STATUTORY INSTRUMENTS

2014 No. 2395 (C. 105)

INCOME TAX

The Finance Act 2009, Schedule 55 (Penalties for failure to make returns) (Appointed Days and Consequential Provision) Order 2014

Made - - - - 10th September 2014

The Treasury make the following Order in exercise of the powers conferred by section 106(2) to (6) of the Finance Act 2009(**a**).

Citation

1. This Order may be cited as the Finance Act 2009, Schedule 55 (Penalties for failure to make returns) (Appointed Days and Consequential Provision) Order 2014.

Appointed Days

2.—(1) The days appointed for the coming into force of Schedule 55 to the Finance Act 2009 (penalty for failure to make returns etc)(**b**) in relation to a return falling within item 4 of the Table in paragraph 1 of that Schedule are—

(a) for paragraph 6C(5), (7), (8), (9) and (11) (amount of penalty: real time information for PAYE)(**c**), 11th September 2014; and

(b) for paragraphs 1, 6B, 6C(1) to (4), (6) and (10), 6D, 16 to 24, 26 and 27—

(i) 6th October 2014 in respect of returns which are required to be delivered to HMRC on or after that date by a Real Time Information employer which at 6th October 2014 is a large existing employer; and

(ii) 6th March 2015 in respect of returns which are required to be delivered to HMRC on or after that date where—

(aa) the Real Time Information employer is, at 6th October 2014, a small existing employer; or

(bb) a person becomes a new Real Time Information employer after 6th October 2014.

(2) For the purposes of this article—

"HMRC" means Her Majesty's Revenue and Customs;

"large existing employer" means a Real Time Information employer who employs at least 50 employees;

(**a**) 2009 c. 10.
(**b**) Schedule 55 has been relevantly amended by paragraphs 3 to 9 of Schedule 50 to the Finance Act 2013 (c. 29).
(**c**) Paragraphs 6B, 6C and 6D were inserted into Schedule 55 by paragraph 6 of Schedule 50 to the Finance Act 2013.

"new Real Time Information employer" means a Real Time Information employer to which HMRC issues an employer's PAYE reference after 6th October 2014;

"Real Time Information employer" means a person who is within regulation 2A (real time information employer) of the Income Tax (Pay As You Earn) Regulations 2003(**a**), or who is treated by regulation 10 (application to agencies and agency workers), regulation 11 (application to pension payers and pensioners) or regulation 12 (application to other payers and payees)(**b**) as an employer for the purposes of those Regulations;

"small existing employer" means a Real Time Information employer who employs no more than 49 employees.

(3) For the purposes of paragraph (2) "employer's PAYE reference" in relation to a Real Time Information employer means the combination of letters, numbers, or both, used by HMRC to identify a Real Time Information employer for the purposes of the Income Tax (Pay As You Earn) Regulations 2003 and the number which identifies that employer's HMRC office.

Consequential provision

3. Regulation 67EA(5) (failure to make a return under regulation 67B or 67D) of the Income Tax (Pay As You Earn) Regulations 2003(**c**) is amended by inserting at the end of the text ", but this paragraph does not apply to a return in respect of the tax year 2014-15 or a subsequent tax year".

David Evennett
Gavin Barwell
10th September 2014 Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order appoints the days from which Schedule 55 to the Finance Act 2009 (c. 10) ("the Act") applies to returns delivered in accordance with regulation 67B or regulation 67D of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) ("the PAYE Regulations").

Schedule 55 to the Act is concerned with penalties for failures to make or deliver returns and other documents to the Commissioners for Her Majesty's Revenue and Customs ("HMRC") by the relevant filing date.

For income tax that is deducted at source under pay as you earn the general rule is that an employer is required to deliver a return under regulation 67B of the PAYE Regulations on or before the date of making the payment to the employee. However, this general rule is overridden in certain cases, for example where the employer meets the conditions in regulation 67B(1A). In that case the employer is permitted to make one return each tax month in respect of all payments made in that month, which must be delivered to HMRC on or before the final payment in that tax month. The general rule also does not apply in the case of an employer which is within regulation 67D(1) of the PAYE Regulations. Such an employer is required to deliver a return for a tax quarter and that return must be filed no more than 14 days after the end of the tax quarter to which the return relates.

Article 2 of this Order appoints 11th September 2014 in relation to a number of sub-paragraphs in paragraph 6C of Schedule 55 to the Act. Paragraph 6C of Schedule 55 makes specific provision in relation to returns under regulation 67B and regulation 67D of the PAYE Regulations. Paragraph 6C(5), (7), (8), (9) and (11) contain powers to make regulations. HMRC will be exercising these powers by making Regulations which will, amongst other matters, set out the

(**a**) S.I. 2003/2682 amended by S.I. 2003/822 and 2013/521; there are other amending instruments but none are relevant. Regulation 2A was inserted by regulation 4 of S.I. 2012/822 and has been amended by regulation 14 of S.I. 2013/521.
(**b**) Regulations 10, 11 and 12 have been amended by regulation 7 of S.I. 2013/521 and regulation 11 has also been amended by regulation 5 of S.I. 2012/822.
(**c**) Regulation 67EA was inserted by regulation 23 of S.I. 2013/521.

quantum of penalties. Those Regulations (the Income Tax (Pay As You Earn (Amendment No. 3) Regulations 2014 (S.I. 2014/2396) and the associated Social Security (Contributions) (Amendment No. 4) Regulations 2014 (S.I. 2014/2397)) will come into force on 6th October 2014.

Article 2 also appoints 6th October 2014 as the day on which the remainder of the relevant provisions in Schedule 55 to the Act will come into force in relation to failures to make returns under regulations 67B and 67D of the PAYE Regulations where the employer is a large existing employer (that is an employer which as at 6th October 2014 employs at least 50 employees). The returns that will be affected are those required to be made or delivered to HMRC on or after 6th October 2014.

Article 2 also appoints 6th March 2015 as the day on which the remainder of the relevant provisions in Schedule 55 to the Act come into force for failure to make returns under regulations 67B and 67D of the PAYE Regulations where the employer is a small existing employer (that is an employer which as at 6th October 2014 employs no more than 49 employees) or is a new employer. The returns that will be affected are those required to be made or delivered to HMRC on or after 6th March 2015.

Article 3 amends regulation 67EA(5) of the PAYE Regulations so that it does not apply to returns in relation to the tax year 2014-15 and subsequent tax years. This amendment is consequential upon the introduction of the late filing penalties in Schedule 55 to the Act 2009.

A Tax Information and Impact Note has not been prepared for this Instrument as it gives effect to previously announced policy and it is an appointed day order.

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