

Subsidiary Legislation made under s.87.

## **Income Tax (Pay As You Earn) Regulations, 1989**

### **LN.1989/114**

*Commencement*                      **28.12.1989**

Amending enactments	Relevant current provisions	Commencement date
LN.1990/039	rr.4 , 7, 8(2), 11(3)	26.4.1990
1990/130	rr. 9, 12(1), 17(1)-(3)	11.10.1990
1990/141	r. 17(2)-(3)	25.10.1990
1992/020	rr. 10(1), 19(1)-(4)	1.7.1991
1993/089	r. 17(2)	29.4.1993
1992/022	r. 2	1.7.1993
Act.1999-13	r. 8(2) (2A), 19(2).	12.8.1999
LN.1999/157	rr. 4(1), 8(1)-(2), 13, 13A, 19(1)(f)-(g)	22.11.1999
Act.2007-17	r. 18(2)(b)(ii)	14.6.2007
2011-11 <sup>1</sup>	rr. 10, 17(4), 19(1)(h)-(j)	1.7.2010
LN.2015/035	r. 19(1), (1A)-(1B)	1.7.2015

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<sup>1</sup> *For the avoidance of doubt, section 24 of the Interpretation and General Clauses Act restricting the retrospective commencement of subsidiary legislation shall not apply to subsidiary legislation made under sections 4 to 7 of Act 2011-11. (s.2(4))*

**2010-21**

Income Tax

**1989/114**

**Income Tax (Pay As You Earn) Regulations, 1989**

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*This version is out of date*

**ARRANGEMENT OF REGULATIONS**

Regulation

1. Title.
2. Interpretation.
3. Deduction of Tax.
4. PAYE Allowance Certificates.
5. Lodgment of Part II.
6. Tax Tables.
7. *Revoked.*
8. Amount of tax to be deducted.
9. Objections to amount of tax deducted.
10. Statement made by employer on appropriate form.
11. Monthly payment.
12. Specified amount of tax payable by employer.
13. Certificate of tax deducted.
- 13A. Cessation of employment.
14. Where employer is a company.
15. Death of employer.
16. Extension of time limits.
17. Production of records by employer.
18. Assessment of emoluments.
19. Offences.

**Title.**

1. These Regulations may be cited as the Income Tax (Pay As You Earn) Regulations, 1989.

**Interpretation.**

2. In these Regulations—

“appropriate form” means any form specified by the Commissioner under section 98(3);

“deduction card” means the record required to be maintained by employers under regulation 10;

“emoluments” means income from any office or employment or a pension and includes every payment in cash including a gratuity and every allowance, perquisite or benefit given in kind;

“employee” means any person other than an individual in respect of whom a certificate issued under the provisions of rule 2 of the Rates of Tax (Relocated Executive Possessing Specialist Skills) Rules, 1992 is in effect, to whom emoluments are paid or are payable and, for the avoidance of doubt, includes a pensioner and a company director;

“employer” means any person paying emoluments whether on his own account or on behalf of any other person to an employee which expression, for the avoidance of doubt, includes a pensioner and a Government pensioner;

“PAYE” means Pay As You Earn;

“payment”, in relation to payment of emoluments to an employee includes the crediting of any sum to an account upon which that employee has power to draw.

**Deduction of Tax.**

3. Where any payment of or on account of emoluments is made by an employer, tax shall, subject to and in accordance with the provisions of these Regulations, be deducted and withheld therefrom by the employer notwithstanding—

- (a) that when the payment is made no assessment has been made in respect of those emoluments;

*This version is out of date*

- (b) that the emoluments are in whole or in part income for a year of assessment other than the year in which the payment is made; and
- (c) in the case of a married woman, the provisions of section 10(1) of the Act.

**P.A.Y.E. Allowances Certificates.**

4.(1) Every employee (including a married woman who is in employment and who is included in an income tax return made by her husband) who on taking up any employment has not been issued with a PAYE allowances certificate or who has not been provided with a certificate such as is mentioned in regulation 13A, shall, within 7 days of taking up such employment, make a declaration to the Commissioner, in such form as the Commissioner may require, specifying the allowances to which he claims to be entitled under the Act.

(2) As soon as possible after receiving any declaration submitted under subregulation (1) of this regulation, the Commissioner shall issue to the Employee a P.A.Y.E. allowances certificate. Such certificate, once issued, shall remain in force in respect of that employee unless and until it is replaced with a new certificate issued in accordance with subregulation (5) of this regulation, or otherwise.

(3) The Commissioner shall in such manner as seems to him appropriate, prescribe codes which shall cover the various amounts of allowances which may be claimed and shall allocate to every employee a code, dependant on the allowances to which the Commissioner considers such employee is entitled. All codes existing at the date of these Regulations shall continue in force until replaced.

(4) Every P.A.Y.E. allowances certificate issued under the provisions of this regulation shall be in two Parts. Part I shall set out the estimated allowances to which the employee is entitled, but such estimate shall be liable to alteration by the Commissioner at any time thereafter, whether by reason of subregulation (5) of this regulation or otherwise. Part II shall specify the code applicable to such employee for the purposes of tax deduction. The code applicable to an employee may be altered if the allowances to which the Commissioner considers such employee is entitled are altered.

(5) Where any of the circumstances determining the amount of an employee's allowances as shown on the allowances certificate change, the employee shall, within thirty days of such charge, declare such change to the Commissioner who shall as soon as possible thereafter re-determine the employee's code. If his code is changed, a new P.A.Y.E. allowances certificate shall be issued to him which he shall lodge with his employer in accordance with the provisions of regulation 5.

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(6) The Commissioner may, in the exercise of his discretion, adjust the coding of an employee for the purposes of recovering tax due, but not previously deducted and paid.

#### **Lodgment of Part II.**

5.(1) Every employee shall lodge Part II of his PAYE allowances certificate with his employer and if he has more than one employer with the employer who pays the higher emoluments.

(2) Notwithstanding anything contained in subregulation (1) an employee who is in receipt of a pension shall, unless the Commissioner otherwise directs, lodge Part II of the certificate with the employer who pays the pension.

#### **Tax Tables.**

6. The Commissioner shall prepare and make available tax-tables to enable employers to ascertain, in accordance with the code contained in Part II of each employee's PAYE allowances certificate the tax to be deducted in respect of that employee. Such tables shall show the amount of tax payable appropriate to ranges of income in respect of each of the codes, such amounts being as closely as is convenient in accordance with the annual rates of tax in force from time to time.

#### *7. Revoked*

#### **Amount of tax to be deducted.**

8.(1) Every employer shall, in respect of each of his employees who has lodged with him Part II of a PAYE allowances certificate or has lodged with him a certificate such as is mentioned in regulation 13A, on each pay day, deduct from the wages the amount of tax shown in the tax-table in respect of the employee's code to be deductible from the gross emoluments to be paid on that day.

(2) Every employer shall, in respect of each of his employees who has not lodged Part II of a PAYE allowances certificate or who has not lodged with him a certificate, deduct from their gross emoluments tax in accordance with code "X" of the tax-tables.

**2010-21**

**Income Tax**

**1989/114**

**Income Tax (Pay As You Earn) Regulations, 1989**

---

*This version is out of date*

(2A) Every employer shall give notice in writing to the Commissioner\* of the engagement of any employee, which shall specify the full name and address of the employee, the date of commencement of the employment and the terms of the employment.

(3) Where part of the income from an office or employment consists of allowances, perquisites or benefits in kind, the employee shall, for the purpose of subregulations (1) and (2) add to the gross emoluments payable on that date the proportionate money value of such allowances, perquisites or benefits.

(4) Notwithstanding anything contained in this regulation where in the case of emoluments payable to an employee the Commissioner is satisfied that the tax to be deducted from those emoluments in accordance with the provisions of this regulation would be substantially more or less than the liability on those emoluments he may direct the employer to deduct such different amount of tax as seems to him to be just in view of those provisions.

(5) Where any obligation is imposed on any person to deduct tax from emoluments any agreement made by that person not to deduct tax shall be void.

**Objections to amount of tax deducted.**

9. Where any employee objects that the amount of tax deducted from his emoluments by an employer is more or less than it should be under the provisions of these Regulations he may refer his objection to the Commissioner whose decision as to the amount of such deductions shall be final:

Provided that nothing contained in this regulation shall preclude an employee from appealing against any assessment in accordance with the provisions of the Act.

**Statement made by employer on appropriate form.**

10.(1) An employer in relation to any year of assessment preceding but not including the year of assessment commencing 1 July 2007 may be required by the Commissioner in pursuance of a notice issued under regulation 17, to deliver to the Commissioner in respect of each of his employees a statement on the appropriate form (deduction card) containing—

- (a) the employee's gross emoluments payable on each pay day; and
- (b) the tax deducted in accordance with these regulations; and

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\* LN 2004/028 Under section 3(2) Income Tax Ordinance individual authorised to assist in enforcement.

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This version is out of date

- (c) such information as the Commissioner may require.
- (2) The Commissioner may, at any time after the end of the year of assessment and in relation to that year of assessment, by notice published in the Gazette or in pursuance of notice issued under regulation 17, require the employer to deliver to the Commissioner a statement on the appropriate form (summary statement) containing—
- (a) all individual employees gross emoluments paid; and
  - (b) the tax deducted from the gross emoluments in accordance with these Regulations in respect of each such employee; and
  - (c) any other information that the Commissioner may require.
- (3) The Commissioner may accept the deduction cards referred to in subregulation (1), and the summary statement referred to in subregulation (2), as the return required by section 56 of the Act.
- (4) The requirements of subregulations (1) and (2), shall not apply in relation to emoluments exempt from tax under rule 3 of the Income Tax (Allowances, Deductions and Exemptions) Rules, 1992.

### **Monthly payment.**

11.(1) On or before the fifteenth day of every month the employer shall report to the Commissioner on the appropriate form the total amount of tax deducted by him from emoluments during the preceding months in accordance with these Regulations, and shall at the same time pay that total amount into the Treasury in accordance with the instructions on such form; and every such total amount shall be a debt due to the Government and shall be recoverable as such.

(2) An employer who wilfully or without reasonable excuse fails to deduct from emoluments tax which he is required by these Regulations to deduct shall be liable to pay such tax as if he had deducted it.

(3) In the event that such total amount as is provided for by subregulation (1) shall not have been paid into the Treasury by the date specified in that subregulation, such total amount may, at the discretion of the Commissioner, be increased by a penalty equivalent to 2% of that total amount for each month by which any such payment into the Treasury is delayed, such penalties to be calculated at a compound rate; and references to “total amount” and to “amount of tax” in this regulation and in regulation 12, shall be taken to be references to the tax deducted

or the tax specified, in accordance with regulation 12(1), increased by the penalty and any such penalty shall be deemed to be part of the tax.

**Specified amount of tax payable by employer.**

12.(1) If after 14 days following the end of any month the employer has not paid the amount of tax to the Treasury for that month, and there is reason to believe that the employer is liable so to pay, the Commissioner upon consideration of any relevant records or information which may be available to him may to the best of his judgement specify the amount of tax calculated in respect of each employee in accordance with code X of the tax tables which he considers the employer is liable to pay and serve notice on him of that amount.

(2) If, on the expiration of the period of 7 days allowed in such notice, the specified amount of tax or any part thereof is unpaid, the amount so unpaid shall be certified by the Commissioner and shall be deemed to be an amount of tax which the employer was liable to pay for that month in accordance with regulation 11.

(3) The provisions of subregulation (2) shall not apply if, during the period allowed in the notice, the employer pays to the Treasury the full amount of tax which the employer is liable to pay under regulation 11 for that month, or the employer satisfies the Commissioner that no amount is due for that month.

(4) The production of a certificate such as is mentioned in subregulation (2) of this regulation shall be sufficient evidence that the employer is liable to pay to the Treasury the amount shown in the certificate; and any document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved. To the amount shown in the said certificate, the provisions of section 86 of this Act shall apply.

(5) Provided the employer has not paid the amount of tax for the relevant months, notice may be given by the Commissioner under subregulation (1) of this regulation which extends to 2 or more consecutive months, and the provisions of this regulation shall have effect as if the said consecutive months were the latest month specified in the notice.

(6) A notice may be given by the Commissioner under subregulation (1) of this regulation notwithstanding that an amount of tax has been paid to him by the employer under regulation 11 for any month, if after seeking the employer's explanation the Commissioner is not satisfied that the amount so paid is the full amount which the employer is liable to pay for that month. The provisions of this regulation shall have effect accordingly, save that subregulation (2) hereof shall not apply if the employer during the period allowed in such notice satisfies the Commissioner that no further amount is due for the relevant month.



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This version is out of date

(7) If during the period allowed in a notice given by the Commissioner under regulation 11 the employer claims, but does not satisfy the Commissioner, that the payment made in respect of the month specified therein is the full amount he is liable to pay to the Treasury for that month, the employer may require the Commissioner to inspect the employer's documents and records as if the Commissioner had called upon the employer to produce those documents and records in accordance with regulation 17 of these Regulations and the provisions of that regulation shall apply in relation to that inspection and the notice given by the Commissioner under this regulation shall thereafter be disregarded.

(8) Notwithstanding anything in this regulation, if the employer pays any amount certified by the Commissioner under this regulation and that amount exceeds the amount which he would have been liable to pay in respect of that month apart from this regulation, he shall be entitled to set-off such excess against any amount which he is liable to pay under regulation 11 for any subsequent month.

(9) If, after the end of the year, the employer renders a return required by section 63 of the Act and pays the total net tax which he is liable to pay any excess of tax paid and not otherwise recovered by set-off in accordance with the provisions of this regulation shall be repaid.

#### **Certificate of tax deducted.**

13. Within one month after the end of every year of assessment in which an employer has deducted tax from emoluments in accordance with these Regulations he shall give to each employee in his employment on the 30th June of such year from whose emoluments tax has been deducted a certificate on the appropriate form showing the gross amount of that employee's emoluments in that year and the total amount of tax deducted therefrom:

#### **Cessation of employment.**

13A.(1) Notwithstanding anything contained in regulation 13, where a person ceases to be an employee of an employer at any time during a year of assessment, the employer shall furnish him with a certificate on the appropriate form (to be known as the Details of Employee leaving Work Form) and send Part 1 thereof to the Commissioner immediately on the date in which he ceases to be an employee.

(2) A Details of Employee leaving Work Form shall, on being produced to a new employer, constitute authority for the new employer to deduct tax in accordance with the code applicable to such employee contained therein, until such time as Part II of a PAYE allowances certificate is lodged with the new employer.

**2010-21**

**Income Tax**

**1989/114**

**Income Tax (Pay As You Earn) Regulations, 1989**

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*This version is out of date*

(3) Every employer shall, on employing any person who has lodged with him Part 2 and 3 of a Details of Employee leaving Work Form, send to the Commissioner Part 3 of the Form immediately after the date of engagement.

**Where employer is a company.**

14. Where the employer is a Company or a firm any Director or Partner shall be deemed to be the employer for the purposes of these Regulations.

**Death of employer.**

15. In the event of the death of an employer, any duties which, if he had not died, he would have been liable to perform under these Regulations shall be performed by his lawful personal representative.

**Extension of time limits.**

16. The Commissioner may, in his discretion and subject to such conditions as he may think fit to impose, extend any time limit laid down in these Regulations.

**Production of records by employer.**

17.(1) Every employer, when called upon to do so, by the Commissioner or by a person authorized in writing by the Commissioner to act on his behalf either in person or by the service of a notice in the form and manner provided for in subregulation (3), shall produce to the Commissioner or to such authorized person for inspection all wages sheets and other documents and records whatsoever relating to the calculation or payment of emoluments to his employees or to the deduction of tax from such emoluments or to the accounting for tax deducted therefrom.

(2) Where an employer is required—

- (a) by subregulation (1) to produce wage sheets, other documents and records; or
- (b) by a notice issued under section 63(1) to submit deduction cards and a summary statement on form P8,

and the employer does not do so by the dates specified by the Commissioner or his authorised representative or in a notice, an amount of £10 per day for each employee in respect of whom disclosure of information or return of deduction cards has been required, may, if the Commissioner so determines, be payable by the employer to the Commissioner for each and every day during which the failure continues and every such total amount shall be a debt due

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This version is out of date

to the Government and shall be recoverable as such and any amount payable under this subregulation shall be deemed to be part of tax.

- (3) Any notice issued by virtue of subregulation (1) shall specify—
- (a) the name of the employer;
  - (b) where the employer is a company or firm, the name where known of the Director, Partner or Manager responsible for the documents specified in the notice;
  - (c) the documents or type of documents required to be produced;
  - (d) the time period in respect of which the documents are to be produced;

and shall be validly served if sent by post to the address in Gibraltar from which it appears to the Commissioner the employer was employing the employees in respect of whom wage sheets and other documents and records are required to be produced.

- (4) The Commissioner may by the service of a notice in writing on the employer in the form and manner provided for in subregulation (3), require the employer to submit to him—
- (a) any deduction card referred to in regulation 10;
  - (b) any summary statement referred to in regulation 10.

**Assessment of emoluments.**

18.(1) If a person who is chargeable to tax on emoluments is also chargeable on other income, the Commissioner may assess that person in respect of his emoluments separately from such other income.

- (2) In making an assessment on a person for any year of assessment in respect of emoluments or in respect of income which includes emoluments, the Commissioner shall set off against the tax otherwise chargeable—
- (a) the amount of tax deducted during that year from those emoluments and paid by an employer in accordance with these Regulations; or
  - (b) the amount of tax deducted during that year from those emoluments but not paid by the employer in accordance with these Regulations, provided that—

**2010-21**

**Income Tax**

**1989/114**

**Income Tax (Pay As You Earn) Regulations, 1989**

---

*This version is out of date*

- (i) where the employer is a Company a winding up order has been made in relation to the employer under the provisions of the Companies Act; and
- (ii) the Financial Secretary has abandoned and written off the amount of tax so deducted in exercise of the powers conferred on him by section 68 of the Public Finance (Control and Audit) Act<sup>7</sup>,

and the Commissioner shall proceed to recover or repay any balance of tax accordingly.

**Offences.**

19.(1) Any employer who wilfully or without reasonable excuse—

- (a) fails to deduct tax from the emoluments of an employee in accordance with these Regulations;
- (b) fails to pay to the Treasury as required by regulation 11 any tax deducted;
- (c) fails to maintain or to return a deduction card for any employee for whom he is required to maintain and return such a card by regulation 10;
- (d) fails to give a certificate of emoluments and of tax deducted therefrom to any employee to whom he is required to give such a certificate by regulation 13;
- (e) fails to produce any wage sheets, documents or records which he is required to produce by regulation 17;
- (f) fails to furnish any employee with a Details of Employee Leaving Work Form in accordance with regulation 13A(1); or
- (g) fails to send to the Commissioner Part 3 of the Details of Employee leaving Work in accordance with regulation 13A(3),
- (h) fails to deliver to the Commissioner a deduction card as required by notice issued by the Commissioner under regulation 17;
- (i) fails to deliver to the Commissioner a summary statement as required by notice published in the Gazette under regulation 10;

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This version is out of date

- (j) fails to deliver to the Commissioner a summary statement as required by notice issued by the Commissioner under regulation 17,

shall be guilty of an offence and shall be liable to the penalties set out in subregulations (1A) and (1B).

(1A) In the case of conduct falling within any of paragraphs (a) or (c) to (j) of subregulation (1), an employer shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(1B) In the case of conduct falling within subregulation (1) (b), an employer shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or a fine, or both.

(2) Any employer who fails to give notice to the Commissioner of the engagement of any employee in accordance with regulation 8(2A), shall be guilty of an offence and shall be sentenced on summary conviction to a fine at level 4 on the standard scale.