

## PAYE REGULATIONS: "OT" CODE

### Paper sent by *ifs ProShare* to HMRC, and The Treasury.

This paper relates to:

1. the proposed changes to the PAYE Regulations, stated to take effect from 6 April 2011, requiring employers to operate an OT code on post cessation payments once the P45 has been issued, and
2. the impact of HMRC's treatment of late payment of PAYE tax and the operation of Share Incentive Plans (SIPs).

**Proposed changes to PAYE Regulations:** Where an employer has already issued a form P45 to the employee, the employer would be required to operate PAYE using code OT at the time the payment is made. This enables tax to be deducted from payments at the basic, higher and the additional rate of income tax.

The PAYE guidance issued in December 2010 (CWG2 for 2011), states that PAYE and NICs are due in the normal way on any 'standard' payments made to employees when they leave or after they have left employment. We understand that HMRC's view is that share related payments will be included as 'standard' payments for the purposes of the revised PAYE Regulations.

*ifs ProShare* champions and encourages employee share ownership and is seeking to support employee share plans; approved or unapproved, all-employee, discretionary and executive, UK and internationally implemented. These plans are introduced with the clear intention of offering and promoting employee share ownership which the Government supports. *ifs ProShare* is concerned that the introduction of the OT code will place a disproportionately high administrative burden and cost on employers operating employee share ownership incentives and as a consequence will adversely affect the desire of employers to continue to offer share based incentives. In particular, the number of employers seeking to implement and offer the benefits of a SIP to its employees may be reduced.

*ifs ProShare* is also concerned that the OT code will impose unfair levels of taxation in particular on participants receiving shares under all-employee arrangements; including under the HMRC approved SIPs. Employees will suffer taxation deductions at rates which are not relevant to their actual taxation position which will result in a significant number having to fill in tax repayment claims to reclaim back tax unfairly deducted and they will be required to wait for a period of up to 22 months before they receive any repayment of tax.

**Impact of proposed changes to PAYE Regulations on SIP:** Under current arrangements where employees choose to keep SIP shares on ceasing employment, administrators sell sufficient shares to cover any income tax, currently deductible for employees who have ceased employment and

received their P45 at basic rate, and employee's NIC. Under the proposed changes, either

- the SIP administrator will need to provide the taxable value and receive payroll calculations on an individual basis (with all the share plans administrator/ payroll additional systems and process costs that will involve), or
- the SIP administrator will have to calculate the income tax and NIC to be deducted for each tax band and sell sufficient shares based on its calculation (also involving significant extra costs and complication).

Employees could also receive the balance in shares based on a higher tax rate than their actual marginal rate for that tax year. Although they will be able to reclaim overpaid income tax, they will not be able to reclaim any growth in the value of the shares or dividends paid on the extra shares that had to be sold to fund the income tax and NIC deductions calculated.

*ifs ProShare* would like to understand why no consultation process was put in place to consider the impact of the introduction of the OT code. No regulatory impact has been published on this, and it is unclear whether the impact on share related payments of using an OT code has been specifically considered. No guidance has been issued to employers.

*ifs ProShare* is unclear how this change to the OT code fits with the stated intention to reduce the administrative burden on employers, one of the key tenets behind the proposals to improve the operation of PAYE under the real-time information ("RTI") consultation published in December 2010 ("the Consultation"). It is also unclear to *ifs ProShare* why these changes are being introduced at this time when it appears clear from the Consultation that the intention is that the current P45 regime will be amended, or superseded completely, as a result of the introduction of RTI; especially as the switch to RTI is proposed from January 2013 (for large employers).

**Late payment of PAYE and Share Incentive Plans.** Employers and Share Plan Administrators have invested significantly in systems and processes to comply with share plans and PAYE legislation. For example, where an employee leaves employment SIP shares have to come out of the SIP and the taxable event is on the leaving date. Employers currently provide leaver data on a monthly basis. SIP administrators process bulk leaver data and write to ex-employees each month with their choices whether to sell all the shares or sell sufficient to cover income tax and NIC. The SIP administrator must wait for the ex-employee to reply before selling the requisite amount of shares, shares cannot be sold without receipt of specific instructions to sell. Payments for income tax and employee's NIC are then returned to payroll once a month with a reconciliation file to allow the employer to ensure the correct amount of income tax and NIC is paid to HMRC under the PAYE regulations. It is clearly not possible for the employer to account under PAYE for income tax and NIC in the month of leaving or the following month, and it would appear that the employer is potentially liable to late PAYE payment penalties.

**Representations:** *ifs ProShare* has received a number of representations from its corporate members and other employers asking to understand why they are being required to enter lengthy and costly changes to their systems and procedures for dealing with the OT change when this change will probably only impact until January 2013. Additionally, employers are seeking reassurance from HMRC that late payment penalties will not be levied for income tax and NIC payments made after the taxable date, in circumstances where employers and administrators have implemented robust systems and processes to ensure the correct amount of income tax and NIC is deducted and paid to HMRC in the quickest reasonable time.

Employers are also seriously concerned about the lack of time provided to change their systems and procedures and the fact that no consultation on this has been offered prior to the proposed date of implementation, 6 April 2011. The revised PAYE Regulations have not to date been produced.

It is clear that employers need more time in which to consider the impact and implement the administrative changes required so that they can ensure compliance with the proposed changes. Discussions with the main SIP administrators make it clear that they will require a period of at least 18 months in order to build and implement the systems changes required.

*ifs ProShare* supports employee share plans and is seeking to ensure that the ability for these plans to be offered and promoted is not adversely impacted by the proposed revised PAYE Regulations. *ifs ProShare* is not aware of any suggestions by HMRC that there has been serial underpayment of tax in the context of SIPs.

*ifs ProShare* recommends that share-based payments should be specifically excluded from the requirement to utilise the OT code.

**Alexy Armitage**  
**Head of Employee Share Ownership**  
*ifs ProShare*  
***"The voice of employee share ownership"***

**PAPER SUPPORTED BY:**

BT  
Computershare Plan Managers  
Equiniti  
Killik Employee Services  
ACS HR Solutions  
BAE Systems  
British American Tobacco  
Capita Share Plan Services

Centrica  
Charles Taylor Consulting  
Kingfisher  
MM&K Share Plan Administration  
National Grid  
RBS  
Santander  
Smith & Nephew

