

# DRAFT LEGISLATION: SIMPLIFICATION OF PAYE SETTLEMENT AGREEMENTS AND THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2018

Response by the Association of Taxation Technicians

## 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC consultation on the draft Income Tax (Pay As You Earn) (Amendment) Regulations 2018 ('the Regulations') published on 6 February 2018<sup>1</sup>.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 Our response covers the proposed changes from April 2018 in section 2 and our comments on the draft regulations in section 3. We have also made some additional observations on digitalising the PAYE Settlement Agreement (PSA) process in section 4.

## 2 Proposed Changes from April 2018

- 2.1 The changes proposed are:
  - The removal of the requirement for the employer to renew their PSA annually.
  - To allow for digitisation of the PSA process at a future stage.

We note that no changes are proposed to the nature and type of benefits in kind or expenses covered by a PSA, nor to existing deadlines.

**Question 1: Do you think adopting an *enduring agreement* will create any issues for employers?**

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<sup>1</sup> <https://www.gov.uk/government/consultations/draft-legislation-simplification-of-payee-settlement-agreements>

- 2.2 We welcome the introduction of an *enduring agreement* and consider this a sensible measure to reduce the administrative burden of the PSA process for employers, their agents and HMRC. This measure fits with the context that PSAs are intended, as the policy paper states, ‘to be an administrative easement for employers and HMRC’.
- 2.3 We ask that clear guidance on the process for application, variation and cessation of *enduring agreements* is provided, as this will be essential for employers and their agents. We would be happy to comment on any draft guidance before it is published.
- 2.4 We have had sight of the response to this consultation from the Chartered Institute of Taxation (CIOT) and would endorse their comments in respect of ensuring that there is clarity for employers over which items are included in the enduring agreement. While noting that there is provision at Regulation 113 (as amended) to vary the agreement for the current and future years, we would ask that HMRC take a pragmatic approach where employers may have a number of items which recur annually on their agreement, but also have additional one-off items which change from year to year.
- 2.5 While we note that there is no intention to digitalise the system at present, there is an opportunity to improve the application process at this time. Currently applications must be sent to a centralised postal address. A simple measure towards digitalisation would be to provide a central *electronic* mailbox to receive applications for enduring agreements and variation requests.

### 3 Technical consultation on the draft regulations

- 3.1 The purpose of the draft regulations, as stated in the policy paper, is to set out:
- The form of the revised PSA
  - How employers or other payroll operators should keep records, calculate and pay any tax due under the revised PSA process
  - Consequential changes to procedures relating to the management of PSA submissions and compliance

#### **Question 2: Do the regulations as drafted achieve their objectives as set out above?**

- 3.2 Yes. The regulations provide for a limited administrative simplification.

#### **Question 3: Do these draft regulations produce any unintended consequences?**

- 3.3 We are concerned that the amendments proposed in draft Regulation 10 to the cancellation of PSAs has significantly broadened HMRC’s right to cancel PSA agreements.
- 3.4 The current regulations<sup>2</sup> allow HMRC to cancel an agreement in the following circumstances:

*“The Inland Revenue may cancel a PSA if the employer has seriously or persistently failed—*

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<sup>2</sup> Regulation 114 Income Tax (Pay As You Earn) Regulations 2003

- (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.”*

- 3.5 The proposed amendments allow the employer or HMRC to cancel a PSA in any circumstances. While an employer may reasonably need to cancel an agreement at any time - and we agree that they should be able to do this – HMRC should have a sufficient reason before they are able to cancel an agreement.
- 3.6 Cancellation of a PSA without due cause could create disproportionate costs for employers. We would prefer to see the circumstances as set out in the existing Regulation 114 retained and updated. Otherwise, employers will presumably be forced to rely on HMRC guidance setting out the circumstances when HMRC has the powers to cancel an agreement.

#### **4 Additional observations**

- 4.1 We note that HMRC has not proposed any changes to the conditions in Regulation 106 which determine the type of benefits that can be included within a PSA. Following feedback from members, we would ask that consideration is given to ensuring that there is greater consistency between PSA teams of what is eligible for inclusion in a PSA computation.
- 4.2 We would endorse the CIOT’s comments in their submission expressing disappointment that digitalisation of the PSA process is not intended to proceed at present given the wider context of MTD, but appreciate that this may not be the most cost-effective measure for HMRC at this stage.

#### **5 Contact Details**

- 5.1 We would be pleased to comment further on any of the above. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Helen Thornley, on 07773 087125 or at [hthornley@att.org.uk](mailto:hthornley@att.org.uk).

Yours sincerely

**Yvette Nunn**

Co-Chair of ATT Technical Steering Group

## 6 Note

6.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 8,500 members and Fellows together with over 5,700 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.