
STATUTORY INSTRUMENTS

2003 No. 2682

INCOME TAX

The Income Tax (Pay As You Earn) Regulations 2003

<i>Made</i>	- - - -	<i>21st October 2003</i>
<i>Laid before the House of</i>		
<i>Commons</i>	- - - -	<i>30th October 2003</i>
<i>Coming into force</i>	- -	<i>6th April 2004</i>

The Commissioners of Inland Revenue in exercise of the powers conferred on them by sections 684, 685(4), 692, 704, 705, 706, 707, 708 and 710 of the Income Tax (Earnings and Pensions) Act 2003⁽¹⁾, sections 59A(10), 59B(8), 98A and 113(1) of the Taxes Management Act 1970⁽²⁾, sections 132 and 133(2) of the Finance Act 1999⁽³⁾, section 136 of the Finance Act 2002⁽⁴⁾, and sections 145(4) and 205 of the Finance Act 2003⁽⁵⁾, hereby make the following Regulations:

PART 1

INTRODUCTION

Citation and commencement

Citation and commencement

1. These Regulations may be cited as The Income Tax (Pay As You Earn) Regulations 2003 and shall come into force on 6th April 2004.

-
- (1) 2003 c. 1. Section 684 was amended by section 145(1) and (2) of the Finance Act 2003 (c. 14); section 685(4) was inserted by section 145(4) of the Finance Act 2003; and section 710 was amended by section 145(6) of the Finance Act 2003. Section 707 is recited for the meaning given to the word “prescribed”.
- (2) 1970 c. 9. Section 59A(10) was inserted by section 126(1) of the Finance Act 1996 (c. 8) and amended by paragraph 130 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 and section 145(7) of the Finance Act 2003; section 59B(8) was inserted by section 126(2) of the Finance Act 1996 and amended by paragraph 131 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 and section 145(7) of the Finance Act 2003; section 98A was inserted by section 165 of the Finance Act 1989 (c. 26) and amended by paragraph 138 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003. Section 113(1) provides that returns under the Taxes Acts shall be in such form as the Board prescribe.
- (3) 1999 c. 16.
- (4) 2002 c. 23.
- (5) 2003 c. 14.

*Interpretation***Interpretation****2.—(1)** In these Regulations, unless the context otherwise requires—

“additional pay” means the appropriate amount, established from an employee’s code (where it is a K code not used on the cumulative basis) and the tax tables, to be added to the relevant payments made to an employee in order to determine the taxable payments;

“agency” has the meaning given in section 44 of ITEPA;

“agency worker” means a worker whose services are treated by section 44 of ITEPA as the duties of an employment held with the agency;

“approved method of electronic communications” has the meaning given in regulation 189;

“basic rate”, in relation to the charging of income tax for any tax year, means the rate of income tax determined under section 1(2)(a) of ICTA(6);

“Board of Inland Revenue” means the Commissioners of Inland Revenue (as to which see in particular the Inland Revenue Regulation Act 1890(7));

“code” and related expressions have the meanings given in regulation 7;

“cumulative basis” means the basis of deduction or repayment of tax provided for in regulation 23;

“deductions working sheet” means—

- (a) any form of record in which are to be kept the matters required by these Regulations in connection with an employee’s relevant payments and tax;
- (b) in regulations 34 and 35 (simplified deduction scheme), and regulations 142 and 143 (direct collection) the form issued by the Inland Revenue for the purpose of keeping those records;

“earnings” has the meaning given in sections 62 and 721(7) of ITEPA;

“electronic communications” has the meaning given in regulation 189;

“employee’s code” has the meaning given in regulation 8(1);

“employer reference” means the combination of letters, numbers or both used by the Inland Revenue to identify an employer for the purposes of these Regulations;

“employer’s PAYE reference”, in relation to an employer, means the combination of the employer’s employer reference and the Inland Revenue office number;

“employment”, subject to regulations 10 to 12, has the meaning given in sections 4 and 5 of ITEPA; and “employer” and “employee” have corresponding meanings;

“excluded business expenses” has the meaning given in regulation 5;

“family” and “family or household”, in relation to a person, have the meanings given in section 721(4) and (5) of ITEPA;

“free pay” means the appropriate amount, established from an employee’s code (where not used on the cumulative basis) and the tax tables, to be subtracted from relevant payments to arrive at taxable payments (and accordingly represents an appropriate part of reliefs allowable against those payments);

“general earnings” has the meaning given in section 7(3) of ITEPA;

(6) Section 1(2)(a) was amended by section 9(3) of the Finance Act 1992 (c. 20).

(7) 1890 c. 21.

“higher rate”, in relation to the charging of income tax for any tax year, means the rate of income tax determined under section 1(2)(b) of ICTA(8);

“ICTA” means the Income and Corporation Taxes Act 1988(9);

“Inland Revenue” means any officer of the Board of Inland Revenue;

“Inland Revenue office”, in relation to an employer, means the office of the Inland Revenue from which codes are normally issued to the employer;

“Inland Revenue office number” means the number which identifies an employer’s Inland Revenue office;

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003(10);

“large employer” and “large or medium employer” have the meanings given in regulation 191;

“national insurance number” means the national insurance number allocated within the meaning of regulation 9 of the Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001(11);

“net PAYE income” has the meaning given in regulation 3;

“non-cumulative basis” means the basis of deduction of tax provided for in regulation 27;

“notice” means notice in writing, or in a form authorised (in relation to the case in question) by directions under section 118 of the Finance Act 1998(12) (which allows certain claims etc to be made by telephone); and “notify” must be read accordingly;

“notional payment” has the meaning given in section 710(2)(a) of ITEPA;

“objects” means gives a notice of objection to the Inland Revenue;

“official computer system” has the meaning given in regulation 189;

“other payee” means a person receiving relevant payments in a capacity other than employee, agency worker or pensioner;

“other payer” means a person making relevant payments in a capacity other than employer, agency or pension payer;

“overriding limit” means the limit on the amount of tax to be deducted from a relevant payment, where the tax due in accordance with the appropriate tax tables in respect of any taxable payments or total taxable payments to date at the relevant date has been calculated by reference to additional pay or total additional pay to date, and that limit is an amount equal to 50% of the amount of the relevant payment;

“PAYE income” has the meaning given in section 683 of ITEPA;

“PAYE pension income” has the meaning given in section 683(3) of ITEPA;

“PAYE threshold” must be determined in accordance with regulation 9;

“payee” means an employee, agency worker, pensioner or other payee;

“payer” means an employer, agency, pension payer or other payer;

“pension” means a pension, annuity or other payments of PAYE pension income;

“pensioner” means a person receiving PAYE pension income;

“pension payer” means a person making payments of PAYE pension income;

“PSA” means a PAYE settlement agreement made in accordance with regulation 105;

(8) Section 1(2)(b) was substituted by section 24(2) of the Finance Act 1988 (c. 39).

(9) 1988 c. 1.

(10) 2003 c. 1. The Income Tax (Earnings and Pensions) Act 2003 is referred to in these footnotes as “ITEPA”.

(11) S.I.2001/769.

(12) 1998 c. 36.

“qualifying general earnings”, in relation to a PSA, has the meaning given in regulation 106;

“reckonable date” has the meaning given in regulation 82(8);

“relevant payments” has the meaning given in regulation 4;

“relevant pension payments” has the meaning given in regulation 6;

“reliefs from income tax” includes allowances and deductions;

“specified date”, for the purposes of Chapters 3 and 4 of Part 10, has the meaning given in regulation 190;

“starting rate”, in relation to the charging of income tax for any tax year, means the rate of income tax determined under section 1(2)(aa) of ICTA(13);

“taxable payments” means relevant payments reduced by free pay or, as the case may be, increased by additional pay (where the employee’s code is not used on the cumulative basis);

“tax month” means the period beginning on the 6th day of a calendar month and ending on the 5th day of the following calendar month;

“tax not deducted because of the overriding limit” means any tax—

- (a) which is due at the relevant date in accordance with the appropriate tax tables in respect of any taxable payments or total taxable payments to date, but
- (b) which has not been deducted because of the overriding limit;

“tax period” means—

- (a) tax quarter, if regulation 34 (simplified deduction scheme for personal employees) or regulation 70 (quarterly tax periods) applies, or
- (b) tax month, in every other case;

“tax quarter” means any of the following (inclusive) periods—

- 6th April to 5th July,
- 6th July to 5th October,
- 6th October to 5th January, and
- 6th January to 5th April;

“tax tables” means the tax tables prepared by the Board of Inland Revenue under section 685 of ITEPA(14);

“tax week” means 6th April to 12th April (inclusive) and each successive period of 7 days, except that the final tax week in a tax year (“Week 53”) is just the last day of the tax year (or last 2 days in a leap year);

“tax year” means a year for which any Act provides for income tax to be charged;

“TMA” means the Taxes Management Act 1970(15);

“total additional pay to date” means the appropriate amount, established from an employee’s code (where it is a K code to be used on the cumulative basis) and the tax tables, to be added to the total payments to date in order to determine the total taxable payments to date;

“total free pay to date”, in relation to any date, means the appropriate amount, established from an employee’s code (where used on the cumulative basis) and the tax tables, to be subtracted from total payments to date to arrive at total taxable payments to date (and accordingly represents an appropriate part of reliefs allowable against those payments);

(13) Section 1(2)(aa) was substituted by section 22(1) of the Finance Act 1999.

(14) Section 685 was amended by section 145(3) and (4) of the Finance Act 2003.

(15) 1970 c. 9.

“total net tax deducted”, in relation to the relevant payments made to an employee during any period, means the total tax deducted from those payments plus any tax accounted for in accordance with regulation 62(5) (notional payments), less any tax repaid to the employee;

“total payments to date”, in relation to any date, means the sum of all relevant payments made by the employer to the employee from the beginning of the tax year up to and including that date;

“total tax to date” means the tax due at any date in accordance with the appropriate tax tables in respect of any total taxable payments to date;

“total taxable payments to date” means total payments to date reduced by total free pay to date or, as the case may be, increased by total additional pay to date (where the employee’s code is used on the cumulative basis);

“trade dispute” has the meaning given in section 35(1) of the Jobseekers Act 1995⁽¹⁶⁾ or, in Northern Ireland, in article 2(2) of the Jobseekers (Northern Ireland) Order 1995⁽¹⁷⁾.

(2) References in these Regulations to income tax in respect of PAYE income (however expressed) are references to income tax in respect of that income if reasonable assumptions are, when necessary, made about other income.

Net PAYE income

3.—(1) “Net PAYE income” means PAYE income less any—

- (a) allowable pension contributions, and
- (b) allowable donations to charity.

(2) In paragraph (1)—

“allowable pension contributions” means any contribution towards a scheme which is withheld from the payment of PAYE income and for which a deduction must be allowed from employment income under section 592(7) or 594(1) of ICTA⁽¹⁸⁾ (exempt approved schemes and exempt statutory schemes);

“allowable donations to charity” means any donation which is withheld from the payment of PAYE income and for which a deduction must be allowed under section 713 of ITEPA (donations to charity: payroll deduction scheme).

Relevant payments

4.—(1) In these Regulations, any reference (however expressed) to relevant payments means payments of, or on account of, net PAYE income, except payments of, or on account of,—

- (a) PAYE social security income, except in so far as it is provided for in Part 8,
- (b) United Kingdom social security pensions,
- (c) excluded relocation expenses,
- (d) excluded business expenses,
- (e) excluded pecuniary liabilities, and
- (f) excluded notional payments.

(2) In paragraph (1)—

“excluded business expenses” has the meaning given in regulation 5;

⁽¹⁶⁾ 1995 c. 18.

⁽¹⁷⁾ S.I. 1995/2705 (N.I. 15).

⁽¹⁸⁾ Section 592(7) was substituted by paragraph 72 of Schedule 6 to ITEPA; section 594(1) was amended by paragraph 6(2) of Schedule 6 to the Finance Act 1989 and paragraph 73 of Schedule 6 to ITEPA.

“excluded notional payments” means notional payments which an employer is treated as making by section 694 or 695 of ITEPA (non-cash vouchers and credit tokens) as a result of an employee using a non-cash voucher or credit token on behalf of the employer, except where the voucher or token is used as, or as part of, any scheme or arrangement the purpose, or one of the main purposes, of which is—

- (a) to provide the employee with money or an asset, or
- (b) to avoid the making of a relevant payment;

“excluded pecuniary liabilities” means payments made to a person other than an employee to meet the employee’s liability to that other person, but which are not made—

- (a) in fulfilment (in whole or in part) of the employee’s right to a sum of money, nor
- (b) as, or as part of, any scheme or arrangement the purpose, or one of the main purposes, of which is to avoid the making of a relevant payment;

“excluded relocation expenses” means payments in respect of removal expenses, as defined by section 272 of ITEPA (removal benefits and expenses to which section 271 applies), if, and to the extent that, they are payments of net PAYE income;

“PAYE social security income” has the meaning given in section 683(5) of ITEPA;

“United Kingdom social security pensions” means income which is taxable income in accordance with section 578 of ITEPA (UK social security pensions).

Excluded business expenses

5.—(1) “Excluded business expenses” means expenses within Chapter 3 of Part 3 of ITEPA (earnings and benefits treated as earnings) which the Inland Revenue have authorised the employer to exclude from relevant payments in accordance with this regulation.

(2) The Inland Revenue may authorise an employer to exclude any payment of expenses from relevant payments if the Inland Revenue are of the opinion that a deduction or relief will, or is likely to, result in no tax being payable as a result of the payment.

(3) The Inland Revenue may authorise the exclusion of—

- (a) specific expenses or a class of expenses,
- (b) expenses paid by a specific employer or a class of employers, and
- (c) expenses paid to a specific employee or a class of employees.

(4) The Inland Revenue must notify an employer of any excluded business expenses and the date from which the exclusion is to apply.

(5) The Inland Revenue may revoke the authorisation to exclude business expenses by giving notice to the employer specifying the date of the notice or a subsequent date as the date from which the revocation has effect.

Relevant pension payments

6. In these Regulations, any reference (however expressed) to relevant pension payments means relevant payments in respect of PAYE pension income.

Meaning of “code” etc

7.—(1) In these Regulations, “code” means—

- (a) a combination of letters, numbers or both for use in accordance with the tax tables to establish free pay, additional pay, total free pay to date or total additional pay to date;

- (b) any of the special codes (whether expressed in words or represented by a combination of letters, numbers or both) for use in accordance with the tax tables or otherwise.
- (2) “K code” means a code which gives rise to additional pay or total additional pay to date.
- (3) The special codes are—
 - (a) the basic rate code, which effects deductions of tax wholly at the basic rate;
 - (b) the higher rate code, which effects deductions of tax wholly at the higher rate;
 - (c) the nil tax code, which requires no deductions of tax;
 - (d) the emergency code, which, after allowing for the relief specified in section 257(1) of ICTA(19) (personal allowance), effects deductions of tax at one or more of the starting rate, basic rate and higher rate, so that during the tax year the amounts subject to deductions at the various rates are in accordance with section 1(2) of ICTA(20);
 - (e) the emergency IB codes which, after allowing for the relief specified in—
 - (i) section 257(1) of ICTA (personal allowance), and
 - (ii) section 265(1) of ICTA(21) (blind person’s allowance), if claimed,effect deductions of tax at one or both of the starting rate and basic rate, so that during the tax year the amounts subject to deductions at the various rates are in accordance with section 1(2) of ICTA.

Employee’s code

- 8.—(1) An employee’s code is the code—
 - (a) issued to an employer for use in respect of the employee for a tax year,
 - (b) applied by these Regulations for use by an employer in respect of the employee, or
 - (c) issued to an employee in accordance with regulation 142 (direct collection).
- (2) A code is issued to an employer if it is contained in a document that is sent—
 - (a) to the employer, or
 - (b) to a person acting on behalf of the employer,

by the Inland Revenue, and any code so issued is received by the employer for the purposes of these Regulations.

PAYE threshold

- 9.—(1) The rules set out in Table 1 apply in order to determine whether a relevant payment made by an employer to an employee is a relevant payment which exceeds the PAYE threshold.
- (2) Rules 1 to 5 apply if the employer normally pays the employee at regular intervals.
- (3) If the employer does not normally pay the employee at regular intervals—
 - (a) rule 6 applies to determine whether a relevant payment made less than a week since the previous relevant payment exceeds the PAYE threshold, and
 - (b) rule 7 applies to determine whether any other relevant payment exceeds the PAYE threshold.

(19) Section 257 was substituted by section 33 of the Finance Act 1988 (c. 39).

(20) Section 1(2) was amended by section 24(2) of the Finance Act 1988, section 9(2) and (3) of the Finance Act 1992 (c. 20) and section 22(1) of the Finance Act 1999 (c. 16).

(21) Section 265 was substituted by paragraph 8 of Schedule 3 to the Finance Act 1988, and subsection (1) was amended by paragraph 19 of Schedule 20 to the Finance Act 1996 (c. 8).

Table 1**Determination of PAYE threshold**

<i>Employee's payment interval</i>	<i>Rule to determine whether relevant payment exceeds PAYE threshold</i>
1. Weekly	1. If the sum of the relevant payment and any other relevant payments made earlier in the same tax week is more than the weekly PAYE threshold.
2. Monthly	2. If the sum of the relevant payment and any other relevant payments made earlier in the same tax month is more than the monthly PAYE threshold.
3. Regular intervals which are multiples of a week	3. If the sum of the relevant payment and any other relevant payments made earlier in the same interval is more than the corresponding multiple of the weekly PAYE threshold.
4. Regular intervals, longer than a week, which are fractions or multiples of a month	4. If the sum of the relevant payment and any other relevant payments made earlier in the same interval is more than the corresponding fraction or multiple of the monthly PAYE threshold.
5. Regular intervals, longer than a week, which are not within rules 1 to 4	5. If the sum of the relevant payment and any other relevant payments made earlier in the same interval is more than the corresponding proportion of the weekly PAYE threshold.
6. Intervals shorter than a week, whether regular or irregular	6. If the sum of the relevant payment and any other relevant payments made earlier in the same tax week is more than the weekly PAYE threshold.
7. Irregular intervals longer than a week	7. If the relevant payment is more than the corresponding proportion of the weekly PAYE threshold since— <ul style="list-style-type: none"> (a) any previous relevant payment in the tax year, or (b) if none, the start of the employment or the start of the tax year (whichever is later).
(4) Regulations 24 and 30 (employee not paid weekly or monthly)—	
<ul style="list-style-type: none"> (a) apply for the purpose of establishing an employee's normal payment interval, but (b) must otherwise be ignored for the purpose of determining whether a relevant payment exceeds the PAYE threshold. 	
(5) If an employee has more than one normal payment interval in respect of payments made by the same employer, the rules must be applied on the basis of the shorter or shortest of those intervals.	

(6) If an employee's normal payment interval is longer than a year, the rules must be applied as if the normal payment interval were a year.

(7) "Weekly PAYE threshold" means 1/52 of the personal allowance specified in section 257(1) of ICTA, rounded to the nearest pound.

(8) "Monthly PAYE threshold" means 1/12 of the personal allowance specified in section 257(1) of ICTA, rounded to the nearest pound.

(9) The "corresponding proportion of the weekly PAYE threshold" is established by dividing the number of days in the payment interval by 7, and multiplying the result by the weekly PAYE threshold.

Application to payers and payees

Application to agencies and agency workers

10.—(1) For the purposes of these Regulations—

- (a) agencies are treated as employers; and
- (b) agency workers are treated as employees.

(2) For the purposes of the regulations listed in paragraph (3), an agency ceases to employ an agency worker at the earlier of—

- (a) the end of the relationship between the agency and agency worker, or
- (b) the end of a period of 3 months during which the agency makes no relevant payments to the agency worker,

and not each time the agency worker stops providing services to a client of the agency.

(3) The regulations are—

regulation 36	cessation of employment: Form P45
regulation 37	PAYE income paid after employment ceased
regulation 46(6)	employer to ignore code relating to employment which has ceased
regulation 51(5) to (7)	effects of employment ceasing on Form P45 procedure
regulation 94(3) to (7)	information to former employees of other earnings.

(4) The following regulations do not apply to agencies or agency workers in their capacity as such—

regulation 34	simplified deduction scheme for personal employees
regulation 35	simplified deduction schemes: records
regulation 91	termination awards: information to be provided
regulation 92	termination awards: return if award changes
regulation 93	termination awards: return if more than one employer

regulation 96	termination awards: information to employees
Part 6	PAYE settlement agreements
regulation 167	jobseeker's allowance paid by employer
regulation 168	regulation 167 cases: application of other regulations.

Application to pension payers and pensioners

11.—(1) For the purposes of these Regulations—

- (a) pension payers are treated as employers;
- (b) pensioners are treated as employees; and
- (c) a pensioner's "employment" with a pension payer starts when the pension starts and ends when the pension ends.

(2) The following regulations do not apply to pension payers or pensioners in their capacity as such—

regulation 25	cumulative basis: subsidiary PAYE income of employee paid weekly or at greater intervals
regulation 34	simplified deduction scheme for personal employees
regulation 35	simplified deduction schemes: records
regulation 38	death of employee (other than pensioner)
Chapter 2 of Part 3	new employees (other than pensioners): Forms P45 and P46
regulation 63	repayment during unpaid leave
regulation 64	trade disputes
regulation 65	repayment if no longer employed
regulation 71	modification of regulation 68 in case of trade dispute
regulation 75	additional return in case of trade dispute
regulations 85 to 89	employers: annual return of other earnings
regulation 90	quarterly return if car becomes available or unavailable
regulation 91	termination awards: information to be provided
regulation 92	termination awards: return if award changes
regulation 93	termination awards: return if more than one employer
regulation 94	employers: information to employees of other earnings
regulation 95	third parties: information to employees of other earnings

regulation 96	termination awards: information to employees
regulation 100	tips: special arrangements
regulation 102(1)	succession to a business etc: employees (other than pensioners)
regulation 104	succession to a business: trade disputes
Part 6	PAYE settlement agreements
Chapter 3 of Part 7	holiday pay funds
regulation 151	obtaining the claimant's Form P45
regulation 167	jobseeker's allowance paid by employer
regulation 168	regulation 167 cases: application of other regulations.

Application to other payers and payees

12.—(1) For the purposes of these Regulations—

- (a) other payers are treated as employers;
- (b) other payees are treated as employees; and
- (c) an other payee's "employment" with an other payer starts when relevant payments start and ends when relevant payments end.

(2) The following regulations do not apply to other payers or other payees in their capacity as such—

regulation 34	simplified deduction scheme for personal employees
regulation 35	simplified deduction schemes: records
regulation 85 to 88	employers: annual return of other earnings
regulation 90	quarterly return if car becomes available or unavailable
regulation 91	termination awards: information to be provided
regulation 92	termination awards: return if award changes
regulation 93	termination awards: return if more than one employer
regulation 94	employers: information to employees of other earnings
regulation 95	third parties: information to employees of other earnings
regulation 96	termination awards: information to employees
Part 6	PAYE settlement agreements
regulation 134	interpretation of Chapter 3 (holiday pay funds)
regulation 167	jobseeker's allowance paid by employer

regulation 168

regulation 167 cases: application of other regulations.

(3) Paragraph (2) is subject to regulation 91(9) (termination awards: former employers and employees).

(4) The following regulation does not apply to other payees in their capacity as such—

regulation 64

trade disputes.

PART 2

CODES

Determination of code

Determination of code by Inland Revenue

13. The Inland Revenue must determine the code for use by an employer in respect of an employee for a tax year.

Matters relevant to determination of code

14.—(1) If the Inland Revenue determine a code under this regulation, they must have regard to the following matters so far as known to them—

- (a) the reliefs from income tax to which the employee is entitled for the tax year in which the code is determined, so far as the employee's title to those reliefs has been established at the time of the determination;
- (b) any PAYE income of the employee (other than the relevant payments in relation to which the code is being determined);
- (c) any tax overpaid for any previous tax year which has not been repaid;
- (d) any tax remaining unpaid for any previous tax year which is not otherwise recovered;
- (e) any tax repaid to the employee in excess of the amount properly due to the employee which may be recovered as if it were unpaid tax under section 30(1) of TMA(22) (recovery of overpayment of tax etc) and which is not otherwise recovered;
- (f) unless the employee objects, any other income of the employee which is not PAYE income; and
- (g) such other adjustments as may be necessary to secure that, so far as possible, the tax in respect of the employee's income in relation to which the code is determined will be deducted from the relevant payments made during that tax year.

(2) If the Inland Revenue determine the code before the beginning of the tax year for which it is determined, the Inland Revenue—

- (a) must have regard to any expected change in the amount of any relief referred to in paragraph (1)(a), but

(22) Section 30 was substituted by section 149(1) of the Finance Act 1982 (c. 39), and subsection (1) was amended by paragraph 13(2) of Schedule 19 to the Finance Act 1998 (c. 36).

- (b) may disregard any such relief if they are not satisfied that the employee will be entitled to it for the tax year for which the code is determined.
- (3) Paragraphs (1)(c) and (d) are subject to regulations 186 and 187 (recovery and repayment: adjustment of employee's code).

Flat rate codes

15.—(1) The Inland Revenue may determine that the code for use by an employer in respect of an employee for a tax year is the higher rate code, if they have reason to believe that the employee will be chargeable at the higher rate on all or a substantial part of the employee's relevant payments.

(2) The Inland Revenue may determine that the code for use by an employer in respect of an employee for a tax year is the basic rate code, if they have reason to believe that the employee will be chargeable at the basic rate on all or a substantial part of the employee's relevant payments.

(3) The Inland Revenue may determine that the code for use by an employer in respect of an employee for a tax year is the nil tax code, if—

- (a) the employee's PAYE income will be taken into account as taxable income other than PAYE income in any assessment,
- (b) the Inland Revenue are not satisfied that the employee's income will be chargeable, or
- (c) the Inland Revenue have reason to believe that the employee will be entitled to a deduction under Chapter 6 of Part 5 of ITEPA (deductions from seafarers' earnings) in respect of the employee's PAYE income or so much of it as remains after any deductions under section 592(7) or 594(1) of ICTA(23) (exempt approved schemes and exempt statutory schemes).

(4) References in this regulation to an employee's relevant payments, PAYE income and income are references to the payments or income in respect of which the employee's code is being determined for the purposes of the employment in question.

Continued application of employee's code

16.—(1) If the Inland Revenue determine that the code for use by an employer in respect of an employee for a tax year remains the same as at the previous 5th April, the Inland Revenue need not issue a code to the employer.

(2) If for any tax year the employer does not receive a code for an employee who was in that employer's employment on the previous 5th April, the code which applied on that date is treated as having been issued by the Inland Revenue for the tax year in question.

Notice to employee of code

17.—(1) The Inland Revenue must give notice to an employee of the code which they have determined for use in respect of that employee for any tax year.

(2) But notice need not be given if—

- (a) the code for use in respect of the employee remains the same as at the previous 5th April; or
- (b) the change in the code is solely because of an alteration or proposed alteration in the rates of any of the personal reliefs allowable under sections 257 and 257A of ICTA(24) (personal allowance and married couple's allowance) or in the tax tables.

(23) Section 592(7) was substituted by paragraph 72 of Schedule 6 to ITEPA; section 594(1) was amended by paragraph 6(2) of Schedule 6 to the Finance Act 1989 (c. 26) and paragraph 73 of Schedule 6 to ITEPA.

(24) Section 257 was substituted, and section 257A inserted, by section 33 of the Finance Act 1988 (c. 39). Section 257 was amended by section 33(4)(a) and (5)(b) of the Finance Act 1989 and paragraph 13 of Schedule 20 to the Finance Act 1996 (c. 8); section 257A was amended by section 33(8)(a) and (9)(b) of the Finance Act 1989, section 77(2) of, and paragraph

*Appeals and amendment***Objections and appeals against employee's code**

18.—(1) An employee who objects to the determination of a code must state the grounds of objection.

(2) On receiving the notice of objection the Inland Revenue may amend the determination of the code by agreement with the employee.

(3) If the Inland Revenue and employee do not reach agreement, the employee may appeal to the General Commissioners against the determination of the code by giving notice to the Inland Revenue.

(4) On appeal, the General Commissioners must determine the code in accordance with these Regulations.

(5) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA(25) (rules for assigning proceedings to General Commissioners), the relevant place for an appeal under this regulation is—

- (a) the place where the employment is situated, or
- (b) if there is no such place, the place where the employee lives.

Amendment of code

19.—(1) Paragraph (2) applies if the code for use by an employer in respect of an employee is found to be inappropriate because the actual circumstances are different from the circumstances by reference to which it was determined, whether by the Inland Revenue or the General Commissioners.

(2) The Inland Revenue may, and if required by the employee must, amend the code by reference to the actual circumstances.

(3) The Inland Revenue must give notice of the amended code to the employee by the date on which the notice under regulation 20(1) is issued to the employer.

(4) But notice need not be given where the change in the code is solely because of an alteration or proposed alteration in the rates of any of the personal reliefs allowable under sections 257 and 257A of ICTA (personal allowance and married couple's allowance) or in the tax tables.

(5) Regulation 18 (objections and appeals) applies in relation to the amended code as it applies in relation to the original code.

(6) Regulation 18 also applies if the Inland Revenue do not agree that the circumstances have changed and so refuse to amend the code in accordance with paragraph (2).

Notice to employer of amended code

20.—(1) If the code for use by an employer in respect of an employee is amended after notice of it has been issued to the employer, the Inland Revenue must issue the amended code to the employer.

(2) An amended code is issued to an employer if it is contained in a document that is sent to the employer or a person acting on behalf of the employer by the Inland Revenue, and any code so issued is received by the employer for the purposes of these Regulations.

(3) On making any subsequent relevant payment to the employee, the employer must deduct or repay tax by reference to the amended code.

¹ of Schedule 8 to, the Finance Act 1994 (c. 9), paragraph 14 of Schedule 20 to the Finance Act 1996 and section 31(1) to (8) of the Finance Act 1999 (c. 16).

(25) Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8) and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

(4) Paragraphs (5) and (6) apply if there is a change or proposed change in the rates of any of the personal reliefs allowable under sections 257 and 257A of ICTA (personal allowance and married couple's allowance).

(5) If the change or proposed change relates to the current tax year, the Inland Revenue may give notice requiring the employer, with effect from the date specified in the notice, to amend specified codes as directed.

(6) If the change relates to the following tax year, the Inland Revenue may give notice requiring the employer to carry forward to the following tax year specified codes of the current tax year and adjust them as directed in the notice.

(7) A code which has—

- (a) been amended by virtue of paragraph (5) in respect of the current tax year, or
- (b) been carried forward to the following tax year and adjusted by virtue of paragraph (6),

is treated as having been determined and issued by the Inland Revenue as the employee's code for that tax year.

(8) A notice under paragraphs (5) and (6) may be issued to the employer or to a person acting on behalf of the employer.

PART 3

DEDUCTION AND REPAYMENT OF TAX

CHAPTER 1

DEDUCTION AND REPAYMENT

Deduction and repayment by reference to employee's code

Deduction and repayment of tax by reference to employee's code

21.—(1) On making a relevant payment to an employee during a tax year, an employer must deduct or repay tax in accordance with these Regulations by reference to the employee's code, if the employer has one for the employee.

(2) The employer must deduct or repay tax by reference to the employee's code, even if the code is the subject of an objection or appeal.

The cumulative basis

The cumulative basis

22. An employer must deduct or repay tax on the cumulative basis, unless these Regulations provide otherwise.

Cumulative basis: deduction and repayment

23.—(1) This regulation provides for deductions and repayments on the basis of total payments to date (the cumulative basis).

(2) In this regulation—

- (a) TT is the total tax to date relating to an employee;

- (b) UT is any tax not deducted because of the overriding limit when the last relevant payment was made to the employee, and is nil if the payment in question is the first relevant payment to the employee in any tax year;
- (c) PT is the previous total tax to date relating to the employee, and is nil if the payment in question is the first relevant payment to the employee in any tax year.
- (3) The employer must, before making any relevant payment to the employee, calculate TT.
- (4) If $TT + UT$ exceeds PT, the employer must deduct the excess from the relevant payment on making the payment.
- (5) But if the employee's code is a K code, the deduction is not to exceed the overriding limit, subject to 62(6) (notional payments).
- (6) If $TT + UT$ is less than PT, the employer must repay the difference to the employee on making the payment, subject to regulations 25(4) (extra payment made before main payment) and 64 (trade disputes).
- (7) If $TT + UT$ equals PT, the employer must neither deduct nor repay tax when making the payment.
- (8) "Previous total tax to date" means the total tax to date corresponding to the employee's total payments to date and the employee's code—
 - (a) at the date of the last preceding relevant payment, or
 - (b) if later, at the date on which the employer complied with this regulation as if a relevant payment had been made.
- (9) But—
 - (a) if the employee's code is an amended code, and
 - (b) the employee's previous code was not used on the cumulative basis,
 "previous total tax to date" means the total net tax deducted by the employer.
- (10) Paragraphs (2)(c), (8) and (9) are subject to regulations 43(9) and (10), 52(11) and (12), 53(4) and 61(4) (which modify the meaning of previous total tax to date in certain circumstances).

Cumulative basis: employee not paid weekly or monthly

- 24.—**(1) This regulation applies if—
- (a) an employer normally makes main relevant payments to an employee at regular intervals which are longer than a week, other than monthly, and
 - (b) the employee's code is used on the cumulative basis.
- (2) The first main relevant payment in a tax year is treated for the purposes of calculating the deduction or repayment of tax as having been made at the end the period which—
- (a) starts on the first day of the tax year, and
 - (b) finishes at the end of the employee's normal regular payment interval.
- (3) Subsequent main relevant payments in the tax year are treated for the purposes of calculating the deduction or repayment of tax as having been made at the end of the period which—
- (a) starts the day after the date on which the previous main relevant payment is treated as having been made (by paragraph (2) or this paragraph), and
 - (b) finishes at the end of the employee's normal regular payment interval or the last day of the tax year (if earlier).

(4) If the employee's main relevant payments are normally made at regular intervals which are longer than a year, any such payment in a tax year is treated, for the purposes of calculating the deduction or repayment of tax, as made on the last day of that tax year.

(5) But, in every case, the employer must record the actual date of every payment in the deductions working sheet.

(6) This regulation does not apply if the payment falls within regulation 31(1) (payments in short payment periods).

Cumulative basis: subsidiary PAYE income of employee paid weekly or at greater intervals

25.—(1) This regulation applies if—

- (a) an employee's main relevant payments are normally made at regular intervals of a week or more,
- (b) the employee's code is used on the cumulative basis, and
- (c) the employer makes a payment in respect of overtime or other extra earnings (the "extra payment").

(2) For the purposes of calculating the deduction or repayment of tax, the extra payment is treated as made on the same date as that on which the main relevant payment in the payment period is due to be paid or is due to be treated as paid by regulation 24 (employee not paid weekly or monthly).

(3) But paragraph (4) applies if the extra payment is actually made before the date on which the main relevant payment in the payment period is due to be paid (disregarding the effects of regulation 24).

(4) A repayment which would (but for this paragraph) be due under regulation 23(6) on making the extra payment must not be paid to the employee, but must instead be added to the previous total tax (as defined by regulation 23(8)) on making the next relevant payment.

(5) This regulation does not apply if the extra payment is made in a short payment period (but regulation 31 applies instead if that period contains an extra pay day).

(6) "Payment period"—

- (a) in the case of an employee normally paid weekly, means a tax week,
- (b) in the case of an employee normally paid monthly, means a tax month,
- (c) in the case of an employee normally paid at other regular intervals, has the meaning given in paragraph (7).

(7) In the case mentioned in paragraph (6)(c)—

- (a) the first payment period in a tax year starts on 6th April and finishes at the end of the employee's normal regular payment interval, and
- (b) subsequent payment periods in the tax year start the day after the end of the previous payment period and finish—
 - (i) at the end of the employee's normal regular payment interval, or
 - (ii) on 5th April (if earlier).

(8) "Short payment period" means the last payment period in a tax year if, because of paragraph (7)(b)(ii), it is shorter than the previous payment periods.

(9) "Extra pay day" has the meaning given in regulation 31(4).

*The non-cumulative basis***The non-cumulative basis**

26.—(1) An employer must deduct tax in accordance with regulation 27 (the non-cumulative basis) from any relevant payment made to an employee if—

- (a) the Inland Revenue direct, or
- (b) these Regulations provide,

that the non-cumulative basis is to apply.

(2) If this regulation applies then regulation 22 (cumulative basis) does not apply.

Non-cumulative basis: general rule for deductions

27.—(1) On making a relevant payment, the employer must deduct the amount of tax which would have been deductible in accordance with the appropriate tax tables, by reference to the employee's code, if the payment had been made on the first day of the tax year.

(2) This is subject to—

regulation 28	modification of general rule
regulation 29	aggregation of payments.

Non-cumulative basis: modification of general rule

28.—(1) Paragraphs (2) to (5) modify the general rule in regulation 27(1) (the non-cumulative basis) in certain circumstances.

(2) If regulation 30 (employee not paid weekly or monthly) applies to the employee's main relevant payments, the employer must deduct from a relevant payment the amount of tax which would have been deductible, by reference to the employee's code, if the payment (whether or not it is a main relevant payment) had been made on the date given by that regulation.

(3) If the employer does not normally make relevant payments to the employee at regular intervals, the employer must deduct from a relevant payment the amount of tax which would have been deductible, by reference to the employee's code—

- (a) if the payment is the first payment in the tax year, on the date it is made, or
- (b) in any other case, on the date found by counting forward x days starting on 5th April, where x is the number of days found by starting with the date of the previous relevant payment and counting forward to the date of the payment in question.

(4) But if two or more relevant payments are made in the same tax week, the employer must deduct from the second or subsequent relevant payment the amount of tax which (subject to regulation 29(5)) would have been deductible, by reference to the employee's code, if that payment were made at the date given by paragraph (3) for the first payment.

(5) If the employee's code is a K code, the deduction is not to exceed the overriding limit, subject to regulation 62(6) (notional payments).

Non-cumulative basis: aggregation of payments

29.—(1) Paragraph (2) applies if—

- (a) relevant payments are normally made to an employee at regular intervals of a week or more, and

- (b) the employee's code is used on the non-cumulative basis.
- (2) If the relevant payment is the second or subsequent relevant payment made to the employee during the payment period (as defined by regulation 25(6)), the amount of tax to be deducted must be—
 - (a) calculated by reference to the aggregate of the relevant payments made to the employee during the payment period (as defined by regulation 25(6)),
 - (b) increased by any tax not deducted because of the overriding limit when the previous relevant payment in that payment period was made to the employee, and
 - (c) reduced by the amount of tax calculated when the employer made the previous relevant payment in that payment period.
- (3) But, for the purposes of the aggregate, any effects of regulation 30(2) (regular payments treated as made at later date) must be disregarded.
- (4) Paragraph (5) applies if relevant payments to an employee—
 - (a) are normally made at regular intervals of less than a week, or
 - (b) are made at irregular intervals of less than a week.
- (5) If the relevant payment is the second or subsequent relevant payment made to the employee during a tax week, the amount of tax to be deducted must be—
 - (a) calculated by reference to the aggregate of the relevant payments made to the employee in the tax week,
 - (b) increased by any tax not deducted because of the overriding limit when the previous relevant payment in that tax week was made to the employee, and
 - (c) reduced by the amount of tax calculated when the employer made the previous relevant payment in that tax week.

Non-cumulative basis: employee not paid weekly or monthly

- 30.**—(1) This regulation applies if—
- (a) an employer normally makes main relevant payments to an employee at regular intervals which are longer than a week, other than monthly, and
 - (b) the employee's code is used on the non-cumulative basis.
- (2) Each main relevant payment in a tax year is treated for the purposes of calculating the deduction of tax as having been made at the end the period which—
- (a) starts on 6th April, and
 - (b) finishes at the end of the employee's regular payment interval.
- (3) If the employee's main relevant payments are normally made at regular intervals which are longer than a year, any such payment in a tax year is treated, for the purposes of calculating the deduction of tax, as made on 5th April in that tax year.
- (4) But, in every case, the employer must record the actual date of every payment in the deductions working sheet.

Payments in short payment periods

- 31.**—(1) An employer must deduct tax on the non-cumulative basis from any relevant payment made to an employee in a short payment period which includes an extra pay day, even if the employee's code is normally used on the cumulative basis.
- (2) Paragraph (1) does not apply if the employee's code is the basic rate code.

(3) If—

- (a) the employee's total payments to date do not exceed the employee's total free pay to date, and
- (b) the employee's code is normally used on the cumulative basis,

the employer must not deduct any tax from relevant payments made in a short payment period which includes an extra pay day.

(4) "Extra pay day" means the last day in a tax year on which a main relevant payment is due to be made to an employee if—

- (a) the employee's main relevant payments are normally made weekly or at greater intervals which results in the number of pay days varying from tax year to tax year (solely because of the number of days in a calendar year), and
- (b) the day falls in a short payment period.

(5) "Short payment period" has the meaning given in regulation 25(8).

Higher rate and nil tax codes

Higher rate code: deductions

32. If an employee's code is the higher rate code the employer must deduct tax at the higher rate, and regulations 22 and 26 (cumulative and non-cumulative basis) do not apply.

Nil tax code: no deductions or repayments

33.—(1) If an employee's code is the nil tax code the employer must not deduct or repay any tax, and so regulation 22 (cumulative basis) does not apply.

(2) But—

- (a) if the nil tax code is an amended code, and
- (b) the Inland Revenue so direct,

regulation 22 applies to the next relevant payment the employer makes in the same tax year, and the employer must make any repayment of tax due.

Simplified deduction scheme

Simplified deduction scheme for personal employees

34.—(1) The Inland Revenue may authorise the employer of a personal employee to deduct tax from each relevant payment made to the employee by reference to the appropriate taxable payments in the simplified tax tables.

(2) The amount of tax to be deducted must be—

- (a) calculated by reference to the aggregate of the relevant payments made to the authorised personal employee during the payment period, and
- (b) reduced by the amount of tax calculated, by reference to that aggregate, when the employer made the previous relevant payment in the same payment period.

(3) In this regulation—

"payment period" means the interval for which free pay is calculated shown on the deductions working sheet issued in accordance with regulation 35(3);

"personal employee" means—

- (a) a person employed at the employer's home to provide domestic or personal services for the employer or the employer's family, or
- (b) a person employed to assist the employer with any business, profession or course of study which, solely because of any physical or mental disability, the employer would not be able to carry on without the assistance of the personal employee;

and "authorised personal employee" means a personal employee in respect of whom an authorisation under paragraph (1) is in force;

"simplified tax tables" means the parts of the tax tables which are prepared by the Board of Inland Revenue for use under this regulation.

(4) The following regulations do not apply to cases in which this regulation and regulation 35 apply—

regulation 15	flat rate codes
regulation 16	continued application of employee's code
regulation 21	deduction and repayment of tax by reference to employee's code
regulations 22 to 25	cumulative basis
regulations 26 to 31	non-cumulative basis
regulations 32 and 33	higher rate and nil tax codes
regulation 36	cessation of employment: Form P45
regulations 42 to 45	employer to complete Form P45
regulation 55	PAYE pension income paid by former employer
regulation 66	deductions working sheets.

Simplified deduction schemes: records

35.—(1) The employer must maintain the following records in relation to an authorised personal employee.

(2) The records are—

- (a) the date of each relevant payment,
- (b) the amount of the relevant payment,
- (c) the amount of the free pay,
- (d) the amount of the taxable payments, and
- (e) the amount of tax, if any, deducted on making the relevant payment, or to be deducted or accounted for under regulation 62(4) or (5) (notional payments).

(3) The employer must maintain the records in a deductions working sheet which has been issued by the Inland Revenue showing the code for use by the employer in respect of the employee for the tax year.

(4) On ceasing to employ an authorised personal employee, the employer must return the completed deductions working sheet in respect of that employee to the Inland Revenue.

(5) Before 20th May following the end of a tax year, an employer who, at the end of that tax year, was employing one or more authorised personal employees must send to the Inland Revenue—

- (a) the completed deductions working sheets in respect of those employees, and

- (b) a return which complies with paragraph (6).
- (6) The employer must declare and certify in the return—
- (a) how many deductions working sheets are being sent,
 - (b) that those are all the deductions working sheets which have been issued to the employer and not already returned to the Inland Revenue, and
 - (c) that the information contained in the deductions working sheets is fully and truly stated to the best of the employer's knowledge and belief.
- (7) The return is treated for the purposes of these Regulations as the return required by regulation 73(1) (annual return of relevant payments liable to deduction of tax).
- (8) "Personal employee" and "authorised personal employee" have the same meaning as in regulation 34.

Cessation of employment

Cessation of employment: Form P45

36.—(1) On ceasing to employ an employee in respect of whom a code has been issued, the employer must complete Form P45.

- (2) The employer must then—
- (a) send Part 1 of that form to the Inland Revenue, and
 - (b) provide Parts 1A, 2 and 3 to the employee,
- on the day on which the employment ceases or, if that is not practicable, without unreasonable delay.
- (3) Retirement on pension is not a cessation of employment for the purposes of this regulation if the PAYE pension income is paid by the same employer after retirement.
- (4) The information listed in column 1 of Table 2 must, subject to the conditions set out in column 2, be provided in the various Parts of Form P45 as indicated in columns 3 to 5.

Table 2

Information which must be provided in Form P45

1. <i>Information to be provided</i>	2. <i>Conditions</i>	3–5. <i>Form P45 Part</i>		
		<i>1</i>	<i>1A</i>	<i>2, 3</i>
1. the employer's PAYE reference		yes	yes	yes
2. the employee's national insurance number	if known	yes	yes	yes
3. the employee's name		yes	yes	yes
4. the date on which the employment ceased		yes	yes	yes

1. Information to be provided	2. Conditions	3–5. Form P45 Part		
		1	1A	2, 3
5. the employee's code or, if more than one, the latest code, issued by the Inland Revenue for the tax year during which the employment ceased		yes	yes	yes
6. whether the employee's code is used on the cumulative basis		yes	yes	yes
7. the tax week or month in which the last relevant payment was made to the employee or, in a case falling within regulation 24, was treated as having been made	if the employee's code is used on the cumulative basis	yes	yes	yes
8. the total payments to date and the corresponding total net tax deducted	if the employee's code is used on the cumulative basis	yes	yes	yes
9. the total payments to date relating to the employment in question and the corresponding total net tax deducted	if the employee's code is used on the cumulative basis, and if different from the information supplied under item 8	yes	yes	no
10. the total payments to date relating to the employment in question and the corresponding total net tax deducted	if the employee's code is not used on the cumulative basis	yes	yes	no
11. the number used by the employer to identify the employee	if any	yes	no	no

1. Information to be provided	2. Conditions	3–5. Form P45 Part		
		1	1A	2, 3
12. the department or branch in which the employee was employed	if any	yes	no	no
13. the employee's address	if known	yes	no	no
14. the employer's name		yes	yes	no
15. the employer's address		yes	yes	no
16. the date the Form is completed		yes	yes	no

(5) This regulation is subject to regulations 38, 39 and 180 (death of employee etc).

PAYE income paid after employment ceased

37.—(1) This regulation applies if a relevant payment is made to an employee after the employment has ceased—

(a) by the former employer in respect of the former employment, or

(b) by any other person in respect of an obligation of the former employer,
and the payment has not been included in Form P45.

(2) The person making the payment must deduct tax at the basic rate in force for the tax year in which the payment is made.

(3) But—

(a) the payment does not affect the cessation of employment, and

(b) the provisions listed in paragraph (4) do not apply.

(4) The provisions are—

regulation 21	deduction and repayment of tax by reference to employee's code
regulations 22 and 23	cumulative basis
regulations 26 and 27	non-cumulative basis
Chapters 2 and 3 of this Part	new employees and new pensioners: Forms P45 and P46.

(5) The person making the payment must record the following information in a deductions working sheet (which the person must prepare for the purpose if one has not already been prepared for that tax year).

(6) The information is—

- (a) the date of the payment,
 - (b) the amount of the relevant payment, and
 - (c) the amount of tax deducted on making the payment, or to be deducted or accounted for under regulation 62(4) or (5) (notional payments).
- (7) The person making the payment must also notify the employee of the information mentioned in paragraph (6) without unreasonable delay.

Death of employee

38.—(1) On the death of an employee (other than a pensioner) in respect of whom a code has been issued by the Inland Revenue, the employer must—

- (a) complete Form P45 indicating in Part 1 that the employee has died, and
 - (b) send it to the Inland Revenue.
- (2) The employer must comply with paragraph (1)—
- (a) on the day on which the employer learns of the employee's death, or
 - (b) if that is not practicable, without unreasonable delay.
- (3) The employer must, on making a relevant payment after learning of the employee's death but before completing Form P45, deduct or repay tax as if the deceased employee were still alive and employed by the employer at the date of the payment.
- (4) Regulation 37(2) to (6) applies to any relevant payment which—
- (a) is made in respect of the employee's employment after the date of the employee's death, and
 - (b) is not included in Form P45.

Death of pensioner

39.—(1) On the death of a pensioner in respect of whom a code has been issued by the Inland Revenue, the pension payer must—

- (a) complete Form P45 indicating in Part 1 that the pensioner has died, and
 - (b) send it to the Inland Revenue.
- (2) The pension payer must comply with paragraph (1)—
- (a) on the day on which the pension payer learns of the pensioner's death, or
 - (b) if that is not practicable, without unreasonable delay.
- (3) Paragraph (4) applies if the pension payer makes any relevant pension payments after the date of the pensioner's death—
- (a) before completing Form P45, or
 - (b) after completing Form P45 but during the tax year in which the pensioner died.
- (4) The pension payer must, on making any such payment, deduct or repay tax as if the deceased pensioner were still alive and in receipt of a pension at the date of the payment.
- (5) Regulation 37(2) to (6) applies to any relevant pension payment which—
- (a) is made in a tax year following the tax year in which the pensioner died, and
 - (b) is not included in Form P45.

*Employee's duty to provide Form P45***Duty of employee to give new employer Form P45**

40.—(1) An employee who has Parts 2 and 3 of Form P45 must give them to the new employer on commencing a new employment.

(2) If an employee receives Parts 2 and 3 of Form P45 after commencing a new employment, the employee must immediately give them to the new employer.

(3) But paragraph (4) applies if an employee objects to the disclosure of the total payments to date to the new employer.

(4) The employee may, instead of complying with paragraph (1) or (2), send Parts 2 and 3 of Form P45 to the Inland Revenue before commencing the new employment or as soon as the employee receives Form P45 (as the case may be).

(5) The Inland Revenue—

- (a) must then issue a code in respect of the employee to the new employer, and
- (b) may direct that the non-cumulative basis is to apply to all relevant payments which the new employer makes to the employee.

CHAPTER 2**NEW EMPLOYEES (OTHER THAN PENSIONERS): FORMS P45 AND P46****Scope of Chapter 2**

41. This Chapter sets out the procedure to be followed for deductions and repayments (Form P45 and P46 procedure) in cases to which Chapter 3 (new pensioners: Forms P45 and P46) does not apply (see regulation 54).

Procedure if employer receives Form P45

42.—(1) This regulation applies—

- (a) if an employee gives Parts 2 and 3 of Form P45 to the employer on commencing employment, and
- (b) in the circumstances mentioned in regulation 51(2) (late presentation of Form P45: before employer required to send Form P46).

(2) The new employer must prepare a deductions working sheet and record on it the following information shown in Parts 2 and 3 of Form P45—

- (a) the employee's name,
- (b) the employee's national insurance number.

(3) If Parts 2 and 3 of Form P45 show that the earlier employment ended in the current tax year, the new employer must comply with regulation 43.

(4) If—

- (a) Parts 2 and 3 of Form P45 show that the earlier employment ended in the previous tax year, and
- (b) the new employment commences on or before 24th May,

the new employer must comply with regulation 44.

(5) If—

- (a) Parts 2 and 3 of Form P45 show that the employment ended in the previous tax year, and

(b) the employment commences after 24th May,
the new employer must comply with regulation 45.

(6) If Parts 2 and 3 of Form P45 show that the employment ended in any earlier tax year, the new employer must comply with regulation 45.

(7) In all cases the new employer must then insert in Part 3 of Form P45—

- (a) the employer's employer reference,
- (b) the date on which the new employment commenced,
- (c) any number used to identify the employee,
- (d) the employee's code in use by the employer if different from the code shown in Parts 2 and 3 of Form P45,
- (e) any figure recorded in accordance with paragraph (5)(c) or (6)(c) of regulation 43 (Form P45 for current tax year), if different from the total tax to date shown on Parts 2 and 3 of Form P45,
- (f) the employee's address,
- (g) the employee's date of birth, if known,
- (h) the employee's job title or description,
- (i) the employer's name, and
- (j) the employer's address.

(8) The employer must then send Part 3 of Form P45 to the employer's Inland Revenue office.

Form P45 for current tax year

43.—(1) The new employer must record in the deductions working sheet the code shown in Parts 2 and 3 of Form P45 as the employee's code.

(2) Paragraphs (3) to (10) apply if Parts 2 and 3 of Form P45 show that the cumulative basis was used.

(3) The employer must record in the deductions working sheet the total payments to date (if any) shown in Parts 2 and 3 of Form P45.

(4) The employer must record in the deductions working sheet the following additional information, or keep such records as enable its production.

(5) If the code shown in Parts 2 and 3 of Form P45 is a K code, the additional information is—

- (a) the total additional pay to date,
- (b) the total taxable payments to date, and
- (c) the lower of the total tax to date as at the week or month shown in Parts 2 and 3 of Form P45 and the total net tax deducted shown in it.

(6) In any other case, the additional information is—

- (a) the total free pay to date,
- (b) the total taxable payments to date, and
- (c) the corresponding total tax to date as at the week or month shown in Parts 2 and 3 of Form P45.

(7) The amounts required by paragraphs (5)(a) and (b) and (6)(a) and (b) must be arrived at by the employer by reference to the information shown in Parts 2 and 3 of Form P45.

(8) On making any relevant payment to the employee, the employer must deduct or repay tax by reference to the employee's code on the cumulative basis.

(9) For the purposes of—

- (a) paragraph (8), and
- (b) item 8 of Table 2 in regulation 36(4) (Form P45), and
- (c) regulation 55(4)(f) (retirement statement),

the total payments to date recorded in the deductions working sheet in accordance with paragraph (3), and the figure recorded in accordance with paragraph (5)(c) or (6)(c) must be treated as if they were relevant payments made to the employee by, and tax deducted by, the new employer.

(10) For the purposes of regulation 23(8) (cumulative basis: meaning of previous total tax to date) the figure recorded in accordance with paragraph (5)(c) or (6)(c) must be treated as the previous total tax to date when the employer next makes a relevant payment to the employee.

(11) If Parts 2 and 3 of Form P45 show that the non-cumulative basis has been used, on making any relevant payment to the employee the employer must, subject to regulation 32 (higher rate code: deductions), deduct or repay tax by reference to the employee's code on the non-cumulative basis.

(12) The receipt by the employer of Parts 2 and 3 of Form P45 is treated as the issue by the Inland Revenue of the code shown in Parts 2 and 3 of Form P45 as the code for use in respect of the employee.

Form P45 for previous tax year: employment starting on or before 24th May

44.—(1) The new employer must—

- (a) record in the deductions working sheet the code shown in Parts 2 and 3 of Form P45 as the employee's code, and
- (b) deduct or repay tax by reference to that code on the cumulative basis, subject to regulation 32 (higher rate code: deductions).

(2) The receipt by the employer of Parts 2 and 3 of Form P45 is treated as the issue by the Inland Revenue of the code shown in Parts 2 and 3 of Form P45 as the code for use in respect of the employee.

Other Forms P45

45.—(1) The new employer must—

- (a) record in the deductions working sheet the emergency code as the employee's code, and
- (b) deduct tax from each relevant payment using the emergency code on the non-cumulative basis.

(2) The emergency code is treated as having been issued to the employer by the Inland Revenue as the code for use in respect of the employee.

Form P46 where employer does not receive Form P45 and code not known

46.—(1) This regulation applies if—

- (a) an employee commences employment without giving the employer Parts 2 and 3 of Form P45, and
- (b) a code in respect of the employee has not otherwise been issued to the employer.

(2) The employee must indicate in Form P46 which (if any) of the following statements apply—

Statement A: that the employee is taking up employment for the first time after a period of full-time education, and has not since received taxable jobseeker's allowance or taxable incapacity benefit (as defined in Part 8),

Statement B: that this is the employee's only or main employment (disregarding any self-employment),

Statement C: that the employee is also receiving a pension,

and must sign and date the form.

(3) The employer must provide the following information in the Form P46—

- (a) the employee's national insurance number, if known,
- (b) the employee's name,
- (c) the employee's address,
- (d) the employee's date of birth, if known,
- (e) the employee's sex,
- (f) any number used by the employer to identify the employee,
- (g) the employee's job title,
- (h) the date on which the employment commenced,
- (i) the employee's code and whether it is being used on the cumulative basis,
- (j) the employer's PAYE reference,
- (k) the employer's name,
- (l) the employer's address, and
- (m) the date the form was completed.

(4) The employer must keep the Form P46 until required to send it to the Inland Revenue in accordance with regulations 47 to 49.

(5) Before sending the Form P46, the employer must indicate in the Form which code is being used in respect of the employee and whether it is being used on the non-cumulative basis.

(6) For the purposes of paragraph (1)(b), the employer must ignore any code issued to the employer in respect of an employee's earlier employment which has ceased.

(7) This regulation ceases to apply in the circumstances mentioned in regulation 51(2) (late presentation of Form P45: before employer required to send Form P46).

Procedure in Form P46 cases: former full-time students

47.—(1) This regulation applies in the case of an employee who indicates in the Form P46 that—

- (a) only Statement A applies, or
- (b) only Statements A and B apply.

(2) On making the first relevant payment which exceeds the PAYE threshold to the employee, the employer must—

- (a) send the Inland Revenue the completed Form P46,
- (b) prepare a deductions working sheet and enter the total payments to date, and
- (c) deduct tax on the cumulative basis using the emergency code.

(3) On making any subsequent relevant payment before the Inland Revenue issue a code for use in respect of the employee, the employer must continue to deduct or repay tax on the cumulative basis using the emergency code.

Procedure in Form P46 cases: employee taking up only or main employment

48.—(1) This regulation applies in the case of an employee who indicates in the Form P46 that only Statement B applies.

(2) On making the first relevant payment which exceeds the PAYE threshold to the employee, the employer must—

- (a) send the Inland Revenue the completed Form P46,
- (b) prepare a deductions working sheet and enter the total payments to date, and
- (c) deduct tax on the non-cumulative basis using the emergency code.

(3) On making any subsequent relevant payment before the employee's code is issued, the employer must continue to deduct or repay tax on the non-cumulative basis using the emergency code.

Procedure in Form P46 cases: other new employees

49.—(1) This regulation applies in any case which is not dealt with by regulation 47 or 48 which concerns an employee to whom regulation 46(1) applies.

(2) On making the first relevant payment to the employee, the employer must—

- (a) send the Inland Revenue the completed Form P46,
- (b) prepare a deductions working sheet and enter both the total payments to date and the total tax to date before the first payment as nil,
- (c) deduct tax on the cumulative basis using the basic rate code.

(3) On making any subsequent relevant payment before the employee's code is issued, the employer must continue to deduct tax on the cumulative basis using the basic rate code.

Procedure in Form P46 cases: code treated as issued by Inland Revenue

50.—(1) The emergency code or the basic rate code used by the employer in accordance with regulations 47 to 49 is treated, for the purposes of Parts 2 to 4 (codes; deduction and repayment of tax; payments, returns and information) as having been issued by the Inland Revenue as the code for use in respect of the employee.

(2) This does not apply for the purposes of regulation 18 (objections and appeals) and regulations 46 to 49 and 51 to 53 (Form P46 procedure and late presentation of Form P45).

Late presentation of Form P45

51.—(1) This regulation applies if an employee gives Parts 2 and 3 of Form P45 to the employer after commencing employment.

(2) If the employee gives Parts 2 and 3 of Form P45 to the employer before the employer is required to send the Form P46 to the Inland Revenue under regulation 47 to 49, regulation 42 (procedure if employer receives Form P45) applies.

(3) If the employee gives Parts 2 and 3 of Form P45 to the employer—

- (a) after the Form P46 is required to have been sent to the Inland Revenue, but
- (b) before the employee's code has been issued to the employer,

this regulation and regulation 52 (late presentation of Form P45: employer's duties) apply.

(4) If the employee gives Parts 2 and 3 of Form P45 to the employer after the employee's code has been issued to the employer, they must be destroyed.

(5) If Parts 2 and 3 of Form P45 show that the employment ended in the current tax year then, unless the employer has already ceased to employ the employee—

- (a) the code shown in Parts 2 and 3 of Form P45 is treated as having been issued by the Inland Revenue to the employer on the day the employee gives them to the employer, and
- (b) the employer must comply with regulation 52.

(6) If Parts 2 and 3 of Form P45 show that the employment ended in the previous tax year and the employee gives them to the employer on or before 24th May then, unless the employer has already ceased to employ the employee—

- (a) the code shown in Parts 2 and 3 of Form P45 is treated as having been issued by the Inland Revenue to the employer on the day the employee gives them to the employer,
- (b) the employer must deduct or repay tax by reference to that code using the cumulative basis, subject to regulation 32 (higher rate code: deductions), and
- (c) the employer must comply with paragraphs (2) and (3) of regulation 52.

(7) Parts 2 and 3 of Form P45 must be destroyed—

- (a) if they show that the employment ended in the previous tax year and the employee gives them to the employer after 24th May, or
- (b) if they show that the employment ended in an earlier tax year.

Late presentation of Form P45: employer's duties

52.—(1) This regulation applies in the circumstances mentioned in regulation 51(5); and paragraphs (2) and (3) of this regulation also apply in the circumstances mentioned in regulation 51(6).

(2) The employer must insert in Part 3 of Form P45—

- (a) the employer's employer reference,
- (b) the date on which the new employment commenced,
- (c) any number used to identify the employee,
- (d) the employee's code in use by the employer if different from the code shown in Parts 2 and 3 of Form P45,
- (e) if Parts 2 and 3 of the Form P45 show that the cumulative basis has been used, the figure (if any) recorded in accordance with paragraph (7)(c) or (8)(c) if different from the total tax to date shown on Parts 2 and 3 of Form P45,
- (f) the employee's address,
- (g) the employee's date of birth, if known,
- (h) the employee's job title or description,
- (i) the employer's name, and
- (j) the employer's address.

(3) The employer must then send Part 3 of Form P45 to the employer's Inland Revenue office.

(4) The employer must prepare a deductions working sheet (unless the employer has already prepared one) in accordance with the following information shown in Parts 2 and 3 of Form P45—

- (a) the employee's name,
- (b) the employee's national insurance number, and
- (c) the employee's code.

(5) The employer must record in the deductions working sheet the sum of—

- (a) the total payments to date (if any) shown in Parts 2 and 3 of Form P45, and
 - (b) the relevant payments which have been made by the employer since the employment commenced which have not already been recorded in the deductions working sheet.
- (6) If Parts 2 and 3 of Form P45 show that the cumulative basis has been used, the employer must also record the following additional information in the deductions working sheet, or keep such records as enable its production.
- (7) If the code shown in Parts 2 and 3 of Form P45 is a K code, the additional information is—
- (a) the total additional pay to date,
 - (b) the total taxable payments to date, and
 - (c) the lower of the total tax to date as at the week or month shown in Parts 2 and 3 of Form P45 or the total net tax deducted shown in it.
- (8) In any other case, the additional information is—
- (a) the total free pay to date,
 - (b) the total taxable payments to date, and
 - (c) the corresponding total tax to date as at the week or month shown in Parts 2 and 3 of Form P45.
- (9) The employer must ascertain the amounts required by paragraphs (7)(a) and (b) and (8)(a) and (b) by reference solely to the information shown in Parts 2 and 3 of Form P45.
- (10) If Parts 2 and 3 of Form P45 show that the cumulative basis has been used, the employer, on making any subsequent relevant payment to the employee, must deduct or repay tax by reference to the code shown in Parts 2 and 3 of Form P45 on the cumulative basis.
- (11) For the purposes of—
- (a) paragraph (10), and
 - (b) item 8 of Table 2 in regulation 36(4) (Form P45), and
 - (c) regulation 55(4)(f) (retirement statement),
- the total payments to date recorded in the deductions working sheet in accordance with paragraph (5) and the figure recorded in accordance with paragraph (7)(c) or (8)(c) must be treated as if they were relevant payments made to the employee by, and tax deducted by, the new employer.
- (12) For the purposes of regulation 23(8) (cumulative basis: meaning of previous total tax to date), the figure recorded in accordance with paragraph (7)(c) or (8)(c) must be added to any actual previous total tax to date, and the total treated as the previous total tax to date when the employer next makes a relevant payment to the employee.
- (13) If Parts 2 and 3 of Form P45 show that the non-cumulative basis has been used, on making any relevant payment to the employee, the employer must, subject to regulation 32 (higher rate code: deductions), deduct tax by reference to the code shown in Parts 2 and 3 of Form P45 on the non-cumulative basis.

Form P46 cases: subsequent procedure on issue of employee's code

53.—(1) On making any relevant payment to an employee falling within regulation 47 to 49 (procedure in Form P46 cases) after the Inland Revenue have issued a code to the employer for use in respect of the employee, the employer must deduct or repay tax by reference to that code.

- (2) For the purposes of paragraph (1) and regulation 66 (deductions working sheets)—
 - (a) any total payments to date notified to the employer by the Inland Revenue are treated as if they represented relevant payments made by the employer; and

- (b) the total net tax deducted before the first payment made in accordance with this regulation is taken to be the sum of—
 - (i) the total net tax deducted, if any, notified to the employer by the Inland Revenue, and
 - (ii) any tax which the employer was liable to deduct from the employee's relevant payments under regulation 47, 48 or 49.
- (3) For the purposes of—
 - (a) item 8 of Table 2 in regulation 36(4) (Form P45), and
 - (b) regulation 55(4)(f) (retirement statement),

any total payments to date and total net tax deducted which are notified to the employer by the Inland Revenue must be treated as if they were relevant payments made to the employee by, and tax deducted by, the employer.

(4) If the employee's previous code was used on the cumulative basis, any amount notified to the employer under paragraph (2)(b)(i) must be added to the previous total tax to date for the purposes of regulation 23(8) (cumulative basis: meaning of previous total tax to date).

CHAPTER 3

NEW PENSIONERS: FORMS P45 AND P46

Scope of Chapter 3

54. This Chapter applies (instead of Chapter 2) when a pension starts, if the pension payer will not be making relevant payments other than relevant pension payments to the pensioner.

PAYE pension income paid by former employer

55.—(1) This regulation applies if the pension payer was, immediately before the pensioner's retirement, the pensioner's employer and so, in accordance with regulation 36(3), no Form P45 was completed.

(2) On making relevant pension payments to the pensioner, the pension payer must deduct tax on the non-cumulative basis, subject to regulation 32 (higher rate code: deductions), for the remainder of the tax year in which the pension starts or until directed otherwise by the Inland Revenue.

(3) Within 14 days after the pensioner's retirement, the pension payer must prepare a retirement statement and—

- (a) send it to the Inland Revenue, and
- (b) give a copy to the pensioner.
- (4) The retirement statement must contain the following information—
 - (a) the pensioner's name,
 - (b) the pensioner's address, if known,
 - (c) the pensioner's national insurance number, if known,
 - (d) the pension payer's PAYE reference,
 - (e) the date of retirement,
 - (f) the total payments to date at the date of retirement,
 - (g) the total payments to date relating to the employment in question at the date of retirement,
 - (h) the total net tax deducted corresponding to the total payments to date relating to the employment in question,
 - (i) the amount of pension payable and the frequency of the payments,

- (j) any number used to identify the pensioner,
- (k) whether the pensioner's code is use on the cumulative basis,
- (l) the pension payer's name, and
- (m) the pension payer's address.

(5) Paragraph (4) is subject to regulation 212 (modifications for electronic version of retirement statement delivered to Inland Revenue).

PAYE pension income paid by other pension payer

56.—(1) This regulation applies if the pensioner gives Parts 2 and 3 of Form P45 to the pension payer when a pension starts.

(2) The pension payer must insert in Part 3 of Form P45—

- (a) the pensioner's address,
- (b) any number used to identify the pensioner, and
- (c) the date on which the pension started.

(3) The pension payer must then send Part 3 of Form P45 to the pension payer's Inland Revenue office.

(4) The receipt by the pension payer of Parts 2 and 3 of Form P45 under paragraph (1) is treated as the issue by the Inland Revenue of the code shown in Parts 2 and 3 of Form P45 as the code for use in respect of the pensioner.

(5) On making relevant pension payments to the pensioner, the pension payer must, subject to regulation 32 (higher rate code: deductions), deduct or repay tax—

- (a) on the non-cumulative basis, for the remainder of the tax year to which Parts 2 and 3 of Form P45 relate;
- (b) on the cumulative basis, for subsequent tax years.

(6) Paragraph (5) applies until the pension payer is directed otherwise by the Inland Revenue.

Information to be provided in Form P46 if code not known: non UK residents

57.—(1) This regulation applies if a pension payer pays a pension, which does not arise wholly from an employment carried on abroad, to a pensioner—

- (a) who is not resident in the United Kingdom,
- (b) who has not given Parts 2 and 3 of Form P45 to the pension payer, and
- (c) in respect of whom a code has not otherwise been issued by the Inland Revenue.

(2) On making the first payment which exceeds the PAYE threshold, the pension payer must send to the Inland Revenue the following information in Form P46.

(3) The information is—

- (a) the pensioner's name,
- (b) the pensioner's date of birth, if known,
- (c) the pensioner's sex,
- (d) the pensioner's address,
- (e) the pensioner's national insurance number, if known,
- (f) the date on which the pension started,
- (g) any number used to identify the pensioner,

- (h) the pension payer's PAYE reference,
- (i) the pension payer's name,
- (j) the pension payer's address, and
- (k) the date the form was completed.

(4) For the purposes of paragraph (1)(c), the pension payer must ignore any code issued to the pension payer in respect of a previous pension of the pensioner which has ended.

Information (Form P46) and procedure if code not known: UK residents

58.—(1) This regulation applies if—

- (a) a pension payer starts to make relevant pension payments to a pensioner,
- (b) the pensioner is resident in the United Kingdom,
- (c) the pensioner does not give to the pension payer Parts 2 and 3 of Form P45, and
- (d) a code in respect of the pensioner has not otherwise been issued to the pension payer.

(2) On making any relevant pension payments to the pensioner before the Inland Revenue issue a code for use in respect of the pensioner, the pension payer must deduct tax on the non-cumulative basis applying the emergency code.

(3) The pension payer must send the Inland Revenue the following information in Form P46.

(4) The information is—

- (a) the pensioner's name,
- (b) the pensioner's date of birth, if known,
- (c) the pensioner's sex,
- (d) the pensioner's address,
- (e) the pensioner's national insurance number, if known,
- (f) the date on which the pension started,
- (g) any number used to identify the pensioner,
- (h) the pension payer's name,
- (i) the pension payer's address,
- (j) the pension payer's PAYE reference, and
- (k) the date the form was completed.

(5) The pension payer must also indicate in the Form that the emergency code is being used on the non-cumulative basis.

(6) For the purposes of paragraph (1)(d), the pension payer must ignore any code issued to the pension payer in respect of a previous pension of the pensioner which has ended.

UK resident pensioner's code treated as issued by Inland Revenue

59.—(1) The emergency code used by the pension payer in accordance with regulation 58 is treated, for the purposes of Parts 2 to 4 (codes; deduction and repayment of tax; payments, returns and information) as having been issued by the Inland Revenue as the code for use in respect of the pensioner.

(2) This does not apply for the purposes of regulation 18 (objections and appeals) and regulations 58, 60 and 61 (Form P46 procedure, late presentation of Form P45 etc).

Late presentation of Form P45

60.—(1) Paragraphs (2) to (6) apply if the pensioner gives Parts 2 and 3 of Form P45 to the pension payer after the pension has started but before a code has been issued.

(2) The pension payer must insert in Part 3 of Form P45—

- (a) the pensioner's address,
- (b) any number used to identify the pensioner, and
- (c) the date on which the pension started.

(3) The pension payer must then send Part 3 of Form P45 to the pension payer's Inland Revenue office.

(4) The receipt by the pension payer of Parts 2 and 3 of Form P45 under paragraph (1) is treated, except for the purposes of paragraph (1), as the issue by the Inland Revenue of the code shown in that Form as the pensioner's code.

(5) On making relevant pension payments to the pensioner, the pension payer must, subject to regulation 32 (higher rate code: deductions), deduct or repay tax—

- (a) on the non-cumulative basis, for the remainder of the tax year to which Parts 2 and 3 of Form P45 relate;
- (b) on the cumulative basis, for subsequent tax years.

(6) Paragraph (5) applies until the pension payer is directed otherwise by the Inland Revenue.

(7) If Parts 2 and 3 of Form P45 are given to the pension payer after the pension has started and after a code has been issued by the Inland Revenue, they must be destroyed.

Subsequent procedure on issue of UK resident pensioner's code

61.—(1) On making any relevant pension payment to a pensioner falling within regulation 58 after the Inland Revenue have issued a code to the pension payer for use in respect of the pensioner, the pension payer must deduct or repay tax by reference to that code.

(2) For the purposes of paragraph (1) and regulation 66 (deductions working sheets)—

- (a) any total payments to date notified to the pension payer by the Inland Revenue are treated as if they represented relevant pension payments made by pension payer; and
- (b) the total net tax deducted before the first payment made in accordance with this regulation is taken to be the sum of—
 - (i) the total net tax deducted, if any, notified to the pension payer by the Inland Revenue, and
 - (ii) any tax which the pension payer was liable to deduct from the pensioner's relevant pension payments under regulation 58.

(3) For the purposes of—

- (a) item 8 of Table 2 in regulation 36(4) (Form P45), and
- (b) regulation 55(4)(f) (retirement statement),

any total payments to date and total net tax deducted which are which are notified to the employer by the Inland Revenue must be treated as if they were relevant pension payments made to the pensioner by, and tax deducted by, the pension payer.

(4) If the pensioner's previous code was used on the cumulative basis, any amount notified to the pension payer under paragraph (2)(b)(i) must be added to the previous total tax to date for the purposes of regulation 23(8) (meaning of previous total tax to date).

CHAPTER 4

MISCELLANEOUS

Deductions in respect of notional payments

62.—(1) This regulation applies if an employer makes a relevant payment which is a notional payment to an employee.

(2) The employer must, so far as possible, deduct tax required to be deducted in respect of a notional payment in accordance with any of the following regulations from any relevant payment or payments which the employer actually makes to the employee at the same time as the notional payment.

(3) The regulations are—

regulations 22 to 25	cumulative basis
regulations 26 to 31	non-cumulative basis
regulation 32	higher rate code: deductions
regulation 34	simplified deduction scheme for personal employees
regulation 37	PAYE income paid after employment ceased.

(4) If the employer cannot deduct the full amount of tax as required by paragraph (2) from another relevant payment made at the same time as the notional payment, the employer must, so far as possible, deduct the tax from any payment or payments which the employer makes later in the same tax period.

(5) If the relevant payments actually made are insufficient to enable the employer to deduct the full amount of tax due in respect of notional payments, the employer must account to the Board of Inland Revenue for any amount which the employer is unable to deduct.

(6) Regulations 23(5) and 28(5) (deductions on cumulative or non-cumulative basis not to exceed the overriding limit) do not apply to the extent that the tax to be deducted is in respect of a notional payment.

Repayment during unpaid leave

63.—(1) This regulation applies if—

- (a) an employee is not entitled to receive any relevant payments on a normal pay day because of absence from work,
- (b) the cumulative basis would have been used in relation to a payment made on that day,
- (c) the employee does not fall within regulation 64(1) (absence from work due to participation in trade dispute), and
- (d) the employee, or the employee's authorised representative, makes an application in person to the employer.

(2) The employer must—

- (a) comply with regulation 23 (cumulative basis: deduction and repayment) and accordingly repay any tax due to the employee, and
- (b) comply with regulation 66(4) to (6) (completion of deductions working sheet),

as if the pay day were one on which relevant payments of nil had been made.

Trade disputes

- 64.**—(1) This regulation applies if an employee—
- (a) is absent from work because of a trade dispute at the employee's place of work, and
 - (b) is participating or directly interested in the trade dispute.
- (2) The employer must—
- (a) on making any relevant payment, calculate the amount of tax to be deducted or repaid, and
 - (b) comply with paragraphs (5) to (8).
- (3) If no relevant payments are to be made on the normal pay day but the employee's code would be used on the cumulative basis if a relevant payment were made on that day, the employer must—
- (a) calculate, in accordance with regulation 23 (cumulative basis: deduction and repayment) whether any tax is due to be repaid on that day as if it were a day on which relevant payments of nil had been paid, and
 - (b) comply with paragraphs (5) to (8).
- (4) Paragraphs (2) and (3) are subject to paragraphs (9) and (10).
- (5) The employer—
- (a) must not repay any tax due to be repaid until the end of the employee's strike action, but
 - (b) must deduct any tax due to be deducted, less any repayment for the tax year which has not been made.
- (6) The amount of any repayment—
- (a) made at the end of the employee's strike action under paragraph (5)(a), or
 - (b) set against tax due to be deducted under paragraph (5)(b),
- must be reduced by any amount previously set off in accordance with paragraph (5)(b).
- (7) If the absence of an employee extends beyond the end of the tax year, the employer must—
- (a) before 1st June following the end of the tax year, give notice to the employee of the amount of any repayment of tax for the tax year in question calculated in accordance with paragraph (2) which has not been set off against any tax due to be deducted under paragraph (5)(b); and
 - (b) complete the certificate which must be given under regulation 67 (Form P60) and the return which must be sent under regulation 73 (Form P35 and P14) as if that tax had been repaid to the employee.
- (8) If the employer has not made any repayment of tax withheld under paragraph (5) within 42 days after the end of the employee's strike action, the employer must instead immediately pay the tax not repaid to the Inland Revenue, and regulation 69(2) (receipt where requested) applies to that payment.
- (9) An employee from whom a repayment of tax has been withheld in accordance with paragraph (5) may request a benefit officer to certify that—
- (a) section 14 of the Jobseekers Act 1995⁽²⁶⁾, or
 - (b) in Northern Ireland, article 16 of the Jobseekers (Northern Ireland) Order 1995⁽²⁷⁾,
- (no allowance to those involved in trade dispute) does not disqualify the employee from receiving jobseeker's allowance, whether or not the employee is in fact entitled to receive jobseeker's allowance.

⁽²⁶⁾ 1995 c. 18.⁽²⁷⁾ S.I. 1995/2705 (N.I. 15).

(10) If a benefit officer certifies in accordance with paragraph (9), the employer must make such repayment to the employee as may be due.

(11) In this regulation—

“benefit officer” means the appropriate officer—

- (a) of the Department for Work and Pensions or,
- (b) in Northern Ireland, of the Department for Social Development;

“end of the employee’s strike action” means any of the following—

- (a) the employee is no longer absent from work because of the trade dispute,
- (b) the employer ceases to employ the employee,
- (c) the employee has become genuinely employed elsewhere in the occupation which the employee usually follows,
- (d) the employee has become regularly engaged in some other occupation, or
- (e) the employee dies;

“jobseeker’s allowance” has the same meaning as in regulation 148;

“place of work” has the meaning given in section 14(4) of the Jobseekers Act 1995 or, in Northern Ireland, in article 16(4) of the Jobseekers (Northern Ireland) Order 1995.

Repayment if no longer employed

65.—(1) This regulation applies if, in a tax year, a person (“P”)—

- (a) was employed,
- (b) is no longer employed, and
- (c) applies for a repayment of tax.

(2) P must give the Inland Revenue—

- (a) Parts 2 and 3 of Form P45,
- (b) either certificate A or B, depending on P’s circumstances, and
- (c) such evidence of P’s unemployment as the Inland Revenue may require.

(3) Certificate A is one which certifies that P is unemployed and, to the best of P’s knowledge and belief, P—

- (a) will not be a claimant during the period starting with the date on which the application is made and ending at the end of the tax year, and
- (b) will not be employed during that period.

(4) Certificate B is one which certifies that P is unemployed and is not a claimant when the application is made.

(5) On receiving P’s application, the Inland Revenue must make any repayment of tax which is appropriate, having regard to P’s employee’s code and the following information.

(6) If P gives certificate A the information is—

- (a) the total payments to date and the corresponding total tax to date as at the week or month shown in Parts 2 and 3 of Form P45 (or, if lower, the total net tax deducted shown in it),
- (b) any other relevant payments received by P in the tax year to date, and
- (c) any other payments P will receive in the tax year.

(7) If P does not give certificate A the information is—

- (a) the total payments to date and the corresponding total tax to date as at the week or month shown in Parts 2 and 3 of Form P45 (or, if lower, the total net tax deducted shown in it), and
- (b) any other relevant payments received by P in the tax year to date.
- (8) For the purposes of this regulation, “claimant” means a person who is—
 - (a) a claimant as defined by regulation 148 (jobseeker’s allowance), or
 - (b) a claimant in receipt of taxable benefit as defined by regulation 173 (incapacity benefit).

Deductions working sheets

- 66.**—(1) Paragraph (2) applies if a code has been issued to an employer in respect of an employee.
- (2) The employer must, on making a relevant payment to the employee, prepare a deductions working sheet (unless the employer has already done so).
- (3) The employer must record in the deductions working sheet—
- (a) the employee’s name,
 - (b) the employee’s national insurance number, if known,
 - (c) the employee’s code, and
 - (d) the tax year to which the deductions working sheet relates.
- (4) The employer must record in the deductions working sheet in respect of every relevant payment which the employer makes to the employee—
- (a) the date of the payment,
 - (b) the amount of the payment, and
 - (c) the amount of tax, if any, deducted or repaid on making the payment, or to be deducted or accounted for under regulation 62(4) or (5) (notional payments).
- (5) If the employee’s code is used on the cumulative basis, the employer must, in respect of every relevant payment which the employer makes to the employee, either—
- (a) record the following information in the deductions working sheet, or
 - (b) keep such records as enable its production.
- (6) The information is—
- (a) the total payments to date in relation to the date of payment,
 - (b) the total free pay to date or, as the case may be, the total additional pay to date, in relation to that date,
 - (c) the total taxable payments to date in relation to that date,
 - (d) the corresponding total tax to date,
 - (e) if the employee’s code is a K code—
 - (i) the tax due to be deducted at that date (subject to the overriding limit),
 - (ii) the overriding limit, if any, in relation to the payment,
 - (iii) the amount of any tax not deducted at that date because of the overriding limit, and
 - (f) any amount of tax which is not to be repaid because of regulation 64 (trade disputes).
- (7) If the employee’s code is not used on the cumulative basis, the employer must, in respect of every relevant payment which the employer makes to the employee, either—
- (a) record the following information in the deductions working sheet, or
 - (b) keep such records as enable its production.
- (8) The information is—

- (a) the free pay, or, as the case may be, the additional pay for the employee's code,
- (b) the taxable payments, and
- (c) if the employee's code is a K code, the tax due to be deducted and the overriding limit.

Information to employees about payments and tax deducted (Form P60)

67.—(1) Before 1st June following the end of the tax year, an employer must give a certificate (Form P60) to every employee—

- (a) who was in the employer's employment on the last day of the tax year, and
- (b) from whose relevant payments the employer was required to deduct tax at any time during that tax year.

(2) The certificate must show—

- (a) the tax year to which it relates,
- (b) the employer's PAYE reference,
- (c) the employee's name,
- (d) the employee's national insurance number, if known,
- (e) any number used by the employer to identify the employee,
- (f) the total amount of the relevant payments made by the employer to the employee during the tax year in respect of the employment in question,
- (g) the total net tax deducted in relation to those payments, subject to regulation 64(7)(b) (trade disputes),
- (h) the employee's code,
- (i) the employer's name, and
- (j) the employer's address.

(3) In the case of an employee taken into employment after the beginning of the tax year, the certificate must also show—

- (a) any amounts required by regulation 43(9), 52(11), 53(3) or 61(3) to be treated as relevant payments made by the employer to the employee during the tax year,
- (b) any amounts treated as tax deducted by the employer at the end of the tax year by any of those regulations,
- (c) the sum of the figures given under sub-paragraph (a) of this paragraph and paragraph (2)(f),
- (d) the sum of the figures given under sub-paragraph (b) of this paragraph and paragraph (2)(g).

PART 4
PAYMENTS, RETURNS AND INFORMATION
CHAPTER 1
PAYMENT OF TAX AND ASSOCIATED RETURNS

Payment and recovery of tax by employer

Periodic payments to and recoveries from the Revenue

68.—(1) This regulation applies to determine how much an employer must pay or can recover for a tax period.

(2) If A exceeds B, the employer must pay the excess to the Inland Revenue.

(3) But if B exceeds A, the employer may recover the excess either—

- (a) by deducting it from the amount which the employer is liable to pay under paragraph (2) for a later tax period in the tax year, or
- (b) from the Board of Inland Revenue.

(4) In this Regulation—

A is—

- (a) the total amount of tax which the employer was liable to deduct from relevant payments made by the employer in the tax period, plus
- (b) the total amount of tax for which the employer was liable to account in respect of notional payments made by the employer in that period under regulation 62(5) (notional payments);

B is the total amount which the employer was liable to repay in the tax period.

(5) Paragraphs (2) and (3) are subject to regulation 71 (modification in case of trade disputes).

(6) Paragraph (2) is also subject to regulation 78(11) (entitlement to set off excess payments).

Due date and receipts for payment of tax

69.—(1) An employer must pay amounts due under regulation 68(2)—

- (a) within 17 days after the end of the tax period, where payment is made by an approved method of electronic communications, or
- (b) within 14 days after the end of the tax period, in any other case.

(2) The Inland Revenue must give a receipt to the employer for the total amount paid under regulation 68(2) if asked.

(3) But no separate receipt for tax only need be given if a receipt is given for the total amount of tax and any earnings-related contributions (as defined by regulation 1(2) of the Social Security (Contributions) Regulations 2001)(28) paid at the same time.

Quarterly tax periods

70.—(1) This regulation applies, so that the tax period is a tax quarter, if an employer—

- (a) has reasonable grounds for believing that the average monthly amount will be less than £1,500, and
- (b) chooses to pay tax quarterly.
- (2) “The average monthly amount” is the average, for tax months falling within the current tax year, of the amounts found by the formula—
- $$\{P + N - L + S\} \div \{C - SP + CD\}.$$
- (3) In paragraph (2)—
- P is the amount which would be payable to the Inland Revenue under regulation 68 disregarding any WTC adjustment;
- N is the amount which would be payable to the Inland Revenue under the SSCBA and the SSC Regulations disregarding—
- (a) any amount of secondary Class 1 contributions in respect of which liability has been transferred to the employed earner by an election made jointly by the employed earner and the secondary contributor for the purposes of paragraph 3B(1) of Schedule 1 to the SSCBA (transfer of liability to be borne by earner)(**29**); and
- (b) any WTC adjustment;
- L is the amount which would be payable to the Inland Revenue under regulation 39(1) of the Student Loans Regulations (payment of repayments deducted to the Inland Revenue) disregarding—
- (a) the reduction referred to in paragraph (3) of that regulation, and
- (b) any WTC adjustment;
- S is the amount which would be payable by the employer to the Inland Revenue under sections 559 and 559A of ICTA(**30**) (deduction on account of tax etc from payments to certain sub-contractors) and regulation 8 of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993(**31**), disregarding any WTC adjustment;
- C is the amount which the employer would be required to pay to employees by way of tax credit under the WTC Regulations;
- SP is the amount which would be payable by the employer to employees by way of statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay under the SSCBA; and
- CD is—
- (a) if the employer is a company, the amount which others would deduct from payments to it, in its position as a sub-contractor, under section 559 of ICTA (deduction on account of tax etc from payments to certain sub-contractors);
- (b) in any other case, nil.
- (4) In this regulation—
- “employed earner” has the same meaning as in the SSCBA;

(29) Paragraph 3B was inserted in Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) by section 77(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19), and in Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) by section 81(2) of the Child Support, Pensions and Social Security Act 2000.

(30) Section 559 was amended by section 139 of, and paragraph 1 of Schedule 27 to, the Finance Act 1995 (c. 4), section 55(2) of the Finance Act 1998 (c. 36), Part 3(1) of Schedule 40 to the Finance Act 2002 (c. 23), paragraph 58 of Schedule 6 to ITEPA and by S.I. 1989/2405 (N.I. 19); section 559A was inserted by section 40(1) of the Finance Act 2002.

(31) S.I. 1993/743.

“SSCBA” means the Social Security Contributions and Benefits Act 1992⁽³²⁾ or, in Northern Ireland, the Social Security Contribution and Benefits (Northern Ireland) Act 1992⁽³³⁾;

“SSC Regulations” means the Social Security (Contributions) Regulations 2001⁽³⁴⁾;

“Student Loans Regulations” means the Education (Student Loans) (Repayment) Regulations 2000⁽³⁵⁾ or, in Northern Ireland, the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000⁽³⁶⁾;

“WTC adjustment” means an adjustment to the amount in question under regulation 7(2) of the WTC Regulations (funding of payment of working tax credit);

“WTC Regulations” means the Working Tax Credit (Payment by Employers) Regulations 2002⁽³⁷⁾.

Modification of regulation 68 in case of trade dispute

71.—(1) This regulation modifies the amount payable or recoverable by an employer under regulation 68 in cases where regulation 64 (trade disputes) applies—

(a) by providing for the amount which would otherwise be payable by the employer for a tax period to be reduced by an amount of repayments (“R”) that cannot be made to employees in the tax period, and

(b) by providing—

(i) for amounts which would otherwise be payable in later tax periods to be increased, or

(ii) for amounts which would otherwise be recoverable in later tax periods to be reduced, by a total of R.

(2) This regulation applies for consecutive tax periods—

(a) starting with the first tax period at the end of which there is an amount calculated as due to be repaid but which is required to be withheld by regulation 64(5) (tax to be withheld during strike action), and

(b) ending with the next tax period at the end of which no amount is required to be withheld by that regulation.

(3) Column 3 of Table 3 shows the amount payable under regulation 68(2) in the cases set out in column 2 for the first and subsequent tax periods.

Table 3

Modified amount payable under regulation 68

<i>1. Tax period</i>	<i>2. Case</i>	<i>3. Amount payable</i>
First tax period	if B equals or exceeds A	nil
First tax period	any other case	A – B, reduced by P (or by so much of P as reduces the amount payable to nil)
Subsequent tax periods	if B equals or exceeds (A + Q)	nil

⁽³²⁾ 1992 c. 4.

⁽³³⁾ 1992 c. 7.

⁽³⁴⁾ S.I. 2001/1004.

⁽³⁵⁾ S.I. 2000/944.

⁽³⁶⁾ S.R. (N.I.) 2000 No. 121.

⁽³⁷⁾ S.I. 2002/2172.

<i>1. Tax period</i>	<i>2. Case</i>	<i>3. Amount payable</i>
Subsequent tax periods	any other case	$(A + Q) - B$, reduced by P (or by so much of P as reduces the amount payable to nil).

(4) The amount (if any) recoverable under regulation 68(3) must be reduced to the extent that it includes amounts—

- (a) for which reduction was made under paragraph (3) in an earlier tax period, or
- (b) which are otherwise being recovered.

(5) In this regulation—

A is—

- (a) the total amount of tax which the employer was liable to deduct from relevant payments made by the employer in the tax period, plus
- (b) the total amount of tax for which the employer was liable to account in respect of notional payments made by the employer in that period under regulation 62(5) (notional payments);

B is the total amount which the employer is liable to repay in the tax period, not including any amounts—

- (a) for which a reduction was made under paragraph (3) in an earlier tax period; or
- (b) which are being recovered under paragraph (4);

P is the total of amounts calculated as due to be repaid in the tax period but required to be withheld during that tax period by regulation 64(5);

Q is the total of amounts—

- (a) which, because of regulation 64(5)(b), are set off against tax due to be deducted in the tax period, and
- (b) which also, under paragraph (3), have reduced the amount payable in an earlier tax period.

Recovery from employee of tax not deducted by employer

72.—(1) This regulation applies if—

- (a) it appears to the Inland Revenue that the deductible amount exceeds the amount actually deducted, and
- (b) condition A or B is met.

(2) In this regulation—

“the deductible amount” is the amount which an employer was liable to deduct from relevant payments made to an employee in a tax period;

“the amount actually deducted” is the amount actually deducted by the employer from relevant payments made to that employee during that tax period;

“the excess” means the amount by which the deductible amount exceeds the amount actually deducted.

(3) Condition A is that the employer satisfies the Inland Revenue—

- (a) that the employer took reasonable care to comply with these Regulations, and
- (b) that the failure to deduct the excess was due to an error made in good faith.

(4) Condition B is that the Inland Revenue are of the opinion that the employee has received relevant payments knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments.

(5) The Inland Revenue may direct that the employer is not liable to pay the excess to the Inland Revenue.

(6) If a direction is made, the excess must not be added under regulation 185(5) or 188(3)(a) (adjustments to total net tax deducted for self-assessments and other assessments) in relation to the employee.

(7) If condition B is met, tax payable by an employee as a result of a direction carries interest, as if it were unpaid tax due from an employer, in accordance with regulation 82 (interest on tax overdue).

(8) The tax payable carries interest from the reckonable date until whichever is the earlier of—

- (a) the date on which payment is made, or
- (b) the date (if any) immediately before the date on which it begins to carry interest under section 86 of TMA⁽³⁸⁾.

Annual returns of relevant payments and tax

Annual return of relevant payments liable to deduction of tax (Forms P35 and P14)

73.—(1) Before 20th May following the end of a tax year, an employer must deliver to the Inland Revenue a return containing the following information.

(2) The information is—

- (a) the tax year to which the return relates,
- (b) the total amount of the relevant payments made by the employer during the tax year to all employees in respect of whom the employer was required at any time during that year to prepare or maintain deductions working sheets, and
- (c) the total net tax deducted in relation to those payments.

(3) The return must be supported by the following information in respect of each of the employees mentioned in paragraph (2)(b).

(4) The supporting information is—

- (a) the employee's name,
- (b) the employee's address, if known,
- (c) either—
 - (i) the employee's national insurance number, or
 - (ii) if that number is not known, the employee's date of birth, if known, and sex,
- (d) the employee's code,
- (e) the tax year to which the return relates,
- (f) the total amount of the relevant payments made by the employer to the employee during that tax year, and
- (g) the total net tax deducted in relation to those payments.

(5) Paragraphs (2)(c) and (4)(g) are subject to regulation 64(7) (trade disputes).

⁽³⁸⁾ Section 86 was substituted by section 110(1) of the Finance Act 1995 (c. 4) and amended by section 131 of, and paragraph 3 of Schedule 18 to, the Finance Act 1996 (c. 8).

(6) If an employee was taken into employment after the beginning of the tax year, the employer must also provide the total amounts of—

- (a) any amounts required by regulation 43(9), 52(11), 53(3) or 61(3) to be treated as relevant payments made by the employer to the employee during the tax year,
- (b) any amounts treated as tax deducted by the employer by any of those regulations,
- (c) the sum of the figures given under sub-paragraph (a) of this paragraph and paragraph (4)(f),
- (d) the sum of the figures given under sub-paragraph (b) of this paragraph and paragraph (4)(g).

(7) The return must include—

- (a) a statement and declaration containing a list of all deductions working sheets which the employer was required to prepare or maintain at any time during that tax year; and
- (b) a certificate showing—
 - (i) the total net tax deducted or the total net tax repaid in the case of each employee, and
 - (ii) the total net tax deducted or repaid in respect of all the employees, during that tax year.

(8) The statement and declaration and the certificate must be—

- (a) signed by the employer, or
- (b) if the employer is a body corporate, signed either by the secretary or by a director.

(9) Paragraph (8) is subject to regulation 211(5) (authentication in approved manner if return sent electronically).

(10) Section 98A of TMA(39) (special penalties in case of certain returns) applies to paragraph (1).

Annual return of relevant payments not liable to deduction of tax (Form P38A)

74.—(1) Before 20th May following the end of a tax year, an employer must deliver a return to the Inland Revenue in respect of every relevant employee.

(2) The return must contain the following information—

- (a) the employee's name,
- (b) the employee's address, if known,
- (c) the employee's national insurance number, if known,
- (d) the employee's job title or description,
- (e) the tax year to which the return relates,
- (f) the dates during which the employee was employed in the tax year, and
- (g) the total amount of the relevant payments made by the employer to the employee during the tax year.

(3) A "relevant employee" is one—

- (a) to whom relevant payments exceeding the PAYE threshold were made at any time during the tax year,
- (b) who was employed for more than a week, or
- (c) who was paid more than £100 during the tax year.

(39) Section 98A was inserted by section 165(1) of the Finance Act 1989 (c. 26) and amended by paragraph 138 of Schedule 6 to ITEPA.

- (4) But the following are not relevant employees—
- (a) an employee included on a return under regulation 73 (Forms P35 and P14),
 - (b) an employee who has indicated that statement A or statement B (or both) apply on Form P46 (see regulation 46), and to whom the employer has not made relevant payments exceeding the PAYE threshold at any time during that tax year.

Additional return in case of trade dispute

75.—(1) An employer must immediately deliver an additional return to the Inland Revenue on each occasion that—

- (a) the employer has not made any repayment of tax withheld under regulation 64(5) (trade disputes) within 42 days after the end of the employee's strike action, and
 - (b) a return has been made under regulation 73 which, in accordance with regulation 64(7) (b), treats that tax as if it were repaid.
- (2) The return must contain the following information—
- (a) the tax year to which it relates,
 - (b) such information as the Board of Inland Revenue may require for identifying each of the employees in question, and
 - (c) the amount of tax not repaid to each of those employees.
- (3) The return must be accompanied by a statement containing the following information—
- (a) a list of all employees in respect of whom the additional return is made,
 - (b) the amount of tax not repaid to each of those employees,
 - (c) the total tax not repaid by the employer to those employees for that tax year.

Failure to account for deductible tax

Certificate if tax in regulation 73 return is unpaid

- 76.**—(1) Paragraph (2) applies if an employer—
- (a) delivers a return under regulation 73 showing an amount of total net tax deducted by the employer for a tax year, and
 - (b) does not pay that amount to the Inland Revenue before 20th April following the end of the tax year.
- (2) The Inland Revenue may prepare a certificate showing how much of that amount remains unpaid.
- (3) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Return and certificate if tax may be unpaid

- 77.**—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B is met.
- (2) Condition A is that—
- (a) an employer has not paid any tax under regulation 68 for that tax period, and
 - (b) the Inland Revenue are unaware of the amount (if any) which the employer is liable to pay.
- (3) Condition B is that—
- (a) an employer has paid an amount of tax under regulation 68 for that period, but

- (b) the Inland Revenue are not satisfied that it is the full amount which the employer is liable to pay for that period.
- (4) The Inland Revenue may give notice to the employer requiring the employer within 14 days of the issue of the notice to deliver a return showing the amount of tax which the employer is liable to pay under regulation 68 in respect of the tax period.
- (5) If the notice extends to two or more consecutive tax periods in a tax year, this regulation has effect as if they were one tax period.
- (6) On receiving a return made by the employer under paragraph (4), the Inland Revenue may prepare a certificate showing the amount of tax which the employer is liable to pay for the tax period and how much (if any) of that amount remains unpaid.
- (7) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Notice and certificate if tax may be unpaid

78.—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B is met.

- (2) Condition A is that—
 - (a) an employer has not paid any tax under regulation 68 for that tax period, and
 - (b) the Inland Revenue have reason to believe that the employer is liable to pay an amount of tax.
- (3) Condition B is that—
 - (a) an employer has paid an amount of tax under regulation 68 for that tax period, but
 - (b) the Inland Revenue are not satisfied, after seeking the employer's explanation, that it is the full amount which the employer is liable to pay for that period.
- (4) The Inland Revenue, on consideration of the employer's record of past payments, may—
 - (a) specify, to the best of their judgment, the amount of tax which they consider the employer is liable to pay, and
 - (b) serve notice on the employer requiring payment of that amount within 7 days of the issue of the notice ("the notice period").
- (5) If the notice extends to two or more consecutive tax periods in a tax year, this regulation has effect as if they were the latest tax period specified in the notice.
- (6) If, during the notice period, the employer—
 - (a) claims that any payment made in respect of the tax period specified in the notice is the full amount the employer is liable to pay, but
 - (b) does not satisfy the Inland Revenue that this is the case,the employer may require the Inland Revenue to inspect the employer's PAYE records as if the employer had been required to produce those records in accordance with regulation 97 (inspection of employer's PAYE records).
- (7) If there is an inspection by virtue of paragraph (6), regulation 97 applies to that inspection and the notice given by the Inland Revenue under paragraph (4) must be disregarded.
- (8) If the amount of tax specified in the notice, or any part of it, is not paid during the notice period—
 - (a) the amount unpaid is treated as an amount of tax which the employer was liable to pay for that tax period under regulation 68, and
 - (b) the Inland Revenue may prepare a certificate showing how much of that tax remains unpaid.

(9) But paragraph (8) does not apply if during the notice period—

- (a) the employer pays the full amount of tax which the employer is liable to pay under regulation 68 for that tax period, or
- (b) the employer satisfies the Inland Revenue that no amount, or no further amount, is due for that tax period.

(10) Paragraph (11) applies if the employer pays an amount certified under this regulation which exceeds the amount the employer would have been liable to pay in respect of that tax period apart from this regulation.

(11) The employer is entitled to set off the excess against any amount which the employer is liable to pay under regulation 68 for any subsequent tax period in the tax year.

(12) Paragraph (13) applies if the employer—

- (a) delivers the return required by regulation 73(1) after the end of the tax year, and
- (b) pays the total net tax which the employer is liable to pay.

(13) Any excess of tax paid, and not otherwise recovered by set-off in accordance with this regulation, must be repaid.

(14) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Certificate after inspection of PAYE records

79.—(1) This regulation applies if there is an inspection of an employer's PAYE records under regulation 97.

(2) The Inland Revenue may, by reference to the information obtained from the inspection, prepare a certificate showing—

- (a) the amount of tax which it appears that the employer is liable to pay for the tax years or tax periods covered by the inspection; and
- (b) any amount of that tax which remains unpaid.

(3) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Determination of unpaid tax and appeal against determination

80.—(1) This regulation applies if it appears to the Inland Revenue that there may be tax payable for a tax year under regulation 68 by an employer which has neither been—

- (a) paid to the Inland Revenue, nor
- (b) certified by the Inland Revenue under regulation 76, 77, 78 or 79.

(2) The Inland Revenue may determine the amount of that tax to the best of their judgment, and serve notice of their determination on the employer.

(3) A determination under this regulation must not include tax in respect of which a direction under regulation 72(5) has been made; and directions under that regulation do not apply to tax determined under this regulation.

(4) A determination under this regulation may—

- (a) cover the tax payable by the employer under regulation 68 for any one or more tax periods in a tax year, and
- (b) extend to the whole of that tax, or to such part of it as is payable in respect of—
 - (i) a class or classes of employees specified in the notice of determination (without naming the individual employees), or
 - (ii) one or more named employees specified in the notice.

(5) A determination under this regulation is subject to Parts 4, 5 (other than section 55) and 6 of TMA (assessment, appeals, collection and recovery) as if—

- (a) the determination were an assessment, and
- (b) the amount of tax determined were income tax charged on the employer,

and those Parts of that Act apply accordingly with any necessary modifications.

(6) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA(40) (rules for assigning proceedings to General Commissioners), the relevant place for an appeal against a determination under this regulation is the place where the determination was made.

Employee liability if tax unpaid after regulation 80 determination

81.—(1) This regulation applies if—

- (a) any part of the tax determined under regulation 80 is not paid within 30 days from the date on which the determination became final and conclusive, and
- (b) condition A or B is met in relation to an employee.

(2) Condition A is that the Inland Revenue are of the opinion that the employee in respect of whose relevant payments the determination was made has received those payments knowing that the employer has wilfully failed to deduct the amount of tax which should have been deducted from those payments.

(3) Condition B is that the unpaid tax represents an amount for which the employer was required to account under regulation 62(5) (notional payments) in relation to a notional payment to the employee.

(4) The Inland Revenue may direct that the employer is not liable to pay the amount of tax which appears to them should have been but was not—

- (a) deducted on making those relevant payments, or
- (b) accounted for under regulation 62(5).

(5) If a direction is made, the amount of tax must not be added under regulation 185(5) or 188(3) (a) (adjustments for self-assessments and other assessments) in relation to the employee.

(6) Tax payable by an employee as a result of a direction carries interest, as if it were unpaid tax due from an employer, in accordance with regulation 82 (interest on tax overdue).

(7) The tax payable carries interest from the reckonable date until whichever is the earlier of—

- (a) the date on which payment is made, or
- (b) the date (if any) immediately before the date on which it begins to carry interest under section 86 of TMA(41).

Interest

Interest on tax overdue

82.—(1) This regulation applies if an employer has not paid to the Inland Revenue the total net tax payable in respect of a tax year by the reckonable date.

(2) Any unpaid tax carries interest at the prescribed rate from the reckonable date until payment (“the interest period”).

(40) Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8) and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

(41) Section 86 was substituted by section 110(1) of the Finance Act 1995 (c. 4) and amended by section 131 of, and paragraph 3 of Schedule 18 to, the Finance Act 1996 (c. 8).

(3) Paragraph (2) applies even if the reckonable date is a non-business day as defined by section 92 of the Bills of Exchange Act 1882(42).

(4) But paragraph (2) does not apply to any tax which the employer does not have to pay as a result of a direction made under regulation 72(5) or 81(4).

(5) Any change made to the prescribed rate during the interest period applies to the unpaid tax from the date of the change.

(6) The “total net tax payable” in respect of a tax year is—

- (a) the total of any amounts payable by the employer under regulation 68 for tax periods in the tax year, less
- (b) the total of any amounts recoverable from the Board of Inland Revenue under regulation 68(3)(b) for those tax periods.

(7) The “prescribed rate” means the rate applicable under section 178 of the Finance Act 1989(43) for the purposes of section 86 of TMA.

(8) The “reckonable date” means—

- (a) 17 days after the end of the tax year, if payment is made using an approved method of electronic communications, or
- (b) 14 days after the end of the tax year, in any other case.

Interest on tax overpaid

83.—(1) This regulation applies if tax is repaid to an employer after the end of the tax year in respect of which the tax was paid.

(2) The tax repaid carries interest at the prescribed rate from the later of—

- (a) 14 days after the end of the tax year, and
- (b) the date on which the payment of tax for that tax year was made,

until the order for the repayment is issued (“the interest period”).

(3) Any change made to the prescribed rate during the interest period applies to the tax repaid from the date of the change.

(4) “The prescribed rate” means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA(44).

Recovery

Recovery of tax and interest

84.—(1) In this regulation, “the unpaid amount” means any amount of tax or interest which—

- (a) an employer is liable to pay under regulation 76(2), 77(6), 78(8), 79(2)(b) or 82(2);
- (b) an employee is liable to pay under regulation 72(7) or regulation 81(6).

(42) 1882 c. 61; section 92 was amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

(43) 1989 c. 26, to which there are amendments not relevant to these Regulations.

(44) Section 824 was amended by paragraph 7 of Schedule 13 to the Finance Act 1988 (c. 39), sections 110(5), 111(4), 158(2) and 179(1) of, and Parts 4, 8 and 10 of Schedule 17 to, the Finance Act 1989 (c. 26), paragraph 14(52) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 41 of Schedule 19 to the Finance Act 1994 (c. 9), section 92 of the Finance Act 1997 (c. 16), section 41 of the Finance Act 1999 (c. 16), section 90 of the Finance Act 2001 (c. 9) and paragraph 104 of Schedule 6 to ITEPA.

(2) Part 6 of TMA (collection and recovery) applies to the recovery of the unpaid amount as if it were income tax charged on the employer or employee (as the case may be) but with the modification indicated in paragraph (3).

(3) Summary proceedings for the recovery of the unpaid amount may be brought in England and Wales or Northern Ireland at any time before the end of the period which applies for the purposes of the regulation in question, as shown in Table 4.

Table 4

Period for summary proceedings for the recovery of unpaid amount

<i>1. Regulation</i>	<i>2. Period</i>
Regulation 76(2)	(a) (a) 12 months after the date by which the statement specified in regulation 73(7) must be delivered, or (b) if that statement is delivered after that date, 12 months after its delivery.
Regulations 77(6), 78(8) and 82(2)	(a) (a) 12 months after the date on which the unpaid amount became payable, or (b) if a return has been required under regulation 77, 12 months after the date of the delivery of that return to the Inland Revenue.
Regulation 79(2)(b)	12 months after the date of the certificate.
Regulations 72(7) and 81(6)	12 months after the date on which the unpaid amount became payable.

(4) Proceedings against an employer may be brought for the recovery of the unpaid amount without distinguishing the amounts which the employer is liable to pay in respect of each employee and without specifying the employees in question.

(5) The unpaid amount is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of TMA(45) (magistrates' courts, county courts and inferior courts in Scotland).

(6) But paragraphs (4) and (5) do not prevent the bringing of separate proceedings for the recovery of each of the amounts which the employer is liable to pay for any tax period in respect of each of the employees.

(45) Section 65 was amended by section 57(1) of the Finance Act 1984 (c. 43) and paragraph 30 of Schedule 19 to the Finance Act 1998 (c. 36); section 66 was amended by section 57(2) of the Finance Act 1984, section 89(1) of the Finance Act 2001 (c. 9), S.I. 1980/397 (N.I. 3) and S.I. 1991/724; section 67 was amended by section 58 of the Finance Act 1976 (c. 40), section 156 of the Finance Act 1995 (c. 4) and section 89(1) of the Finance Act 2001.

CHAPTER 2

OTHER RETURNS AND INFORMATION

*Returns involving PAYE income other than payments***Employers: annual return of other earnings (Forms P11D and P9D)**

85.—(1) Before 7th July following the end of a tax year, the employer must provide the Inland Revenue—

- (a) with the information listed in regulation 86 for each employee, and
- (b) with the additional information listed in regulation 87 for each employee whose employment is subject to the benefits code.

(2) At the same time and in the same manner as the employer provides that information, the employer must also provide a declaration stating that—

- (a) all information required to be provided has been provided, and
- (b) the information is complete and accurate to the best of the employer's knowledge and belief.

(3) For the purposes of this regulation an employment is “subject to the benefits code” if, for the purposes of the benefits code in ITEPA, it is a taxable employment under Part 2 of ITEPA (as defined by section 66(3) of ITEPA) which is not an excluded employment under section 216(1) of ITEPA (lower-paid employment and certain types of company director).

Information employer must provide for each employee

86.—(1) Particulars of the following information must be provided in the case of each employee—

- (a) any earnings which the employee receives from the employer or related third party otherwise than in money, including the amount of those earnings;
- (b) any payments made on behalf of the employee by the employer or related third party and not repaid, including the amounts;
- (c) any non-cash voucher provided by the employer or related third party by reason of which the employee is treated by section 87(1) of ITEPA (benefit of non-cash voucher treated as earnings) as receiving earnings in that tax year, including the amount of those earnings;
- (d) any use of a credit-token provided by the employer or related third party by reason of which the employee is treated by section 94(1) of ITEPA (benefit of credit-token treated as earnings) as receiving earnings in that tax year, including the amount of those earnings;
- (e) the due amount in respect of any notional payment where that amount is treated by section 222 of ITEPA⁽⁴⁶⁾ (payments on account of tax where deduction not possible) as earnings of the employee received in that tax year;
- (f) any living accommodation which has been provided for the employee or a member of the employee's family or household by the employer or related third party, including the amount that is treated as earnings for that tax year by section 102 of ITEPA (benefit of living accommodation treated as earnings);
- (g) any earnings consisting of the amount by which the value of the exemption under subsection (2) of section 287 of ITEPA (limit on exemption of removal expenses and

⁽⁴⁶⁾ Section 222 was amended by section 144 of the Finance Act 2003 (c. 14).

removal benefits) exceeds the limit specified in subsection (1) of that section and having effect in relation to the employee.

(2) Particulars of removal expenses and removal benefits to which section 271 of ITEPA (limited exemption of removal benefits and expenses) applies are required—

- (a) only under paragraph (1)(g), and
- (b) only to the extent that they exceed the limit in section 287(1) of ITEPA which applies to the change of residence of the employee in question.

(3) In the case of any earnings relating to business entertainment, as defined by section 577 of ICTA(47), the employer must also inform the Inland Revenue whether the amount of the earnings has been or will be disallowed as a deduction or inclusion as mentioned in section 577(1)(a) of that Act in any tax computation relating to the trade, business, profession or vocation of the employer.

(4) “Related third party” means a person making payments or providing benefits to an employee, if the making or provision of the payments or benefits by that person has been arranged, guaranteed or in any way facilitated by the employer.

Information employer must also provide for benefits code employees

87.—(1) Particulars of the following information must also be provided in the case of each employee whose employment is subject to the benefits code—

- (a) any payments made by the employer or related third party to the employee by reason of the employment in respect of expenses;
- (b) any sums put by the employer or related third party at the disposal of the employee by reason of the employment and paid away by the employee;
- (c) any benefits provided by the employer or related third party for the employee such as give rise to any amount treated by Chapters 6 to 10 of Part 3, and section 223, of ITEPA(48) (cars and vans, loans, shares, other benefits and payments on account of director’s tax) as earnings of the employee received in that tax year, including the amount of those earnings.

(2) Particulars are not required under paragraph (1) of removal expenses and removal benefits to which section 271 of ITEPA (limited exemption of removal benefits and expenses) applies (as to which see regulation 86(2)).

(3) In the case of any earnings relating to business entertainment, as defined by section 577 of ICTA, the employer must also inform the Inland Revenue whether the amount of the earnings has been or will be disallowed as a deduction or inclusion as mentioned in section 577(1)(a) of that Act in any tax computation relating to the trade, business, profession or vocation of the employer.

(4) “Related third party” has the meaning given in regulation 86(4).

(5) Regulation 85(3) (meaning of employment “subject to benefits code”) applies for the purposes of this regulation.

Annual return of other earnings: amounts

88.—(1) Paragraph (2) applies if an employer is required by regulations 85 to 87 to provide an amount which is or is treated as earnings.

(2) The employer must make all deductions and other adjustments which the employer is able to show, by reference to information in the employer’s possession or otherwise available to the

(47) Section 577 was amended by Part 4 of Schedule 14 to the Finance Act 1988 (c. 39), paragraph 1 of Schedule 7 and Part 3(4) of Schedule 27 to the Finance Act 1998 (c. 36), paragraph 51 of Schedule 2 to the Capital Allowances Act 2001 (c. 2), section 73 of the Finance Act 2001 (c. 9) and paragraph 62 of Schedule 6 to ITEPA.

(48) Relevant amendments were made to Chapters 8 and 9 of Part 3 of ITEPA by paragraphs 22 and 23 of Schedule 22 to the Finance Act 2003 (c. 14).

employer, are authorised or required by Part 3 of ITEPA (earnings and benefits etc treated as earnings).

Annual return of other earnings: exclusion for notional payments

89. The employer is not required to provide particulars in the return under regulation 85 of any notional payment which is a relevant payment made by the employer to the employee (as particulars of it may be required under regulation 73 or 74 (annual returns of relevant payments)).

Quarterly return if a car becomes available or unavailable (Form P46 (Car))

90.—(1) This regulation applies if—

- (a) section 120 of ITEPA (benefit of car treated as earnings) treats the benefit of a car as giving rise to an amount as earnings of an employee received in a tax year, and
- (b) one or more of the following occurs in a tax quarter—
 - (i) the car becomes available;
 - (ii) the car becomes unavailable;
 - (iii) the car is available and the employee's employment becomes subject to the benefits code (as defined by regulation 85(3)).

(2) The employer must provide the Inland Revenue with the following information in respect of the employee not later than 28 days after the end of the tax quarter.

(3) The information is—

- (a) the employee's name,
- (b) the employee's national insurance number, if known,
- (c) details of the car in question,
- (d) the interim sum determined at step 4 of section 121(1) of ITEPA (method of calculating cash equivalent of benefit of a car),
- (e) any capital sum contributed by the employee to expenditure on the provision of the car or on any qualifying accessory which is taken into account in so determining the interim sum in respect of the car,
- (f) any amount which, as a condition of the car being available for the employee's private use, the employee is required to pay in the tax year concerned for that use (whether by way of deduction from relevant payments or otherwise),
- (g) whether any fuel is provided for private use.

(4) In this regulation—

“available” and “unavailable” are to be read in accordance with sections 116(1) and 143(2) of ITEPA (meaning of when car is available and unavailable to employee);

“qualifying accessory” has the meaning given in section 125 of ITEPA (meaning of accessory etc).

Termination awards: information to be provided

91.—(1) Before 7th July following the end of the tax year, an employer must, in respect of each employee who received a termination award, provide the Inland Revenue with the information specified in paragraph (3) relating to that award.

(2) “Termination award” means an award consisting of payments combined with other benefits, or consisting solely of other benefits—

- (a) which were awarded in that tax year in connection with the termination of the employee's employment with the employer, or any change in the duties of or earnings from that employment,
 - (b) which when provided (whether in that or a subsequent tax year) would constitute payments and other benefits received to which Chapter 3 of Part 6 of ITEPA applies (payments and benefits on termination of employment etc), and
 - (c) the total amount of which is estimated by the employer to exceed £30,000, when aggregated with other payments and other benefits provided or to be provided (whether in that or a subsequent tax year) in respect of the same person as mentioned in section 404(1) of ITEPA (aggregation of payments in respect of other related employments).
- (3) The information to be provided is—
- (a) the total amount of the payments and other benefits awarded;
 - (b) the total amount of the payments made in that tax year in connection with the award;
 - (c) details of the non-cash benefits provided in that tax year in connection with the award, other than benefits previously contained in a return for that tax year under regulation 85, and the total amount of their amounts calculated in accordance with section 415(2) of ITEPA (valuation of benefits);
 - (d) the estimated total number of the tax years in which payments and non-cash benefits are to be provided in connection with the award and, if the duration of any of those payments and non-cash benefits is capable of being reduced in certain circumstances, details of those circumstances;
 - (e) the estimated total amount of the payments to be made in subsequent tax years in connection with the award;
 - (f) a description of each of the other benefits to be provided in subsequent tax years in connection with the award, and the terms of their provision.
- (4) In calculating the cash equivalents of non-cash benefits for the purposes of this regulation, the employer must make all deductions and other adjustments which the employer is able to show, by reference to information in the employer's possession or otherwise available to the employer, are authorised or required by any of the provisions of the benefits code as applied by section 415 of ITEPA.
- (5) In calculating the total amount of payments and other benefits for the purposes of paragraphs (2)(c) and (3)(a), the employer—
- (a) must have regard to the provisions of Chapter 3 of Part 6 of ITEPA,
 - (b) must take into account the matters referred to in paragraph (3)(d),(e) and (f), and
 - (c) in valuing the amount of non-cash benefits for future tax years in connection with the award, must assume that the provisions of ITEPA relating to those benefits will remain unchanged with respect to those years.
- (6) Information required to be provided by an employer in accordance with paragraphs (1) and (3) may be provided after the termination award is made but before the end of the tax year in which it is made.
- (7) If information is provided in accordance with paragraph (6), paragraph (3)(b) and (c) have effect, so far as concerns the providing of information relating to the tax year, as if they required the amounts and benefits there specified to be estimated by the employer as accurately as possible.
- (8) This regulation is subject to regulation 93 (return if more than one employer).
- (9) In this regulation and regulations 92, 93 and 96 (further provisions about termination awards)
-

“employee” includes a former employee; and

“employer” includes a former employer.

Termination awards: return if award changes

92.—(1) Paragraph (3) applies if—

(a) information has not been provided by the employer under regulation 91(1) solely because either—

(i) the total amount of payments and other benefits awarded in the tax year in respect of the employee is estimated in accordance with regulation 91(2)(c) not to exceed £30,000, or

(ii) the award made in the tax year consisted of payments only, and

(b) there is a change in the award in a subsequent tax year.

(2) “Change in the award” means—

(a) that there is a change in—

(i) the amount of the payments awarded, or

(ii) the nature and amounts of the other benefits awarded,

so that the total amount of those payments and other benefits is estimated in accordance with regulation 91(2)(c) to exceed £30,000; or

(b) that the nature of the award is changed so that it consists—

(i) of payments combined with other benefits, or

(ii) solely of other benefits,

estimated in accordance with regulation 91(2)(c) to exceed £30,000.

(3) The employer must, before 7th July following the tax year in which the change in the award occurred, provide the Inland Revenue with the information specified in regulation 91(3) with respect to those payments and other benefits.

(4) Paragraph (5) applies if, after the employer has provided information in accordance with regulation 91(1) or paragraph (3) above, there is a material change—

(a) in the amount of the payments awarded, or

(b) in the nature and amounts of the other benefits awarded,

in relation to the employee.

(5) The employer must, before 7th July following the end of the tax year in which the material change occurred, give details of the material change to the Inland Revenue.

(6) For the avoidance of doubt, an employer is not required to provide details under this regulation of a change which arises solely because of amendments to the provisions of ITEPA which relate to non-cash benefits.

(7) This regulation is subject to regulation 93 (return if more than one employer).

Termination awards: return if more than one employer

93.—(1) This regulation applies if the payments and other benefits aggregated in accordance with regulation 91(2)(c) include amounts in respect of different employments with more than one employer.

(2) The person who must provide information to the Inland Revenue under regulation 91 or 92, or to the employee under regulation 96, is the employer providing the greatest amount of payments and other benefits so aggregated.

Information to be given to employees

Employers: information to employees of other earnings (Forms P11D and P9D)

94.—(1) Before 7th July following the end of a tax year, the employer must give a statement to every current employee in respect of whom particulars are to be provided under regulation 85(1) by the employer for that tax year.

(2) The statement must contain the particulars provided under regulations 86 and 87 in so far as they relate to the employee.

(3) If a person who was a current employee ceases to be an employee at any time before 7th July following the end of the tax year, the statement is given to the employee if it is sent or delivered to, or left at, that person's usual or last known address.

(4) A former employee in respect of whom particulars are to be provided under regulation 85(1) by the employer for a tax year may by notice require the employer to give the statement specified in paragraph (2) to that former employee—

- (a) before 7th July following the end of the tax year, or
- (b) within 30 days of receiving the notice,

whichever is the later.

(5) The notice may be given to the employer at any time up to 3 years after the end of the tax year.

(6) A former employee who has received a statement from the employer under paragraph (4) in respect of a tax year may not require a further statement from the employer under that paragraph in respect of the same tax year.

(7) In this regulation—

“current employee” means a person who was an employee on 5th April in the tax year to which the particulars provided under regulation 85(1) relate;

“former employee” means a person who was an employee during a part of the tax year to which the particulars provided under regulation 85(1) relate, but who was no longer an employee on 5th April in that tax year.

Third parties: information to employees of other earnings

95.—(1) This regulation applies if a person (“the third party”) has, in a tax year—

- (a) made any unrelated payments to, or on behalf of, another person's employee, or
- (b) provided any unrelated benefits to, or in respect of, another person's employee.

(2) Before 7th July following the end of the tax year, the third party must give the employee a statement containing such of the particulars specified by regulations 86 and 87 as relate to the unrelated payments or unrelated benefits.

(3) A benefit or payment is “unrelated” if—

- (a) the employee's employer is not required to provide particulars about it under regulation 85(1), and
- (b) the third party would have been required to provide particulars about it under regulation 85(1) had the third party been the employee's employer.

Termination awards: information to employees

96.—(1) This regulation applies if an employer is required to provide the information specified in regulation 91(3) to the Inland Revenue by—

- (a) regulation 91(1) (termination award), or
- (b) regulation 92(3) (change in termination award).

(2) The employer must also give a copy of that information to the employee before 7th July following the end of the tax year.

(3) A copy of the information is given to the employee if it is sent or delivered to, or left at, the employee's usual or last known address.

(4) As to the person who is the employer in cases where there is more than one employer, see regulation 93.

CHAPTER 3**PAYE RECORDS****Inspection of employer's PAYE records**

97.—(1) Whenever required do so by an authorised officer of the Board, an employer must produce to that officer all PAYE records, or such PAYE records as may be specified by the officer, for inspection at the prescribed place and at such time as that officer may reasonably require.

(2) "PAYE records" means the following documents and records—

- (a) all wages sheets, deductions working sheets, documents completed under regulation 46 (Form P46) (other than those which the employer has sent to the Inland Revenue), and other documents and records relating to—
 - (i) the calculation of the PAYE income of the employees,
 - (ii) relevant payments to the employees, or
 - (iii) the deduction of tax from, or accounting for tax in respect of, such payments, and
- (b) all documents and records relating to any information which an employer is required to provide to the Inland Revenue under regulation 85 (Forms P11D and P9D).

(3) "The prescribed place" means such place in the United Kingdom as the employer and the authorised officer may agree upon, or in the absence of agreement—

- (a) the place in the United Kingdom at which the PAYE records are normally kept, or
- (b) if there is no such place, the employer's principal place of business in the United Kingdom.

(4) The authorised officer may—

- (a) take copies of, or make extracts from, any document produced for inspection in accordance with paragraph (1);
- (b) remove any document so produced if it appears to the officer to be necessary to do so, at a reasonable time and for a reasonable period.

(5) If any document is removed in accordance with paragraph (4)(b), the authorised officer must provide—

- (a) a receipt for the document, and
- (b) a copy of the document, free of charge, to the person by whom it was produced or caused to be produced, within 7 days of that person requesting a copy, if the document is reasonably required for the proper conduct of a business.

(6) If a lien is claimed on a document produced in accordance with paragraph (1), the removal of the document under paragraph (4)(b) is not to be regarded as breaking the lien.

(7) If records are maintained by computer, the person required to make them available for inspection must provide the authorised officer with all facilities necessary for obtaining information from them.

(8) For the purposes of this regulation, an employer must keep, for not less than 3 years after the end of the tax year to which they relate, all PAYE records which are not required to be sent to the Inland Revenue by other provisions of these Regulations.

PART 5

EMPLOYERS

Special arrangements

Multiple PAYE schemes

98.—(1) An employer may elect, for the purposes of these Regulations, to be treated as different employers in relation to different groups of employees.

(2) Where the employer makes an election, these Regulations apply as if—

- (a) in respect of each group the employer were a different employer;
- (b) each group constituted all of the employer's employees;
- (c) each group were employed in a separate undertaking from the others; and
- (d) an employee who has moved from one group to another has left one employment and started employment with a new employer.

(3) While an election is in force, an employer must allocate any new employees to one of the groups.

(4) An election must be made by notice to the Inland Revenue containing—

- (a) such information as may be necessary to identify the groups of employees, and
- (b) a certificate that each employee falls into one of the groups.

(5) An employer must, subject to paragraph (6), make an election before the beginning of the tax year for which it is to have effect.

(6) An employer who acquires the whole or a part of any business of another employer may, within 90 days of the acquisition, elect—

- (a) to be treated as a different employer in relation to the acquired employees, or two or more different employers in relation to groups of the acquired employees, whether or not an election is already in force in respect of the existing employees, or
- (b) to add some or all of the acquired employees to existing groups of employees in respect of whom an election is already in force,

and such an election has effect for the tax year in which the acquisition takes place.

(7) In paragraph (6)—

“business” includes any trade, concern or undertaking;

“acquired employee” means an employee who was employed in the acquired business.

(8) An election continues in effect until revoked by a notice given to the Inland Revenue.

(9) A notice of revocation must be given before the beginning of the tax year for which the election is to be revoked, but the revocation of an election does not prevent the making of a new election for that or a later tax year.

(10) An election which has not yet come into effect may be revoked at any time before the beginning of the tax year for which it is to have effect.

(11) This regulation is subject to regulation 99.

Multiple PAYE schemes: election made for improper purpose ineffective

99.—(1) An election made under regulation 98 must be disregarded if the Inland Revenue—

- (a) issue a notice to the employer stating that it appears to them that the election is made wholly or mainly for an improper purpose (“an improper purpose notice”), and
- (b) issue the improper purpose notice within 60 days of the making of the election.

(2) An election is made for an “improper purpose” if it is made for the purpose of—

- (a) avoiding the requirement imposed by regulation 199 (large employers required to make specified payments electronically),
- (b) avoiding the requirement imposed by regulation 205 (mandatory use of electronic communications), or
- (c) receiving an incentive payment under the Income Tax (Incentive Payments for Voluntary Electronic Communication of PAYE Returns) Regulations 2003⁽⁴⁹⁾.

(3) An employer may appeal against an improper purpose notice by giving notice to the Inland Revenue within 30 days of the issue of the improper purpose notice.

(4) The grounds of appeal are—

- (a) that the election was not made wholly or mainly for an improper purpose, or
- (b) that the improper purpose notice was not issued within 60 days of the election.

(5) If the appeal is successful the improper purpose notice must be withdrawn.

(6) Regulation 217 (appeals: supplementary provisions) applies to appeals under this regulation.

Tips: special arrangements

100.—(1) This regulation applies if an organised arrangement exists for tips to be shared among employees by a person (“T”) who is not the principal employer.

(2) On becoming aware of the existence of an arrangement, the principal employer must notify the Inland Revenue about the arrangement giving T’s name, if known.

(3) For the purposes of these Regulations—

- (a) every payment made to an employee by way of the employee’s share of tips by T (including the retention by T of T’s own share if T is also an employee) is regarded as a relevant payment by T; and
- (b) to the extent of any such payment, T is regarded as the employer.

(4) But if in any case the Inland Revenue are satisfied that T has failed to comply with any of the requirements of these Regulations and they so direct, then—

- (a) any tips paid to T through the principal employer for sharing among the employees are to be dealt with in accordance with paragraph (5), and

(49) S.I. 2003/2495.

- (b) any other tips may be taken into account by the Inland Revenue under regulation 14(1)(b) in determining the code for each employee.
- (5) If this paragraph applies—
 - (a) the principal employer is treated as the employer for the purposes of these Regulations in relation to the tips;
 - (b) T must, before the principal employer pays any tips to T, give the principal employer such particulars of every payment by way of the sharing of tips to be made to an employee as may be necessary to enable the principal employer to comply with these Regulations;
 - (c) the principal employer must, on making any payment of tips to T, deduct or repay tax in accordance with these Regulations in respect of the amount of such tips to be paid to each employee, and notify T of each amount so deducted or repaid.
- (6) Paragraph (2) does not apply if the arrangement came into existence before 6th April 2004.
- (7) In this regulation—
 - “the principal employer” means the person under whose general control and management the employees work;
 - “tips” means gratuities and service charges.

Death of employer and succession

Death of employer

- 101.**—(1) This regulation applies if an employer dies.
- (2) Anything which the employer would have been liable to do under these Regulations must be done by the employer’s personal representatives.
- (3) But if the employer made payments on behalf of another person (“the principal”), anything which the employer would have been liable to do under these Regulations in respect of or in connection with those payments must be done by the principal.

Succession to a business etc

- 102.**—(1) This regulation applies if there is a change in an employee’s employer while the employee remains in employment in the same business.
- (2) This regulation also applies if there is a change in the pension payer who pays a pension to a pensioner.
- (3) The change is not to be treated as a cessation of employment for the purposes of regulation 36 (cessation of employment: Form P45).
- (4) The new employer is, in relation to any matter arising after the change, liable to do anything which the former employer would have been liable to do under these Regulations if the change had not taken place.
- (5) Paragraph (4) is subject to paragraphs (6) and (7) and regulation 104 (succession to a business: trade disputes).
- (6) The new employer is not liable for the payment of any tax which was deductible from relevant payments made to the employee—
 - (a) before the change took place, unless those payments were made by the new employer, or
 - (b) by the former employer after the change took place.

(7) The new employer is not liable for the payment of any tax which was to be deducted or accounted for in accordance with regulation 62(4) or (5) (notional payments) in respect of notional payments made to the employee—

- (a) before the change took place, unless those payments were made by the new employer, or
- (b) by the former employer after the change took place.

(8) The former employer must give the new employer any particulars which the new employer needs in order to comply with this regulation.

(9) In paragraph (1), “business” includes any trade, concern or undertaking.

Death and succession

103.—(1) Regulation 101 (death of employer) does not affect the operation of regulation 102 (succession to a business etc) for the purposes of which the deceased employer’s personal representative or the principal may also be the new employer.

(2) But paragraph (3) applies where a person (“P”) is both the new employer and also the deceased employer’s personal representative or the principal.

(3) Paragraphs (6) and (7) of regulation 102 (new employer not liable for certain payments of tax) do not apply to P in P’s capacity as personal representative or principal.

(4) “Principal” has the same meaning as in regulation 101.

Succession to a business: trade disputes

104.—(1) This regulation applies if a trade dispute began, but did not end, before a change to which regulation 102 (succession to a business etc) applies took place.

(2) The former employer must comply with regulations 64(8) (trade disputes: payments to Revenue) and 75 (additional return in case of trade dispute) as though the time limit of 42 days ran out on the date on which the change took place.

(3) The new employer is liable to repay, in accordance with regulation 64, any tax that was withheld in the tax year in which the change took place by the former employer.

(4) The new employer may recover from the Board of Inland Revenue an amount repayable under paragraph (3), as if it were an amount recoverable under regulation 68(3)(b) (periodic payments to and recoveries from Revenue).

(5) But any amount recovered under paragraph (4) must be ignored when determining how much the new employer must pay or can recover under regulation 68.

PART 6

PAYE SETTLEMENT AGREEMENTS

Making and effect of PSA

Inland Revenue and employer may make PSA

105.—(1) The Inland Revenue and an employer may agree that paragraph (2) applies in respect of income tax on qualifying general earnings of the employer’s employees for a tax year.

(2) In relation to qualifying general earnings included in the agreement, the employer is—

- (a) accountable to the Board of Inland Revenue in accordance with the terms of the agreement and this Part, and
- (b) not accountable in accordance with the rest of these Regulations.
- (3) Such an agreement is referred to as a PAYE settlement agreement (“PSA”).

Qualifying general earnings

106.—(1) Qualifying general earnings are those general earnings which meet conditions A and B.

(2) Condition A is that the general earnings consist of—

- (a) taxable benefits provided or made available by reason of employments with the employer, or
- (b) expenses paid to persons holding those employments.

(3) Condition B is that the employer and the Inland Revenue agree that the general earnings are—

- (a) minor, as regards the amount of the sums paid or the type of benefit provided or made available,
- (b) irregular, as regards the frequency in which, or the times at which, the sums are paid or the benefit is provided or made available,
- (c) paid in circumstances where deduction of tax by reference to the tax tables is impracticable, or
- (d) in the case of a benefit provided or made available, shared between employees so that apportionment of the benefit between the employees is impracticable.

(4) “Taxable benefit”, in relation to an employee, means any benefit provided or made available, other than in the form of a payment of money, to the employee or to a person who is a member of the employee’s family or household.

(5) General earnings to which regulation 112(2)(a) or (b) (pre-agreement general earnings etc) apply are not qualifying general earnings.

Effect of PSA

107.—(1) Qualifying general earnings included in the PSA are treated as excluded from an employee’s income for the purposes of determining the amount of the employee’s liability to income tax for the tax year to which the PSA relates.

(2) But this does not affect—

- (a) the chargeability of those qualifying general earnings to income tax, or
- (b) the employer’s liability under the PSA to account for income tax in respect of those qualifying general earnings.

(3) Sums in respect of income tax for which an employer is accountable to the Board of Inland Revenue under a PSA are not to be treated, for the purposes of these Regulations, as tax deducted from relevant payments.

(4) An employee has no right to be treated as having paid tax in respect of sums for which the employer is accountable under a PSA, and accordingly is not entitled to claim or receive any refund of tax paid by the employer under the PSA.

(5) An employee must, subject to paragraph (6), be treated as relieved from any obligations under the Income Tax Acts—

- (a) to keep records containing information relating to qualifying general earnings included in a PSA, or

- (b) to deliver returns in respect of those qualifying general earnings.
- (6) Paragraph (5) does not apply for the purposes of the obligations imposed on the employer under regulation 117 (inspection of PSA records).
- (7) Qualifying general earnings comprised in a PSA are not to be included—
 - (a) in a return by the employer under regulation 73, 74, or 75 (returns of relevant payments and tax deducted), nor
 - (b) in particulars provided by the employer under regulation 85 (annual return of other earnings (Forms P11D and P9D)).

Payment of tax under PSA

Calculation of tax payable under PSA

108.—(1) A PSA must provide for the sums in respect of income tax for which an employer is to be accountable to the Board of Inland Revenue under the PSA—

- (a) to be computed in accordance with the factors specified in paragraph (2), and
 - (b) to be comprised of the amounts specified in paragraph (3).
- (2) The factors are—
- (a) in the case of qualifying general earnings comprising sums paid in respect of expenses, the estimated aggregate amount of such payments on which income tax is chargeable, reduced by such amount (if any) as would have been deductible if the qualifying general earnings had not been included in the PSA;
 - (b) in the case of qualifying general earnings comprising benefits provided or made available, the estimated aggregate amount of the cash equivalents and other amounts on which income tax is chargeable, reduced by such amount (if any) as would have been deductible if the qualifying general earnings had not been included in the PSA;
 - (c) the total number of employees in receipt of qualifying general earnings comprised in the PSA;
 - (d) the number of those employees respectively chargeable to income tax—
 - (i) only at the starting rate for the tax year to which the PSA relates,
 - (ii) at both the starting rate and the basic rate for that tax year, and
 - (iii) at the starting rate, the basic rate and the higher rate for that tax year;
 - (e) such other matters as are agreed by the Inland Revenue and the employer to be relevant in relation to the qualifying general earnings comprised in the PSA.
- (3) The amounts specified for the purposes of paragraph (1)(b) are—
- (a) an amount equal to income tax on the aggregate of the amounts computed in accordance with paragraph (2)(a) and (b), calculated so as to take account of the factor specified in paragraph (2)(d); and
 - (b) a further amount reflecting an estimate of the income tax on the benefit to the employees of having no tax liability on the qualifying general earnings included in the PSA.

Payment of tax and recovery proceedings

109.—(1) The employer must pay to the Inland Revenue by the due date the aggregate amount for which the employer is accountable to the Board of Inland Revenue under a PSA.

- (2) “The due date” means 19th October following the end of the tax year to which the PSA relates.

(3) Part 6 of TMA (collection and recovery) applies to the recovery of the aggregate amount or any part of it (“the amount of tax”) as if it were income tax charged on the employer.

(4) But summary proceedings for the recovery of the amount of tax may be brought in England, Wales or Northern Ireland at any time before the expiry of 12 months beginning with the due date.

(5) Proceedings may be brought for the recovery of the amount of tax without distinguishing the amounts which the employer is liable to pay in respect of each employee under the PSA and without specifying the employees in question.

(6) The amount of tax is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of TMA(50) (magistrates' courts, county courts and inferior courts in Scotland).

Formal determination of tax payable by the employer

110.—(1) This regulation applies if it appears to the Inland Revenue that there may be an amount payable under regulation 109(1) for any tax year which has not been paid by the due date (as defined by regulation 109(2)).

(2) The Inland Revenue may determine the amount payable to the best of their judgment.

(3) If a determination is made, the Inland Revenue must serve notice of it on the employer.

(4) A determination under this regulation is subject to Parts 4, 5 and 6 of TMA (assessment, appeals, collection and recovery) as if—

(a) the determination were an assessment, and

(b) the amount determined were income tax charged on the employer,

and those Parts of TMA apply accordingly with any necessary modifications.

(5) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA(51) (rules for assigning proceedings to General Commissioners), the relevant place for an appeal against a determination is the place where the determination was made.

Form and commencement of PSA

Form of PSA

111.—(1) A PSA must be—

(a) in writing, and

(b) signed and dated by the employer and the Inland Revenue.

(2) A PSA must incorporate, whether by specification or indirect reference—

(a) the qualifying general earnings included in the PSA,

(b) the method of calculation, determined in accordance with regulation 108, of the amount of income tax for which the employer is to be accountable in respect of those qualifying general earnings, and

(c) the due date by which, in accordance with regulation 109, income tax in respect of those qualifying general earnings is due and payable.

(50) Section 65 was amended by section 57(1) of the Finance Act 1984 (c. 43) and paragraph 30 of Schedule 19 to the Finance Act 1998 (c. 36); section 66 was amended by section 57(2) of the Finance Act 1984, section 89(1) of the Finance Act 2001 (c. 9), S.I. 1980/397 (N.I. 3) and S.I. 1991/724; section 67 was amended by section 58 of the Finance Act 1976 (c. 40), section 156 of the Finance Act 1995 (c. 4) and section 89(1) of the Finance Act 2001.

(51) Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8) and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

Commencement of PSA

112.—(1) A PSA may be entered into at any time before 6th July following the end of the tax year for which it is to have effect (“the year in question”).

(2) A PSA entered into after the beginning of the year in question cannot apply to—

- (a) general earnings which, when the PSA is entered into, have been, or should have been, paid earlier in the year in question under deduction of tax in accordance with Part 3, or
- (b) general earnings consisting of benefits which, when the PSA is entered into, are or were reflected in the employee’s code for the year in question in accordance with Part 2.

Variation and cancellation of PSA

Variation of PSA

113.—(1) The Inland Revenue and the employer may, by agreement and consistently with the provisions of this Part, vary the terms of a PSA entered into by them.

(2) The agreement must be—

- (a) in writing, and
- (b) signed and dated by the employer and by the Inland Revenue.

(3) The last date for variation of a PSA is 6th July following the end of the tax year to which it relates.

Cancellation of PSA

114.—(1) The Inland Revenue may cancel a PSA if the employer has seriously or persistently failed—

- (a) to account to the Board of Inland Revenue for sums for which the employer is accountable under the PSA, or otherwise to comply with the terms of the PSA,
- (b) to produce records in accordance with regulation 117 (inspection of PSA records),
- (c) to deduct, or account for, tax in accordance with Parts 3 and 4 (deduction and repayment of tax; payments, returns and information), or
- (d) to deliver returns in accordance with Parts 3 and 4.

(2) Cancellation must be effected by notice to the employer.

(3) A cancellation comes into effect from the date of the notice.

(4) If a PSA is cancelled, this Part does not apply to general earnings—

- (a) to which the cancelled PSA related, and
- (b) which are paid, or (as the case may be) provided or made available, after the employer receives notice of the cancellation.

Interest

Interest on unpaid tax

115.—(1) This regulation applies if an employer has not paid to the Inland Revenue by the due date (as defined by regulation 109(2)) the full amount for which the employer is liable under this Part.

(2) The unpaid amount carries interest at the prescribed rate from the due date until payment (“the interest period”).

(3) Paragraph (2) applies even if the due date is a non-business day as defined by section 92 of the Bills of Exchange Act 1882⁽⁵²⁾.

(4) Any change made to the prescribed rate during the interest period applies to the unpaid amount from the date of the change.

(5) Interest is recoverable as if it were an amount payable under the PSA.

(6) “The prescribed rate” means the rate applicable under section 178 of the Finance Act 1989⁽⁵³⁾ for the purposes of section 86 of TMA⁽⁵⁴⁾.

Interest on overpaid tax

116.—(1) This regulation applies if tax in respect of the tax year to which a PSA relates is repaid to the employer after the due date (as defined by regulation 109(2)).

(2) The tax repaid carries interest at the prescribed rate from the later of—

- (a) the due date, and
- (b) the date on which the tax was paid,

until the order for the repayment is issued (“the interest period”).

(3) Any change made to the prescribed rate during the interest period applies to the tax repaid from the date of the change.

(4) “The prescribed rate” means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA⁽⁵⁵⁾.

Records

Inspection of PSA records

117.—(1) An authorised officer may require an employer who has entered into a PSA to produce all PSA records, or such PSA records as may be specified by the authorised officer, for inspection—

- (a) at the prescribed place, and
- (b) at such time as that officer may reasonably require.

(2) “PSA records” means all books, documents and other records relating to—

- (a) the qualifying general earnings comprised in the PSA,
- (b) the calculation of amounts for which the employer is accountable to the Board of Inland Revenue in accordance with the PSA, and
- (c) the payment of those amounts to the Inland Revenue.

(3) “The prescribed place” means such place in the United Kingdom as the employer and the authorised officer may agree upon, or in the absence of agreement—

- (a) the place in the United Kingdom at which the PSA records are normally kept, or
- (b) if there is no such place, the employer’s principal place of business in the United Kingdom.

⁽⁵²⁾ 1882 c. 61; section 92 was amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

⁽⁵³⁾ 1989 c. 26, to which there are amendments not relevant to these Regulations.

⁽⁵⁴⁾ Section 86 was substituted by section 110(1) of the Finance Act 1995 (c. 4) and amended by section 131 of, and paragraph 3 of Schedule 18 to, the Finance Act 1996 (c. 18).

⁽⁵⁵⁾ Section 824 was amended by paragraph 7 of Schedule 13 to the Finance Act 1988 (c. 39), sections 110(5), 111(4), 158(2) and 179(1) of, and Parts 4, 8 and 10 of Schedule 17 to, the Finance Act 1989 (c. 26), paragraph 14(52) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 41 of Schedule 19 to the Finance Act 1994 (c. 9), section 92 of the Finance Act 1997 (c. 16), section 41 of the Finance Act 1999 (c. 16), section 90 of the Finance Act 2001 (c. 9), and paragraph 104 of Schedule 6 to ITEPA.

- (4) The authorised officer may—
- (a) take copies of, or make extracts from, any records produced for inspection in accordance with paragraph (1);
 - (b) remove any records so produced if the officer considers it necessary to do so, at a reasonable time and for a reasonable period.
- (5) If any record is removed in accordance with paragraph (4)(b), the authorised officer must provide—
- (a) a receipt for the record, and
 - (b) a copy of the record, free of charge, to the person by whom it was produced or caused to be produced, within 7 days of that person requesting a copy, if the record is reasonably required for the proper conduct of a business.
- (6) If a lien is claimed on a record produced in accordance with paragraph (1), the removal of the document under paragraph (4)(b) is not to be regarded as breaking the lien.
- (7) If records are maintained by computer, the person required to make them available for inspection must provide the authorised officer with all facilities necessary for obtaining information from them.
- (8) An employer must keep PSA records for not less than 3 years after the end of the most recent tax year to which they relate.

PART 7

SPECIAL CASES

CHAPTER 1

COUNCILLORS' ALLOWANCES

Interpretation of Chapter 1

118.—(1) In this Chapter—

“allowances” means—

- (a) payments by way of attendance allowance within section 173(1) or 175(1) of the Local Government Act 1972⁽⁵⁶⁾,
- (b) payments within regulations made under section 18(1) of the Local Government and Housing Act 1989⁽⁵⁷⁾,
- (c) payments within regulations made under section 100(1)(a) or (c) of the Local Government Act 2000⁽⁵⁸⁾,
- (d) payments by way of attendance allowance within section 47(1) of the Local Government (Scotland) Act 1973⁽⁵⁹⁾, or
- (e) payments within regulation 3(1), 4(1) or 5(1) of the Local Government (Payments to Councillors) Regulations (Northern Ireland) 1999⁽⁶⁰⁾;

⁽⁵⁶⁾ 1972 c. 70; section 173(1) was amended by section 24(1) of the Local Government, Planning and Land Act 1980 (c. 65) and paragraph 26 of Schedule 11 to the Local Government and Housing Act 1989 (c. 42); section 175(1) was amended by paragraph 27 of Schedule 11 to the Local Government and Housing Act 1989.

⁽⁵⁷⁾ 1989 c. 42.

⁽⁵⁸⁾ 2000 c. 22.

⁽⁵⁹⁾ 1973 c. 65.

⁽⁶⁰⁾ S.R. (N.I.) 1999 No. 449.

“councillor” means a person entitled to receive any allowances;

“local council” means the local authority, council, joint authority or joint committee paying allowances.

(2) For the purposes of paragraph (1)—

“council” and “joint committee” are to be read in accordance with section 148(1) of the Local Government Act (Northern Ireland) 1972⁽⁶¹⁾; and

“local authority” in England and Wales has the meaning given in section 270(1) of the Local Government Act 1972⁽⁶²⁾, and in Scotland has the meaning given in section 235(1) of the Local Government (Scotland) Act 1973⁽⁶³⁾.

Councillor’s option to have tax deducted at basic rate

119.—(1) A councillor may, by notice to the Inland Revenue, opt to have income tax deducted from allowances at the basic rate in force at the time of payment of the allowances (the “basic rate option”).

(2) On receiving any such notice the Inland Revenue must give notice to the local council of the councillor’s exercise of the basic rate option.

(3) On receiving a notice under paragraph (2), the local council must, when making any payment of allowances to the councillor, deduct income tax at the basic rate in force at the time of that payment on the non-cumulative basis.

(4) Paragraph (5) applies if—

- (a) a councillor has exercised the basic rate option, and
- (b) the Inland Revenue consider that the councillor may incur deductible expenses.

(5) The Inland Revenue may direct the local council to disregard an appropriate amount of the allowances in calculating the tax to be deducted.

(6) In paragraph (4)(b), “deductible expenses” means expenses of a kind which would be deductible under sections 336 to 338 of ITEPA (expenses incurred wholly, exclusively and necessarily in performance of duties, and travel expenses).

Particulars that local council must record

120.—(1) This regulation applies if the Inland Revenue have given notice to the local council of the exercise by a councillor of the basic rate option.

(2) The local council must record, in a deductions working sheet (which it must prepare for the purpose unless it has already prepared one) the following particulars about every payment of allowances which it makes to the councillor.

(3) The particulars are—

- (a) the councillor’s name,
- (b) the councillor’s national insurance number, if known,
- (c) the date of the payment,
- (d) the amount of the allowances,

⁽⁶¹⁾ 1972 c. 9 (N.I.).

⁽⁶²⁾ The definition of “local authority” in section 270(1) was amended by Schedule 17 to the Local Government Act 1985 (c. 51) and section 1(5) of the Local Government (Wales) Act 1994 (c. 19).

⁽⁶³⁾ The definition of “local authority” in section 235(1) was substituted by paragraph 92(66) of Schedule 13 to the Local Government etc. (Scotland) Act 1994 (c. 39).

- (e) where regulation 119(5) applies, the net amount of the allowances from which tax has been deducted, and
- (f) the amount of tax deducted from the allowances.

Regulations apply as if basic rate option were issue of code

121. If a councillor exercises the basic rate option, these Regulations apply as if the Inland Revenue had issued the basic rate code in respect of the allowances.

CHAPTER 2

RESERVE FORCES' PAY

Interpretation of Chapter 2

122.—(1) In this Chapter—

“the Ministry” means the Ministry of Defence;

“reserve forces” means the forces specified in paragraph (2);

“reserve pay” means relevant payments made by the Ministry to members of the reserve forces;

“reservist” means any person in receipt of reserve pay, but does not include a person who is not resident in the United Kingdom and is serving outside the United Kingdom.

(2) The forces specified in this paragraph are—

- (a) the Royal Naval Reserve (including Queen Alexandra’s Royal Naval Nursing Service Reserve),
- (b) the Royal Marines Reserve,
- (c) the Territorial Army,
- (d) the Royal Auxiliary Air Force,
- (e) the University Air Squadron, and
- (f) Officers, Adult Instructors and Adult Warrant Officers of the Sea Cadet Corps, Army Cadet Force, Air Training Corps or Combined Cadet Force.

Application of other Parts

123.—(1) Parts 2 (codes) and 3 (deduction and repayment of tax) do not apply to reserve pay.

(2) The rest of these Regulations apply as if the Inland Revenue had issued the basic rate code in respect of reserve pay.

Deduction of tax

124.—(1) On making any payment of reserve pay to a reservist during a tax year, the Ministry must deduct income tax at the basic rate in force when the payment is made.

(2) But the Ministry must not deduct income tax if—

- (a) it has received notice from the Inland Revenue of a determination for that tax year under this Chapter that tax is not to be deducted from reserve pay, and
- (b) it has not received notice of any amendment of that determination.

(3) This regulation applies even if an objection or appeal has been made under this Chapter.

Determination by Inland Revenue

125.—(1) The Inland Revenue may make a determination that tax is not to be deducted from reserve pay if the Inland Revenue are satisfied that the reservist will not be liable to income tax on the full amount of the reserve pay in a tax year.

(2) For the purpose of making a determination, it must be assumed—

- (a) that any reliefs from income tax to which the reservist is entitled are allowable primarily against the reservist's PAYE income from other sources, and
- (b) unless the reservist objects, that the balance (if any) of such reliefs is next allowable against the reservist's income other than PAYE income.

(3) The Inland Revenue may make a determination before, or at any time during, the tax year.

(4) On making a determination the Inland Revenue must notify the reservist and the Ministry.

Objection against deduction of tax

126.—(1) A reservist who objects to tax being deducted in accordance with regulation 124 (deduction at basic rate) must state the grounds of objection.

(2) On receiving the notice of objection, the Inland Revenue must make a determination whether income tax at the basic rate is to be deducted from the reserve pay.

(3) Regulation 125(2) (assumptions) applies for the purpose of making the determination.

(4) The Inland Revenue must notify the reservist of the determination.

(5) The Inland Revenue may amend the determination by agreement with the reservist.

(6) If the Inland Revenue and the reservist do not reach agreement, the reservist may appeal against the determination by giving notice to the Inland Revenue.

(7) An appeal under paragraph (6) may be made to the General or Special Commissioners.

Appeal to Commissioners

127.—(1) On appeal, the Commissioners must determine whether income tax at the basic rate is to be deducted from the reserve pay.

(2) Regulation 125(2) (assumptions) applies for the purpose of making the determination.

(3) If, on appeal, the Commissioners determine that tax is not to be deducted from the reserve pay, the Inland Revenue must give notice of the determination to the Ministry.

(4) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA(64) (rules for assigning proceedings to General Commissioners), the relevant place for the appeal is the place where the reservist lives.

Amended determinations

128.—(1) This regulation applies if a determination by the Inland Revenue or the Commissioners under regulation 125, 126 or 127 is found to be inappropriate because the actual circumstances are different from the circumstances by reference to which it was made.

(2) The Inland Revenue must amend the determination.

(3) The Inland Revenue must give notice of the amended determination to the reservist and the Ministry.

(64) Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8) and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

(4) Regulations 126 and 127 apply in relation to an amended determination as they apply in relation to a determination under regulation 126(2).

Certificate of tax deducted

129.—(1) On making any payment of reserve pay from which tax is deducted, the Ministry may, and if the reservist so requires must, give the reservist a certificate showing the following particulars.

(2) The particulars are—

- (a) the reservist's name,
- (b) the reservist's national insurance number, if known,
- (c) the date of the payment,
- (d) the amount of the payment, and
- (e) the amount of tax deducted.

Repayment to reservist during tax year

130.—(1) The Ministry must not repay tax in respect of reserve pay to a reservist.

(2) If a reservist applies for a repayment of tax deducted from reserve pay, the Inland Revenue may make such repayment at any time during the tax year as may be appropriate.

(3) In deciding what is appropriate the Inland Revenue must have regard to—

- (a) the reserve pay of the reservist for the period from the beginning of the tax year up to and including the date of the application,
- (b) the amount of tax deducted from the reserve pay as evidenced by certificates of pay and tax supplied under regulation 129,
- (c) any reliefs from income tax to which the reservist is entitled, and
- (d) the reservist's other PAYE income for the tax year and, unless the reservist objects, the reservist's income for the tax year from all other sources, and liability to tax on that income, as estimated by the Inland Revenue.

Particulars that Ministry must record

131.—(1) The Ministry must record, in a deductions working sheet, the following particulars about every payment of reserve pay made to a reservist.

(2) The particulars are—

- (a) the reservist's name,
- (b) the reservist's national insurance number, if known,
- (c) the tax year to which the deductions working sheet relates,
- (d) the date of the payment,
- (e) the amount of the payment, and
- (f) the amount of tax (if any) deducted on making the payment.

End of year certificate

132.—(1) The Ministry must give an end of year certificate to a reservist in respect of whom the Ministry was required to prepare or maintain a deductions working sheet.

(2) The certificate must be given before 1st June following the end of the tax year to which it relates.

- (3) The certificate must show—
- (a) the tax year to which it relates,
 - (b) the reservist's name,
 - (c) the reservist's national insurance number, if known,
 - (d) the total amount of reserve pay paid by the Ministry to the reservist during the tax year,
 - (e) the total tax deducted from the reserve pay,
 - (f) the force in which the reservist was serving, and
 - (g) the reservist's service number.

Other PAYE income of reservist

133. Nothing in this Chapter affects the application of these Regulations to any other PAYE income of a reservist.

CHAPTER 3

HOLIDAY PAY FUNDS

Interpretation of Chapter 3

134. In this Chapter—

“fund” means a person who pays holiday pay—

- (a) to an individual who is not employed by the person, or
- (b) in respect of such an individual who has died;

“holiday pay” means—

- (a) any payment received by an individual in exchange for a voucher, stamp or similar document purchased by a person who employs (or employed) that individual for any holiday period, or
- (b) if such an individual has died, any payment received by a person claiming in respect of that individual's right to such a payment;

“recipient” means a person who is paid holiday pay.

Application of other Parts

135.—(1) Parts 2 (codes) and 3 (deduction and repayment of tax) do not apply to holiday pay.

(2) The rest of these Regulations apply as if the Inland Revenue had issued the basic rate code in respect of holiday pay.

Deduction of tax

136. On making any payment of holiday pay to a recipient, a fund must deduct income tax at the basic rate in force at the time the payment is made.

Certificate of tax deducted

137.—(1) On making any payment of holiday pay, a fund must give the recipient a certificate showing the following particulars.

(2) The particulars are—

- (a) the recipient's name,

- (b) the recipient's national insurance number, if known,
- (c) the tax year in which the payment is made,
- (d) the date of the payment,
- (e) the amount of the payment, and
- (f) the amount of tax deducted on making the payment.

Repayment to recipient during tax year

138.—(1) A fund must not repay tax deducted from a payment of holiday pay to a recipient.

(2) If a recipient applies for a repayment of tax deducted from holiday pay, the Inland Revenue may make such repayment at any time during the tax year as may be appropriate.

(3) In deciding what is appropriate the Inland Revenue must have regard to—

- (a) the holiday pay of the recipient for the period from the beginning of the tax year up to and including the date of the application,
- (b) the amount of tax deducted from the holiday pay as evidenced by certificates supplied under regulation 137,
- (c) any entitlement of the recipient to relief from income tax, and
- (d) the recipient's other PAYE income for the tax year and, unless the recipient objects, the recipient's income for the tax year from all other sources, and liability to tax on that income, as estimated by the Inland Revenue.

Particulars that fund must record

139.—(1) A fund must record, in a deductions working sheet, the following particulars about every payment of holiday pay made to a recipient.

(2) The particulars are—

- (a) the recipient's name,
- (b) the recipient's national insurance number, if known,
- (c) the tax year to which the deductions working sheet relates,
- (d) the date of the payment,
- (e) the amount of the payment, and
- (f) the amount of tax (if any) deducted on making the payment.

Other PAYE income of recipient

140. Nothing in this Chapter affects the application of these Regulations to any other PAYE income of a recipient.

CHAPTER 4

DIRECT COLLECTION AND SPECIAL ARRANGEMENTS

Direct collection and special arrangements

141.—(1) In—

- (a) cases of casual employment, and
- (b) any other case in which the Inland Revenue are of the opinion that deduction of tax by reference to the tax tables is impracticable,

the Inland Revenue may proceed in accordance with regulation 142, or make special arrangements for the collection of tax in respect of PAYE income of any employees.

- (2) A special arrangement does not apply to PAYE income of an employer's employees if—
- (a) the arrangement has not been agreed with the employer, and
 - (b) the employer does not proceed in accordance with the arrangement.

Direct collection: issue of deductions working sheet

142.—(1) The Inland Revenue may issue a deductions working sheet to an employee specifying—

- (a) the employee's name,
- (b) the capacity in which the employee receives relevant payments,
- (c) the employee's code, and
- (d) the tax year to which the deductions working sheet relates.

(2) In such a case regulations 143 to 147 apply unless, within 30 days beginning with the receipt of the deductions working sheet, the employee objects to the use of the direct collection procedure.

Direct collection: employee to keep records

143.—(1) Whenever the employee receives any relevant payment during the tax year, the employee must record in the deductions working sheet—

- (a) the amount of the payment,
- (b) the date on which it was received, and
- (c) the total payments to date.

(2) In addition, the employee must record in the deductions working sheet in relation to the last date in a tax quarter on which the employee receives a relevant payment—

- (a) the total free pay to date or, as the case may be, the total additional pay to date in relation to that date according to the employee's code, and
- (b) the corresponding total tax to date.

(3) If the employee does not receive any relevant payments in a tax quarter, the last day of the quarter must be used for the purposes of paragraph (2).

(4) If the employee receives relevant payments in more than one capacity, no account is to be taken for the purposes of this regulation and regulations 144 to 147 of the relevant payments received by the employee in any capacity other than that mentioned in the deductions working sheet.

(5) In this regulation and regulations 145 and 146, "total payments to date" means, in relation to any date, the sum of all relevant payments received by the employee from the beginning of the tax year up to and including that date, irrespective of the person or persons from whom it was received.

Direct collection: payment

144.—(1) In this regulation—

"the current total tax" means the total tax to date required to be recorded in the deductions working sheet by an employee under regulation 143(2)(b);

"the previous total tax" means the total tax to date (if any) required to be recorded for the previous tax quarter in the tax year.

(2) If, in relation to any tax quarter, the current total tax exceeds the previous total tax, the employee must pay the excess to the Inland Revenue, within 14 days after the end of the tax quarter.

(3) But if, in relation to any tax quarter, the previous total tax exceeds the current total tax, the employee may recover the excess—

- (a) by deducting it from the amount payable under paragraph (2) for a later quarter in the tax year, or
- (b) from the Board of Inland Revenue.

(4) If the employee's code is a K code, the amount payable under paragraph (2) is not to exceed the overriding limit in relation to the relevant payments which the employee has received in that tax quarter.

(5) Any amount which is not payable because of the application of paragraph (4) must be added to the current total tax for the purpose of the calculation in paragraph (2) or (3) for the next tax quarter (if any) of that tax year.

Direct collection: return when relevant payments cease

145.—(1) When no longer receiving relevant payments, the employee must, without unreasonable delay, send a return to the Inland Revenue showing the following particulars.

(2) The particulars are—

- (a) such particulars as the Board may require for identifying the employee,
- (b) the tax year to which the return relates,
- (c) the last date on which the employee received any relevant payments (“the last date”),
- (d) the employee's total payments to date at the last date,
- (e) the corresponding total tax to date at the last date, and
- (f) if the employee's code is a K code, the amount, if any, of that corresponding total tax to date which is not payable because of regulation 144(4) (overriding limit).

Direct collection: end of year return

146.—(1) Before 20th May following the end of the tax year, the employee must deliver a return to the Inland Revenue.

(2) The return must show—

- (a) such particulars as the Board may require for identifying the employee,
- (b) the tax year to which the return relates,
- (c) the employee's total payments to date at the end of the tax year,
- (d) the total tax to date calculated for the last tax quarter in the tax year, and
- (e) if the employee's code is a K code, the amount, if any, of that total tax to date which is not payable because of regulation 144(4) (overriding limit).

(3) But paragraph (1) does not apply if the employee has already delivered a return under regulation 145 or section 8 of TMA(65) (personal returns).

(4) If a return is required by paragraph (1), regulations 76, 84 and 218 (which relate to the certification and recovery of tax remaining unpaid by an employer for any tax year) apply with the necessary modifications in the case of any tax remaining unpaid by the employee.

(5) Section 98A of TMA(66) (special penalties in case of certain returns) applies to paragraph (1).

(65) Section 8 was substituted by section 90(1) of the Finance Act 1990 (c. 29) and amended by section 178(1) of the Finance Act 1994 (c. 9), section 104(1) and (2) of the Finance Act 1995 (c. 4) and section 121(1) to (3) of the Finance Act 1996 (c. 8).

(66) Section 98A was inserted by section 165 of the Finance Act 1989 (c. 26) and amended by paragraph 138 of Schedule 6 to ITEPA.

Direct collection: failure to pay

147.—(1) This regulation applies if, within 14 days after the end of any tax quarter—

- (a) the employee has not paid any tax for that quarter, and the Inland Revenue are unaware of the amount, if any, which the employee is liable to pay for that quarter, or
- (b) the employee has paid an amount of tax for that quarter, but the Inland Revenue are not satisfied that it is the full amount which the employee is liable to pay for that quarter.

(2) The Inland Revenue may give notice to the employee requiring the employee, within 14 days of the issue of the notice, to deliver a return showing the amount of tax which the employee is liable to pay under regulation 144(2) in respect of the tax quarter in question.

(3) If such a notice is given, regulations 77, 84 and 218(5) and (6) (which relate to the certification and recovery of tax unpaid by an employer) apply with the necessary modifications for the purposes of ascertaining, certifying and recovering the tax payable by the employee as if it were tax which the employee was liable to deduct from relevant payments paid by the employee.

PART 8

SOCIAL SECURITY BENEFITS

CHAPTER 1

JOBSEEKER'S ALLOWANCE: NORMAL CASES

Interpretation of Chapters 1 and 2

148. In Chapters 1 and 2—

“award” means an award of a jobseeker’s allowance;

“claim” means a claim for a jobseeker’s allowance;

“claimant” means a person who has made a claim, or who is treated for the purposes of the JSA Regulations as having made a claim;

“Chapter 2 claimant” means—

(a) a claimant who is entitled to a jobseeker’s allowance by virtue of regulation 17 of the JSA Regulations (laid off and short time workers); or

(b) a claimant who is a share fisherman, as defined by regulation 156 of the JSA Regulations;

“Department” means the Department for Work and Pensions or, in Northern Ireland, the Department for Social Development;

“JSA Regulations” means the Jobseeker’s Allowance Regulations 1996⁽⁶⁷⁾ or, in Northern Ireland, the Jobseeker’s Allowance Regulations (Northern Ireland) 1996⁽⁶⁸⁾;

“jobseeker’s allowance” means benefit payable under—

(a) the Jobseekers Act 1995⁽⁶⁹⁾, or

(b) in Northern Ireland, the Jobseekers (Northern Ireland) Order 1995⁽⁷⁰⁾;

“taxable jobseeker’s allowance” means any amount of jobseeker’s allowance which is chargeable to income tax under Chapter 2 of Part 10 of ITEPA (tax on social security income).

⁽⁶⁷⁾ S.I. 1996/207.

⁽⁶⁸⁾ S.R. (N.I.) 1996 No. 198.

⁽⁶⁹⁾ 1995 c. 18.

⁽⁷⁰⁾ S.I. 1995/2705 (N.I. 15).

Scope of Chapter 1

149. This Chapter applies to claimants who are not Chapter 2 claimants.

Application of other regulations

150.—(1) The following regulations apply to payments of taxable jobseeker's allowance made to a claimant with the modifications mentioned in paragraphs (2) and (3)—

regulation 2	interpretation
regulation 14	matters relevant to determination of code
regulation 15	flat rate codes
regulation 16	continued application of employee's code
regulation 17	notice to employee of code
regulation 18	objections and appeals against employee's code
regulation 19	amendment of code
regulation 20	notice to employer of amended code
regulation 21	deduction and repayment of tax by reference to employee's code
regulation 97	inspection of employer's PAYE records
regulation 98	multiple PAYE schemes
regulation 102	succession to a business etc
regulation 185	adjusting total net tax deducted for purposes of sections 59A(1) and 59B(1) TMA
regulation 188	assessments other than self-assessments
regulation 211	how information must or may be delivered by employers
regulation 214	how information must be provided by employees
regulation 216	service by post.

(2) In the application of those regulations, the expressions listed in column 1 of Table 5 have the meanings shown in column 2 of the table.

Table 5

Meaning of expressions in application of other regulations

<i>1. Expression</i>	<i>2. Meaning for purposes of this Chapter</i>
employee	claimant
employer	Department
employment	award
relevant payments	taxable jobseeker's allowance.

(3) In the application of regulations 20 and 21, any reference to the deduction or repayment of tax must be read as a reference to the tax calculation which the Department is required to make at the end of the tax year or on the cessation of an award (by virtue of regulations 157(2)(a) and 158(2) respectively).

Obtaining the claimant's Form P45

151.—(1) A claimant who has Parts 2 and 3 of Form P45 must deliver them to the Department on making a claim for a jobseeker's allowance which includes taxable jobseeker's allowance.

(2) If, on making a claim, the claimant declares that the claimant's last employer did not provide Parts 2 and 3 of Form P45, the Department may require the employer to deliver them to a specified office of the Department.

Deductions working sheet for claimants awarded taxable jobseeker's allowance

152.—(1) The Department must prepare a deductions working sheet in respect of each claimant whose award includes taxable jobseeker's allowance.

(2) If the Department obtains Parts 2 and 3 of Form P45 relating to the claimant, it must immediately prepare the deductions working sheet using the information shown in Parts 2 and 3 of Form P45 in accordance with regulation 153.

(3) If the Department does not obtain Parts 2 and 3 of Form P45 relating to the claimant, it must prepare the deductions working sheet in accordance with regulation 154.

Form P45: deductions working sheet and return

153.—(1) If Parts 2 and 3 of Form P45 relate to the current tax year, the Department must record in the deductions working sheet the total payments to date shown in Parts 2 and 3 of Form P45.

(2) If Parts 2 and 3 of Form P45 relate to the current tax year and show that the cumulative basis has been used, the Department must also—

- (a) record the following information from Parts 2 and 3 of Form P45 in the deductions working sheet, or
- (b) keep such records as enable production of the information.

(3) If the code shown in Parts 2 and 3 of Form P45 is a K code, the information is—

- (a) the total additional pay to date,
- (b) the total taxable payments to date, and
- (c) the lower of the total tax to date as at the week or month shown in Parts 2 and 3 of Form P45 or the total net tax deducted shown in them.

(4) In any other case the information is—

- (a) the total free pay to date,
- (b) the total taxable payments to date, and
- (c) the corresponding total tax to date as at the week or month shown in Parts 2 and 3 of Form P45.

(5) Paragraph (6) applies if—

- (a) the claim is made by 24th May in a tax year, and
- (b) Parts 2 and 3 of Form P45 show that the last relevant payment was made in the preceding tax year.

(6) The Department must complete the deductions working sheet but without recording the total payments to date or total net tax deducted (if any) shown in Parts 2 and 3 of Form P45.

(7) In cases falling within paragraphs (1) and (5), the code shown in Parts 2 and 3 of Form P45 must be treated as the claimant's code for the purposes of these Regulations.

(8) If, in a case not falling within paragraph (5), Parts 2 and 3 of Form P45 show that the last relevant payment was made in a tax year preceding that in which the claim was made, the Department—

- (a) must complete the deductions working sheet but without recording the total payments to date or total net tax deducted (if any) shown in Parts 2 and 3 of Form P45, and
- (b) must record the emergency code as the claimant's code.

(9) The Department must supply the information recorded under this regulation to the Inland Revenue together with such further information as may be required for the purposes of these Regulations.

No Form P45: deductions working sheet and return

154.—(1) In a case falling within regulation 152(3) (no Form P45), the Department must—

- (a) prepare the deductions working sheet within 14 days of the award of a taxable jobseeker's allowance, and
- (b) record the emergency code as the claimant's code.

(2) The Department must also deliver a return to the Inland Revenue, giving—

- (a) the claimant's name,
- (b) the claimant's national insurance number,
- (c) the claimant's date of birth, if known,
- (d) the date on which the claim was made, and
- (e) the reference number of the benefit office submitting the return.

(3) But the return need not be delivered if the claimant certifies that the claimant—

- (a) is undergoing a course of full-time education and has not had regular employment since the previous 6th April, or
- (b) has not had regular employment since finishing full-time education.

Claimant's code etc to be used for calculations

155.—(1) This regulation applies if, in respect of a claimant, the Department receives notification from the Inland Revenue of—

- (a) a code or amended code,
- (b) total payments to date, or
- (c) total net tax deducted.

(2) The Department must record that notification in substitution for any previous record and use it for the purpose of all calculations required under this Chapter.

Recording the amount of taxable jobseeker's allowance

156. Whenever a payment of jobseeker's allowance is made, the Department must record the taxable jobseeker's allowance included in the payment.

Obligations at end of tax year

157.—(1) This regulation applies in respect of each award which includes taxable jobseeker's allowance and which continues beyond the end of a tax year.

- (2) Before 1st June following the end of the tax year, the Department must—
 - (a) make a tax calculation in accordance with regulation 161 if the claimant's code is used on the cumulative basis;
 - (b) subject to paragraph (3), issue a certificate to the claimant; and
 - (c) deliver a return to the Inland Revenue.
- (3) The Department need not issue the certificate if—
 - (a) no taxable jobseeker's allowance has been paid, and
 - (b) a tax calculation in accordance with regulation 161 is not required.
- (4) The certificate must show—
 - (a) the tax year to which it relates,
 - (b) the total jobseeker's allowance for the tax year excluding any amounts previously notified under regulation 159(2) or 160(2),
 - (c) the taxable jobseeker's allowance included in the total jobseeker's allowance,
 - (d) the claimant's code,
 - (e) the claimant's national insurance number,
 - (f) the claimant's name,
 - (g) the claimant's address, if known,
 - (h) any previous relevant payments and any tax deducted from those relevant payments which the Department was required to take into account under regulation 161,
 - (i) any total payments to date recorded by the Department in accordance with regulation 153(1) plus the total taxable jobseeker's allowance for the tax year, and the corresponding total net tax deducted, and
 - (j) the amount of tax refunded by the Department.
- (5) The return must show—
 - (a) the particulars specified in paragraph (4), and
 - (b) if a calculation is required under regulation 161, any amount of tax outstanding.

When an award ceases

158.—(1) For the purposes of these Regulations an award ceases when entitlement to a jobseeker's allowance ceases.

- (2) When an award of a taxable jobseeker's allowance ceases the Department must make a tax calculation in accordance with regulation 161 if the claimant's code is used on the cumulative basis.
- (3) The relevant date for the purposes of that calculation is the date on which the award ceases.
- (4) The date on which the award ceases is the last day for which benefit was paid and was not recoverable, except that if the last day is 4th or 5th April the date is the preceding 3rd April.
- (5) But the Department need not amend a tax calculation solely because the date used for the purposes of the calculation is subsequently shown to be incorrect.

Cessation of award: Form P45U

159.—(1) When an award of a taxable jobseeker's allowance ceases the Department must immediately complete Form P45U.

(2) The Department must then—

(a) send Part 1 of Form P45U to the Inland Revenue, and

(b) provide Part 1A of Form P45U and Parts 2 and 3 of Form P45 to the claimant.

(3) The information listed in column 1 of Table 6 must, subject to the conditions set out in column 2, be provided in Parts 1 and 1A of Form P45U and Parts 2 and 3 of Form P45 as indicated in columns 3 to 5.

Table 6

Information which must be provided in Form P45U

<i>1. Information to be provided</i>	<i>2. Conditions</i>	<i>3. FormP45U Part 1</i>	<i>4. Part 1A</i>	<i>5. Form P45 Parts 2 & 3</i>
1. the tax reference as shown in the deductions working sheet		yes	yes	yes
2. the claimant's national insurance number		yes	yes	yes
3. the claimant's name		yes	yes	yes
4. the date on which the award ceased		yes	yes	yes
5. the claimant's code or, if more than one, the latest code for the tax year during which the award ceased		yes	yes	yes
6. whether the claimant's code is used on the cumulative basis		yes	yes	yes
7. the tax week or month in which the award ceased	if the claimant's code is used on the cumulative basis	yes	yes	yes

<i>1. Information to be provided</i>	<i>2. Conditions</i>	<i>3. Form P45U Part 1</i>	<i>4. Part 1A</i>	<i>5. Form P45 Parts 2 & 3</i>
8. the total payments to date (including taxable jobseeker's allowance) at the date the award ceased, and the corresponding total net tax deducted	if the claimant's code is used on the cumulative basis	yes	yes	yes
9. the taxable jobseeker's allowance paid during the tax year by virtue of the award in question	if the claimant's code is used on the cumulative basis, and if different from the information supplied under item 8	yes	yes	no
10. the taxable jobseeker's allowance paid during the tax year by virtue of the award in question	if the claimant's code is not used on the cumulative basis	yes	yes	no
11. any amount of tax outstanding	if the claimant's code is used on the cumulative basis	yes	no	no
12. whether the claimant was self-employed immediately before the claim was made		yes	no	no
13. whether the claimant is receiving a pension by reason of a former employment		yes	no	no
14. the claimant's address	if known	yes	no	no
15. the address of the benefit officer		yes	yes	no

<i>1. Information to be provided</i>	<i>2. Conditions</i>	<i>3. Form P45U Part 1</i>	<i>4. Part 1A</i>	<i>5. Form P45 Parts 2 & 3</i>
16. the date the form is completed		yes	yes	no

(4) The Department must also give notice to the claimant of—

- (a) the total jobseeker's allowance for the tax year excluding any sums previously notified under this regulation or regulation 160, 171 or 172, and
- (b) the taxable jobseeker's allowance included in that total.

(5) Expressions used in Parts 2 and 3 of Form P45 have the following meanings—

- (a) "employee" means "claimant",
- (b) "leaving date" means "date the award ceased", and
- (c) "pay" means "jobseeker's allowance".

(6) Regulation 163 (death of claimant) modifies the requirements of this regulation if an award of taxable jobseeker's allowance has ceased on the death of the claimant.

Notification of taxable jobseeker's allowance adjustment

160.—(1) Paragraph (2) applies if—

- (a) after a certificate under regulation 157(2)(b) has been issued (or would have been issued but for regulation 157(3)), or
- (b) after a notice has been issued under regulation 159(4) or this regulation,

further taxable jobseeker's allowance is paid to, or taxable jobseeker's allowance overpaid is recovered from, the claimant.

(2) The Department must—

- (a) give notice to the claimant of the revised figure of total jobseeker's allowance and the taxable jobseeker's allowance included in that revised figure in accordance with the relevant regulation, and
- (b) notify the Inland Revenue of the sums paid or refunded.

Tax calculation

161.—(1) This regulation applies, subject to regulation 162, if the Department is required by regulation 157 or 158 to make a tax calculation.

(2) The Department must calculate in respect of the claimant as at the relevant date—

- (a) the total payments to date, and
- (b) the claimant's total tax.

(3) If the recorded tax exceeds the claimant's total tax, the Department must repay the excess to the claimant.

(4) But if the recorded tax is less than the claimant's total tax—

- (a) the difference is tax outstanding for the purposes of regulation 157(5)(b) or item 11 of Table 6 in regulation 159(3), and
- (b) the Department must treat the claimant's code as issued by the Inland Revenue on the non-cumulative basis from the relevant date.

(5) In this regulation—

“claimant’s total tax” means—

- (a) if the claimant’s code is a K code, the lesser of—
 - (i) 50% of the claimant’s total payments to date, and
 - (ii) the tax due in accordance with the appropriate tax tables in respect of the claimant’s total taxable payments to date at the relevant date;
- (b) in any other case, the tax due in accordance with the appropriate tax tables in respect of the claimant’s total taxable payments to date at the relevant date;

“recorded tax” means the total tax to date or (as the case may be) the total net tax deducted which was recorded in accordance with regulation 153(3) or (4) when the claim was made;

“relevant date” means—

- (a) the end of the tax year, if the calculation is required by regulation 157;
- (b) the date used for the purposes of the calculation, if the calculation is required by regulation 158;

“total payments to date” means any payments to date recorded by the Department in accordance with regulation 153(1), plus the total taxable jobseeker’s allowance.

No tax calculation required in certain cases

162.—(1) A tax calculation under regulation 161 is not required in any of the following cases—

- (a) if the claimant does not give the Department Parts 2 and 3 of Form P45, and does not certify in accordance with regulation 154(3) (students etc);
- (b) if the claimant gives the Department Parts 2 and 3 of Form P45, but they do not relate to the claimant’s last employment or award before the present award, whichever is later;
- (c) if the claimant is in receipt of a pension in respect of a former employment;
- (d) if it appears to the Department on the occasion of a claim that a previous award should have been treated as having ceased in accordance with regulation 158 (when an award ceases); or
- (e) if the claimant’s code is a nil tax code, basic rate code or higher rate code.

(2) Those cases are treated as if the Inland Revenue had made a direction that the claimant’s code must be used on the non-cumulative basis.

(3) Those cases are subject to a notification from the Inland Revenue under regulation 155 that revised particulars are to be substituted and used.

Death of claimant

163.—(1) On being informed of the death of a claimant whose award included taxable jobseeker’s allowance, the Department must send the Inland Revenue the completed Form P45U indicating in Part 1 that the claimant has died.

(2) If the Department knows the name and address of the claimant’s personal representative, the Department must send the notice referred to in regulation 159(4) to the personal representative.

(3) But if the Department has not been notified of the name and address of the claimant’s personal representative within 30 days of the claimant’s death, the Department is not required—

- (a) to make a tax calculation under regulation 161, nor
- (b) to issue the notice under regulation 159(4).

Finance

164.—(1) The Board of Inland Revenue must advance monies to the National Insurance Funds of Great Britain and Northern Ireland at intervals to be agreed with the Department for use in making repayments of income tax under these Regulations.

(2) The Department must provide the Board with a quarterly statement of receipts and payments.

CHAPTER 2**JOBSEEKER'S ALLOWANCE: SPECIAL CASES****Scope of Chapter 2**

165.—(1) This Chapter applies only to Chapter 2 claimants (as defined by regulation 148).

(2) Except for regulation 148 (interpretation), Chapter 1 does not apply to Chapter 2 claimants.

Jobseeker's allowance paid directly to claimant

166.—(1) This regulation applies if the Department makes a payment of taxable jobseeker's allowance directly to a Chapter 2 claimant.

(2) The Department must—

- (a) record the amount, and
- (b) pay the full sum without any deduction or repayment of income tax.

Jobseeker's allowance paid by employer

167.—(1) If—

- (a) a jobseeker's allowance is paid to a Chapter 2 claimant by the claimant's employer on behalf of the Department, and
- (b) the employer calculates the jobseeker's allowance payable by reference to instructions supplied by the Department,

the employer must also calculate the taxable jobseeker's allowance in accordance with those instructions.

(2) If—

- (a) a jobseeker's allowance is paid to a Chapter 2 claimant by the claimant's employer on behalf of the Department, and
- (b) paragraph (1)(b) does not apply,

the Department must notify the employer of the amount of jobseeker's allowance and of taxable jobseeker's allowance.

(3) If the employer has undertaken to pay a jobseeker's allowance on behalf of the Department, the Department must pay the full amount to the employer without any deduction on account of income tax.

Regulation 167 cases: application of other regulations

168.—(1) Parts 2 to 4 (codes; deduction and repayment of tax; payments, returns and information) apply to the taxable jobseeker's allowance paid to a Chapter 2 claimant by the employer on behalf of the Department under regulation 167, as if it were a relevant payment from the employment.

(2) But this is subject to paragraph (3), which applies in any case in which it appears to the Inland Revenue that deduction of tax from the taxable jobseeker's allowance paid by the employer on behalf of the Department by reference to the tax tables is impracticable.

(3) The Inland Revenue may make such other arrangements as are appropriate for the collection of tax in respect of taxable jobseeker's allowance.

(4) Regulations 170 to 172 (information to be supplied etc) do not apply if—

(a) the Chapter 2 claimant's employer has been paying the jobseeker's allowance in accordance with regulation 167, and

(b) the employer provides the information in question.

When a Chapter 2 award ceases

169. For the purposes of this Chapter, an award ceases when entitlement to a jobseeker's allowance which depends on regulation 17 or 156 of the JSA Regulations ceases.

Information to be supplied at end of tax year

170.—(1) This regulation applies in respect of an award of taxable jobseeker's allowance which continues beyond the end of a tax year.

(2) Before 1st June following the end of the tax year, the Department must give notice to the Inland Revenue and the Chapter 2 claimant of—

(a) the total jobseeker's allowance, and

(b) the taxable jobseeker's allowance,

paid in respect of the award during that tax year.

Information to be supplied when an award of taxable jobseeker's allowance ceases

171.—(1) When an award of taxable jobseeker's allowance ceases, the Department must give notice to the Inland Revenue and, except where the Chapter 2 claimant has died, the claimant, of—

(a) the total jobseeker's allowance, and

(b) the taxable jobseeker's allowance,

paid in respect of the award, showing the amounts appropriate to the award for the tax year in which it ceased.

(2) If the Department has been notified of the name and address of a deceased claimant's personal representative within 30 days of the claimant's death, the Department must send the notice to the personal representative.

Adjustments of taxable jobseeker's allowance

172.—(1) Paragraph (2) applies if, after the issue of a notice under regulation 170 or 171(1)—

(a) further taxable jobseeker's allowance is paid to the Chapter 2 claimant, or

(b) taxable jobseeker's allowance overpaid is recovered from the Chapter 2 claimant.

(2) The Department must—

(a) notify the Chapter 2 claimant of the revised figure of total jobseeker's allowance and the taxable jobseeker's allowance included in that revised figure, and

(b) notify the Inland Revenue of any adjustment to the figure of taxable jobseeker's allowance, showing the amounts appropriate to each tax year.

CHAPTER 3

INCAPACITY BENEFIT

Interpretation of Chapter 3

173. In this Chapter—

“award” means an award of incapacity benefit;

“claim” means a claim for incapacity benefit;

“claimant” means a person who has made a claim;

“Department” means the Department for Work and Pensions or, in Northern Ireland, the Department for Social Development;

“incapacity benefit” means short-term incapacity benefit or long-term incapacity benefit payable under—

- (a) sections 30A(1), 30A(5), 40 or 41 of the Social Security Contributions and Benefits Act 1992⁽⁷¹⁾, or
- (b) in Northern Ireland, section 30A(1), 30A(5), 40 or 41 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁷²⁾;

“single-income claimant” means a claimant who, for a tax year—

- (a) is not entitled to receive any relevant payments in addition to the payments of taxable incapacity benefit, or
- (b) is so entitled but has failed to provide any details relating to those payments when making the claim,

and who is not a self-employed earner as defined by section 2 of the Social Security Contributions and Benefits Act 1992 or, in Northern Ireland, section 2 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“taxable incapacity benefit” means any amount of incapacity benefit which is chargeable to income tax under Chapter 2 of Part 10 of ITEPA (tax on social security income).

Application of other regulations

174.—(1) The following regulations apply, subject to this Chapter, to payments of taxable incapacity benefit with the modifications mentioned in paragraphs (2) to (4)—

regulation 2	interpretation
regulation 15	flat rate codes
regulation 16	continued application of employee’s code
regulation 17	notice to employee of code
regulation 18	objections and appeals against employee’s code
regulation 19	amendment of code

(71) 1992 c. 4. Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30); section 40 was substituted by paragraph 8 and section 41 by paragraph 9 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994.

(72) 1992 c. 7. Section 30A was inserted by article 3(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and amended by article 61 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)); section 40 was substituted by paragraph 8 and section 41 by paragraph 9 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994.

regulation 20	notice to employer of amended code
regulation 21	deduction and repayment of tax by reference to employee's code
regulations 22 to 25	cumulative basis
regulations 26 to 31	non-cumulative basis
regulation 33	nil tax code: no deductions or repayments
regulation 36	cessation of employment: Form P45
regulation 66	deductions working sheets
regulation 67	information to employees about payments and tax deducted
regulation 68	periodic payments to and recoveries from the Revenue
regulation 69	due date and receipts for payments of tax
regulation 70	quarterly tax periods
regulation 72	recovery from employee of tax not deducted by employer
regulation 73	annual return of relevant payments liable to deduction of tax
regulation 74	annual return of relevant payments not liable to deduction of tax
regulation 76	certificate if tax in regulation 73 return is unpaid
regulation 79	certificate after inspection of PAYE records
regulation 84	recovery of tax and interest
regulation 97	inspection of employer's PAYE records
regulation 98	multiple PAYE schemes
regulation 102	succession to a business etc
regulation 141	direct collection and special arrangements
regulation 185	adjusting total net tax deducted for purposes of sections 59A(1) and 59B(1) TMA
regulation 188	assessments other than self-assessments
regulation 211	how information must or may be delivered by employers
regulation 216	service by post
regulation 218	certificate that sum due
regulation 219	payment by cheque.

(2) In the application of those regulations, the expressions listed in column 1 of Table 7 have the meanings shown in column 2 of the table.

Table 7

Meaning of expressions in application of other regulations

<i>1. Expression</i>	<i>2. Meaning for purposes of this Chapter</i>
employee	claimant
employer	Department
employment	award
relevant payments	taxable incapacity benefit.

(3) In regulation 15 (flat rate codes)—

- (a) omit paragraph (1);
- (b) omit paragraph (3)(a); and
- (c) for paragraph (3)(c) substitute—

“(c) the Inland Revenue consider that the code which would otherwise be the claimant’s code would result in too much tax being deducted for the tax year in question.”

(4) In regulation 21(1) (deduction and repayment of tax by reference to employee’s code), for “in accordance with these Regulations” substitute “in accordance with Chapter 3 of Part 8”.

Emergency IB code to be used before claimant’s code issued

175.—(1) Paragraph (2) applies if the Department makes a payment of taxable incapacity benefit during a tax year to a single-income claimant before a code has been issued by the Inland Revenue for that year in respect of that award.

(2) The Department must—

- (a) deduct tax using an emergency IB code on the non-cumulative basis, and
- (b) keep records in a deductions working sheet which it must prepare for the purpose.

(3) The use of an emergency IB code under this regulation is treated as the issue of a code for the purposes of regulations 21, 36 and 180.

Return in respect of all claimants to taxable incapacity benefit

176.—(1) When the Department first makes a payment of taxable incapacity benefit to a claimant it must immediately deliver a return to the Inland Revenue containing the following information.

(2) The information is—

- (a) the claimant’s name,
- (b) the claimant’s address,
- (c) the claimant’s date of birth, if known,
- (d) the claimant’s national insurance number,
- (e) the date on which the claimant’s entitlement to taxable incapacity benefit began,
- (f) the weekly rate of taxable incapacity benefit being paid to the claimant,
- (g) if a code is being used for the payment, that code and whether it is used on the non-cumulative basis,

- (h) if the payment was preceded by payment of incapacity benefit which was not taxable, the date that benefit was first paid, and
- (i) the claimant's tax reference, if known.

Further return required in certain cases

177.—(1) On making a subsequent payment of taxable incapacity benefit to the claimant, the Department must deliver a further return in accordance with regulation 176 as if that subsequent payment were the first payment, if conditions A and B are met.

(2) Condition A is that the Inland Revenue have previously determined the claimant's code in relation to the payments of incapacity benefit to be a nil tax code.

(3) Condition B is that the subsequent payment is the first payment to be made at a different rate from the rate subsisting at the time of that determination.

(4) In addition to providing the information listed in regulation 176(2), the Department must indicate in the further return that the weekly rate of taxable incapacity benefit being paid to the claimant represents a revised amount.

Delivery of Form P45 to Department

178.—(1) This regulation applies if a single-income claimant—

- (a) has Parts 2 and 3 of Form P45, and
- (b) has not made, and does not intend to make, a claim for repayment of tax.

(2) The claimant must deliver Parts 2 and 3 of Form P45 when making a claim, and the Department must immediately send them to the Inland Revenue office.

Determination of claimant's code by Inland Revenue

179.—(1) On receiving a return under regulation 176 relating to a single-income claimant, the Inland Revenue must determine the code for the claimant.

(2) The Inland Revenue may determine the code for a claimant who is not a single-income claimant if they consider that it would be impractical to collect tax arising on the claimant's taxable incapacity benefit by other means.

(3) In determining the code for a claimant under this regulation, regulation 14(1) (matters to which Revenue must have regard in determining an employee's code) does not apply.

(4) If the Inland Revenue are satisfied the claimant is entitled, for the tax year for which the code is determined, to any of the following reliefs from income tax, they must have regard to that relief in determining the code for the claimant under this regulation.

(5) The reliefs are—

- (a) personal allowance (section 257(1) of ICTA(**73**)),
- (b) married couple's allowance (section 257A of ICTA(**74**)), and
- (c) blind person's allowance (section 265(1) of ICTA(**75**)).

(6) If the Inland Revenue determine the code for a claimant before the beginning of the tax year for which it is determined, the Inland Revenue—

(73) Section 257 was substituted by section 33 of the Finance Act 1988 (c. 39).

(74) Section 257A was inserted by section 33 of the Finance Act 1988, and amended by section 33(8)(a) and (9)(b) of the Finance Act 1989 (c. 26), section 77(2) of, and paragraph 1 of Schedule 8 to, the Finance Act 1994 (c. 9), paragraph 14 of Schedule 20 to the Finance Act 1996 and section 31(1) to (8) of the Finance Act 1999 (c. 16).

(75) Section 265 was substituted by paragraph 8 of Schedule 3 to the Finance Act 1988, and subsection (1) was amended by paragraph 19 of Schedule 20 to the Finance Act 1996 (c. 8).

- (a) must have regard to any expected change in the amounts of those reliefs, but
- (b) may disregard any of those reliefs if they are not satisfied that the claimant will be entitled to it for the tax year for which it is determined.

Death of claimant

180.—(1) On the death of a claimant in respect of whom a code has been issued by the Inland Revenue, the Department must—

- (a) complete Form P45 indicating in Part 1 that the claimant has died, and
- (b) send it to the Inland Revenue.

(2) The Department must comply with paragraph (1)—

- (a) on the day on which it learns of the claimant's death, or
- (b) if that is not practicable, without unreasonable delay.

(3) Paragraph (4) applies if the Department makes any payment of taxable incapacity benefit after the date of the claimant's death—

- (a) before completing Form P45, or
- (b) after completing Form P45 but during the tax year in which the claimant died.

(4) The Department must, on making the payment, deduct or repay tax as if the deceased claimant were still alive and the award had not ceased at the date of payment.

(5) Regulation 37(2) to (6) (PAYE income paid after employment ceased) applies to any payment of taxable incapacity benefit which—

- (a) is made in a tax year following the tax year in which the claimant died, and
- (b) is not included in Form P45.

CHAPTER 4

INCOME SUPPORT

Interpretation of Chapter 4

181. In this Chapter—

“award” means an award of income support;

“claim” means a claim for income support;

“claimant” means a person who has made a claim;

“Department” means the Department for Work and Pensions or, in Northern Ireland, the Department for Social Development;

“income support” means benefit payable under—

- (a) section 124 of the Social Security Contributions and Benefits Act 1992⁽⁷⁶⁾, or
- (b) in Northern Ireland, section 123 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁷⁷⁾;

“taxable income support” means any amount of income support which is chargeable to income tax under Chapter 2 of Part 10 of ITEPA (tax on social security income).

⁽⁷⁶⁾ 1992 c. 4; section 124 was amended by paragraph 30 of Schedule 2 and Schedule 3 to the Jobseekers Act 1995 (c. 18).

⁽⁷⁷⁾ 1992 c. 7; section 123 was amended by paragraph 13 of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)).

Recording the amount of taxable income support

182. Whenever the Department makes a payment of taxable income support it must—

- (a) record the amount, and
- (b) pay the full sum without any deduction or repayment of income tax.

Information to be supplied when an award of taxable income support ceases

183.—(1) This regulation applies when an award of taxable income support ceases.

(2) The Department must give notice to the Inland Revenue and, except where the claimant has died, the claimant of—

- (a) the total income support, and
- (b) the taxable income support,

paid in respect of the award showing the amounts appropriate to each tax year.

(3) If the Department has been notified of the name and address of a deceased claimant's personal representative within 30 days of the claimant's death, the Department must send the notice to the personal representative.

Adjustments of taxable income support

184.—(1) Paragraph (2) applies if, after the issue of a notice under regulation 183(2)—

- (a) further taxable income support is paid to the claimant, or
- (b) taxable income support overpaid is recovered from the claimant.

(2) The Department must—

- (a) notify the claimant of the revised figure of total income support and the taxable income support included in that revised figure, and
- (b) notify the Inland Revenue of any adjustment to the figure of taxable income support,

showing the amounts appropriate to each tax year.

PART 9

ASSESSMENT AND SELF-ASSESSMENT

Adjusting total net tax deducted for purposes of sections 59A(1) and 59B(1) TMA

185.—(1) This regulation applies for the purpose of determining—

- (a) the excess mentioned in section 59A(1) of TMA⁽⁷⁸⁾ (payments on account of income tax: income tax assessed exceeds amount deducted at source), and
- (b) the difference mentioned in section 59B(1) of TMA⁽⁷⁹⁾ (payments of income tax and capital gains tax: difference between tax contained in self-assessment and aggregate of payments on account or deducted at source).

⁽⁷⁸⁾ Section 59A was inserted by section 192 of the Finance Act 1994 (c. 9), and subsection (1) was amended by section 108(1) of the Finance Act 1995 (c. 4).

⁽⁷⁹⁾ Section 59B was inserted by section 193 of the Finance Act 1994, and subsection (1) was amended by section 122(2) of the Finance Act 1996 (c. 8) and paragraph 131(2) of Schedule 6 to ITEPA.

(2) For those purposes, the amount of income tax deducted at source under these Regulations is the total net tax deducted during the relevant tax year (“A”) after making any additions or subtractions required by paragraphs (3) to (5).

(3) Subtract from A any repayments of A which are made before the taxpayer’s return and self-assessment is made under section 8 or 8A of TMA⁽⁸⁰⁾ (personal return and trustee’s return).

(4) Add to A any overpayment of tax from a previous tax year, to the extent that it was taken into account in determining the taxpayer’s code for the relevant tax year.

(5) Add to A any tax treated as deducted, other than any direction tax, but—

- (a) only if there would be an amount payable by the taxpayer under section 59B(1) of TMA on the assumption that there are no payments on account and no addition to A under this paragraph, and then
- (b) only to a maximum of that amount.

(6) In this regulation—

“direction tax” means any amount of tax which is the subject of a direction made under regulation 72(5) or regulation 81(4) in relation to the taxpayer in respect of one or more tax periods falling within the relevant tax year;

“relevant tax year” means—

- (a) in relation to section 59A(1) of TMA, the immediately preceding year referred to in that subsection;
- (b) in relation to section 59B(1) of TMA, the tax year for which the self-assessment referred to in that subsection is made;

“tax treated as deducted” means any tax which in relation to relevant payments made by an employer to the taxpayer in the relevant tax year—

- (a) the employer was liable to deduct from payments but failed to do so, or
- (b) the employer was liable to account for in accordance with regulation 62(5) (notional payments) but failed to do so;

“the taxpayer” means the person referred to in section 59A(1) of TMA or the person whose self-assessment is referred to in section 59B(1) of TMA (as the case may be).

Recovery: adjustment of employee’s code

186.—(1) This regulation applies if, on the assumption mentioned in paragraph (2), the difference for a tax year mentioned in section 59B(1) of TMA (difference between tax contained in a self-assessment and aggregate of payments on account) would be payable by the taxpayer.

(2) The assumption is that, in respect of the tax year, nothing will be deducted at source under these Regulations in a subsequent tax year.

(3) The Inland Revenue must have regard to the difference in determining a taxpayer’s code for a subsequent tax year under regulation 14 (matters relevant to determination of code) if—

- (a) it is less than £2,000, and
- (b) the return for the tax year is—
 - (i) delivered by an approved method of electronic communications before 31st December following the end of the tax year, or

⁽⁸⁰⁾ Section 8 was substituted by section 90(1) of the Finance Act 1990 (c. 29) and amended by section 178(1) of the Finance Act 1994 (c. 9), section 104(1) to (3) of the Finance Act 1995 (c. 4) and section 121(1) to (3) of the Finance Act 1996 (c. 8); section 8A was inserted by section 90(1) of the Finance Act 1990 and amended by section 178(2) of the Finance Act 1994, sections 103(3) and (4) and 104(1) and (2) of the Finance Act 1995 and section 121(1) to (3) of the Finance Act 1996.

- (ii) delivered by any other method before 1st October following the end of the tax year.
- (4) In a case not falling within paragraph (3)(b)(i), the Inland Revenue may have regard to the difference in determining a taxpayer's code for a subsequent tax year under regulation 14 if—
 - (a) it is less than £2,000, and
 - (b) the return for the tax year is delivered on or after 1st October following the end of the tax year and the code is determined before 31st December.
- (5) But the Inland Revenue must not have regard to the difference if the taxpayer objects at the time the return is delivered or subsequently.

Repayment: adjustment of employee's code

187.—(1) This regulation applies if the difference for a tax year mentioned in section 59B(1) of TMA (difference between tax contained in a self-assessment and aggregate of payments on account) is payable to the taxpayer.

(2) The Inland Revenue may have regard to the difference in determining the employee's code for a subsequent tax year under regulation 14 (matters relevant to determination of code).

(3) But the Inland Revenue must not have regard to the difference if the taxpayer objects at the time the return is delivered or subsequently.

Assessments other than self-assessments

188.—(1) In this regulation, “assessment” means an assessment other than one under section 9 of TMA⁽⁸¹⁾ (self-assessment).

(2) The tax payable by the employee is—

$$A - (B - C)$$

A is the tax payable under the assessment;

B is the total net tax deducted in relation to the employee's relevant payments during the tax year for which the assessment is made, adjusted as required by paragraph (3); and

C is so much, if any, of B as is subsequently repaid.

(3) For the purpose of determining the tax payable by the employee, and subject to paragraphs (4) and (5)—

(a) add to B any tax which—

(i) the employer was liable to deduct from relevant payments but failed to do so, or

(ii) the employer was liable to account for in accordance with regulation 62(5) (notional payments) but failed to do so;

(b) make any necessary adjustment to B in respect of any tax overpaid or remaining unpaid for any tax year; and

(c) make any necessary adjustment to B in respect of any amount to be recovered as if it were unpaid tax under section 30(1) of TMA⁽⁸²⁾ (recovery of overpayment of tax etc) to the extent that—

(i) the Inland Revenue took that amount into account in determining the employee's code, and

⁽⁸¹⁾ Section 9 was substituted by section 179 of the Finance Act 1994 (c. 9), and amended by sections 121(4) and 122(1) of the Finance Act 1996 (c. 8), section 98(2) of the Finance Act 1998 (c. 36), paragraphs 1 and 2(1) of Schedule 29 to the Finance Act 2001 (c. 9) and paragraph 125 of Schedule 6 to ITEPA.

⁽⁸²⁾ Section 30 was substituted by section 149(1) of the Finance Act 1982 (c. 39), and subsection (1) was amended by paragraph 13(2) of Schedule 19 to the Finance Act 1998.

- (ii) the total net tax deducted was in consequence greater than it would otherwise have been.
- (4) No direction tax is to be included in calculating the amount of tax referred to in paragraph (3)(a).
- (5) If a direction is made after the making of the assessment, the amount (if any) shown in the notice of assessment as a deduction from, or a credit against, the tax payable under the assessment is to be taken as reduced by so much of the direction tax as was included in calculating the amount of tax referred to in paragraph (3)(a).
- (6) Instead of requiring payment by the employee, the Inland Revenue may take the tax payable by the employee into account in determining the employee's code for a subsequent tax year.
- (7) In this regulation—
- “direction” means a direction made under regulation 72(5) or 81(4) in relation to the employee in respect of one or more tax periods falling within the tax year in question;
- “direction tax” means any amount of tax which is the subject of a direction;
- “tax payable under the assessment” means the amount of tax shown in the assessment as payable without regard to any amount shown in the notice of assessment as a deduction from, or a credit against, the amount of tax payable.

PART 10

COMMUNICATIONS

CHAPTER 1

ELECTRONIC COMMUNICATIONS: INTERPRETATION

Meaning of electronic communications etc

189. In these Regulations—

“approved method of electronic communications”, in relation to the delivery of information or the making of a payment in accordance with a provision of these Regulations, means a method of electronic communications which has been approved, by specific or general directions issued by the Board of Inland Revenue, for the delivery of information of that kind or the making of a payment of that kind under that provision;

“electronic communications” has the meaning given in section 132(10) of the Finance Act 1999⁽⁸³⁾;

“official computer system” means a computer system maintained by or on behalf of the Board of Inland Revenue or an officer of the Board.

Specified date

190.—(1) For the purposes of Chapters 3 and 4, the Board of Inland Revenue may announce each tax year a date (“the specified date”) for the following tax year.

(2) Any announcement must be made by means of a direction no later than 30th November in a tax year.

(3) The specified date for a tax year applies in respect of specified payments due to be made in respect of that year and specified information required to be delivered in respect of that year.

(83) 1999 c. 16.

Large and medium sized employers

191.—(1) “Large employer” means an employer treated as paying PAYE income to 250 or more employees at the specified date.

(2) “Large or medium sized employer” means an employer treated as paying PAYE income to 50 or more employees at the specified date.

(3) An employer is treated as paying PAYE income to an employee at the specified date if the employer—

- (a) is required at that date by these Regulations, or by regulation 6(6) of the Working Tax Credit (Payment by Employers) Regulations 2002⁽⁸⁴⁾, to prepare or maintain a deductions working sheet in respect of the employee, and
- (b) has not sent to the Inland Revenue Part 1 of Form P45 in respect of that employee.

CHAPTER 2

ELECTRONIC COMMUNICATIONS: GENERAL

Whether information has been delivered electronically

192. For the purpose of these Regulations, information is taken to have been delivered to an official computer system by an approved method of electronic communications only if it is accepted by that official computer system.

Proof of content of electronic delivery

193.—(1) A document certified by the Inland Revenue to be a printed-out version of any information delivered by an approved method of electronic communications is evidence, unless the contrary is proved, that the information—

- (a) was delivered by an approved method of electronic communications on that occasion, and
- (b) constitutes everything which was delivered on that occasion.

(2) A document which purports to be a certificate given in accordance with paragraph (1) is presumed to be such a certificate unless the contrary is proved.

Proof of identity of person sending or receiving electronic delivery

194. The identity of—

- (a) the person sending any information delivered by an approved method of electronic communications to the Inland Revenue, or
- (b) the person receiving any information delivered by an approved method of electronic communications by the Inland Revenue,

is presumed, unless the contrary is proved, to be the person recorded as such on an official computer system.

Information sent electronically on behalf of a person

195.—(1) Any information delivered by an approved method of electronic communications—

- (a) to the Inland Revenue, or
- (b) to an official computer system,

(84) S.I. 2002/2172.

on behalf of a person is taken to have been delivered by that person.

(2) But this does not apply if the person proves that the information was delivered without the person's knowledge or connivance.

Proof of delivery of information sent electronically

196.—(1) The use of an approved method of electronic communications is presumed, unless the contrary is proved, to have resulted in the delivery of information—

- (a) to the Inland Revenue, if the delivery of the information has been recorded on an official computer system;
- (b) by the Inland Revenue, if the despatch of the information has been recorded on an official computer system.

(2) The use of an approved method of electronic communications is presumed, unless the contrary is proved, not to have resulted in the delivery of information—

- (a) to the Inland Revenue, if the delivery of the information has not been recorded on an official computer system;
- (b) by the Inland Revenue, if the despatch of the information has not been recorded on an official computer system.

(3) The time of receipt or despatch of any information delivered by an approved method of electronic communications is presumed, unless the contrary is proved, to be the time recorded on an official computer system.

Proof of payment sent electronically

197.—(1) The use of a method of electronic communications is presumed, unless the contrary is proved, to have resulted in the making of a payment—

- (a) to the Inland Revenue, if the making of the payment has been recorded on an official computer system;
- (b) by the Inland Revenue, if the despatch of the payment has been recorded on an official computer system.

(2) The use of a method of electronic communications is presumed, unless the contrary is proved, not to have resulted in the making of a payment—

- (a) to the Inland Revenue, if the making of the payment has not been recorded on an official computer system;
- (b) by the Inland Revenue, if the despatch of the payment has not been recorded on an official computer system.

(3) The time of receipt or despatch of any payment sent by a method of electronic communications is presumed, unless the contrary is proved, to be the time recorded on an official computer system.

(4) In this regulation, "the Inland Revenue" means the Board of Inland Revenue or any officer of the Board.

Use of unauthorised method of electronic communications

198.—(1) This regulation applies to information which is required to be delivered to the Board of Inland Revenue or to the Inland Revenue under a provision of these Regulations.

(2) The use of a method of electronic communications for the purpose of delivering such information is conclusively presumed not to have resulted in the delivery of that information, unless

that method of electronic communications is for the time being approved for delivery of information of that kind under that provision.

CHAPTER 3

ELECTRONIC PAYMENT BY LARGE EMPLOYERS

Large employers required to make specified payments electronically

199.—(1) A large employer to whom an e-payment notice in respect of a tax year has been issued must use an approved method of electronic communications to make specified payments.

(2) “Specified payments”, in this Chapter, means payments of tax under regulation 68 (periodic payments to and recoveries from the Revenue) in respect of tax months in the tax year to which the e-payment notice relates.

(3) The Board of Inland Revenue may give specific or general directions—

- (a) suspending, for any period during which the use of an approved method of electronic communications for the making of specified payments is impossible or impractical, any requirement imposed by these Regulations relating to the use of such methods,
- (b) substituting alternative requirements for the suspended ones, and
- (c) making any provision that is necessary in consequence of the imposition of the substituted requirements.

E-payment notices and appeal

200.—(1) “E-payment notice” means a notice issued by the Inland Revenue in respect of a tax year that the employer is a large employer and accordingly is required to use an approved method of electronic communications for the making of specified payments.

(2) An e-payment notice in respect of a tax year must be issued by 31st December following the specified date for that tax year.

(3) An employer may appeal against an e-payment notice by giving notice to the Inland Revenue within 30 days of the issue of the e-payment notice.

(4) The grounds of appeal are that the employer is not a large employer.

(5) If the appeal is successful the e-payment notice must be withdrawn.

(6) Regulation 217 (appeals: supplementary provisions) applies to appeals under this regulation.

Employer in default if specified payment not received by applicable due date

201.—(1) This regulation applies if an employer is required to make a specified payment by an approved method of electronic communications in accordance with regulation 199.

(2) The employer is in default if the specified payment is not received in full by the Inland Revenue (whether by an approved method of electronic communications or otherwise) on or before the date by which that payment is required in accordance with regulation 69 (due date for payments of tax).

(3) But the employer is not in default if—

- (a) the employer had a reasonable excuse for failing to make the specified payment in a manner which secures that it is received in full by the Inland Revenue on or before the applicable due date, and
- (b) the specified payment is received in full by the Inland Revenue without unreasonable delay after the excuse ceased.

(4) Inability to pay is not a reasonable excuse for the purposes of paragraph (3)(a).

(5) A payment is not treated as received in full by the Inland Revenue on or before the date by which that payment is required in accordance with regulation 69 unless it is made in a manner which secures (in a case where the payment is made otherwise than in cash) that, on or before that date, all transactions can be completed which need to be completed before the whole amount of the payment becomes available to the Inland Revenue.

Default notice and appeal

202.—(1) The Inland Revenue must issue a default notice to any person who appears to be in default under regulation 201 in respect of a specified payment.

(2) A person may appeal against a default notice by giving notice to the Inland Revenue within 30 days of the issue of the default notice.

(3) The grounds of appeal are—

- (a) that the person is not in default, or
- (b) that the person is not a large employer, subject to paragraph (5).

(4) If the appeal is successful the default notice must be withdrawn.

(5) Paragraph (3)(b) does not apply if, following an appeal under regulation 200, the e-payment notice was not withdrawn.

(6) Regulation 217 (appeals: supplementary provisions) applies to appeals under this regulation.

Default surcharge

203.—(1) An employer in default in respect of any specified payment to whom—

- (a) a default notice under regulation 202, and
- (b) a surcharge notice under regulation 204,

have been issued, is liable to a surcharge.

(2) The surcharge is the sum of the surcharges, calculated in accordance with paragraph (3), in respect of each default relating to the tax year in which were made the relevant payments to which the specified payment referred to in paragraph (1) relates.

(3) The surcharge in respect of each default is the specified percentage of (A – B).

(4) In paragraph (3)—

- (a) A is the total amount of tax due for the tax year in which the relevant payments to which the specified payment relates were made;
- (b) B is the total of the amounts deducted from A under—
 - (i) rule 1 of regulation 7(2) of the Working Tax Credit (Payment by Employers) Regulations 2002⁽⁸⁵⁾;
 - (ii) regulations 4, 5 and 6 of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994⁽⁸⁶⁾,
 - (iii) regulations 3 and 5 of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002⁽⁸⁷⁾, and

⁽⁸⁵⁾ S.I. 2002/2172.

⁽⁸⁶⁾ S.I. 1994/1882, amended by S.I. 2003/672.

⁽⁸⁷⁾ S.I. 2002/2820.

- (iv) regulation 44B of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993⁽⁸⁸⁾;
- (c) the specified percentage is determined by reference to the number of the default during a surcharge period in accordance with Table 8.

Table 8

Specified percentage for each default in a surcharge period

<i>1. Default number (within a surcharge period)</i>	<i>2. Specified percentage</i>
1st	0%
2nd	0%
3rd	0.17%
4th	0.17%
5th	0.17%
6th	0.33%
7th	0.33%
8th	0.33%
9th	0.58%
10th	0.58%
11th	0.58%
12th and subsequent defaults	0.83%

- (5) A surcharge period is a period which—
 - (a) begins on the day following the date by which payment is required in accordance with regulation 69 for the first specified payment in respect of which the employer is in default, and
 - (b) ends at the end of a tax year in relation to which the employer has not been in default in respect of any specified payment.
- (6) A surcharge payable under this regulation is payable 30 days after the issue of the surcharge notice.
- (7) Section 102 of TMA⁽⁸⁹⁾ (mitigation of penalties) applies to a surcharge payable under this regulation as if it were a penalty.

Surcharge notice and appeal

204.—(1) The Inland Revenue must issue a surcharge notice to an employer who has been in default on three or more occasions during a surcharge period and consequently will be liable to a surcharge under regulation 203.

- (2) The surcharge notice must show the total surcharge liability for the tax year.
- (3) The surcharge notice must be issued within 6 years of—

⁽⁸⁸⁾ S.I. 1993/743, amended by S.I. 2003/536.

⁽⁸⁹⁾ Section 102 was amended by section 168(4) of the Finance Act 1989 (c. 26).

- (a) the end of the tax year, or
 - (b) if earlier, the date on which the employer delivered a return in accordance with regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)).
- (4) An employer may appeal against a surcharge notice by giving notice to the Inland Revenue within 30 days of the issue of the surcharge notice.
- (5) The grounds of appeal are—
- (a) that the number of defaults stated in the notice is incorrect, or
 - (b) that the amount of the surcharge is incorrect.
- (6) But paragraph (5)(a) does not apply in respect of a disputed default which has already been the subject of an appeal under regulation 202, following which the default notice was not withdrawn.
- (7) Parts 4, 5 and 6 of TMA (assessment, appeals, collection and recovery) apply to the surcharge notice as if it were an assessment and the amount of the surcharge was tax charged by the assessment, subject to paragraphs (4), (5) and (8).
- (8) On an appeal section 50(6) to (8) of TMA (procedure) do not apply, but the Commissioners may—
- (a) if it appears to them that no surcharge has been incurred, set the surcharge notice aside,
 - (b) if the amount of the total surcharge liability appears to them to be correct, confirm the surcharge notice, or
 - (c) if the amount of the total surcharge liability appears to them to be incorrect, increase or reduce it to the correct amount.
- (9) Regulation 217(3) (appeals: supplementary provisions) applies to appeals under this regulation.

CHAPTER 4

MANDATORY USE OF ELECTRONIC COMMUNICATIONS

Mandatory use of electronic communications

205.—(1) A specified employer must deliver specified information by an approved method of electronic communications to the Inland Revenue.

(2) The Board may make a general or specific direction requiring a specified employer to deliver specified information by a particular approved method of electronic communication.

(3) Specified information may be delivered under this regulation by a person on behalf of a specified employer.

(4) References in this Chapter to information and to the delivery of information must be construed in accordance with section 135(8) of the Finance Act 2002⁽⁹⁰⁾ (mandatory e-filing).

(5) This regulation applies in relation to specified information—

- (a) in respect of the tax year ending 5th April 2005, for specified employers who are large employers,
- (b) in respect of the tax year ending 5th April 2006 and subsequent tax years, for specified employers who are large or medium sized employers.

(90) 2002 c. 23.

Specified employers

206.—(1) In this Chapter, “specified employer” means—

- (a) a large employer, or
- (b) a large or medium sized employer,

to whom an e-filing notice for a tax year has been issued by 31st December following the specified date for the tax year.

(2) But the following are not specified employers—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications,
- (b) a partnership, if all the partners fall within sub-paragraph (a), and
- (c) a company, if all the directors and the company secretary fall within sub-paragraph (a).

(3) In paragraph (2)(c), “company” means a body corporate or unincorporated association but does not include a partnership.

Specified information

207.—(1) In this Chapter, “specified information” means the return and accompanying information required by regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)).

(2) But specified information does not include information supplied under special arrangements for the collection of tax made under regulation 141 (direct collection and special arrangements).

E-filing notice and appeals

208.—(1) In this Chapter, “e-filing notice” means a notice issued by the Inland Revenue in respect of a tax year that an employer—

- (a) is a large or a large or medium sized employer, and
- (b) does not fall within regulation 206(2) (religious objection),

and accordingly is required to use an approved method of electronic communications for the delivery of specified information for the tax year.

(2) An employer may appeal against an e-filing notice by notice to the Inland Revenue within 30 days of the issue of the e-filing notice.

- (3) The grounds of appeal are that the employer does not satisfy the description specified.
- (4) If an appeal is successful the e-filing notice must be withdrawn.
- (5) Regulation 217 (appeals: supplementary provisions) applies to appeals under this regulation.

Standards of accuracy and completeness

209.—(1) Specified information delivered by a method of electronic communications must meet the standards of accuracy or completeness set by specific or general directions given by the Board of Inland Revenue.

(2) Specified information which fails to meet those standards must be treated as not having been delivered.

Penalties and appeals

210.—(1) A specified employer who fails to deliver specified information or any part of it in accordance with regulation 205 is liable to a penalty.

(2) Table 9 sets out the penalties for specified employers for the tax years ending 5th April 2005 to 5th April 2009, depending on the number of employees for whom particulars should have been included with the specified information.

Table 9

Penalties: tax years ending 5th April 2005 to 5th April 2009

<i>1. Number of employees for whom particulars should have been included with the specified information</i>	<i>2. Penalty</i>
1 – 49	nil
50 – 249	nil for tax year ending 5th April 2005, £600 for subsequent tax years
250 – 399	£900
400 – 499	£1,200
500 – 599	£1,500
600 – 699	£1,800
700 – 799	£2,100
800 – 899	£2,400
900 – 999	£2,700
1000 or more	£3,000

(3) An employer is not liable to a penalty if the employer had a reasonable excuse for failing to comply with regulation 205 which had not ceased at the time the specified information was delivered.

(4) A notice of appeal against a determination under section 100 of TMA(91) of a penalty under this regulation can only be on the grounds that—

- (a) the employer is not a specified employer, subject to paragraph (5),
- (b) the employer did comply with regulation 205,
- (c) the amount of the penalty is incorrect, or
- (d) paragraph (3) applies.

(5) An employer may not appeal on the grounds that the employer is not a specified employer if the employer has already appealed under regulation 208(2) (appeal against e-filing notice).

(6) Section 103A of TMA(92) (interest on penalties) applies to penalties payable under this regulation.

(91) Section 100 was substituted by section 167 of the Finance Act 1989 (c. 26) and amended by S.I. 1994/1813.

(92) Section 103A was inserted by paragraph 33 of Schedule 19 to the Finance Act 1994 (c. 9).

CHAPTER 5

METHODS OF PROVIDING INFORMATION ETC

How information must or may be delivered by employers

211.—(1) Table 10 applies to determine how employers must or may comply with the requirements of the regulations listed in column 1.

(2) The requirements of the regulation must be complied with in a document or format provided or approved by the Board of Inland Revenue if so indicated in column 4.

(3) Where appropriate, the relevant form number is listed in column 3.

(4) Instead of sending a document to the Inland Revenue, the requirements of the regulation may be complied with by an employer arranging for the information it would contain to be delivered to the Inland Revenue by an approved method of electronic communications if so indicated in column 5.

Table 10

Regulations which require approved document or format, and which permit electronic delivery

<i>1. Regulation</i>	<i>2. Description of information</i>	<i>3. Form number</i>	<i>4. Approved document or format</i>	<i>5. Electronic communications</i>
35(3), (4), (5)(a)	simplified deduction scheme: deductions working sheet	Form P12	yes	yes
35(5)(b)	simplified deductions scheme: annual return of deductions working sheets	Form P37	yes	yes
36(1), (2)(a)	cessation of employment	Form P45, Part 1	yes	yes
36(1), (2)(b)	cessation of employment	Form P45, Parts 1A, 2, 3	yes	no
38(1)	death of employee	Form P45, Part 1	yes	yes
39(1)	death of pensioner	Form P45, Part 1	yes	yes
42(8)	procedure if new employer receives Form P45	Form P45, Part 3	yes	yes
46(4), 47(2)(a) 48(2)(a)	information to be provided if code not known	Form P46	yes	yes

<i>1. Regulation</i>	<i>2. Description of information</i>	<i>3. Form number</i>	<i>4. Approved document or format</i>	<i>5. Electronic communications</i>
49(2)(a)				
52(3)	late presentation of Form P45	Form P45, Part 3	yes	yes
55(3)(a)	retirement statement	Form P160	no	yes
56(3)	procedure if new pension payer receives Form P45	Form P45, Part 3	yes	yes
57(2)	information to be provided if code not known (non-UK resident pensioners)	Form P46	yes	yes
58(3)	information to be provided if code not known (UK resident pensioners)	Form P46	yes	yes
60(3)	late presentation of Form P45	Form P45, Part 3	yes	yes
67(1)	information to employees about payments and tax deducted	Form P60	yes	no
73	annual return of relevant payments liable to deduction of tax	Forms P35 and P14	yes	yes
74	annual return of relevant payments not liable to deduction of tax	Form P38A	yes	yes
77(4)	return of tax for which employer is liable under regulation 68	Form P100	yes	no
85(1)(a)	employers: annual return of other PAYE income	Form P9D	yes	no
85(1)(a) and (b)	employers: annual return	Form P11D	yes	yes

<i>1. Regulation</i>	<i>2. Description of information</i>	<i>3. Form number</i>	<i>4. Approved document or format</i>	<i>5. Electronic communications</i>
	of other PAYE income: benefits code employee			
85(2)	employers: annual return of other PAYE income: declaration	Form P11D(b)	yes	yes
90(2)	quarterly return of cars becoming available or unavailable	Form P46 (car)	yes	yes
129(1)	reserve forces' pay: certificate of tax deducted	Form P59	yes	no
132(1)	reserve forces' pay: end of year certificate	Form P60	yes	no
137(1)	holiday pay funds: certificate of tax deducted	Form P403	yes	no
152(2)	deductions working sheet for claimants awarded taxable JSA	Form PB8	yes	no
153(9)	Department's return for claimant who delivers Form P45	Forms PB3 and P45 Part 3	yes	no
154(2)	Department's return for claimant who does not deliver Form P45	Form PB3	yes	no
157(2)(b)	claimant's end of year certificate	Form P60U	yes	no
157(2)(c)	Department's end of year return	Form P14U	yes	no
159(2)	cessation of award of JSA	Form P45U	yes	no

<i>1. Regulation</i>	<i>2. Description of information</i>	<i>3. Form number</i>	<i>4. Approved document or format</i>	<i>5. Electronic communications</i>
160(2)(b)	Department's notification of taxable JSA adjustment	Form P180	yes	no
164(2)	Department's quarterly statement to Board of receipts and payments in respect of taxable JSA	—	yes	no

(5) If an employer delivers electronically the return required by regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)), the statement and declaration and the certificate must, instead of being signed as required by regulation 73(8), be authenticated by or on behalf of the employer in such manner as may be approved by the Board of Inland Revenue.

Modifications for electronic version of Form P160

212.—(1) This regulation applies if instead of sending to the Inland Revenue the statement required by regulation 55(3)(a) (pensioner's retirement statement: Form P160) a pension payer delivers the information it would contain to the Inland Revenue by an approved method of electronic communications (as permitted by regulation 211).

(2) For sub-paragraphs (a) to (m) of regulation 55(4) (information to be provided in retirement statement) substitute—

- “(a) the pension payer's PAYE reference,
- (b) the pensioner's name,
- (c) the date of retirement,
- (d) the date on which the pension started,
- (e) the pensioner's code immediately before retirement and whether it was being used on the cumulative basis,
- (f) if the pensioner's code immediately before retirement was used on the cumulative basis—
 - (i) the tax week or tax month in which the last relevant payment before retirement was made to the pensioner or, in a case falling within regulation 24, was treated as having been made,
 - (ii) the total payments to date at the date of retirement,
 - (iii) the total net tax deducted,
- (g) any number used to identify the pensioner,
- (h) the tax code in use for the pensioner, and whether it is being used on the cumulative basis,
- (i) the pensioner's address, if known,
- (j) the pensioner's sex,
- (k) the pensioner's national insurance number, if known,

- (l) the pensioner's date of birth, if known,
- (m) the amount of pension payable annually."

How information may be delivered by Inland Revenue

213.—(1) Table 11 applies to determine how the Inland Revenue may comply with requirements of the regulations listed in column 1.

(2) Instead of sending a document to the employer or (where relevant) the employer's agent, the requirements of the regulation may be complied with by the Inland Revenue arranging for the information it would contain to be delivered to the employer or (where relevant) the employer's agent by an approved method of electronic communications if so indicated in column 4.

(3) The relevant form number is listed in column 3.

Table 11

Regulations which permit electronic delivery by Inland Revenue

<i>1. Regulation</i>	<i>2 Description of information</i>	<i>3. Form number</i>	<i>4. Electronic communications</i>
8(2), 20(2)	issue of code to employer or agent	Form P6 or P9	yes
20(5), (6)	notice to employer to amend codes	Form P7X or P9X	yes
53(2)	notice to employer of payments and total net tax deducted	Form P6	yes
61(2)	notice to pension payer of payments and total net tax deducted	Form P6	yes

(4) But the Inland Revenue may only deliver information by an approved method of electronic communications if the employer or employer's agent (as the case may be) has consented to delivery of information in that way, and the Inland Revenue have not been notified that the consent has been withdrawn.

(5) References in paragraphs (2) and (4) to an employer's agent are to a person acting on behalf of the employer.

How information must be provided by employees

214.—(1) An employee must comply with the requirements of the regulations listed in column 1 of Table 12 in a document or format provided or approved by the Board of Inland Revenue.

(2) Where appropriate, the relevant form number is listed in column 3 of the Table.

Table 12

Regulations which require employee to use approved document or format

<i>1. Regulation</i>	<i>2. Subject</i>	<i>3. Form number</i>
46(2)	Form P46 where employer does not receive Form P45 and code not known	Form P46
145(1)	direct collection: return when relevant payments cease	—
146(1)	direct collection: end of year return	Form P14
147(2)	direct collection: return of unpaid tax	—
154(3)	claimant's certificate of full-time education	Form P187

Meaning of Form P45 and P46**215.** In these Regulations—

“Form P45” means the form provided or approved for use in accordance with regulations 36 (cessation of employment: Form P45), 38 (death of employee) or 39 (death of pensioner);

“Parts 2 and 3 of Form P45” means—

- (a) the Parts 2 and 3 of the Form P45 provided to the employee or claimant (as the case may be) in accordance with regulation 36, or
- (b) the Parts 2 and 3 of the Form P45 provided to the claimant in accordance with regulation 159 (cessation of award: Form P45U);

“Form P45U” means the form required to be completed in accordance with regulation 159;

“Form P46” means the form provided or approved for use in accordance with regulations 46, 57 and 58 (Form P46 procedure for employees and pensioners).

Service by post

216. Any notice or deductions working sheet which is authorised or required to be given, served or issued under these Regulations may be sent by post.

PART 11**SUPPLEMENTARY PROVISIONS***Miscellaneous appeals***Appeals: supplementary provisions**

217.—(1) The following provisions of TMA apply to appeals under the regulations listed in paragraph (2) as they apply to an appeal under section 31 of TMA(**93**)—

(93) Sections 31 to 31D were substituted by paragraph 11 of Schedule 29 to the Finance Act 2001 (c. 9).

section 31A(5) and (6)	notice of appeal
section 31B	appeals to General Commissioners
section 31D	election to bring appeal before Special Commissioners.

(2) The regulations are—

regulation 99(3)	appeal against improper purpose notice
regulation 200(3)	appeal against e-payment notice
regulation 202(2)	appeal against default notice
regulation 208(2)	appeal against e-filing notice.

(3) In an appeal under the regulations listed in paragraph (2) and regulation 204(4) (appeal against surcharge notice), the relevant place for the purposes of paragraph 3(1)(a) of Schedule 3 to TMA⁽⁹⁴⁾ (rules for assigning proceedings to General Commissioners) is the place which at the time of the notice of appeal is—

- (a) the employer's place of business in the United Kingdom, or
- (b) if there is no such place, the employer's place of residence in the United Kingdom.

(4) In paragraph (3)—

“place of business” means—

- (a) the place where the trade, profession, vocation or business with which the proceedings are concerned is carried out, or
 - (b) if more than one such place, the head office or place where it is mainly carried out; and
- “place of residence” means the employer's usual place of residence or, if that is unknown, the employer's last known place of residence.

Certificate that sum due and payment by cheque

Certificate that sum due

218.—(1) A certificate of the Inland Revenue that, to the best of their knowledge and belief, any amount shown in a certificate under the regulations listed in paragraph (2) has not been paid by an employer, is sufficient evidence that the amount mentioned in the certificate is unpaid and due to the Crown.

(2) The regulations are—

regulation 76	unpaid amounts in regulation 73 return (Form P35)
regulation 77(6)	unpaid amounts in regulation 77 return
regulation 78(8)	unpaid amounts from regulation 78 specification

⁽⁹⁴⁾ Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8), and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

regulation 79	unpaid amounts following inspection under regulation 97.
---------------	--

(3) A certificate of the Inland Revenue that, to the best of their knowledge and belief, any amount of interest payable under the regulations listed in paragraph (4) has not been paid by an employer or employee is sufficient evidence that the amount mentioned in the certificate is unpaid and due to the Crown.

(4) The regulations are—

regulation 72(7)	interest consequential on regulation 72 direction
regulation 81(6)	interest consequential on regulation 81 direction
regulation 82	interest on overdue tax
regulation 115	interest on tax overdue under PSA.

(5) The production of—

(a) the return made by the employer under paragraph (4) of regulation 77 (return and certificate if tax unpaid), and

(b) the certificate of the Inland Revenue under paragraph (6) of that regulation,

is sufficient evidence that the amount shown in the certificate is the amount of tax which the employer is liable to pay to the Inland Revenue in respect of the tax period in question under that regulation.

(6) A document which purports to be a certificate under paragraph (1) or (3), or regulation 77(6), is treated as such a certificate until the contrary is proved.

Payment by cheque

219.—(1) For the purposes of the following provisions, if—

(a) any payment to the Inland Revenue is made by cheque, and

(b) the cheque is paid on its first presentation to the banker on whom it is drawn,

the payment is treated as made on the day on which the cheque was received by the Inland Revenue.

(2) The provisions are—

regulation 69	due date and receipts for payments of tax
regulation 72	recovery from employee of tax not deducted by employer
regulation 78	notice and certificate if tax may be unpaid
regulation 82	interest on tax overdue
regulation 83(2)(b)	interest on tax overpaid: date of overpayment
regulation 115	interest on tax due under PSA
regulation 116	interest due on tax overpaid under PSA.

Transitional provisions, savings and revocations

Transitional provisions, savings and revocations

220.—(1) Schedule 1 (transitional provisions and savings) has effect.

(2) The regulations listed in column 1 of Schedule 2 are revoked to the extent specified in column 3 of that Schedule.

(3) Paragraph (2) is subject to Schedule 1.

Nick Montagu

Ann Chant

21st October 2003

Two of the Commissioners of Inland Revenue

SCHEDULE 1

Regulation 220

TRANSITIONAL PROVISIONS AND SAVINGS

PART 1

GENERAL PROVISIONS

Continuity of the law

1. The revocation of provisions and their making in a rewritten form in these Regulations does not affect the continuity of the law.

2. Paragraph 1 does not apply to any change in the law made by these Regulations.

3. Anything which—

(a) has been done, or has effect as if done, under or for the purposes of a provision of the revoked Regulations, and

(b) is in force or effective immediately before the commencement of these Regulations,

has effect after that commencement as if done under or for the purposes of the corresponding provision of these Regulations.

4. Any reference (express or implied) in these Regulations or any document made under these Regulations to—

(a) a provision of these Regulations, or

(b) things done or falling to be done under or for the purposes of a provision of these Regulations,

is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding provision of the revoked Regulations had effect, a reference to the provision of the revoked Regulations or to things done or falling to be done under or for the purposes of the provision of the revoked Regulations.

5. Any reference (express or implied) in these Regulations to relevant payments, relevant payments exceeding the PAYE threshold or similar concepts created by these Regulations is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding concept of the revoked Regulations had effect, a reference to the concept of the revoked Regulations.

6. Any reference (express or implied) in these Regulations to—

(a) a provision of ITEPA, or

(b) things done or falling to be done under or for the purposes of a provision of ITEPA,

is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding provision repealed by ITEPA had effect, a reference to the repealed provision or to things done or falling to be done under or for the purposes of the repealed provision.

7. Any reference (express or implied) in these Regulations to general earnings, PAYE income or similar concepts created by ITEPA is to be read as including, in relation to times, circumstances or purposes in relation to which any corresponding concept which has been superseded by ITEPA had effect, a reference to the superseded concept.

8. Paragraphs 4, 5, 6 and 7 apply only in so far as the context permits.

9. Paragraph 5 is without prejudice to the generality of paragraph 4 and paragraph 7 is without prejudice to the generality of paragraph 6.

10. These Regulations have effect in relation to tax liable, under the Income Tax (Employments) Regulations 1993⁽⁹⁵⁾ or section 710 of ITEPA⁽⁹⁶⁾, to be deducted or accounted for in respect of payments made before 6th April 2004 as if the tax had been liable to be deducted or accounted for under these Regulations.

11. Paragraph 10 is without prejudice to the generality of paragraphs 1 to 9.

12. Paragraphs 1 to 11 have effect instead of paragraph (b) of section 17(2) of the Interpretation Act 1978⁽⁹⁷⁾.

General saving for old savings

13.—(1) The revocation by these Regulations of a provision previously revoked subject to savings does not affect the continued operation of those savings.

(2) The revocation by these Regulations of a saving on the previous revocation of a provision does not affect the operation of the saving in so far as it is not specifically reproduced in these Regulations but remains capable of having effect.

Interpretation

14. In this Part of this Schedule, “the revoked Regulations” means the Regulations which are revoked by these Regulations.

PART 2

SPECIFIC PROVISIONS

Modification of reference to payment to the Inland Revenue in regulation 68(2)

15. For the purposes of giving effect to any enactment or instrument which refers to an amount which is, or would in certain circumstances be, payable to the collector, paragraph (2) of regulation 68 has effect as if that paragraph required payment of the amount to which it refers to the collector.

FPCS information for the tax year ending 5th April 2002: employees not covered by regulation 46(1) of 1993 Regulations

16.—(1) This paragraph applies to a person (a “former FPCS employee”)—

(a) who was employed by an employer during a part of the tax year ending 5th April 2002, but who was no longer employed by that employer on 5th April 2002, and

(b) in respect of whom the employer—

(i) has provided information to the Inland Revenue under the FPCS arrangement for the tax year ending 5th April 2002, or

⁽⁹⁵⁾ [S.I. 1993/744](#); relevant amending instruments are [S.I. 1993/2276](#), [S.I. 1994/775](#), [S.I. 1994/1212](#), [S.I. 1995/447](#), [S.I. 1995/853](#), [S.I. 1995/1223](#), [S.I. 1995/1284](#), [S.I. 1996/804](#), [S.I. 1996/980](#), [S.I. 1996/1312](#), [S.I. 1996/2381](#), [S.I. 1996/2554](#), [S.I. 1996/2631](#), [S.I. 1997/214](#), [S.I. 1998/1891](#), [S.I. 1998/2484](#), [S.I. 1999/70](#), [S.I. 1999/2155](#), [S.I. 2002/680](#), [S.I. 2003/536](#), and [S.I. 2003/2494](#).

⁽⁹⁶⁾ Section 710 of ITEPA was amended by section 145(6) of the Finance Act 2003 (c. 14).

⁽⁹⁷⁾ 1978 c. 30.

Status: This is the original version (as it was originally made).

- (ii) has delivered information by an approved method of electronic communications to an official computer system under the FPCS arrangement for the tax year ending 5th April 2002, but
 - (c) in respect of whom no particulars were required to be provided by the employer under regulation 46(1) of the 1993 Regulations⁽⁹⁸⁾ for the tax year ending 5th April 2002.
- (2) The former FPCS employee may by notice require the employer to give a statement to the former FPCS employee containing—
- (a) particulars of the amount of the taxable profit, if any, for the tax year ending 5th April 2002 in respect of car allowances and motor mileage allowances paid to the former FPCS employee in the tax year ending 5th April 2002 for business travel, calculated by reference to the FPCS arrangement, or
 - (b) particulars of the total amount of the car allowances and motor mileage allowances paid to the former FPCS employee in the tax year ending 5th April 2002 for business travel, and the total amount of miles covered by the former FPCS employee in the tax year ending 5th April 2002 in the course of business travel for which the motor mileage allowances were paid.
- (3) The former FPCS employee may give the notice to the employer at any time before 6th April 2005.
- (4) The employer must give the statement to the former FPCS employee within 30 days of receiving the notice.
- (5) A former FPCS employee who has received the statement from the employer may not require a further statement from the employer in respect of the tax year ending 5th April 2002.
- (6) In this paragraph—
- “business travel” has the meaning given by section 168(5)(c) of ICTA⁽⁹⁹⁾ as that definition had effect for the tax year ending 5th April 2002 by virtue of regulation 46AA(6) of the 1993 Regulations⁽¹⁰⁰⁾;
 - “the FPCS arrangement” means the arrangement known as the Fixed Profit Car Scheme made between the employer and the Inland Revenue for providing information in respect of payments of car allowances and motor mileage allowances made to employees for business travel.
- (7) The reference in sub-paragraph (1)(b)(ii) to the delivery of information by an approved method of electronic communications to an official computer system includes, in relation to information which was delivered before the commencement of these Regulations, a reference to the delivery of information to an official computer system within the meaning of regulation 2(1) of the 1993 Regulations by a means of electronic communications approved for the purposes of regulation 46AA(3) of those Regulations.

FPCS information for the tax year ending 5th April 2002: employees covered by regulation 46(1) of 1993 Regulations

17.—(1) This paragraph applies to a former employee who would be a former FPCS employee were it not for the fact that the employer was required under regulation 46(1) of the 1993 Regulations to provide particulars in respect of the former employee for the tax year ending 5th April 2002.

⁽⁹⁸⁾ Regulation 46 was substituted by regulation 4 of S.I. [1995/1284](#) and paragraph (1) was amended by regulation 15 of S.I. [1998/2484](#) and regulation 17(1) of S.I. [2001/1081](#).

⁽⁹⁹⁾ Section 168(5)(c) was substituted by section 62(4) of the Finance Act [1997 \(c. 16\)](#) and repealed by paragraph 24 of Schedule 6 to ITEPA.

⁽¹⁰⁰⁾ Regulation 46AA was inserted by regulation 4 of S.I. [1995/1284](#).

(2) If the former employee gives notice to the employer under paragraph (4) of regulation 94 requiring a statement relating to the tax year ending 5th April 2002, the statement must contain (in addition to the particulars mentioned in paragraph (2) of that regulation)—

- (a) particulars of the amount of the taxable profit, if any, for the tax year ending 5th April 2002 in respect of car allowances and motor mileage allowances paid to the former employee in the tax year ending 5th April 2002 for business travel, calculated by reference to the FPCS arrangement, or
- (b) particulars of the total amount of the car allowances and motor mileage allowances paid to the former employee in the tax year ending 5th April 2002 for business travel, and the total amount of miles covered by the former employee in the tax year ending 5th April 2002 in the course of business travel for which the motor mileage allowances were paid.

(3) “Former employee” has the same meaning as in regulation 94(7).

(4) Expressions used in this paragraph which are defined in paragraph 16 have the same meaning in this paragraph as in that paragraph.

Due date for payments of tax in respect of tax periods ending before 6th April 2004

18.—(1) The following provisions have effect with the following modifications in so far as the provisions apply in relation to tax periods ending before 6th April 2004.

(2) For sub-paragraphs (a) and (b) of regulation 69(1) (due date for payments of tax) substitute “within 14 days after the end of the tax period”.

(3) In regulation 77(1) (return and certificate if tax may be unpaid) for “17 days” substitute “14 days”.

(4) In regulation 78(1) (notice and certificate if tax may be unpaid) for “17 days” substitute “14 days”.

Interest on unpaid tax: disapplication of regulation 82 for tax years before the tax year ending 5th April 1993

19. Regulation 82 (interest on tax overdue) does not apply in relation to unpaid tax in respect of a tax year ending on or before 5th April 1992.

Interest on unpaid tax: provisions applying to tax years before the tax year ending 5th April 1993

20.—(1) This paragraph applies if the Inland Revenue make a determination under regulation 80 (determination of unpaid tax) which relates to tax payable for a tax year ending on or before 5th April 1992.

(2) This paragraph also applies if—

- (a) the inspector, at any time after 19th April 1988, made a determination under regulation 49 of the 1993 Regulations (determination of tax payable by employer),
- (b) the determination relates to tax payable for a tax year ending on or before 5th April 1992, and
- (c) tax remains payable pursuant to the determination immediately before the commencement of these Regulations.

(3) The tax payable pursuant to the determination carries interest at the prescribed rate from the relevant start date until payment (“the interest period”).

(4) Sub-paragraph (3) applies even if the relevant start date is a non-business day as defined by section 92 of the Bills of Exchange Act 1882(101).

(5) Any change made to the prescribed rate during the interest period applies to the tax payable pursuant to the determination from the date of change.

(6) Regulation 84 (recovery of tax and interest) applies to an amount of interest which an employer is liable to pay under this paragraph as if it were the unpaid amount for the purposes of that regulation.

(7) Paragraphs (3) and (6) of regulation 218 (certificate of interest due) apply in relation to an amount which an employer is liable to pay under this paragraph as if this paragraph were a regulation included among those listed in paragraph (4) of that regulation.

(8) Regulation 219 (payment by cheque) applies for determining when a payment is made for the purposes of this paragraph as if this paragraph were included among the provisions listed in paragraph (2) of that regulation.

(9) In this paragraph—

“inspector” means an inspector of taxes;

“the prescribed rate” means the rate applicable under section 178 of the Finance Act 1989(102) for the purposes of section 86 of TMA;

“the relevant start date” means—

- (a) in a case where the determination relates to tax payable for a tax year ending on or before 5th April 1988, 19th April 1988, and
- (b) in a case where the determination relates to tax payable for a tax year ending after 5th April 1988 but on or before 5th April 1992, the 14th day after the end of the tax year to which the determination relates.

Interest on tax overdue: application of regulation 82 to tax years from 1992-93 to 2003-04

21.—(1) Regulation 82 (interest on tax overdue) has effect with the following modifications where the tax year in respect of which tax is unpaid is—

- (a) the tax year ending 5th April 1993, or
- (b) a tax year ending after 5th April 1993 but on or before 5th April 2004.

(2) In paragraph (1) for “the total net tax payable in respect of a tax year” substitute “the total net tax deductible by him in respect of all of his employees during a tax year”.

(3) In paragraph (4) for “a direction made under regulation 72(5) or 81(4)” substitute “a direction made under regulation 42(2) or (3) or 49(5) of the 1993 Regulations(103) or regulation 72(5) or 81(4) of these Regulations”.

(4) Omit paragraph (6).

(5) For paragraph (8) substitute—

“(8) The “reckonable date” means 14 days after the end of the tax year.”

(6) After that paragraph insert—

“(9) “The 1993 Regulations” means the Income Tax (Employments) Regulations 1993.”

(101) 1882 c. 61; section 92 was amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

(102) 1989 c. 26, to which there are amendments not relevant to these Regulations.

(103) Regulation 42(2) and (3) were amended by regulation 3 of S.I. 1995/447. Regulation 49(5) was amended by regulation 5 of S.I. 1995/447.

Interest on overpaid tax: disapplication of regulation 83 for tax years before the tax year ending 5th April 1997

22. Regulation 83 (interest on overpaid tax) does not apply to tax which was paid by an employer in respect of a tax year ending on or before 5th April 1996.

Interest on overpaid tax: provisions applying to tax years from 1992-93 to 1995-96

23.—(1) This paragraph applies in relation to tax which—

(a) was paid by an employer in respect of the tax year ending 5th April 1993 or in respect of a tax year ending after 5th April 1993 but on or before 5th April 1996, and

(b) is repaid to the employer after the end of the tax year in respect of which the tax was paid.

(2) If the late repayment condition is met, the tax repaid carries interest at the prescribed rate from the relevant time until the order for the repayment is issued (“the interest period”).

(3) The late repayment condition is that the tax is repaid—

(a) after the end of the tax year following the tax year in respect of which the tax was paid, and

(b) after the end of the tax year in which the tax was paid.

(4) Any change made to the prescribed rate during the interest period applies to the tax repaid from the date of change.

(5) Regulation 219 (payment by cheque) applies for determining when a payment is made for the purposes of this paragraph as if this paragraph were included among the provisions listed in paragraph (2) of that regulation.

(6) In this paragraph—

“the prescribed rate” means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA(104);

“the relevant time” means—

(a) in a case where the tax was paid more than twelve months after the end of the tax year in respect of which the payment was made, the end of the tax year in which that tax was paid, and

(b) in any other case, the end of the tax year after the tax year in respect of which the payment was made.

Overpayments and underpayments of tax: tax years before the tax year ending 5th April 1997

24.—(1) Despite the revocations made by these Regulations, regulation 101 of the 1993 Regulations(105) (repayment of overpayments and recovery of underpayments) continues to apply in relation to an assessment for a tax year ending on or before 5th April 1996, but with the modifications mentioned in sub-paragraph (2).

(2) The modifications are—

(a) the references in paragraphs (1) and (2) of regulation 101 to the appropriate code for a subsequent year are to be read as references to the employee’s code for a subsequent tax year;

(104) Section 824 was amended by paragraph 7 of Schedule 13 to the Finance Act 1988 (c. 39), sections 110(5), 111(4), 158(2) and 179(1) of, and Parts 4, 8 and 10 of Schedule 17 to, the Finance Act 1989 (c. 26), paragraph 14(52) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 41 of Schedule 19 to the Finance Act 1994 (c. 9), section 92 of the Finance Act 1997 (c. 16), section 41 of the Finance Act 1999 (c. 16), section 90 of the Finance Act 2001 (c. 9) and paragraph 104 of Schedule 6 to ITEPA.

(105) Regulation 101 was amended by regulation 7 of S.I. 1995/447 and regulation 14 of S.I. 1996/1312.

Status: This is the original version (as it was originally made).

- (b) the references in paragraphs (1) and (2) of that regulation to the inspector and to the collector are to be read as references to the Inland Revenue;
 - (c) the reference in paragraph (6) of that regulation to a direction made by the collector under regulation 42(2) of the 1993 Regulations in relation to the employee and in respect of one or more income tax periods falling within the year is to be read as including a reference to a direction under regulation 72(5) of these Regulations in relation to that employee in respect of one or more tax periods falling within the tax year;
 - (d) the reference in that paragraph to a direction made by the Board under regulation 42(3) of the 1993 Regulations in relation to the employee and in respect of one or more income tax periods falling within the year is to be read as including a reference to a direction under regulation 72(5) of these Regulations in relation to that employee in respect of one or more tax periods falling within the tax year;
 - (e) the reference in that paragraph to a direction made by the Board under regulation 49(5) of the 1993 Regulations in relation to the employee and in respect of one or more income tax periods falling within the year is to be read as including a reference to a direction under regulation 81(4) of these Regulations in relation to that employee in respect of one or more tax periods falling within the tax year.
- (3) Any tax which is payable to the Inland Revenue under regulation 101(2) as it continues to have effect by virtue of this paragraph is payable within 14 days of the date on which the Inland Revenue first makes application for its payment.

Overpayments and underpayments of tax: tax years before the tax year ending 5th April 2002

25.—(1) Regulation 188 (assessments other than self-assessments)—

- (a) does not apply in relation to an assessment for a tax year ending on or before 5th April 1996, and
 - (b) has effect in particular with the following modification in relation to an assessment, other than one under section 9 of TMA(**106**), for a tax year beginning on or after 6th April 1996 and ending on or before 5th April 2001.
- (2) In paragraph (3), after sub-paragraph (a) insert—
- “(aa) make any necessary adjustment to B in respect of any shortfall in deductions made in accordance with the Income Tax (Employments) Regulations 1993(**107**) from the employee, where—
 - (i) payments of profit-related pay have been made to the employee in accordance with a profit-related pay scheme registered under Chapter 3 of Part 5 of ICTA(**108**),
 - (ii) in consequence of the relief given by that Chapter less tax has been deducted from those payments than would have been deducted if the scheme had not been registered, and
 - (iii) the registration of the scheme has subsequently been cancelled with effect from a time before that relevant for the purposes of the relief;”.

(106) Section 9 was substituted by section 179 of the Finance Act 1994 (c. 9), and amended by sections 104(4) and 115(2) of the Finance Act 1995 (c. 4), sections 121(4) and 122(1) of the Finance Act 1996 (c. 8), section 98(2) of the Finance Act 1998 (c. 36), paragraphs 1 and 2(1) of Schedule 29 to the Finance Act 2001 (c. 9) and paragraph 125(2) and (3) of Schedule 6 to ITEPA.

(107) S.I. 1993/744; relevant amending instruments are S.I. 1993/2276, S.I. 1994/775, S.I. 1994/1212, S.I. 1995/447, S.I. 1995/853, S.I. 1995/1223, S.I. 1995/1284, S.I. 1996/804, S.I. 1996/980, S.I. 1996/1312, S.I. 1996/2381, S.I. 1996/2554, S.I. 1996/2631, S.I. 1997/214, S.I. 1998/1891, S.I. 1998/2484, S.I. 1999/70, S.I. 1999/2155, S.I. 2002/680, S.I. 2003/536, and S.I. 2003/2494.

(108) Chapter 3 of Part 5 was repealed by Part 6(3) of Schedule 18 to the Finance Act 1997 (c. 16).

Attribution of repayments: tax years before the tax year ending 5th April 1997

26.—(1) Despite the revocations made by these Regulations, regulations 106 to 108 of the 1993 Regulations (attribution of repayments) continue to apply in relation to a repayment to which section 824(5) of ICTA(109) applies for a tax year ending on or before 5th April 1996, but with the modification mentioned in sub-paragraph (2).

(2) The modification is that the reference to the collector in regulation 107(3) is to be read as including a reference to the Inland Revenue.

Certificate that sum due: certificate of the collector

27.—(1) A certificate of the collector that any amount shown in a certificate under the regulations listed in paragraph (2) of regulation 218 has not been paid by an employer to the collector or, to the best of the collector's knowledge and belief, to any other collector or to any person acting on the collector's behalf or on behalf of another collector is sufficient evidence that the amount mentioned in the collector's certificate is unpaid and due to the Crown.

(2) A certificate of the collector that any amount of interest payable under the regulations listed in paragraph (4) of regulation 218 has not been paid by an employer or employee to the collector or, to the best of the collector's knowledge and belief, to any other collector or to any person acting on the collector's behalf or on behalf of another collector is sufficient evidence that the amount mentioned in the certificate is unpaid and due to the Crown.

(3) A document which purports to be a certificate of the collector under sub-paragraph (1) or (2) is treated as such a certificate until the contrary is proved.

Interpretation

28. In this Part of this Schedule—

“the 1993 Regulations” means the Income Tax (Employments) Regulations 1993;

“collector” means a collector of taxes.

SCHEDULE 2

Regulation 220

REVOCATIONS

<i>1. Regulations revoked</i>	<i>2. Reference</i>	<i>3. Extent of revocation</i>
The Income Tax (Employments) Regulations 1993	S.I. 1993/744	The whole Regulations.
The Income Tax (Employments) (Amendment) Regulations 1993	S.I. 1993/2276	The whole Regulations.
The Income Tax (Employments) (Amendment) Regulations 1994	S.I. 1994/775	The whole Regulations.

(109) Section 824(5) was amended by section 158(2) of the Finance Act 1989 (c. 26) and repealed, with savings, by paragraph 41 of Schedule 19 to the Finance Act 1994 (c. 9).

Status: This is the original version (as it was originally made).

<i>1. Regulations revoked</i>	<i>2. Reference</i>	<i>3. Extent of revocation</i>
The Income Tax (Employments) (Notional Payments) Regulations 1994	S.I. 1994/1212	The whole Regulations.
The Income Tax (Employments) (Amendment) Regulations 1995	S.I. 1995/216	The whole Regulations.
The Income Tax (Employments) (Amendment No. 2) Regulations 1995	S.I. 1995/447	The whole Regulations.
The Income Tax (Employments) (Incapacity Benefit) Regulations 1995	S.I. 1995/853	The whole Regulations.
The Income Tax (Employments) (Amendment No. 3) Regulations 1995	S.I. 1995/1223	The whole Regulations.
The Income Tax (Employments) (Amendment No. 4) Regulations 1995	S.I. 1995/1284	The whole Regulations.
The Income Tax (Employments) (Amendment) Regulations 1996	S.I. 1996/804	The whole Regulations.
The Income Tax (Employments) (Amendment No. 2) Regulations 1996	S.I. 1996/980	The whole Regulations.
The Income Tax (Employments) (Amendment No. 3) Regulations 1996	S.I. 1996/1312	The whole Regulations.
The Income Tax (Employments) (Amendment No. 4) Regulations 1996	S.I. 1996/2381	The whole Regulations.
The Income Tax (Employments) (Amendment No. 5) Regulations 1996	S.I. 1996/2554	The whole Regulations.
The Income Tax (Employments) (Amendment No. 6) Regulations 1996	S.I. 1996/2631	The whole Regulations.
The Income Tax (Employments) (Amendment) Regulations 1997	S.I. 1997/214	The whole Regulations.
The Income Tax (Employments) (Notional Payments) (Amendment) Regulations 1998	S.I. 1998/1891	The whole Regulations.

<i>1. Regulations revoked</i>	<i>2. Reference</i>	<i>3. Extent of revocation</i>
The Income Tax (Employments) (Amendment) Regulations 1998	S.I. 1998/2484	The whole Regulations.
The Income Tax (Employments) (Amendment) Regulations 1999	S.I. 1999/70	The whole Regulations.
The Income Tax (Employments) (Amendment No. 2) Regulations 1999	S.I. 1999/824	The whole Regulations.
The Income Tax (Employments) (Amendment No. 3) Regulations 1999	S.I. 1999/2155	The whole Regulations.
The Income Tax (Employments) (Amendment) Regulations 2000	S.I. 2000/1152	The whole Regulations.
The Income Tax (Sub-contractors in the Construction Industry and Employments) (Amendment) Regulations 2000	S.I. 2000/2742	Regulation 3.
The Income Tax (Electronic Communications) (Miscellaneous Amendments) Regulations 2001	S.I. 2001/1081	In regulation 1(2), the definition of “the Employments Regulations”. Regulations 7 to 21.
The Income Tax (Employments and Electronic Communications) (Miscellaneous Provisions) Regulations 2002	S.I. 2002/680	Regulations 3 to 8.
The Income Tax (Sub-contractors in the Construction Industry and Employments) (Amendment) Regulations 2003	S.I. 2003/536	In regulation 1(2), the definition of “the Employments Regulations”. Regulation 9.
The Income Tax (Employments) (Amendment) Regulations 2003	S.I. 2003/2494	The whole Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Following the rewrite of the primary legislation relating to pay as you earn in Part 11 of the Income Tax (Earnings and Pensions) Act 2003, these Regulations rewrite, with minor changes, the Income Tax (Employments) Regulations 1993 and regulation 13 of the Income Tax (Employments) (Notional Payments) Regulations 1994.

The Tax Law Rewrite project at the Inland Revenue has prepared a detailed commentary on these Regulations, together with tables of origins and destinations. Copies have been placed in the Library of each House. The commentary is published by The Stationery Office Limited, ISBN 0118404970. It is also available on the internet.

A Regulatory Impact Assessment has also been prepared in relation to these Regulations. It has been placed in the Library of each House. Paper copies may be obtained from the Tax Law Rewrite Project, Inland Revenue, South West Wing, Bush House, London, WC2B 4RD (telephone 020 7438 7606). It is also available on the internet. The project's website is at www.inlandrevenue.gov.uk/rewrite.