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STATUTORY INSTRUMENTS

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**2003 No. 2682**

**The Income Tax (Pay As You Earn) Regulations 2003**

**PART 3**

**DEDUCTION AND REPAYMENT OF TAX**

**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).