



**Legislative changes relating to Pay As You Earn and Real Time Information  
HM Revenue & Customs technical note**

**Response by the Low Incomes Tax Reform Group**

**1 Executive summary**

- 1.1 We welcome the opportunity to comment on this technical note.
- 1.2 We are pleased to note that the simplified scheme for Pay as You Earn (SPDS) for care and support employers will continue to April 2014.
- 1.3 However, there appears to be a gap for those care and support employers who are currently not in the SPDS but may require to revert to paper filing in 2013/14 due to their inability to meet the RTI requirements.
- 1.4 We remain concerned that other (non care and support) employers currently using the SPDS have not so far been provided with adequate help, warning and guidance that they will have to comply with the burdens of RTI.
- 1.5 We are concerned that the latest amendments to the regulations make them more complicated than ever, and would recommend a rewrite and/or consolidation once RTI has “bedded in”.
- 1.6 We also emphasise the need for much clearer guidance to be provided for all employers, particularly on the issues we detail below (and not aimed solely at those with professional, or payroll company, representation).

- 1.7 We comment on the tax codes to be applied on certain pension payments, and make some suggestions as to further changes required to the regulations.
- 1.8 Our response supplements that of our CIOT colleagues, which we endorse.

## **2 Introduction**

### **2.1 *About us***

- 2.1.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.
- 2.1.2 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 RTI reporting deadlines**

- 3.1 New Regulation 67BA adds further confusion to the situation regarding employers paying their staff amounts below the NIC threshold, and whether they are, or are not, required to make an RTI return. We stated our concerns in paragraph 3.3 of our earlier RTI response<sup>1</sup> regarding the confusion for employers who may never have had to make returns prior to RTI.
- 3.2 We feel this aspect requires consolidation in the regulations to make the situation much clearer. We refer in particular to the interaction of Regulations 67B and 67BA and the actual requirement of Regulation 66. That is to say that in cases where a code *has* been issued, regardless of the amount of the payment, employers will now have to make an RTI submission. Clear guidance on this must be provided to employers.

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[http://www.litrg.org.uk/Resources/LITRG/Documents/2011/12/LITRG\\_response\\_to\\_RTI\\_Regs\\_consultation\\_9January2012\\_final.pdf](http://www.litrg.org.uk/Resources/LITRG/Documents/2011/12/LITRG_response_to_RTI_Regs_consultation_9January2012_final.pdf).

#### **4 Other RTI changes – paper filing**

- 4.1 We stated in our previous response to the RTI regulations<sup>1</sup> (in paragraphs 5.5 onwards) that it is not simply a case of establishing who is a care and support employer and who is not, and thus who will qualify for paper filing. There are many varieties and degrees of disabilities, and thus individuals who will have difficulties complying with the burdens of RTI reporting, but will not be allowed the concession to file on paper because they are employers in the course of business. In compulsorily moving these people to RTI, we would ask for a much greater degree of support and understanding than demonstrated so far, and particularly in future when penalties start to apply.
- 4.2 Our previous response also identified those whose health may deteriorate who, whilst at one point may be capable of filing online, may later have to revert to paper filing. There does not appear to be sufficient cover in the regulations for this scenario, or at the very least, clear guidance from HMRC for this group.
- 4.3 In our RTI response on late filing and penalties<sup>2</sup> (paragraphs 2.27 to 2.2.21) we highlighted the problems facing those who are, for one reason or another - either permanently or temporarily - digitally excluded. The regulations as they stand do not cover sufficiently cases where paper filing must still be an option. If the regulations cannot be amended, HMRC needs to have a clear process for occasions where those who are digitally excluded, for any reason, can still file on paper.
- 4.4 This same point on digital exclusion was made in our response to the RTI impact assessment.<sup>3</sup> We would recommend that HMRC revisit each of LITRG RTI responses, as our points raised still stand in each case.

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[http://www.litrg.org.uk/Resources/LITRG/Documents/2011/12/LITRG\\_response\\_to\\_RTI\\_Regs\\_consultation\\_9January2012\\_final.pdf](http://www.litrg.org.uk/Resources/LITRG/Documents/2011/12/LITRG_response_to_RTI_Regs_consultation_9January2012_final.pdf)

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[http://www.litrg.org.uk/Resources/LITRG/Documents/2012/09/120906\\_LITRG%20Response\\_RTI%20Penalties\\_final.pdf](http://www.litrg.org.uk/Resources/LITRG/Documents/2012/09/120906_LITRG%20Response_RTI%20Penalties_final.pdf)

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[http://www.litrg.org.uk/Resources/LITRG/Documents/2012/05/RTI\\_Impact\\_Assessment\\_LITRG\\_comments\\_18Apr2012.pdf](http://www.litrg.org.uk/Resources/LITRG/Documents/2012/05/RTI_Impact_Assessment_LITRG_comments_18Apr2012.pdf)

## 5 Non RTI changes

### 5.1 *Phased closure of the simplified PAYE Deductions scheme*

- 5.1.1 We are pleased to note the simplified PAYE scheme (SPDS) for care and support employers is to be available until April 2014. However we would request that due consideration is given to ensuring this message is adequately conveyed to the target audience, and not only by “online” methods (i.e. HMRC website). We would recommend that HMRC provide dedicated RTI support for care and support employers, both by telephone, mail and any other methods required according to the individual’s need.
- 5.1.2 We wish to highlight that there may be care and support employers who currently use normal PAYE and are thus filing annual electronic returns already but may not be able to cope with the extra rigours of RTI and weekly or monthly electronic filing. They too may need a paper system in 2013/14. There is a need to recognise that some care and support employers who opted for normal PAYE online filing (pre RTI) may have done so in the belief it was an easier option than the SPDS - which in reality could be quite burdensome. For these employers it cannot be assumed that the move to RTI was anticipated and thus that they will be easily able to deal with the requirements of RTI. Consequently RTI may force some care and support employers back to paper filing, but no paper filing option appears to be available to them for 2013/14. We recommend that either new care and support employers should be allowed to use the SPDS for 2013/14 (thus reversing the decision to close that scheme to new entrants), or – preferably – that further concessions and/or reasonable adjustments are introduced for care and support employers within RTI.
- 5.1.3 Other employers currently using the SPDS but who do not qualify for the care and support exemption will be required to move from SPDS straight to RTI obligations as the draft regulations stand. This fails to recognise that they might well still have great difficulty in making the transition yet there is no evidence of targeted support for these employers. For example it would have been helpful for those who do have access to HMRC’s website if the “home” page for RTI<sup>1</sup> were to have had a heading specifically for those using the SPDS. For those without online access we would recommend dedicated RTI support as suggested in paragraph 5.1.1 above.
- 5.1.4 Given that we are now so close to the planned April 2013 introduction of RTI for the vast majority of employers, yet the support for those most in need has not been hitherto provided, it would make sense for HMRC to defer inviting SPDS employers to join RTI until later in the year. Indeed, we had understood that HMRC had given themselves the flexibility

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<sup>1</sup> <http://www.hmrc.gov.uk/payerti/index.htm>

of inviting different groups of employers to join at RTI at different times so that they *could* provide such targeted support.

## **6 Tax code applied to certain commuted pension payments from registered pension schemes**

### **6.1 *Background to this section of our response***

6.1.1 The Low Incomes Tax Reform Group and Tax Help for Older People, with which latter organisation we have liaised on this part of our response, were key participants in the earlier consultation process leading up to the proposed change in the PAYE regulations as they apply to payments listed in paragraph 26 of the technical note (hereinafter referred to as “relevant lump sum payments”) and we welcome the opportunity to comment thereon.

### **6.2 *Our comments on the changes***

6.2.1 We are pleased to see the proposal to change the default PAYE code from the emergency code to Basic Rate (BR), which will apply to relevant lump sum payments from 6 April 2013.

6.2.2. However, we feel this change does not, as drafted, go far enough to achieve the effects desired from the consultation process.

6.2.3 Firstly we believe that a lump sum which is made in exchange for a pension in payment should not be excluded from the definition of a relevant lump sum payment (proposed new regulation 58(7)(b)). Our reasons for contending this are:

- Under existing PAYE regulations, lump sum payments made in exchange for a pension in payment have PAYE deducted in the same way as normal pension payments made by the pension provider. Specifically, the PAYE code that applied to the pension is applied to the lump sum on a cumulative basis (in this case the whole of the payment is taxable).
- Where the relevant lump sum payment is made in the latter months of a tax year, this should produce a PAYE deduction which is very close to the actual tax liability on the lump sum for that tax year.
- However, where the relevant lump sum payment is made in the early months of the tax year, the PAYE tables will only allocate a proportion of personal allowances and rate bands resulting in possible higher and additional rate tax deductions in much the same way as if an emergency code was applied.

- The normal “smoothing effect” of cumulative PAYE codes as the tax year progresses will not be available to the recipient, as, following making the relevant lump sum payment, the pension provider will be making no further payments of PAYE pension income to them. Indeed they will be treated as a “leaver” and given a form P45.

6.2.4 We would therefore submit that the proposed new regulation 58(7)(b) be removed.

6.2.5 Secondly, we note that change is only proposed to Regulation 58. We would submit that a similar change is needed to Regulations 55, 56 and 60 if the desired objectives of the earlier consultation process mentioned above are to be met. More specifically:

- Regulation 55 applies where a former employer pays a pension.
- Regulation 56 applies where an individual is able to present a form P45.
- Regulation 60 applies where an individual presents a form P45 late.

6.2.6 All three regulations require that, on making relevant pension payments, which include relevant lump sum payments, that PAYE codes are applied on a non-cumulative basis resulting in possible higher and additional rate tax deductions in much the same way as if an emergency code was applied.

6.2.7 We would therefore submit that these regulations be supplemented by wording similar to that drafted in Regulation 58A and that Basic Rate (BR) be the default code for all relevant lump sum payments coming within their scope.

### 6.3 ***Other comments***

6.3.1 For the sake of completeness we view the remaining Regulations in Chapter 3, Part 3 of SI2003/2682 as currently adequate for purpose.

6.3.2 We would however strongly recommend consideration be given to changing the default code for relevant pension payments other than relevant lump sum payments from the emergency code to OT. This would help to avoid unnecessary underpayments arising where individuals have more than one pension - created by the emergency code allocating a proportion of personal allowances to each.

LITRG

11 January 2013