 78-80A 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 VI of SI 1993/744, very helpful. The table of origins on page 1 and 2 in Annex A, was also most helpful.

B General comments

4. We have no particular criticism of the structure of Part 6, with new Chapter 1 now dealing with the effects of the death of a person operating PAYE and of a succession to a business; followed by Chapters 2-4 providing for a modified and simpler system of deduction of tax at the basic rate, on the non-cumulative basis, as concerns Councillors' Attendance Allowances, the Reserve and Auxiliary Forces, and Holiday Pay Funds; with Chapter 5 dealing with PAYE settlement agreements, contained separately in the Fourth Progress Report SC/CC(02)16. We note, however, that the regulations in Chapter 1 are likely to migrate to an earlier 'core' Part of the regulations. We agree that Chapter 5 probably sits better within Part 6 than any other Part, as in effect a special provision.
5. In the case of many of the Part 6 Chapters I-IV regulations, the rewrite is of a fairly light tidying-up effect; but the essential aim of clarity is achieved.
6. Regulation 80(1)(a) SI 1993/744 includes a reference to income 'in connection with any property'. This is not overtly included in rewritten Regulation 80(1), (2) and (8). Is the assumption that such income is encapsulated within 'business' as defined in Regulation 80(8)?
7. In Annex A, is the explanation in paragraph 103 (Background) correct? This refers to the employer paying holiday pay to the employee, and then reclaiming this from the fund; whereas the regulations are made on the basis of the fund

making payments of holiday pay to the employee in exchange for a voucher, etc (see Regulation 73, and the definitions of ‘fund’ and ‘recipient’ in Regulation 71(1))?

C Specific comments

8. Q1 Agreed.
9. Q2 Agreed.
10. Q3 Agreed.
11. Q4 Agreed.
12. Q5 It would appear clearer and consistent with the purpose of Part 6 Chapter 2 to refer only to the attendance allowance, where a local government provision includes both that and travelling and subsistence payments, as in Regulation 56. It might then be prudent as further clarification (see Annex A paragraph 51) of this to expressly provide in Regulation 56 that the reference to attendance allowance excludes any expenses payments.
13. Q6 Agreed.
14. Q7 Agreed.
15. Q8 Agreed.
16. Q9 Annex A paragraphs 71 and 72 are written on the assumption that Regulation 60 will comprise the alternative draft of paragraphs (1) and alternative (2) only. We support this, on the basis that it is clearer to apply the applicable Regulations as though the Revenue had issued a basic rate code (as to be defined in the April 2003 draft regulations).
17. Q10 Agreed.
18. Q11 Agreed.
19. Q12 Agreed.
20. Q13 Agreed.
21. Q14 Agreed.
22. Q15 We have no objection to the end of year certificate showing the reservist’s national insurance number which is not currently a requirement of Reg 68 of SI 1993/744. We note, however, that this is a tentative suggestion only at this stage pending the Ministry’s views (as explained in Annex A, paragraph 96).

23. Q16 We support the proposal to require an end of year certificate under Regulation 68 whether or not tax has been deducted, and to make a similar change to Regulation 39. As Annex A paragraph 97 explains this is to rectify any disadvantage to which the reservist would otherwise be put given the new emphasis on part of income for tax credits, and will also make it easier to meet the requirements for self-assessment.
24. Q17 Agreed.
25. Q18 Agreed.
26. Q19 Agreed.

D Minor drafting points

- 27 Annex D is not expressly labelled as such; but it is of course quite clear that Annex B comprises the current drafts of the rewritten regulations on the unnumbered pages following Annex A.
28. In the table of origins, on page 2, Regulation 71 should refer to Chapter 4 and not 3. The description of Regulation 72 does not accord with that in Annex B.
29. In Annex A, page 2, in the final sentence the reference should be to questions on pages 21 and 22 rather than 20.
30. In Annex A, paragraph 13, the first ‘the’ is redundant.
31. In Annex A, paragraph 36, the meaning of the final sentence is unclear and the final word should be ‘payment’ and not ‘payement’.
32. In Annex A, paragraph 108, the reference to ‘72(1)’ should presumably be to ‘72’. Should the bracketed reference to Regulation 62 be to Regulation 58 (see Annex A, paragraph 62)?
33. In Annex A, in the final sentence of paragraph 115, a closing bracket is required after the italicised Change 18.

14-13-36
TJH/PCB
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