
STATUTORY INSTRUMENTS

2003 No. 2682

The Income Tax (Pay As You Earn) Regulations 2003

PART 4

PAYMENTS, RETURNS AND INFORMATION

CHAPTER 1

PAYMENT OF TAX AND ASSOCIATED RETURNS

^{F1}Real time returns

Textual Amendments

- F1** Regs. 67B-67H and cross-headings inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **27(b)** (with regs. 54-57)

Real time returns of information about relevant payments

67B.—(1) [^{F2}Subject to [^{F3}paragraph (1A)],] on or before making a relevant payment to an employee, a Real Time Information employer must deliver to HMRC the information specified in Schedule A1 in accordance with this regulation unless the employer is not required by regulation 66 (deductions working sheets) to maintain a deductions working sheet for any employees.

[^{F4}(1A) But a Real Time Information employer—

- (a) which for the tax year 2014-15 meets Conditions A and B, or
- (b) which for the tax year 2015-16 meets Conditions A and C,

may instead for that tax year deliver to HMRC the information specified in Schedule A1 (real time returns) in respect of all relevant payments made to an employee in a tax month on or before making the last relevant payment in that month.

(1B) Condition A is that, at 5th April 2014, the Real Time Information employer is one to whom HMRC has issued an employer's PAYE reference.

(1C) Condition B is that, at 6th April 2014, the Real Time Information employer employs no more than 9 employees.

(1D) Condition C is that, at 6th April 2015, the Real Time Information employer employs no more than 9 employees.]

(2) The information must be included in a return.

(3) Subject to paragraph (4), if relevant payments are made to more than one employee at the same time, the return under paragraph (2) must include the information required by Schedule A1 in respect of each employee to whom a relevant payment is made at that time.

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

(4) If relevant payments are made to more than one employee at the same time but the employer operates more than one payroll, the employer must make a return in respect of each payroll.

(5) The return is to be made using an approved method of electronic communications.

(6)

(7)

Textual Amendments

F2 Words in reg. 67B(1) inserted (with effect in accordance with reg. 1(2)(3) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2013 \(S.I. 2013/2300\)](#), regs. 1(1), **2(a)**

F3 Words in reg. 67B(1) substituted (6.4.2014) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), **4(a)**

F4 Reg. 67B(1A)-(1D) substituted for reg. 67B(1A) (6.4.2014) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), **4(b)**

[^{F5} Employees in respect of whom employer is not required to maintain deductions working sheets

67BA.—(1) This regulation applies if an employer makes a relevant payment to an employee in respect of whom the employer is not required by regulation 66 (deductions working sheets) to maintain a deductions working sheet.

(2) The employer need not deliver the information required by regulation 67B(1) on or before making the payment.

(3) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

Textual Amendments

F5 [Regs. 67BA-67BC](#) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **19**

Employees paid in specified circumstances

67BB.—(1) This regulation applies if an employer makes a payment to an employee and all of the circumstances in paragraph (2) apply.

(2) The circumstances are that—

(a) the payment includes an amount which is a relevant payment for work undertaken by the employee on—

(i) the day the payment is made, or

(ii) provided that the payment is made before the employee leaves the place of work at the end of the employee’s period of work, the day before the payment is made,

(b) in respect of the work mentioned in sub-paragraph (a), it was not reasonably practicable for the employer to calculate the payment due before the completion of the work, and

(c) it is not reasonably practicable for the employer to deliver the information required by regulation 67B(1) on making the payment.

(3) The employer need not deliver the information required by regulation 67B(1) on or before making the payment.

(4) The employer must deliver that information no later than the end of the period of 7 days starting with the day following the day on which the payment is made.

Textual Amendments

F5 Regs. 67BA-67BC inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **19**

Regulations 67BA and 67BB: supplementary

67BC Where regulation 67BA or 67BB applies, the information required by regulation 67B(1) in respect of the relevant payment may be included in a return with the information for any other relevant payment.]

Textual Amendments

F5 Regs. 67BA-67BC inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **19**

Modification of the requirements of regulation 67B: notional payments

67C.—(1) This regulation applies if an employer makes a relevant payment which is a notional payment (including a notional payment arising by virtue of a retrospective tax provision) to an employee.

[^{F6}(2) If the employer is unable to comply with the requirements in regulation 67B(1) to deliver the information required by that regulation on or before making the relevant payment, the employer must instead deliver the information as soon as reasonably practicable after the payment is made and in any event no later than 14 days after the end of the tax month in which the payment is made.]

Textual Amendments

F6 Reg. 67C(2) substituted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **20**

[^{F7}Notifications of relevant payments to and by providers of certain electronic payment methods

67CA.—(1) A Real Time Information employer who makes a relevant payment using an approved method of electronic communications which falls to be included in a return under regulation 67B must—

- (a) generate a reference under paragraph (3) and include it in that return,
- (b) notify the service provider that the payment is a relevant payment, and
- (c) generate a sub-reference under paragraph (3) in respect of the relevant payment and notify the service provider of that sub-reference.

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

(2) A service provider who receives a notification under paragraph (1)(b) must notify HMRC of the information it holds that is required for generating a reference under paragraph (3) in relation to the relevant payment.

(3) A reference and sub-reference under this paragraph is to be generated using the method specified by the Commissioners for Her Majesty's Revenue and Customs in a direction.

(4) In paragraphs (1) and (2), "service provider" means the provider of the approved method of electronic communications using which the payment is made.

(5) For the purposes of paragraphs (1) and (4), an "approved method of electronic communications" is any method of electronic communications which has been approved for the purposes of regulation 199 (large employers required to make specified payments electronically).

(6) A direction under paragraph (3) may also—

- (a) specify circumstances in which paragraphs (1) and (2) are not to apply, and
- (b) specify the form and manner of the notifications required by paragraphs (1)(b) and (c) and (2).]

Textual Amendments

F7 Reg. 67CA inserted (9.8.2012 with effect in relation to relevant payments made on and after 1.9.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2012 \(S.I. 2012/1895\)](#), regs. 1, 2

Exceptions to regulation 67B

67D.—(1) This regulation applies to—

- (a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications,
- (b) a partnership, if all the partners fall within sub-paragraph (a),
- (c) a company, if all the directors and the company secretary fall within sub-paragraph (a), ...
- (d) a care and support employer [^{F8}, and
- (e) an employer to whom a direction has been given under paragraph (11)] ,
[^{F9}but this is subject to paragraph (2B).]

(2) A Real Time Information employer to whom this regulation applies may proceed in accordance this regulation instead of regulation 67B.

[^{F10}(2A) Before 6th April 2014, a Real Time Information employer to whom this regulation applies may proceed as if the employer were a non-Real Time Information employer and the provisions of these Regulations apply accordingly to such an employer.]

[^{F11}(2B) This regulation does not apply if a Real Time Information employer within paragraph (1) makes a return using an approved method of electronic communications.]

(3) [^{F12}On and after 6th April 2014, a] Real Time Information employer must deliver to HMRC the information specified in Schedule A1 in respect of each employee to whom relevant payments are made in a tax [^{F13}quarter] unless the employer is not required by regulation 66 (deductions working sheets) to maintain a deductions working sheet for any employees and, for the purposes of this regulation, references in Schedule A1 to a relevant payment shall be read as if they were references to all the relevant payments made to the employee in the tax [^{F13}quarter].

- (4) The information must be included in a return.
- (5) The return required under paragraph (4) must be delivered within 14 days after the end of the tax [^{F14}quarter] the return relates to.
- (6) If relevant payments have been made to more than one employee in the tax [^{F15}quarter], the return under paragraph (4) must include the information required by Schedule A1 in respect of each employee to whom a relevant payment has been made.
- (7)
- (8)
- (9) In paragraph (1)(c), “company” means a body corporate or unincorporated association but does not include a partnership.
- (10) In paragraph (1)(d), “a care and support employer” means an individual (“the employer”) who employs a person to provide domestic or personal services at or from the employer’s home where—
 - (a) the services are provided to the employer or a member of the employer’s family,
 - (b) the recipient of the services has a physical or mental disability, or is elderly or infirm, and
 - (c) it is the employer who delivers the return (and not some other person on the employer’s behalf).

- [
- ^{F16}(11) Where the Commissioners for Her Majesty’s Revenue and Customs are satisfied that—
 - (a) it is not reasonably practicable for an employer to make a return using an approved method of electronic communication, and
 - (b) it is the employer who delivers the return (and not some other person on the employer’s behalf)

they may make a direction specifying that the employer is not required to make a return using an approved method of electronic communication.]

Textual Amendments

- F8** Reg. 67D(1)(e) and word inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **21(a)(ii)**
- F9** Words in reg. 67D(1)(e) inserted (6.4.2014) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), **5(a)**
- F10** Reg. 67D(2A) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **21(b)**
- F11** Reg. 67D(2B) inserted (6.4.2014) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), **5(b)**
- F12** Words in reg. 67D(3) substituted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **21(c)**
- F13** Word in reg. 67D(3) substituted (6.4.2014) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), **5(c)**
- F14** Word in reg. 67D(5) substituted (6.4.2014) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), **5(c)**
- F15** Word in reg. 67D(6) substituted (6.4.2014) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), **5(c)**

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

F16 Reg. 67D(11) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **21(e)**

Returns under regulations 67B and 67D: amendments

67E.—(1) This regulation applies where [^{F17}there is an inaccuracy in a return] made under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) [^{F18}, whether careless or deliberate,] and paragraph (2), (3) or (4) applies.

(2) This paragraph applies where the [^{F19}inaccuracy] relates to the information given in the return in respect of an employee under paragraph 16 or 17 of Schedule A1 (real time returns).

(3) This paragraph applies where the [^{F19}inaccuracy] was the omission of details of a relevant payment to an employee.

(4) This paragraph applies where the [^{F20}inaccuracy] arises because, as a result of a retrospective tax provision, the total amount of the relevant payments made by an employer to an employee increases for any tax year in which the employer was a Real Time Information employer.

[^{F21}(5) Where an employer becomes aware of an inaccuracy in a return submitted under regulation 67B or 67D, the employer must provide the correct information in the next return for the tax year in question.]

(6) But if the information has not been corrected before 20th April following the end of the tax year in question, the employer must make a return under this paragraph.

(7) A return under paragraph (6)—

(a) must include the following—

(i) the information specified in paragraphs 2 to 4, 8 to [^{F22}13, 15 and 22A] of Schedule A1,

(ii)

(iii) the value of the adjustment to the information given under paragraphs 16 or 17 of Schedule A1 in the final return under regulation 67B or 67D containing information in respect of the employee in the tax year in question,

[^{F23}(iv) the tax code used by the employer in respect of the employee in the tax year in question and,]

(v) if paragraph (8) applies, the information specified in paragraphs 36 to [^{F24}43] of Schedule A1,

(b) must be made as soon as reasonably practicable after the [^{F25}employer becomes aware of the inaccuracy], and

(c) must be made by an approved method of electronic communications.

(8) This paragraph applies if—

(a) the [^{F26}inaccuracy] is within paragraph (3),

(b) the relevant payment was the first relevant payment to the employee in the employment, and

(c) the information specified in paragraphs 36 to [^{F27}43] of Schedule A1 has not otherwise been provided.

(9) In the application of paragraphs (6) and (7) to cases within paragraph (3), if no information was given in any returns under regulation 67B or 67D in respect of the employee in the tax year,

the value of the adjustments required must be calculated as if there was a final return containing information for the employee in the year and the figure requiring adjustment was zero.

(10) Paragraph (7)(c) does not apply if the employer is one to whom regulation 67D applies.

Textual Amendments

- F17** Words in reg. 67E(1) substituted (6.4.2014) by The Income Tax (Pay As You Earn) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2014 (S.I. 2014/472), regs. 1(2), **6(a)(i)**
- F18** Words in reg. 67E(1) inserted (6.4.2014) by The Income Tax (Pay As You Earn) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2014 (S.I. 2014/472), regs. 1(2), **6(a)(ii)**
- F19** Word in reg. 67E(2)(3) substituted (6.4.2014) by The Income Tax (Pay As You Earn) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2014 (S.I. 2014/472), regs. 1(2), **6(b)**
- F20** Word in reg. 67E(4) substituted (6.4.2014) by The Income Tax (Pay As You Earn) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2014 (S.I. 2014/472), regs. 1(2), **6(b)**
- F21** Reg. 67E(5) substituted (6.4.2014) by The Income Tax (Pay As You Earn) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2014 (S.I. 2014/472), regs. 1(2), **6(c)**
- F22** Words in reg. 67E(7)(a)(i) substituted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2013 (S.I. 2013/521), regs. 1(2), **22(a)**
- F23** Reg. 67E(7)(a)(iv) substituted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2013 (S.I. 2013/521), regs. 1(2), **22(c)**
- F24** Words in reg. 67E(7)(a)(v) substituted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2013 (S.I. 2013/521), regs. 1(2), **22(d)**
- F25** Words in reg. 67E(7)(b) substituted (6.4.2014) by The Income Tax (Pay As You Earn) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2014 (S.I. 2014/472), regs. 1(2), **6(d)**
- F26** Word in reg. 67E(8)(a) substituted (6.4.2014) by The Income Tax (Pay As You Earn) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2014 (S.I. 2014/472), regs. 1(2), **6(b)**
- F27** Words in reg. 67E(8)(c) substituted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2013 (S.I. 2013/521), regs. 1(2), **22(d)**

[^{F28} Failure to make a return under regulation 67B or 67D

67EA.—(1) This regulation applies where an employer does not make a return as required by regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B).

(2) The employer must provide the information in the next return made under regulation 67B or 67D for the tax year in question.

(3) If the information has not been provided before 20th April following the end of the tax year in question, the employer must make a return under this paragraph.

(4) A return under paragraph (3) must—

- (a) include the information specified in Schedule A1,
- (b) be made as soon as reasonably practicable after the discovery of the failure to make the return, and
- (c) be made using an approved method of electronic communications.

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

(5) If a return under paragraph (3) is not made before 20th May following the end of the tax year in question section 98A of TMA 1970 (special penalties in case of certain returns) will apply to the return [^{F29}, but this paragraph does not apply to a return in respect of the tax year 2014-15 or a subsequent tax year].]

Textual Amendments

- F28** Reg. 67EA inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **23**
- F29** Words in reg. 67EA(5) inserted (10.9.2014) by [The Finance Act 2009, Schedule 55 \(Penalties for failure to make returns\) \(Appointed Days and Consequential Provision\) Order 2014 \(S.I. 2014/2395\)](#), art. 3

Additional information about payments

- 67F.**—(1) A Real Time Information employer may send to HMRC a notification if—
- (a) for a tax period, the employer was not required to make any returns in accordance with regulation 67B or 67D because no relevant payments were made during the tax period, or
 - (b) the employer has sent the final return under regulation 67B or 67D that the employer expects to make—
 - (i) in the circumstances described in paragraph 5 of Schedule A1 (real time returns), or
 - (ii) for the tax year.
- (2) A notification under paragraph (1)(b) must—
- (a)
 - (b) be sent within 14 days of the end of final tax period of the tax year.
- [if the notification is under paragraph (1)(b)(i), include the date on which the PAYE scheme ^{F30}(c) ceased]
- (3) A notification under this regulation must—
- (a) state—
 - (i) the tax year to which it relates,
 - (ii) the employer’s HMRC office number,
 - (iii) the employer’s PAYE reference, and
 - (iv) the employer’s accounts office reference, and
 - (b) be sent using an approved method of electronic communications unless the employer is one to whom regulation 67D applies.

[^{F31}(4) This regulation applies in addition to the provisions set out in regulation 147D (duty to report amount of apprenticeship levy to be paid).]

Textual Amendments

- F30** Reg. 67F(2)(c) inserted (with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **24**
- F31** Reg. 67F(4) inserted (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), regs. 1, **2(4)**

Payment and recovery of tax by employer

Payments to and recoveries from HMRC for each tax period by Real Time Information employers

67G.—(1) For each tax period, a Real Time Information employer must pay to, or may recover from, HMRC the amount arrived at under the formula in paragraph (4).

(2) If the amount arrived at under the formula in paragraph (4) is a positive amount, the employer must pay the excess to HMRC.

(3) If the amount arrived at under the formula in paragraph (4) is a negative amount, the employer may recover that amount either—

- (a) by deducting it from the amount which the employer is liable to pay under paragraph (2) for a later period in the tax year, or
- (b) from the Commissioners for Her Majesty’s Revenue and Customs.

[^{F32}(3A) Where a return for a tax period contains a correction under regulation 67E(5) (returns under regulations 67B and 67D: amendments) and paragraph (3) of this regulation applies, the negative amount is treated as having been paid to HMRC—

- (a) 17 days after the end of the tax period in respect of which that return is delivered, where payment is made using an approved method of electronic communications, or
- (b) 14 days after the end of the tax period in respect of which that return is delivered, in any other case.]

(4) The formula in this paragraph is

A–B

, where—

A is the sum total of the relevant amounts for each of the employer’s employees, and

B is amount A for the previous tax period in the tax year, if any.

(5) For the purposes of paragraph (4), a “relevant amount” is the amount shown under paragraph 17 of Schedule A1 (real time returns) for an employee in the most recent return made in the tax year by the employer under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) which contains information about that employee.

[^{F33}(5A) If the employer makes a return under regulation 67EA(3) (failure to make a return under regulation 67B or 67D) a “relevant amount” for the purposes of paragraph (4) is the amount shown under paragraph 17 of Schedule A1 (real time returns) for an employee in that return for the tax year to which that return relates.]

(6) In paragraph (5) “the most recent return” means the return which, as at the end of the tax period, contains the most up to date information under paragraph 17 of Schedule A1 about the employee.

(7) This regulation is subject to regulations 67H (payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under regulation 67E(6)), 71 (modification of regulations 67G and 68 in case of trade dispute) and 75B (certificates under regulation 75A: excess payments).

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

Textual Amendments

- F32** Reg. 67G(3A) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2014 \(S.I. 2014/1017\)](#), regs. 1(1), **2(a)**
- F33** Reg. 67G(5A) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **25**

Payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under regulation 67E(6)

67H.—(1) This regulation applies if, during any tax period, an employer makes a return under regulation 67E(6) (returns under regulations 67B and 67D: amendments) other than by virtue of regulation 67E(4).

[^{F34}(2) If the return shows an adjustment under regulation 67E(7)(a)(iii) and the value of the adjustment is a positive amount, that amount is an amount due to be paid to HMRC for the final tax period of the tax year the return relates to.]

(3) [^{F35}If the return shows such an adjustment and the value of the adjustment is a negative amount, that amount is an amount due to be repaid to the employer for the final tax period of the tax year the return relates to and], the employer may recover that amount—

- (a) by setting it off against the amount the employer is liable to pay under regulation 67G for the tax period the return was made in, or
- (b) from the Commissioners for Her Majesty's Revenue and Customs.

[^{F36}(4) Where the value of the adjustment is a negative amount, that amount is treated as having been paid to HMRC—

- (a) 17 days after the end of the final tax period of the tax year the return relates to, if payment is made using an approved method of electronic communications, or
- (b) 14 days after the end of the final tax period of the tax year the return relates to, in any other case.]]

Textual Amendments

- F34** Reg. 67H(2) substituted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **26(a)**
- F35** Words in reg. 67H(3) substituted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **26(b)**
- F36** Reg. 67H(4) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2014 \(S.I. 2014/1017\)](#), regs. 1(1), **2(b)**

^{F37} Penalties under Schedule 55 to the Finance Act 2009

Textual Amendments

- F37** Regs. 67I-67K and cross-heading inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by The Income Tax (Pay As You Earn) (Amendment No. 3) Regulations 2014 (S.I. 2014/2396), regs. 1(1), 2

Penalty: failure to comply with regulation 67B or 67D

67I.—(1) For the purposes of paragraph 6C of Schedule 55 to the Finance Act 2009 (amount of penalty: real time information for PAYE), a Real Time Information employer which fails to deliver a return falling within item 4 in the Table in paragraph 1 of that Schedule in accordance with—

- (a) regulation 67B (real time returns of information about relevant payments);
- (b) regulation 67BA (employees in respect of whom employer is not required to maintain a deductions working sheet);
- (c) regulation 67BB (employees paid in specific circumstances);
- (d) regulation 67C (modification of the requirements of regulation 67B: notional payments); or
- (e) regulation 67D (exceptions to regulation 67B)

as the case may be, is liable to a penalty of the amount set out in paragraph (2).

(2) Where a Real Time Information employer fails to deliver such a return and the number of persons employed in the period to which the return relates is—

- (a) no more than 9, the penalty is £100;
- (b) at least 10 but no more than 49, the penalty is £200;
- (c) at least 50 but no more than 249, the penalty is £300; and
- (d) at least 250, the penalty is £400.

Penalty: initial period

67J. For the purposes of paragraph 6C(3), (4) and (5) of Schedule 55 to the Finance Act 2009 (initial period), the duration of the initial period is thirty days.

Penalty: first failure to deliver a return in a tax year

67K.—(1) Paragraph 6C(4) of Schedule 55 to the Finance Act 2009 (unpenalised default) does not apply to any failure to deliver a return falling within item 4 in the Table in paragraph 1 of that Schedule in accordance with regulation 67B, regulation 67BA, regulation 67BB, regulation 67C or regulation 67D, as the case may be,—

- (a) by a small existing Real Time Information employer or a new Real Time Information employer in the period 6th March 2015 to 5th April 2015; or
- (b) for any tax year for which a Real Time Information employer operates an annual PAYE Scheme.

(2) For the purposes of paragraph (1)(a)—

- (a) an employer is a small existing Real Time Information employer if at 6th October 2014 that employer employed no more than 49 employees; and

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- (b) an employer is a new Real Time Information employer if it is issued with an employer's PAYE reference after 6th October 2014.
- (3) For the purposes of paragraph (1)(b), a Real Time Information employer operates an annual PAYE Scheme for a tax year if for that year—
 - (a) all the employees are paid annually;
 - (b) all the employees are paid on the same date; and
 - (c) the Real Time Information employer is only required under regulation 69 (due date and receipts for payment of tax) to pay HMRC annually.]

F38 ...

Textual Amendments

F38 Reg. 68 cross-heading omitted (6.4.2012) by virtue of [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **27(a)**

[^{F39}Periodic payments to and recoveries from HMRC: non-Real Time Information employers]

68.—(1) This regulation applies to determine how much [^{F40}a non-Real Time Information employer] must pay or can recover for a tax period.

- (2) If A exceeds B, the employer must pay the excess to the Inland Revenue.
- (3) But if B exceeds A, the employer may recover the excess either—
 - (a) by deducting it from the amount which the employer is liable to pay under paragraph (2) for a later tax period in the tax year, or
 - (b) from the Board of Inland Revenue.
- (4) In this Regulation—
 - A is—
 - (a) the total amount of tax which the employer was liable to deduct from relevant payments made by the employer in the tax period, plus
 - (b) the total amount of tax for which the employer was liable to account in respect of notional payments made [^{F41}or treated by virtue of a retrospective tax provision as made,] by the employer in that period under regulation 62(5) (notional payments);

B is the total amount which the employer was liable to repay in the tax period.

- (5) Paragraphs (2) and (3) are subject to regulation 71 (modification in case of trade disputes).
- (6) Paragraph (2) is also subject to regulation 78(11) (entitlement to set off excess payments).

[^{F42}(7) In the application of paragraph (4) to notional payments arising by reason of the coming into force of the Finance Act 2006, the reference to section 710(7A)(a) of ITEPA 2003 shall be modified as mentioned in section 94(5)(c) of the Finance Act 2006.]

Textual Amendments

F39 Reg. 68 heading substituted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **28**

- F40** Words in reg. 68(1) substituted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **29**
- F41** Words in reg. 68(4)(b) inserted (6.4.2007) by [The Income Tax \(Pay as You Earn\) \(Amendment\) Regulations 2007 \(S.I. 2007/1077\)](#), regs. 1, **12(2)**
- F42** Reg. 68(7) added (6.4.2007) by [The Income Tax \(Pay as You Earn\) \(Amendment\) Regulations 2007 \(S.I. 2007/1077\)](#), regs. 1, **12(3)**

Due date and receipts for payment of tax

69.—(1) An employer must pay amounts due under regulation ^[F43]67G(2) ^[F44], as adjusted by regulation 67H(2) where appropriate,] or] 68(2)—

- (a) within 17 days after the end of the tax period, where payment is made by an approved method of electronic communications, or
- (b) within 14 days after the end of the tax period, in any other case.

^[F45](1A) In paragraph (1), the reference to amounts due under regulation 67G(2) includes any amount the employer was liable to deduct from employees during the tax period whether or not that amount was included in any return under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B).]

(2) The Inland Revenue must give a receipt to the employer for the total amount paid under regulation ^[F43]67G(2) ^[F44], as adjusted by regulation 67H(2) where appropriate,] or] 68(2) if asked.

(3) But no separate receipt for tax only need be given if a receipt is given for the total amount of tax and any earnings-related contributions (as defined by regulation 1(2) of ^[F46]the SSC Regulations)](1) paid at the same time.

^[F47](4) In paragraph (1) “the tax period”, in relation to an amount of retrospective employment income, means the tax period immediately following the relevant time.]

Textual Amendments

- F43** Words in reg. 69 inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **30**
- F44** Words in reg. 69(1)(2) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **27**
- F45** Reg. 69(1A) inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2014 \(S.I. 2014/1017\)](#), regs. 1(1), **2(c)**
- F46** Words in reg. 69(3) substituted (6.4.2007) by [The Income Tax \(Pay as You Earn\) \(Amendment\) Regulations 2007 \(S.I. 2007/1077\)](#), regs. 1, **13(2)**
- F47** Reg. 69(4) added (6.4.2007) by [The Income Tax \(Pay as You Earn\) \(Amendment\) Regulations 2007 \(S.I. 2007/1077\)](#), regs. 1, **13(3)**

^[F48]Circumstances in which payment of a lesser amount is to be treated as payment in full for the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009

69A.—(1) A payment that is less than the full amount due under regulation 67G(2) (payments to and recoveries from HMRC for each tax period), as adjusted by regulation 67H (payments due and recoveries from HMRC for each tax period: returns under regulation 67E(6)) where appropriate, will for the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009 (amount of penalty: PAYE

(1) [S.I.2001/1004](#).

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Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

and CIS) be treated as payment of the full amount if the difference between the full amount and the amount paid is no more than £100 (“the tolerance”), but this is subject to paragraphs (2) and (3).

(2) Paragraph (1) does not apply where—

- (a) the payment relates to a return which is correcting information given in a return filed in respect of a relevant payment made in an earlier tax month, and
- (b) the return is delivered after 19th April following the end of the tax year in question.

(3) If the total sum paid by the employer to HMRC for the tax period includes not only the amount due under regulation 67G(2), as adjusted by regulation 67H where appropriate, but also one or more of—

- (a) any earnings-related contributions (as defined by regulation 1(2) of the SSC Regulations 2001),
- (b) any payment under regulation 7(1) of the Income Tax (Construction Industry Scheme) Regulations 2005, or
- (c) any repayment due under the Student Loans Regulations,

the tolerance is applied to the total sum paid to HMRC for the tax period to which the payments relate.]

Textual Amendments

F48 Reg. 69A inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), 7

Quarterly tax periods

70.—(1) This regulation applies, so that the tax period is a tax quarter, if an employer—

- (a) has reasonable grounds for believing that the average monthly amount will be less than £1,500, and
- (b) chooses to pay tax quarterly.

[^{F49}(1A) But this regulation does not apply, so that the tax period remains a month, in respect of amounts of retrospective employment income.]

(2) “The average monthly amount” is the average, for tax months falling within the current tax year, of the amounts found by the formula—

[^{F50}(P + N + L + S) – (SP + CD)]

(3) In paragraph (2)—

P is the amount which would be payable to the Inland Revenue under regulation [^{F51}67G [^{F52}, as adjusted by regulation 67H(2) where appropriate.] or] 68 [^{F53}but disregarding any amount payable in respect of retrospective employment income] ...;

N is the amount which would be payable to the Inland Revenue under the SSCBA and the SSC Regulations disregarding—

- (a) any amount of secondary Class 1 contributions in respect of which liability has been transferred to the employed earner by an election made jointly by the employed earner

and the secondary contributor for the purposes of paragraph 3B(1) of Schedule 1 to the SSCBA (transfer of liability to be borne by earner)(2); ...

(aa) [^{F54}any amount payable under retrospective contributions regulations (see paragraph 1(2) of Schedule 4 to the SSC Regulations) in respect of retrospective earnings (within the meaning of those Regulations);]

(c) ...

L is the amount which would be payable to the Inland Revenue under regulation [^{F55}54(1) or, in Northern Ireland, 49(1)] of the Student Loans Regulations (payment of repayments deducted to the Inland Revenue) disregarding—

(a) the reduction referred to in paragraph (3) of [^{F55}those regulations], ...

(b) ...

S is the amount which would be payable by the employer to the Inland Revenue under sections 559 and 559A of ICTA(3) (deduction on account of tax etc from payments to certain sub-contractors) and regulation 8 of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993(4)...;

...

SP is the amount which would be payable by the employer to employees by way of statutory sick pay, statutory maternity pay, [^{F56}statutory paternity pay][^{F57}, statutory shared parental pay] and statutory adoption pay under the SSCBA; and

CD is—

(a) if the employer is a company, the amount which others would deduct from payments to it, in its position as a sub-contractor, under section 559 of ICTA (deduction on account of tax etc from payments to certain sub-contractors);

(b) in any other case, nil.

(4) In this regulation—

“employed earner” has the same meaning as in the SSCBA;

“SSCBA” means the Social Security Contributions and Benefits Act 1992(5) or, in Northern Ireland, the Social Security Contribution and Benefits (Northern Ireland) Act 1992(6);

...

...

...

...

Textual Amendments

F49 Reg. 70(1A) inserted (6.4.2007) by [The Income Tax \(Pay as You Earn\) \(Amendment\) Regulations 2007 \(S.I. 2007/1077\)](#), regs. 1, **14(2)**

(2) Paragraph 3B was inserted in Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) by section 77(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19), and in Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) by section 81(2) of the Child Support, Pensions and Social Security Act 2000.

(3) Section 559 was amended by section 139 of, and paragraph 1 of Schedule 27 to, the Finance Act 1995 (c. 4), section 55(2) of the Finance Act 1998 (c. 36), Part 3(1) of Schedule 40 to the Finance Act 2002 (c. 23), paragraph 58 of Schedule 6 to ITEPA and by S.I. 1989/2405 (N.I. 19); section 559A was inserted by section 40(1) of the Finance Act 2002.

(4) S.I. 1993/743.

(5) 1992 c. 4.

(6) 1992 c. 7.

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Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- F50** Formula in reg. 70(2) substituted (6.4.2006) by The Income Tax (Pay As You Earn, etc.), (Amendment) Regulations 2006 (S.I. 2006/777), regs. 1(1), **3(a)**
- F51** Words in reg. 70(3) inserted (6.4.2012) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (S.I. 2012/822), regs. 1(1), **31**
- F52** Words in reg. 70(3) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2013 (S.I. 2013/521), regs. 1(2), **28**
- F53** Words in reg. 70(3) inserted (6.4.2007) by The Income Tax (Pay as You Earn) (Amendment) Regulations 2007 (S.I. 2007/1077), regs. 1, **14(3)(a)**
- F54** Words in reg. 70(3) inserted (6.4.2007) by The Income Tax (Pay as You Earn) (Amendment) Regulations 2007 (S.I. 2007/1077), regs. 1, **14(3)(b)**
- F55** Words in reg. 70(3) substituted (6.4.2012) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (S.I. 2012/822), regs. 1(1), **63**
- F56** Words in reg. 70(3) substituted (5.4.2015) by The Statutory Shared Parental Pay (Miscellaneous Amendments) Regulations 2015 (S.I. 2015/125), regs. 1(3), **3(a)** (with reg. 6)
- F57** Words in reg. 70(3) inserted (26.2.2015) by The Statutory Shared Parental Pay (Miscellaneous Amendments) Regulations 2015 (S.I. 2015/125), regs. 1(2), **3(b)**, 5 (with reg. 6)

Modification of [^{F58}regulations 67G and 68] in case of trade dispute

71.—(1) This regulation modifies the amount payable or recoverable by an employer under [^{F59}regulations 67G and 68] in cases where regulation 64 (trade disputes) applies—

- (a) by providing for the amount which would otherwise be payable by the employer for a tax period to be reduced by an amount of repayments (“R”) that cannot be made to employees in the tax period, and
- (b) by providing—
 - (i) for amounts which would otherwise be payable in later tax periods to be increased, or
 - (ii) for amounts which would otherwise be recoverable in later tax periods to be reduced, by a total of R.

(2) This regulation applies for consecutive tax periods—

- (a) starting with the first tax period at the end of which there is an amount calculated as due to be repaid but which is required to be withheld by regulation 64(5) (tax to be withheld during strike action), and
- (b) ending with the next tax period at the end of which no amount is required to be withheld by that regulation.

(3) Column 3 of Table 3 shows the amount payable under regulation [^{F60}67G(2) [^{F61}, as adjusted by regulation 67H(2) where appropriate,] or, as the case may be,] 68(2) in the cases set out in column 2 for the first and subsequent tax periods.

Table 3

Modified amount payable under regulation [^{F62}67G or] 68

<i>1. Tax period</i>	<i>2. Case</i>	<i>3. Amount payable</i>
First tax period	if B equals or exceeds A	nil
First tax period	any other case	A – B, reduced by P (or by so much of P as reduces the amount payable to nil)

1. Tax period	2. Case	3. Amount payable
Subsequent tax periods	if B equals or exceeds (A + Q)	nil
Subsequent tax periods	any other case	(A + Q) – B, reduced by P (or by so much of P as reduces the amount payable to nil).

(4) The amount (if any) recoverable under regulation [^{F63}67G [^{F64}, as adjusted by regulation 67H(2) where appropriate,] or, as the case may be,] 68(3) must be reduced to the extent that it includes amounts—

- (a) for which reduction was made under paragraph (3) in an earlier tax period, or
- (b) which are otherwise being recovered.

(5) In this regulation—

A is—

- (a) the total amount of tax which the employer was liable to deduct from relevant payments made by the employer in the tax period, plus
- (b) the total amount of tax for which the employer was liable to account in respect of notional payments made by the employer in that period under regulation 62(5) (notional payments);

B is the total amount which the employer is liable to repay in the tax period, not including any amounts—

- (a) for which a reduction was made under paragraph (3) in an earlier tax period; or
- (b) which are being recovered under paragraph (4);

P is the total of amounts calculated as due to be repaid in the tax period but required to be withheld during that tax period by regulation 64(5);

Q is the total of amounts—

- (a) which, because of regulation 64(5)(b), are set off against tax due to be deducted in the tax period, and
- (b) which also, under paragraph (3), have reduced the amount payable in an earlier tax period.

Textual Amendments

- F58** Words in [reg. 71 heading](#) substituted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), [regs. 1\(1\), 32](#)
- F59** Words in [reg. 71\(1\)](#) substituted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), [regs. 1\(1\), 33\(a\)](#)
- F60** Words in [reg. 71\(3\)](#) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), [regs. 1\(1\), 33\(b\)\(i\)](#)
- F61** Words in [reg. 71\(3\)](#) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), [regs. 1\(2\), 29\(a\)](#)
- F62** Words in [reg. 71\(3\)](#) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), [regs. 1\(1\), 33\(b\)\(ii\)](#)
- F63** Words in [reg. 71\(4\)](#) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), [regs. 1\(1\), 33\(c\)](#)

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

F64 Words in reg. 71(4) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2013 (S.I. 2013/521), regs. 1(2), 29(b)

Recovery from employee of tax not deducted by employer

72.—(1) This regulation applies if—

- (a) it appears to the Inland Revenue that the deductible amount exceeds the amount actually deducted, and
- (b) condition A or B is met.

(2) In this regulation [^{F65}and regulations 72A and 72B]—

“the deductible amount” is the amount which an employer was liable to deduct from relevant payments made to an employee in a tax period;

“the amount actually deducted” is the amount actually deducted by the employer from relevant payments made to that employee during that tax period;

“the excess” means the amount by which the deductible amount exceeds the amount actually deducted.

(3) Condition A is that the employer satisfies the Inland Revenue—

- (a) that the employer took reasonable care to comply with these Regulations, and
- (b) that the failure to deduct the excess was due to an error made in good faith.

(4) Condition B is that the Inland Revenue are of the opinion that the employee has received relevant payments knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments.

(5) The Inland Revenue may direct that the employer is not liable to pay the excess to the Inland Revenue.

[^{F66}(5A) Any direction under paragraph (5) must be made by notice (“the direction notice”), stating the date the notice was issued, to—

- (a) the employer and the employee if condition A is met;
- (b) the employee if condition B is met.

(5B) A notice need not be issued to the employee under paragraph (5A)(a) if neither the Inland Revenue nor the employer are aware of the employee’s address or last known address.]

(6) If a direction is made, the excess must not be added under regulation 185(5) or 188(3)(a) (adjustments to total net tax deducted for self-assessments and other assessments) in relation to the employee.

(7) If condition B is met, tax payable by an employee as a result of a direction carries interest, as if it were unpaid tax due from an employer, in accordance with [^{F67}section 101 of the Finance Act 2009].

(8)

Textual Amendments

F65 Words in reg. 72(2) inserted (12.4.2004) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2004 (S.I. 2004/851), regs. 1, 3(2)

F66 Reg. 72(5A)(5B) inserted (12.4.2004) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2004 (S.I. 2004/851), regs. 1, 3(3)

F67 Words in [reg. 72\(7\)](#) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2009, Sections 101 and 102 \(Interest on Late Payments and Repayments\), Appointed Days and Consequential Provisions Order 2014 \(S.I. 2014/992\), arts. 1\(1\), 9\(3\)\(a\)](#)

[^{F68}Employer’s request for a direction and appeal against refusal

72A.—(1) In relation to condition A in regulation 72(3), the employer may by notice to the Inland Revenue (“the notice of request”) request that the Inland Revenue make a direction under regulation 72(5).

(2) The notice of request must—

(a) state—

- (i) how the employer took reasonable care to comply with these Regulations; and
- (ii) how the error resulting in the failure to deduct the excess occurred;

(b) specify the relevant payments to which the request relates;

(c) specify the employee or employees to whom those relevant payments were made; and

(d) state the excess in relation to each employee.

(3) The Inland Revenue may refuse the employer’s request under paragraph (1) by notice to the employer (“the refusal notice”) stating—

(a) the grounds for the refusal, and

(b) the date on which the refusal notice was issued.

(4) The employer may appeal against the refusal notice—

(a) by notice to the Inland Revenue,

(b) within 30 days of the issue of the refusal notice,

(c) specifying the grounds of the appeal.

(5) For the purpose of paragraph (4) the grounds of appeal are that—

(a) the employer did take reasonable care to comply with these Regulations, and

(b) the failure to deduct the excess was due to an error made in good faith.

(6) If on appeal under paragraph (4) [^{F69}that is notified to the tribunal] it appears to the [^{F70}tribunal] that the refusal notice should not have been issued [^{F71}the tribunal] may direct that the Inland Revenue make a direction under regulation 72(5) in an amount the [^{F72}tribunal determines] is the excess for one or more tax periods falling within the relevant tax year.

Textual Amendments

F68 Regs. 72A-72D inserted (12.4.2004) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2004 \(S.I. 2004/851\), regs. 1, 4](#)

F69 Words in [reg. 72A\(6\)](#) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\), art. 1\(2\), Sch. 2 para. 96\(2\)](#)

F70 Word in [reg. 72A\(6\)](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\), art. 1\(2\), Sch. 2 para. 96\(3\)](#)

F71 Words in [reg. 72A\(6\)](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\), art. 1\(2\), Sch. 2 para. 96\(4\)](#)

F72 Words in [reg. 72A\(6\)](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\), art. 1\(2\), Sch. 2 para. 96\(5\)](#)

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Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

Employee's appeal against a direction notice where condition A is met

- 72B.**—(1) An employee may appeal against a direction notice under regulation 72(5A)(a)—
- (a) by notice to the Inland Revenue,
 - (b) within 30 days of the issue of the direction notice,
 - (c) specifying the grounds of the appeal
- (2) For the purpose of paragraph (1) the grounds of appeal are that—
- (a) the employer did not act in good faith,
 - (b) the employer did not take reasonable care, or
 - (c) the excess is incorrect.
- (3) On an appeal under paragraph (1) [^{F73}that is notified to the tribunal, the tribunal] may—
- (a) if it appears ... that the direction notice should not have been made, set aside the direction notice; or
 - (b) if it appears ... that the excess specified in the direction notice is incorrect, increase or reduce the excess specified in the notice accordingly.

Textual Amendments

F68 Regs. 72A-72D inserted (12.4.2004) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2004 \(S.I. 2004/851\)](#), regs. 1, 4

F73 Words in reg. 72B(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 97(2)**

Employee's appeal against a direction notice where condition B is met

- 72C.**—(1) An employee may appeal against a direction notice under regulation 72(5A)(b)—
- (a) by notice to the Inland Revenue,
 - (b) within 30 days of the issue of the direction notice,
 - (c) specifying the grounds of the appeal.
- (2) For the purpose of paragraph (1) the grounds of appeal are that—
- (a) the employee did not receive the payments knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments, or
 - (b) the excess is incorrect.
- (3) On an appeal under paragraph (1) [^{F74}that is notified to the tribunal, the tribunal] may—
- (a) if it appears ... that the direction notice should not have been made, set aside the direction notice; or
 - (b) if it appears ... that the excess specified in the direction notice is incorrect, increase or reduce the excess specified in the notice accordingly.

Textual Amendments

F68 Regs. 72A-72D inserted (12.4.2004) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2004 \(S.I. 2004/851\)](#), regs. 1, 4

F74 Words in reg. 72C(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 98(2)**

Appeals: supplementary provisions

72D.—(1) This regulation applies to appeals under regulations 72A(4), 72B, [^{F75}72C, 72G and 81A].

(2)

(3)

(4) [^{F76}This paragraph applies if] in respect of the same error by an employer in relation to condition A in regulation 72(3)—

(a) more than one employee is appealing under regulation 72B; or

(b) there is an appeal by an employer under regulation 72A(4) and by an employee under regulation 72B

...

(5)

(6)

(7)

[^{F77}(8) Where paragraph (4) applies or the appeal is material to the liability to tax of the employer and the employee, all the persons concerned are entitled to be parties to the appeal.]

(9)]

Textual Amendments

F68 Regs. 72A-72D inserted (12.4.2004) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2004 \(S.I. 2004/851\)](#), regs. 1, 4

F75 Words in 72D(1) substituted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, 6

F76 Words in reg. 72D(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 99(3)(a)**

F77 Reg. 72D(8) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 99(4)**

[^{F78}Conditions where regulation 72F applies

72E.—(1) Regulation 72F applies where—

(a) [^{F79}one or more employees have] received a relevant payment;

(b) it appears to HMRC that an amount intended to represent tax on the payment—

[^{F80}(i) is likely to have been self-assessed by one or more of the employees, or]

(ii) has not been self-assessed, but has been paid under section 59A TMA (payments on account of income tax), section 559A of ICTA (treatment of sums deducted under s.559 (sub-contractors)) or section 62 of the Finance Act 2004 (treatment of sums deducted (sub-contractors));

(c) any of conditions A, B and C is met;

(d) a trigger event has occurred; and

(e) a trigger event did not occur before 6th April 2008.

(2) Condition A is that it appears to HMRC that the amount which the employer was liable to deduct—

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Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (a) from the relevant payment; or
 - (b) in the case of a notional payment, from other relevant payments,
- exceeds the amount actually deducted.
- (3) Condition B is that it appears to HMRC that the amount for which the employer was required to account under regulation 62(5) (notional payments) in respect of the relevant payment exceeds the amount actually accounted for.
- (4) Condition C is that—
- (a) tax on the relevant payment was included in a determination under regulation 80 (determination of unpaid tax and appeal against determination); and
 - (b) the full amount of the determination is not paid within 30 days from the date on which the determination became final and conclusive.
- (5) The following are trigger events—
- (a) HMRC serve notice of a determination under regulation 80 that includes tax on the relevant payment;
 - (b) HMRC receive a return under section 8 of TMA (personal return) which includes a self-assessment which includes tax on the relevant payment as tax treated as deducted;
 - (c) HMRC receive—
 - (i) an amended return under section 9ZA of TMA (amendment of personal or trustee return by taxpayer), or
 - (ii) a claim under section 33 of TMA (error or mistake),
 which includes tax on the relevant payment as tax treated as deducted;
 - (d) HMRC receive a letter of offer.
- (6) In paragraph (5)—
- “letter of offer” means an offer in writing by the employer to agree an amount in settlement of the employer’s liability to pay an amount that includes tax on the relevant payment;
- “tax treated as deducted” has the meaning given by regulation 185(6).
- (7) For the purposes of this regulation tax is self-assessed if—
- (a) it is included in a return under section 8 of TMA which includes a self-assessment; and
 - (b) ignoring any relevant credit, the tax is or would be assessed as payable by way of income tax.
- (8) In paragraph (7), “relevant credit” means—
- (a) a payment made under section 59A of TMA (payments on account of income tax) or 59B (payment of income tax and capital gains tax); or
 - (b) tax deducted at source or tax treated as deducted (within the meaning given by regulation 185(6)).

Textual Amendments

- F78** Regs. 72E-72G inserted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, 7
- F79** Words in reg. 72E(1)(a) substituted (6.4.2014) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), **8(a)**
- F80** Reg. 72E(1)(b)(i) substituted (6.4.2014) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), **8(b)**

Recovery from employee of tax that has been self-assessed etc.

72F.—(1) Where this regulation applies, HMRC may direct that the employer is not liable to pay an amount of tax to them.

(2) The direction may be in respect of one or more amounts that appear to HMRC to fall within regulation 72E(1)(b)(i) and (ii).

(3) A direction must be made by notice to both the employer and the employee, stating—

(a) the date the notice was issued;

^[F81](b) the—

(i) amount (or amounts) within regulation 72E(1)(b) to which it relates, or

(ii) employment in respect of which the relevant payment within regulation 72E(1)(a) was received and in respect of which the amount within regulation 72E(1)(b)(i) is likely to have been self-assessed, and]

(c) which of conditions A, B and C in regulation 72E have been met.

(4) A direction may be combined with one or more other directions relating to the same employer and may be made by issuing one notice to the employer, but each employee must be issued with a separate notice.

(5) A notice need not be issued to the employee if neither HMRC nor the employer are aware of the employee's address or last known address.

(6) The amount specified in a notice to the employee must not be added under regulation 185(5) or 188(3)(a) (adjustments to total net tax deducted for self-assessments and other assessments) in relation to the employee.

Textual Amendments

F78 Regs. 72E-72G inserted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, 7

F81 Reg. 72F(3)(b) substituted (6.4.2014) by [The Income Tax \(Pay As You Earn\) and the Income Tax \(Construction Industry Scheme\) \(Amendment\) Regulations 2014 \(S.I. 2014/472\)](#), regs. 1(2), 9

Employee's appeal against a direction notice

72G.—(1) An employee may appeal against a direction notice under regulation 72F—

(a) by notice to HMRC,

(b) within 30 days of the issue of the direction notice,

(c) specifying the grounds of the appeal.

(2) For the purposes of paragraph (1) the grounds of appeal are that—

(a) the employee did not receive a relevant payment;

(b) the amount specified in the notice is incorrect, because all or part of it did not fall within regulation 72E(1)(b)(i) or (ii);

(c) no trigger event within regulation 72E(5) occurred; or

(d) a trigger event within regulation 72E(5) occurred before 6th April 2008.

(3) On an appeal under paragraph (1) ^[F82]that is notified to the tribunal, the tribunal] may—

(a) if it appears ... that the direction should not have been made, set aside the direction; or

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Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (b) if it appears ... that the amount specified in the notice is incorrect, increase or reduce the amount accordingly.]

Textual Amendments

- F78** Regs. 72E-72G inserted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, 7
- F82** Words in reg. 72G(3) substituted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 2 para. 100(2)**

Annual returns of relevant payments and tax

[^{F83} **Application of regulations 73 to 75**

72H. Regulations 73 to 75 apply to—

- (a) non-Real Time Information employers,
- (b) Real Time Information employers in relation to tax years in which they were, for the whole of the tax year, non-Real Time Information employers, and
- (c) Real Time Information employers to whom HMRC has given a notice requiring a return under regulation 73 in respect of a tax year.]

Textual Amendments

- F83** [Reg. 72H](#) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **34**

Annual return of relevant payments liable to deduction of tax (Forms P35 and P14)

73.—(1) Before 20th May following the end of a tax year, an employer must deliver to the Inland Revenue a return containing the following information.

- (2) The information is—
 - (a) the tax year to which the return relates,
 - (b) the total amount of the relevant payments made by the employer during the tax year to all employees in respect of whom the employer was required at any time during that year to prepare or maintain deductions working sheets, and
 - (c) the total net tax deducted in relation to those payments.
- (3) The return must be supported by the following information in respect of each of the employees mentioned in paragraph (2)(b).
- (4) The supporting information is—
 - (a) the employee's name,
 - (b) the employee's address, if known,
 - (c) either—
 - (i) the employee's national insurance number, or
 - (ii) if that number is not known, the employee's date of birth, if known, and sex,
 - (d) the employee's code,

- (e) the tax year to which the return relates,
 - (f) the total amount of the relevant payments made by the employer to the employee during that tax year, and
 - (g) the total net tax deducted in relation to those payments.
- (5) Paragraphs (2)(c) and (4)(g) are subject to regulation 64(7) (trade disputes).
- (6) If an employee was taken into employment after the beginning of the tax year, the employer must also provide the total amounts of—
- (a) any amounts required by regulation 43(9), 52(11), 53(3) or 61(3) to be treated as relevant payments made by the employer to the employee during the tax year,
 - (b) any amounts treated as tax deducted by the employer by any of those regulations,
 - (c) the sum of the figures given under sub-paragraph (a) of this paragraph and paragraph (4)(f),
 - (d) the sum of the figures given under sub-paragraph (b) of this paragraph and paragraph (4)(g).
- (7) The return must include—
- (a) a statement and declaration containing a list of all deductions working sheets which the employer was required to prepare or maintain at any time during that tax year; and
 - (b) a certificate showing—
 - (i) the total net tax deducted or the total net tax repaid in the case of each employee, and
 - (ii) the total net tax deducted or repaid in respect of all the employees, during that tax year.
- (8) The statement and declaration and the certificate must be—
- (a) signed by the employer, or
 - (b) if the employer is a body corporate, signed either by the secretary or by a director.
- (9) Paragraph (8) is subject to regulation 211(5) (authentication in approved manner if return sent electronically).
- (10) Section 98A of TMA(7) (special penalties in case of certain returns) applies to paragraph (1).

[^{F84}Amended returns of relevant payments and tax (Forms P14 and P35(RL))

73A.—(1) This regulation applies where, as a result of a retrospective tax provision, the total amount of the relevant payments made by an employer to employees increases for any closed tax year.

(2) Where this regulation applies, before 20th May following the end of the tax year in which the enactment containing the retrospective tax provision is passed, the employer must deliver to HMRC a return containing the following information.

- (3) The information is—
- (a) the tax year to which the return relates,
 - (b) the revised total amounts of the relevant payments made, or treated as made, during the tax year to all employees in respect of whom the employer was required, or has subsequently become required, to prepare or maintain deductions working sheets for any time during that year,
 - (c) the total net tax deducted in respect of those payments.

(7) Section 98A was inserted by section 165(1) of the Finance Act 1989 (c. 26) and amended by paragraph 138 of Schedule 6 to ITEPA.

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Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

(4) The return must be supported by the same information in respect of each of the employees mentioned in paragraph (3)(b) as is required by regulation 73(3) to support a return under that regulation.

(5) The return must include—

(a) a statement and declaration containing a list of all deductions working sheets which the employer was required to prepare or maintain at any time during that year, and

(b) a certificate showing —

(i) the total original net tax deducted or repaid in the case of each employee,

(ii) the revised total net tax deducted or repaid in the case of each employee;

(iii) the total original net tax deducted or repaid in respect of all the employees,

(iv) the revised total net tax deducted or repaid in respect of all the employees, and

(v) the difference between the figures given in paragraphs (iii) and (iv) above.

(6) The statement and declaration and the certificate must be—

(a) signed by the employer, or

(b) if the employer is a body corporate, signed either by the secretary or by a director.

(7) Section 98A of TMA (special penalties in case of certain returns) applies to a return under paragraph (2).]

Textual Amendments

F84 Reg. 73A inserted (6.4.2007) by [The Income Tax \(Pay as You Earn\) \(Amendment\) Regulations 2007 \(S.I. 2007/1077\)](#), regs. 1, 15

Annual return of relevant payments not liable to deduction of tax (Form P38A)

74.—(1) Before 20th May following the end of a tax year, an employer must deliver a return to the Inland Revenue in respect of every relevant employee.

(2) The return must contain the following information—

(a) the employee's name,

(b) the employee's address, if known,

(c) the employee's national insurance number, if known,

(d) the employee's job title or description,

(e) the tax year to which the return relates,

(f) the dates during which the employee was employed in the tax year, and

(g) the total amount of the relevant payments made by the employer to the employee during the tax year.

(3) A "relevant employee" is one—

(a) to whom relevant payments exceeding the PAYE threshold were made at any time during the tax year,

(b) who was employed for more than a week, or

(c) who was paid more than £100 during the tax year.

(4) But the following are not relevant employees—

(a) an employee included on a return under regulation 73 (Forms P35 and P14),

- (b) an employee who has indicated that statement A or statement B [^{F85}applies] on Form P46 (see regulation 46), and to whom the employer has not made relevant payments exceeding the PAYE threshold at any time during that tax year.

Textual Amendments

- F85** Word in reg. 74(4)(b) substituted (6.4.2006) by [The Income Tax \(Pay as You Earn\) \(Amendment\) Regulations 2005 \(S.I. 2005/2691\)](#), regs. 1, **9(2)**

Additional return in case of trade dispute

75.—(1) An employer must immediately deliver an additional return to the Inland Revenue on each occasion that—

- (a) the employer has not made any repayment of tax withheld under regulation 64(5) (trade disputes) within 42 days after the end of the employee’s strike action, and
 - (b) a return has been made under regulation 73 which, in accordance with regulation 64(7)(b), treats that tax as if it were repaid.
- (2) The return must contain the following information—
- (a) the tax year to which it relates,
 - (b) such information as the Board of Inland Revenue may require for identifying each of the employees in question, and
 - (c) the amount of tax not repaid to each of those employees.
- (3) The return must be accompanied by a statement containing the following information—
- (a) a list of all employees in respect of whom the additional return is made,
 - (b) the amount of tax not repaid to each of those employees,
 - (c) the total tax not repaid by the employer to those employees for that tax year.

Failure to account for deductible tax

[^{F86}Power of HMRC to issue a notice and certificate in cases where regulation 67B or 67D returns are not made, etc

75A.—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B or C is met.

- (2) Condition A is that a Real Time Information employer—
- (a) has not paid to HMRC any tax for that tax period,
 - (b) has not made any returns under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) in respect of the tax period, and
 - (c) has not sent HMRC a notification under regulation 67F(1)(a) (additional information about payments),

and HMRC are not satisfied that no relevant payments have been made in the tax period.

- (3) Condition B is that—
- (a) a Real Time Information employer has paid an amount of tax for that tax period, whether or not the amount is the amount due under regulation 67G (payments to and recoveries from HMRC for each tax period by Real Time Information employers) [^{F87}as adjusted by regulation 67H(2) where appropriate,] but

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Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (b) HMRC are not satisfied, after seeking the employer's explanation, that the amount due under regulation 67G [^{F88}, as adjusted by regulation 67H(2) where appropriate] is the amount which would have been due had any tax returned under regulation 67B or 67D as deducted from each of the employer's employees during the period been the amount that the employer was liable to deduct.
- (4) Condition C is that a Real Time Information employer has not paid to HMRC the amount of tax due under regulation 67G [^{F89}, as adjusted by regulation 67H(2) where appropriate].
- (5) HMRC, on consideration of the matters specified in paragraph (6), may—
- (a) specify to the best of their judgment, the amount of tax, or a combined amount, they consider the employer is liable to pay, and
 - (b) serve notice on the employer requiring payment of that amount within 7 days of the issue of the notice (“the notice period”).
- (6) The matters specified in this paragraph are—
- (a) the employer's record of past payments, whether of tax or combined amounts,
 - (b) any returns made by the employer under regulation 67B or 67D in respect of the tax period,
 - (c) any returns made by the employer under regulation 67B or 67D in respect of earlier tax periods,
 - (d) any returns made by the employer under regulation 67E(6),
 - (e) any returns made by the employer under regulation 73 (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)) in relation to previous tax years.
- (7) If the notice extends to two or more consecutive tax periods in a tax year, this regulation has effect as if they were the latest period specified in the notice.
- (8) If, during the notice period, the employer—
- (a) claims that the amount paid in respect of the tax period specified in the notice represents the full amount of tax the employer was liable to deduct from each of the employer's employees during the period, but
 - (b) does not satisfy HMRC that this is the case,
- the employer may require HMRC to inspect the employer's PAYE records as if the employer had been required to produce those records under Schedule 36 to the Finance Act 2008 (information and inspection powers).
- (9) If there is an inspection by virtue of paragraph (8), the notice given by HMRC under paragraph (5) must be disregarded.
- (10) If the amount specified in the notice, or any part of it, is not paid during the notice period—
- (a) the amount unpaid is treated as an amount of tax or as including an amount of tax which the employer was liable to pay for that tax period under regulation 67G [^{F90}, where appropriate], and
 - (b) HMRC may prepare a certificate showing how much of that amount remains unpaid.
- (11) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Textual Amendments

F86 Regs. 75A, 75B inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), 35

- F87** Words in [reg. 75A\(3\)\(a\)](#) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **30(a)(i)**
- F88** Words in [reg. 75A\(3\)\(b\)](#) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **30(a)(ii)**
- F89** Words in [reg. 75A\(4\)](#) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **30(b)**
- F90** Words in [reg. 75A\(10\)\(a\)](#) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **30(c)**

Certificates under [^{F91}regulation] 75A: excess payments

75B.—(1) This regulation applies if, as a consequence of paying a certified amount of tax under regulation 75A in relation to the tax year, the total amount of tax paid to HMRC for the tax year under these Regulations by an employer exceeds the amount which would have been paid had it not been necessary for HMRC to prepare the certificate.

(2) The employer is entitled to set off the excess tax against any amount which the employer is liable to pay under regulation 67G [^{F92}, as adjusted by regulation 67H(2) where appropriate,] for any subsequent tax period or, if the tax year in question has ended, the excess of tax paid may be repaid.]

Textual Amendments

- F86** [Regs. 75A, 75B](#) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **35**
- F91** Word in [reg. 75B](#) heading substituted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **31(a)**
- F92** Words in [reg. 75B](#) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **31(b)**

Certificate if tax in regulation 73 return is unpaid

76.—(1) Paragraph (2) applies if an employer—

- (a) delivers a return under regulation 73 showing an amount of total net tax deducted by the employer for a tax year, and
- (b) does not pay that amount to the Inland Revenue before 20th April following the end of the tax year.

(2) The Inland Revenue may prepare a certificate showing how much of that amount remains unpaid.

(3) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Return and certificate if tax may be unpaid [^{F93}: amounts due under regulation 68]

77.—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B is met.

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Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (2) Condition A is that—
- (a) an employer has not paid any tax under regulation 68 for that tax period, and
 - (b) the Inland Revenue are unaware of the amount (if any) which the employer is liable to pay.
- (3) Condition B is that—
- (a) an employer has paid an amount of tax under regulation 68 for that period, but
 - (b) the Inland Revenue are not satisfied that it is the full amount which the employer is liable to pay for that period.
- (4) The Inland Revenue may give notice to the employer requiring the employer within 14 days of the issue of the notice to deliver a return showing the amount of tax which the employer is liable to pay under regulation 68 in respect of the tax period.
- (5) If the notice extends to two or more consecutive tax periods in a tax year, this regulation has effect as if they were one tax period.
- (6) On receiving a return made by the employer under paragraph (4), the Inland Revenue may prepare a certificate showing the amount of tax which the employer is liable to pay for the tax period and how much (if any) of that amount remains unpaid.
- (7) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Textual Amendments

F93 Words in [reg. 77 heading](#) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **36**

Notice and certificate if tax may be unpaid ^{F94}: amounts due under regulation 68]

78.—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B is met.

- (2) Condition A is that—
- (a) an employer has not paid any tax under regulation 68 for that tax period, and
 - (b) ^{F95}HMRC] have reason to believe that the employer is liable to pay an amount of tax.
- (3) Condition B is that—
- (a) an employer has paid an amount of tax under regulation 68 for that tax period, but
 - (b) ^{F96}HMRC] are not satisfied, after seeking the employer’s explanation, that it is the full amount which the employer is liable to pay for that period.
- (4) ^{F97}HMRC], on consideration of the employer’s record of past payments ^{F98}whether of tax or of combined amounts], may—
- (a) specify, to the best of their judgment, the amount of tax ^{F99}or a combined amount] which they consider the employer is liable to pay, and
 - (b) serve notice on the employer requiring payment of that amount within 7 days of the issue of the notice (“the notice period”).
- (5) If the notice extends to two or more consecutive tax periods in a tax year, this regulation has effect as if they were the latest tax period specified in the notice.
- (6) If, during the notice period, the employer—
- (a) claims that any payment made in respect of the tax period specified in the notice is ^{F100}or includes] the full amount ^{F101}of tax] the employer is liable to pay, but

(b) does not satisfy [^{F102}HMRC] that this is the case, the employer may require [^{F102}HMRC] to inspect the employer's PAYE records as if the employer had been required to produce those records [^{F103}under Schedule 36 to the Finance Act 2008 (information and inspection powers)].

(7) If there is an inspection by virtue of paragraph (6) ... the notice given by [^{F104}HMRC] under paragraph (4) must be disregarded.

(8) If the amount ... specified in the notice, or any part of it, is not paid during the notice period—

- (a) the amount unpaid is treated as an amount of tax [^{F105}or as including an amount of tax] which the employer was liable to pay for that tax period under regulation 68, and
- (b) [^{F106}HMRC] may prepare a certificate showing how much of that [^{F107}amount] remains unpaid.

(9) But paragraph (8) does not apply if during the notice period—

- (a) the employer pays the full amount of tax which the employer is liable to pay under regulation 68 for that tax period, or
- (b) the employer satisfies [^{F108}HMRC] that no amount, or no further amount, is due for that tax period.

(10) Paragraph (11) applies if the employer pays an amount [^{F109}of tax, whether separately or as part of a combined amount, which is] certified under this regulation [^{F110}and] which exceeds the amount the employer would have been liable to pay in respect of that tax period apart from this regulation.

(11) The employer is entitled to set off the excess [^{F111}tax] against any amount which the employer is liable to pay under regulation 68 for any subsequent tax period in the tax year.

(12) Paragraph (13) applies if the employer—

- (a) delivers the return required by regulation 73(1) after the end of the tax year, and
- (b) pays the total net tax which the employer is liable to pay.

(13) Any excess of tax paid, and not otherwise recovered by set-off in accordance with this regulation, must be repaid.

(14) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Textual Amendments

- F94** Words in [reg. 78 heading](#) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **37**
- F95** Word in [reg. 78\(2\)\(b\)](#) substituted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, **8(2)**
- F96** Word in [reg. 78\(3\)\(b\)](#) substituted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, **8(3)**
- F97** Word in [reg. 78\(4\)](#) substituted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, **8(4)(a)**
- F98** Words in [reg. 78\(4\)](#) inserted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, **8(4)(b)**
- F99** Words in [reg. 78\(4\)\(a\)](#) inserted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, **8(4)(c)**
- F100** Words in [reg. 78\(6\)\(a\)](#) inserted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, **8(5)(a)(i)**

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- F101** Words in reg. 78(6)(a) inserted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **8(5)(a)(ii)**
- F102** Word in reg. 78(6) substituted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **8(5)(b)**
- F103** Words in reg. 78(6) substituted (1.4.2009) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2009 (S.I. 2009/588), regs. 1(1), **4(a)**
- F104** Word in reg. 78(7) substituted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **8(6)**
- F105** Words in reg. 78(8)(a) inserted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **8(7)(b)**
- F106** Word in reg. 78(8)(b) substituted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **8(7)(c)(i)**
- F107** Word in reg. 78(8)(b) substituted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **8(7)(c)(ii)**
- F108** Word in reg. 78(9) substituted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **8(8)**
- F109** Words in reg. 78(10) substituted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **8(9)(a)**
- F110** Word in reg. 78(10) inserted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **8(9)(b)**
- F111** Word in reg. 78(11) inserted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **8(10)**

Certificate after inspection of PAYE records

79.—(1) This regulation applies if there is an inspection of an employer’s PAYE records under [F112]Schedule 36 to the Finance Act 2008 (information and inspection powers)].

(2) The Inland Revenue may, by reference to the information obtained from the inspection, prepare a certificate showing—

- (a) the amount of tax which it appears that the employer is liable to pay for the tax years or tax periods covered by the inspection; and
 - (b) any amount of that tax which remains unpaid.
- (3) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Textual Amendments

- F112** Words in reg. 79(1) substituted (1.4.2009) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2009 (S.I. 2009/588), regs. 1(1), **5**

Determination of unpaid tax and appeal against determination

80.—(1) This regulation applies if it appears to [F113]HMRC] that there may be tax payable for a tax year under regulation [F114]67G [F115], as adjusted by regulation 67H(2) where appropriate,] or] 68 by an employer which has neither been—

- (a) paid to [F113]HMRC], nor
- (b) certified by [F113]HMRC] under regulation [F116]75A,] 76, 77, 78 or 79.

[F117](1A) In paragraph (1), the reference to tax payable for a tax year under regulation 67G includes a reference to any amount the employer was liable to deduct from employees during the tax

year whether or not that amount was included in any return under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B).]

(2) [F118HMRC] may determine the amount of that tax to the best of their judgment, and serve notice of their determination on the employer.

(3) A determination under this regulation must not include tax in respect of which a direction under regulation 72(5) has been made; and directions under that regulation do not apply to tax determined under this regulation.

[F119(3A) A determination under this regulation must not include tax in respect of which a direction under regulation 72F has been made.]

(4) A determination under this regulation may—

(a) cover the tax payable by the employer under regulation [F12067G [F121, as adjusted by regulation 67H(2) where appropriate,] or] 68 for any one or more tax periods in a tax year, and

(b) extend to the whole of that tax, or to such part of it as is payable in respect of—

(i) a class or classes of employees specified in the notice of determination (without naming the individual employees), or

(ii) one or more named employees specified in the notice.

(5) A determination under this regulation is subject to Parts 4, 5 [F122, 5A] ... and 6 of TMA (assessment, appeals, collection and recovery) as if—

(a) the determination were an assessment, and

(b) the amount of tax determined were income tax charged on the employer,

and those Parts of that Act apply accordingly with any necessary modifications.

(6)

Textual Amendments

F113 Word in reg. 80(1) substituted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, **9(a)**

F114 Words in reg. 80(1) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **38(a)(i)**

F115 Words in reg. 80(1) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **32**

F116 Words in reg. 80(1) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **38(a)(ii)**

F117 Reg. 80(1A) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **38(b)**

F118 Word in reg. 80(2) substituted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, **9(b)**

F119 Reg. 80(3A) inserted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, **9(c)**

F120 Words in reg. 80(4) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **38(c)**

F121 Words in reg. 80(4)(a) inserted (6.4.2013 with application in relation to the tax year 2013-14 and subsequent tax years) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2013 \(S.I. 2013/521\)](#), regs. 1(2), **32**

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

F122 Word in reg. 80(5) inserted (in relation to the tax year 2010-11 and subsequent tax years) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2010 (S.I. 2010/668), regs. 1(3), 3

Employee liability if tax unpaid after regulation 80 determination

81.—(1) This regulation applies if—

- (a) any part of the tax determined under regulation 80 is not paid within 30 days from the date on which the determination became final and conclusive, and
- (b) condition A or B is met in relation to an employee.

(2) Condition A is that the Inland Revenue are of the opinion that the employee in respect of whose relevant payments the determination was made has received those payments knowing that the employer has wilfully failed to deduct the amount of tax which should have been deducted from those payments.

(3) Condition B is that the unpaid tax represents an amount for which the employer was required to account under regulation 62(5) (notional payments) in relation to a notional payment to the employee.

(4) The Inland Revenue may direct that the employer is not liable to pay the amount of tax which appears to them should have been but was not—

- (a) deducted on making those relevant payments, or
- (b) accounted for under regulation 62(5).

[^{F123}(4A) If condition A or B is met, any direction under paragraph (4) must be made by notice (“the direction notice”) to the employee stating the date the notice was issued.]

(5) If a direction is made, the amount of tax must not be added under regulation 185(5) or 188(3) (a) (adjustments for self-assessments and other assessments) in relation to the employee.

(6) Tax payable by an employee as a result of a direction carries interest, as if it were unpaid tax due from an employer, in accordance with [^{F124}section 101 of the Finance Act 2009].

(7)

Textual Amendments

F123 Reg. 81(4A) inserted (12.4.2004) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2004 (S.I. 2004/851), regs. 1, 5

F124 Words in reg. 81(6) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2009, Sections 101 and 102 (Interest on Late Payments and Repayments), Appointed Days and Consequential Provisions Order 2014 (S.I. 2014/992), arts. 1(1), 9(4)(a)

[^{F125}**Employee’s appeal against direction notice**

81A.—(1) An employee may appeal against a direction notice under regulation 81(4A)—

- (a) by notice to the Inland Revenue,
- (b) within 30 days of the issue of the direction notice,
- (c) specifying the grounds of the appeal.

(2) For the purpose of paragraph (1) the grounds of appeal are that—

- (a) in relation to condition A in regulation 81, the employee did not receive the payments knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments,

- (b) in relation to condition B in regulation 81, the relevant payment was not a notional payment, or
- (c) the excess is incorrect.
- (3) On an appeal under paragraph (1) [^{F126}that is notified to the tribunal, the tribunal] may—
 - (a) if it appears ... that the direction notice should not have been made, set aside the notice; or
 - (b) if it appears ... that the amount of tax specified in the direction notice is incorrect, increase or reduce the amount specified in the notice accordingly.
- (4) Regulation 72D applies to appeals under this regulation.]

Textual Amendments

F125 Reg. 81A inserted (12.4.2004) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2004 (S.I. 2004/851), regs. 1, 6

F126 Words in reg. 81A(3) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), Sch. 2 para. 102(2)

Interest

Interest on tax overdue

82.

Interest on tax overpaid

83.

Recovery

Recovery of tax and interest

- 84.—(1) In this regulation, “the unpaid amount” means any amount of tax or interest which—
- (a) an employer is liable to pay under regulation [^{F127}75A(10),] 76(2), 77(6), 78(8) [^{F128}or 79(2)(b)];
 - (b) an employee is liable to pay under regulation 72(7) or regulation 81(6).

(2) Part 6 of TMA (collection and recovery) applies to the recovery of the unpaid amount [^{F129}or combined amount and any interest on it] as if it were income tax charged on the employer or employee (as the case may be) but with the modification indicated in paragraph (3).

(3) Summary proceedings for the recovery of the unpaid amount may be brought in England and Wales or Northern Ireland at any time before the end of the period which applies for the purposes of the regulation in question, as shown in Table 4.

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

Table 4

Period for summary proceedings for the recovery of unpaid amount

<i>1. Regulation</i>	<i>2. Period</i>
Regulation 76(2)	(a) (a) 12 months after the date by which the statement specified in regulation 73(7) must be delivered, or (b) if that statement is delivered after that date, 12 months after its delivery.
Regulations ^{F130} 75A(10),] 77(6) [^{F131} and] 78(8) ^{F132} ...	(a) (a) 12 months after the date on which the unpaid amount [^{F133} or combined amount and any interest on it] became payable, or (b) if a return has been required under regulation 77, 12 months after the date of the delivery of that return to the Inland Revenue.
Regulation 79(2)(b)	12 months after the date of the certificate.
Regulations 72(7) and 81(6)	12 months after the date on which the unpaid amount became payable.

(4) Proceedings against an employer may be brought for the recovery of the unpaid amount [^{F134}or combined amount and any interest on it] without distinguishing the amounts which the employer is liable to pay in respect of each employee and without specifying the employees in question.

(5) The unpaid amount [^{F135}or combined amount and any interest on it] is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of TMA(8) (magistrates' courts, county courts and inferior courts in Scotland).

(6) But paragraphs (4) and (5) do not prevent the bringing of separate proceedings for the recovery of each of the amounts which the employer is liable to pay for any tax period in respect of each of the employees.

Textual Amendments

F127 Word in reg. 84(1)(a) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **40(a)**

F128 Words in reg. 84(1)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Finance Act 2009, Sections 101 and 102 \(Interest on Late Payments and Repayments\), Appointed Days and Consequential Provisions Order 2014 \(S.I. 2014/992\)](#), arts. 1(1), **9(6)(a)**

F129 Words in reg. 84(2) inserted (6.4.2008) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2008 \(S.I. 2008/782\)](#), regs. 1, **11(2)**

F130 Word in reg. 84(3) Table 4 inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **40(b)**

(8) Section 65 was amended by section 57(1) of the Finance Act 1984 (c. 43) and paragraph 30 of Schedule 19 to the Finance Act 1998 (c. 36); section 66 was amended by section 57(2) of the Finance Act 1984, section 89(1) of the Finance Act 2001 (c. 9), S.I. 1980/397 (N.I. 3) and S.I. 1991/724; section 67 was amended by section 58 of the Finance Act 1976 (c. 40), section 156 of the Finance Act 1995 (c. 4) and section 89(1) of the Finance Act 2001.

- F131** Word in reg. 84(3) Table 4 inserted (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 2009, Sections 101 and 102 (Interest on Late Payments and Repayments), Appointed Days and Consequential Provisions Order 2014 (S.I. 2014/992), arts. 1(1), **9(6)(b)(i)**
- F132** Word in reg. 84(3) Table 4 omitted (with effect in accordance with art. 1(2) of the amending S.I.) by virtue of The Finance Act 2009, Sections 101 and 102 (Interest on Late Payments and Repayments), Appointed Days and Consequential Provisions Order 2014 (S.I. 2014/992), arts. 1(1), **9(6)(b)(ii)**
- F133** Words in reg. 84(3) Table 4 inserted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **11(3)**
- F134** Words in reg. 84(4) inserted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **11(4)**
- F135** Words in reg. 84(5) inserted (6.4.2008) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2008 (S.I. 2008/782), regs. 1, **11(5)**

^{F136}Continental shelf workers: provisions relating to certificates

Textual Amendments

- F136** Regs. 84A-84D and cross-heading inserted (6.4.2014) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2014 (S.I. 2014/474), regs. 1, **2(2)**

Application for certificate

84A.—(1) An employer who meets the conditions in paragraph (2) may apply to HMRC for the issue of a UKCS continental shelf workers certificate.

- (2) The conditions are that—
- (a) the employer supplies or intends to supply a continental shelf worker for whom the oil field licensee is the relevant person;
 - (b) the employer has or intends to have a contractual relationship under which the employer acts, directly or indirectly, as an agent of the oil field licensee in connection with these Regulations; and
 - (c) the employer or an associated company has not had a certificate cancelled previously for a failure to comply with their obligations under regulation 84B.
- (3) An application under this regulation must be made in writing and must include—
- (a) the name and address of the employer and employer’s PAYE reference;
 - (b) the name and address of a person in the United Kingdom who is authorised to accept service on behalf of the employer;
 - (c) confirmation that the employer understands and intends to comply with their obligations contained in regulation 84B; and
 - (d) the name, address, and employer’s PAYE reference of any associated company which is a current or former holder of a UKCS continental shelf workers certificate.
- (4) When the employer makes the first application under this regulation, the employer may also comply with the obligation under regulation 84B(e) by including those details (if known) in the application.
- (5) An application made under this regulation may be combined with an application made under regulation 114A of the SSC Regulations.

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

(6) Upon receipt of an application under this regulation, an officer of Revenue and Customs may, if they are satisfied the conditions in paragraph (2) are met, issue a UKCS continental shelf workers certificate.

(7) A UKCS continental shelf workers certificate must include—

- (a) the name of the UKCS continental shelf workers certificate holder;
- (b) the employer’s PAYE reference of the UKCS continental shelf workers certificate holder; and
- (c) the date on which the certificate is issued.

(8) A UKCS continental shelf workers certificate may be issued to—

- (a) the person authorised to accept service on behalf of the employer;
- (b) the employer; or
- (c) both the person authorised to accept service on behalf of the employer and the employer.

(9) A certificate may be combined with a certificate issued under regulation 114A of the SSC Regulations.

(10) Where an employer ceases to meet the conditions in paragraph (2) or to comply with its obligations under regulation 84B, or regulation 114B of the SSC Regulations, an officer of Revenue and Customs may, by notice in writing to the person authorised to accept service on behalf of the employer, cancel the UKCS continental shelf workers certificate from the date specified in the notice of cancellation.

(11) The date specified in paragraph (10) may not be earlier than 10 working days after the date of the notice.

(12) A notice under paragraph (10) may be combined with a notice under regulation 114A of the SSC Regulations.

(13) In this regulation “associated company” means any company within the meaning of section 449 of the Corporation Tax Act 2010.

UKCS continental shelf workers certificate holder: obligations

84B.—(1) A UKCS continental shelf workers certificate holder must—

- (a) make such deductions, returns and repayments as are required of a relevant person;
- (b) keep written records of—
 - (i) the name, date of birth, and national insurance number of the continental shelf workers supplied;
 - (ii) the name, registered office and oil field licence number of the oil field licensee to whom each of the workers were supplied;
 - (iii) the offshore installation to which each of the workers were supplied; and
 - (iv) the dates between which the workers worked on the offshore installation;
- (c) keep the records required by sub-paragraph (b) for a period of 6 years from the end of the tax year to which they relate;
- (d) where an officer of Revenue and Customs requires them in writing to do so, provide copies of the records required by sub-paragraph (b) to HMRC within 30 days of the date of the request; and
- (e) before supplying the oil field licensee with continental shelf workers for the first time, inform HMRC in writing of the details of the oil field licensee including name, business address, and oil field licence number of the oil field licensee.

(2) In this regulation “offshore installation” means a structure which is, is to be, or has been, put to a relevant use while in water but a structure is not an offshore installation if—

- (a) it has permanently ceased to be put to a relevant use,
- (b) it is not, and is not to be, put to any other relevant use, and
- (c) since permanently ceasing to be put to a relevant use, it has been put to a use which is not a relevant use.

(3) In paragraph (2) a use is a relevant use if it is—

- (a) for the purposes of exploiting mineral resources,
- (b) for the purposes of exploration with a view to exploiting mineral resources,
- (c) for the storage of gas in or under the shore or the bed of any waters,
- (d) for the recovery of gas so stored,
- (e) for the conveyance of things by means of a pipe,
- (f) mainly for the provision of accommodation for individuals who work on or from a structure which is, is to be, or has been put to any of the above uses while in the water,
- (g) for the purposes of decommissioning any structure which has been used for or in connection with any of the relevant uses above.

(4) For the purposes of paragraphs (3) and (4) a structure is put to use while in water if it is put to use while—

- (i) standing in any waters,
- (ii) stationed (by whatever means) in any waters, or
- (iii) standing on the foreshore or other land intermittently covered with water.

(5) For the purposes of paragraphs (2), (3) and (4) a “structure” includes a ship or other vessel except where it is used wholly or mainly—

- (a) for the transport of supplies;
- (b) as a safety vessel;
- (c) for a combination of (a) and (b); or
- (d) for the laying of cables.

UKCS oil field licensee certificate

84C.—(1) Where a UKCS continental shelf workers certificate holder has notified HMRC that the employer intends to supply continental shelf workers to an oil field licensee an officer of Revenue and Customs must issue a UKCS oil field licensee certificate to the oil field licensee.

(2) The UKCS oil field licensee certificate must include—

- (a) the name of the oil field licensee;
- (b) the registered office of that oil field licensee;
- (c) the oil field licence number;
- (d) the name of the UKCS continental shelf workers certificate holder;
- (e) the date on which it is issued; and
- (f) a description of the continental shelf workers to whom it applies.

(3) Where a UKCS oil field licensee certificate is in force the holder of that certificate is not liable to make deductions in respect of any continental shelf worker of a description set out in the certificate.

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (4) If a UKCS continental shelf workers certificate is cancelled by an officer of Revenue and Customs that officer must also, by notice in writing, cancel the UKCS oil field licensee certificate.
- (5) A notice under paragraph (4) must—
- (a) be sent on the same day as the notice cancelling the UKCS continental shelf workers certificate;
 - (b) specify the date of cancellation of the UKCS oil field licensee certificate; and
 - (c) notify the oil field licensee that it is liable to meet its obligations as a relevant person.
- (6) The date of cancellation of the UKCS oil field licensee certificate must be the same date as that specified in the UKCS continental shelf workers certificate cancellation notice.
- (7) In this regulation “UKCS oil field licensee certificate” means a certificate issued under paragraph (1).

Interpretation of regulations 84A to 114C

84D. In regulations 84A to 84C—

“oil field licensee” means the holder of a licence under Part 1 of the Petroleum Act 1998 in respect of the area in which the duties of the continental shelf worker’s employment are performed;

“UKCS continental shelf workers certificate” means a certificate issued under regulation 84A.]

^{F137}Employment Intermediaries: return of information relating to agency workers for whom they have not operated PAYE

Textual Amendments

F137 Regs. 84E-84H and cross-heading inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2015 \(S.I. 2015/171\)](#), regs. 1(2), **2(3)**

Specified employment intermediaries

84E. An employment intermediary is a specified employment intermediary if at any time during a tax quarter—

- (a) the employment intermediary is an agency;
- (b) more than one individual provides services to a client under or in consequence of a contract between the employment intermediary and one or more clients;
- (c) those services are not provided exclusively on the United Kingdom continental shelf; and
- (d) the employment intermediary makes one or more payments in respect of, or connected with, the services provided by one or more individuals that—
 - (i) is required by regulation 67B to be included in a return delivered to HMRC by the employment intermediary when the payment is made but has not been (“a reporting failure”); or
 - (ii) is not required by regulation 67B to be included in a return delivered to HMRC by the employment intermediary when the payment is made because the individual is not an employee or treated as an employee under regulation 10 (“no reporting requirement”).

Returns by specified employment intermediaries

84F.—(1) A specified employment intermediary must, for each tax quarter, provide to HMRC the information specified in regulation 84G no later than the end of the tax month following that quarter.

(2) The information must be included in a return in a form prescribed by HMRC and include a declaration that the information provided in the return is correct and complete to the best of the knowledge and belief of the person completing it.

(3) The return is to be made using an approved method of electronic communication.

(4) The return may be amended until the end of the tax month following the tax quarter after the tax quarter to which the return relates.

(5) Where a return is made in relation to a tax quarter, the specified employment intermediary shall continue to provide a return to HMRC in relation to every subsequent tax quarter until either—

- (a) regulation 84E(b) to 84E(d) has not been satisfied for 4 consecutive tax quarters in respect of the specified intermediary; or
- (b) the specified employment intermediary notifies HMRC that it is no longer an employment intermediary.

Specified information

84G. The specified information is—

- (a) in respect of the specified employment intermediary making the return its—
 - (i) name;
 - (ii) address;
 - (iii) postcode;
 - (iv) employer's PAYE reference number where it is required to have one;
- (b) in respect of each individual providing the services referred to in regulation 84E—
 - (i) the individual's—
 - (aa) full name;
 - (bb) address;
 - (cc) postcode;
 - (dd) national insurance number (if the individual has one) or gender and date of birth (where the individual does not have a national insurance number);
 - (ee) Unique Taxpayer Reference issued by HMRC (if self-employed or a member of a partnership);
 - (ii) the date on which the individual began providing the services referred to in regulation 84E;
 - (iii) the date (if any) on which the individual stopped providing the services referred to in regulation 84E; and
- (c) where a payment is made to an individual in respect of, or in connection with, the services referred to in regulation 84E, but that payment is not included in a return delivered to HMRC under regulation 67B at the time the payment was made because there is no reporting requirement or there is a reporting failure—
 - (i) the full name (or if a partnership the name under which they trade) and address of the person receiving the payment made by the specified employment intermediary (if not the same as in 84G(b)(i)(aa) and (bb));

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (ii) the total of the payments made by the specified employment intermediary to the person in the tax quarter;
- (iii) the reason why the specified employment intermediary has not deducted income tax from those payments;
- (iv) where the reason for the non deduction given in (iii) is that the payments made are to a limited company the full name of the company and company registration number of that company; and
- (v) whether the payments included amounts in respect of Value Added Tax.

Retention of records

84H.—(1) A specified employment intermediary must keep and preserve non-PAYE records which are not required to be sent to HMRC under any other provision of these Regulations for not less than three years after the end of the tax year to which they relate.

(2) The duty under paragraph (1) to keep and preserve non-PAYE records may be discharged by preserving them in any form or by any means.

(3) In this regulation “non-PAYE records” means information, records and documents which evidence the specified information.]

CHAPTER 2

OTHER RETURNS AND INFORMATION

Returns involving PAYE income other than payments

Employers: annual return of other earnings ([^{F138}form P11D])

85.—(1) Before 7th July following the end of a tax year, the employer must provide the Inland Revenue—

- (a) with the information listed in regulation 86 for each employee, and
- (b) with the additional information listed in regulation 87 for each employee whose employment is subject to the benefits code.

(2) At the same time and in the same manner as the employer provides that information, the employer must also provide a declaration stating that—

- (a) all information required to be provided has been provided, and
- (b) the information is complete and accurate to the best of the employer’s knowledge and belief.

(3) For the purposes of this regulation an employment is “subject to the benefits code” if, for the purposes of the benefits code in ITEPA, it is a taxable employment under Part 2 of ITEPA (as defined by section 66(3) of ITEPA)

[^{F139}(4) But this regulation does not apply in relation to a benefit provided in a tax year which has been treated as a payment of PAYE income under Chapter 3A of the Regulations.]

Textual Amendments

F138 Words in [reg. 85](#) heading substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 4\) Regulations 2015 \(S.I. 2015/1927\)](#), regs. 1(1), [7\(a\)](#)

F139 Reg. 85(4) inserted (with effect in accordance with reg. 1(4) of the amending S.I.) by The Income Tax (Pay As You Earn) (Amendment No. 4) Regulations 2015 (S.I. 2015/1927), regs. 1(1), 7(c)

Information employer must provide for each employee

86.—(1) Particulars of the following information must be provided in the case of each employee—

- (a) any earnings which the employee receives from the employer or related third party otherwise than in money, including the amount of those earnings;
- (b) any payments made on behalf of the employee by the employer or related third party and not repaid, including the amounts;
- (c) any non-cash voucher provided by the employer or related third party by reason of which the employee is treated by ^{F140}section 87(1) (benefit of non-cash voucher treated as earnings) or 87A(1) (benefit of non-cash voucher treated as earnings: optional remuneration arrangements) of ITEPA] as receiving earnings in that tax year, including the amount of those earnings;
- (d) any use of a credit-token provided by the employer or related third party by reason of which the employee is treated by ^{F141}section 94(1) (benefit of credit-token treated as earnings) or 94A(1) (benefit of credit-token treated as earnings: optional remuneration arrangements) of ITEPA] as receiving earnings in that tax year, including the amount of those earnings;
- (e) the due amount in respect of any notional payment where that amount is treated by section 222 of ITEPA⁽⁹⁾ (payments on account of tax where deduction not possible) as earnings of the employee received in that tax year;
- (f) any living accommodation which has been provided for the employee or a member of the employee's family or household by the employer or related third party, including the amount that is treated as earnings for that tax year by ^{F142}section 102 (benefit of living accommodation treated as earnings) or 103A (accommodation provided pursuant to optional remuneration arrangements: relevant amount) of ITEPA];
- (g) any earnings consisting of the amount by which the value of the exemption under subsection (2) of section 287 of ITEPA (limit on exemption of removal expenses and removal benefits) exceeds the limit specified in subsection (1) of that section and having effect in relation to the employee.

(2) Particulars of removal expenses and removal benefits to which section 271 of ITEPA (limited exemption of removal benefits and expenses) applies are required—

- (a) only under paragraph (1)(g), and
- (b) only to the extent that they exceed the limit in section 287(1) of ITEPA which applies to the change of residence of the employee in question.

(3) In the case of any earnings relating to business entertainment, as defined by section ^{F143}356(1) of ITEPA], the employer must also inform the Inland Revenue whether the amount of the earnings has been or will be disallowed as a deduction or inclusion ^{F144}... in any tax computation relating to the trade, business, profession or vocation of the employer.

(4) “Related third party” means a person making payments or providing benefits to an employee, if the making or provision of the payments or benefits by that person has been arranged, guaranteed or in any way facilitated by the employer.

(9) Section 222 was amended by section 144 of the Finance Act 2003 (c. 14).

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

Textual Amendments

- F140** Words in reg. 86(1)(c) substituted (6.4.2018) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2017 \(S.I. 2017/1263\)](#), regs. 1, **14(a)(i)**
- F141** Words in reg. 86(1)(d) substituted (6.4.2018) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2017 \(S.I. 2017/1263\)](#), regs. 1, **14(a)(ii)**
- F142** Words in reg. 86(1)(f) substituted (6.4.2018) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2017 \(S.I. 2017/1263\)](#), regs. 1, **14(a)(iii)**
- F143** Words in reg. 86(3) substituted (6.4.2018) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2017 \(S.I. 2017/1263\)](#), regs. 1, **14(b)(i)**
- F144** Words in reg. 86(3) omitted (6.4.2018) by virtue of [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2017 \(S.I. 2017/1263\)](#), regs. 1, **14(b)(ii)**

Information employer must also provide for benefits code employees

87.—(1) Particulars of the following information must also be provided in the case of each employee whose employment is subject to the benefits code—

- (a)
- (b) any sums put by the employer or related third party at the disposal of the employee by reason of the employment and paid away by the employee;
- (c) any benefits provided by the employer or related third party for the employee such as give rise to any amount treated by Chapters 6 to 10 of Part 3, and section 223, of ITEPA⁽¹⁰⁾ (cars and vans, loans, shares, other benefits and payments on account of director’s tax) as earnings of the employee received in that tax year, including the amount of those earnings.
- [^{F145}(d) any mileage allowance payments which are not approved mileage allowance payments;
- (e) any passenger payments which are not approved passenger payments.]

(2) Particulars are not required under paragraph (1) of removal expenses and removal benefits to which section 271 of ITEPA (limited exemption of removal benefits and expenses) applies (as to which see regulation 86(2)).

(3) In the case of any earnings relating to business entertainment, as defined by section 577 of ICTA, the employer must also inform the Inland Revenue whether the amount of the earnings has been or will be disallowed as a deduction or inclusion as mentioned in section 577(1)(a) of that Act in any tax computation relating to the trade, business, profession or vocation of the employer.

(4) [^{F146}In this regulation—]

[^{F147}“approved mileage allowance payments” are mileage allowance payments that are approved in accordance with section 229(3) of ITEPA;

“approved passenger payments” are passenger payments that are approved in accordance with section 233(4) of ITEPA;

“mileage allowance payments” have the meaning given by section 229(2) of ITEPA;

“passenger payments” have the meaning given by section 233(3) of ITEPA.]

“[^{F148}related] third party” has the meaning given in regulation 86(4).

(5) Regulation 85(3) (meaning of employment “subject to benefits code”) applies for the purposes of this regulation.

⁽¹⁰⁾ Relevant amendments were made to Chapters 8 and 9 of Part 3 of ITEPA by paragraphs 22 and 23 of Schedule 22 to the Finance Act 2003 (c. 14).

Textual Amendments

- F145** Reg. 87(1)(d)(e) inserted (8.8.2016) by The Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2016 (S.I. 2016/747), regs. 1, **2(2)**
- F146** Words in reg. 87(4) inserted (19.12.2016) by The Income Tax (Pay As You Earn) (Amendment No. 3) Regulations 2016 (S.I. 2016/1137), regs. 1(1), **10(a)**
- F147** Words in reg. 87(4) inserted (8.8.2016) by The Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2016 (S.I. 2016/747), regs. 1, **2(3)**
- F148** Word in reg. 87(4) substituted (19.12.2016) by The Income Tax (Pay As You Earn) (Amendment No. 3) Regulations 2016 (S.I. 2016/1137), regs. 1(1), **10(b)**

Annual return of other earnings: amounts

88.—(1) Paragraph (2) applies if an employer is required by regulations 85 to 87 to provide an amount which is or is treated as earnings.

(2) The employer must make all deductions and other adjustments which the employer is able to show, by reference to information in the employer's possession or otherwise available to the employer, are authorised or required by Part 3 of ITEPA (earnings and benefits etc treated as earnings).

Annual return of other earnings: exclusion for notional payments

89. The employer is not required to provide particulars in the return under regulation 85 of any notional payment which is a relevant payment made by the employer to the employee (as particulars of it may be ^{F149}required under regulation 67B (real time returns of information about relevant payments)] or 74 (annual returns of relevant payments)).

Textual Amendments

- F149** Words in reg. 89 substituted (6.4.2018) by The Income Tax (Pay As You Earn) (Amendment No. 2) Regulations 2017 (S.I. 2017/1263), regs. 1, **15**

Quarterly return if a car becomes available or unavailable (Form P46 (Car))

90.—(1) This regulation applies if—

- (a) ^{F150}section 120 (benefit of car treated as earnings) or 120A (benefit of a car treated as earnings: optional remuneration arrangements) of ITEPA treat] the benefit of a car as giving rise to an amount as earnings of an employee received in a tax year, and
- (b) one or more of the following occurs in a tax quarter—
- (i) the car becomes available;
- (ii) the car becomes unavailable;
- (iii) the car is available and the employee's employment becomes subject to the benefits code (as defined by regulation 85(3)).

^{F151}(1A) This regulation does not apply if—

- (a) the reason a car becomes available or unavailable is that one is replaced with another; or
- (b) Chapter 3A of these Regulations applies.]

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

(2) The employer must provide the [F152HMRC] with the following information in respect of the employee not later than 28 days after the end of the tax quarter.

(3) The information is—

- (a) the employee's name,
- (b) the employee's national insurance number, if known,
- (c) details of the car in question,

[F153(d) any provisional sum as calculated pursuant to section 121A(1) of ITEPA]

- (e) any capital sum contributed by the employee to expenditure on the provision of the car or on any qualifying accessory which is taken into account in so determining the interim sum in respect of the car,
- (f) any amount which, as a condition of the car being available for the employee's private use, the employee is required to pay in the tax year concerned for that use (whether by way of deduction from relevant payments or otherwise),
- (g) whether any fuel is provided for private use.

(4) In this regulation—

“available” and “unavailable” are to be read in accordance with sections 116(1) and 143(2) of ITEPA (meaning of when car is available and unavailable to employee);

“qualifying accessory” has the meaning given in section 125 of ITEPA (meaning of accessory etc).

Textual Amendments

F150 Words in [reg. 90\(1\)](#) substituted (6.4.2018) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2017 \(S.I. 2017/1263\)](#), [regs. 1, 16\(a\)](#)

F151 [Reg. 90\(1A\)](#) substituted (with effect in accordance with [reg. 1\(4\)](#) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 4\) Regulations 2015 \(S.I. 2015/1927\)](#), [regs. 1\(1\), 9](#)

F152 Words in [reg. 90\(2\)](#) substituted (with effect in accordance with [reg. 1\(2\)\(b\)](#) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2009 \(S.I. 2009/588\)](#), [regs. 1\(1\), 9\(b\)](#)

F153 Words in [reg. 90\(3\)\(d\)](#) substituted (6.4.2018) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 2\) Regulations 2017 \(S.I. 2017/1263\)](#), [regs. 1, 16\(b\)](#)

Termination awards: information to be provided

91.—(1) Before 7th July following the end of the tax year, an employer must, in respect of each employee who received a termination award, provide the Inland Revenue with the information specified in paragraph (3) relating to that award.

(2) “Termination award” means an award consisting of payments combined with other benefits, or consisting solely of other benefits—

- (a) which were awarded in that tax year in connection with the termination of the employee's employment with the employer, or any change in the duties of or earnings from that employment,
- (b) which when provided (whether in that or a subsequent tax year) would constitute payments and other benefits received to which Chapter 3 of Part 6 of ITEPA applies (payments and benefits on termination of employment etc), and
- (c) the total amount of which is estimated by the employer to exceed £30,000, when aggregated with other payments and other benefits provided or to be provided (whether in

that or a subsequent tax year) in respect of the same person as mentioned in section 404(1) of ITEPA (aggregation of payments in respect of other related employments).

- (3) The information to be provided is—
- (a) the total amount of the payments and other benefits awarded;
 - (b) the total amount of the payments made in that tax year in connection with the award;
 - (c) details of the non-cash benefits provided in that tax year in connection with the award, other than benefits previously contained in a return for that tax year under regulation 85, and the total amount of their amounts calculated in accordance with section 415(2) of ITEPA (valuation of benefits);
 - (d) the estimated total number of the tax years in which payments and non-cash benefits are to be provided in connection with the award and, if the duration of any of those payments and non-cash benefits is capable of being reduced in certain circumstances, details of those circumstances;
 - (e) the estimated total amount of the payments to be made in subsequent tax years in connection with the award;
 - (f) a description of each of the other benefits to be provided in subsequent tax years in connection with the award, and the terms of their provision.

(4) In calculating the cash equivalents of non-cash benefits for the purposes of this regulation, the employer must make all deductions and other adjustments which the employer is able to show, by reference to information in the employer's possession or otherwise available to the employer, are authorised or required by any of the provisions of the benefits code as applied by section 415 of ITEPA.

(5) In calculating the total amount of payments and other benefits for the purposes of paragraphs (2)(c) and (3)(a), the employer—

- (a) must have regard to the provisions of Chapter 3 of Part 6 of ITEPA,
- (b) must take into account the matters referred to in paragraph (3)(d),(e) and (f), and
- (c) in valuing the amount of non-cash benefits for future tax years in connection with the award, must assume that the provisions of ITEPA relating to those benefits will remain unchanged with respect to those years.

(6) Information required to be provided by an employer in accordance with paragraphs (1) and (3) may be provided after the termination award is made but before the end of the tax year in which it is made.

(7) If information is provided in accordance with paragraph (6), paragraph (3)(b) and (c) have effect, so far as concerns the providing of information relating to the tax year, as if they required the amounts and benefits there specified to be estimated by the employer as accurately as possible.

(8) This regulation is subject to regulation 93 (return if more than one employer).

(9) In this regulation and regulations 92, 93 and 96 (further provisions about termination awards)

“employee” includes a former employee; and

“employer” includes a former employer.

Termination awards: return if award changes

92.—(1) Paragraph (3) applies if—

- (a) information has not been provided by the employer under regulation 91(1) solely because either—

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (i) the total amount of payments and other benefits awarded in the tax year in respect of the employee is estimated in accordance with regulation 91(2)(c) not to exceed £30,000, or
 - (ii) the award made in the tax year consisted of payments only, and
- (b) there is a change in the award in a subsequent tax year.
- (2) “Change in the award” means—
- (a) that there is a change in—
 - (i) the amount of the payments awarded, or
 - (ii) the nature and amounts of the other benefits awarded,
 so that the total amount of those payments and other benefits is estimated in accordance with regulation 91(2)(c) to exceed £30,000; or
 - (b) that the nature of the award is changed so that it consists—
 - (i) of payments combined with other benefits, or
 - (ii) solely of other benefits,
 estimated in accordance with regulation 91(2)(c) to exceed £30,000.
- (3) The employer must, before 7th July following the tax year in which the change in the award occurred, provide the Inland Revenue with the information specified in regulation 91(3) with respect to those payments and other benefits.
- (4) Paragraph (5) applies if, after the employer has provided information in accordance with regulation 91(1) or paragraph (3) above, there is a material change—
- (a) in the amount of the payments awarded, or
 - (b) in the nature and amounts of the other benefits awarded,
- in relation to the employee.
- (5) The employer must, before 7th July following the end of the tax year in which the material change occurred, give details of the material change to the Inland Revenue.
- (6) For the avoidance of doubt, an employer is not required to provide details under this regulation of a change which arises solely because of amendments to the provisions of ITEPA which relate to non-cash benefits.
- (7) This regulation is subject to regulation 93 (return if more than one employer).

Termination awards: return if more than one employer

93.—(1) This regulation applies if the payments and other benefits aggregated in accordance with regulation 91(2)(c) include amounts in respect of different employments with more than one employer.

(2) The person who must provide information to the Inland Revenue under regulation 91 or 92, or to the employee under regulation 96, is the employer providing the greatest amount of payments and other benefits so aggregated.

Information to be given to employees

Employers: information to employees of other earnings (F¹⁵⁴Form P11D)

94.—(1) Before 7th July following the end of a tax year, the employer must give a statement to every current employee in respect of whom particulars are to be provided under regulation 85(1) by the employer for that tax year.

(2) The statement must contain the particulars provided under regulations 86 and 87 in so far as they relate to the employee.

(3) If a person who was a current employee ceases to be an employee at any time before 7th July following the end of the tax year, the statement is given to the employee if it is sent or delivered to, or left at, that person's usual or last known address.

(4) A former employee in respect of whom particulars are to be provided under regulation 85(1) by the employer for a tax year may by notice require the employer to give the statement specified in paragraph (2) to that former employee—

- (a) before 7th July following the end of the tax year, or
- (b) within 30 days of receiving the notice,

whichever is the later.

(5) The notice may be given to the employer at any time up to 3 years after the end of the tax year.

(6) A former employee who has received a statement from the employer under paragraph (4) in respect of a tax year may not require a further statement from the employer under that paragraph in respect of the same tax year.

(7) In this regulation—

“current employee” means a person who was an employee on 5th April in the tax year to which the particulars provided under regulation 85(1) relate;

“former employee” means a person who was an employee during a part of the tax year to which the particulars provided under regulation 85(1) relate, but who was no longer an employee on 5th April in that tax year.

Textual Amendments

F154 Words in reg. 94 heading substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by *The Income Tax (Pay As You Earn) (Amendment No. 4) Regulations 2015* (S.I. 2015/1927), regs. 1(1), 10

Third parties: information to employees of other earnings

95.—(1) This regulation applies if a person (“the third party”) has, in a tax year—

- (a) made any unrelated payments to, or on behalf of, another person's employee, or
- (b) provided any unrelated benefits to, or in respect of, another person's employee.

(2) Before 7th July following the end of the tax year, the third party must give the employee a statement containing such of the particulars specified by regulations 86 and 87 as relate to the unrelated payments or unrelated benefits.

(3) A benefit or payment is “unrelated” if—

- (a) the employee's employer is not required to provide particulars about it under regulation 85(1), and

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (b) the third party would have been required to provide particulars about it under regulation 85(1) had the third party been the employee's employer.

Termination awards: information to employees

96.—(1) This regulation applies if an employer is required to provide the information specified in regulation 91(3) to the Inland Revenue by—

- (a) regulation 91(1) (termination award), or
(b) regulation 92(3) (change in termination award).

(2) The employer must also give a copy of that information to the employee before 7th July following the end of the tax year.

(3) A copy of the information is given to the employee if it is sent or delivered to, or left at, the employee's usual or last known address.

(4) As to the person who is the employer in cases where there is more than one employer, see regulation 93.

CHAPTER 3

PAYE RECORDS

[^{F155}Retention by employer of PAYE records

97.—(1) An employer must keep and preserve for not less than three years after the end of the tax year to which they relate all PAYE records which are not required to be sent to HMRC by other provisions in these Regulations.

(2) The duty under paragraph (1) to keep and preserve PAYE records may be discharged by preserving them in any form or by any means.

(3) "PAYE records" means the following documents and records—

- (a) all wages sheets, deductions working sheets, documents completed under regulation 46 (Form P46) [^{F156}, information provided under regulation 40A(1) (duty of employee to assist with completion of new employee fields in returns under regulations 67B and 67D)] and other documents and records relating to—
- (i) the calculation of the PAYE income of the employees,
(ii) relevant payments to the employees, or
(iii) the deduction of tax from, or accounting for tax in respect of, such payments, and
- (b) all documents relating to any information which an employer is required to provide to HMRC under regulation 85 ([^{F157}Form P11D]).]

Textual Amendments

F155 Reg. 97 substituted (1.4.2009) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2009 \(S.I. 2009/588\)](#), regs. 1(1), 6

F156 Words in reg. 97(3)(a) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), 41

F157 Words in reg. 97(3)(b) substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income Tax \(Pay As You Earn\) \(Amendment No. 4\) Regulations 2015 \(S.I. 2015/1927\)](#), regs. 1(1), 11

[^{F158}CHAPTER 3A

Certain debts of companies under Chapter 7 of Part 2 of ITEPA (agencies)

Textual Amendments

F158 Pt. 4 Ch. 3A inserted (with effect in accordance with s. 17(6) of the amending Act) by Finance Act 2014 (c. 26), s. 17(1)(5)

Interpretation of Chapter 3A

97ZA In this Chapter—

“company” includes a limited liability partnership;

“HMRC” means Her Majesty's Revenue and Customs;

“director” has the meaning given by section 67 of ITEPA;

“personal liability notice” has the meaning given by regulation 97ZB(2);

“relevant PAYE debt”, in relation to a company, means—

(a) any amount that the company is to deduct, or account for, in accordance with these Regulations by virtue of—

(i) section 44(4) to (6) of ITEPA (persons providing fraudulent documents), or

(ii) section 46A of that Act (anti-avoidance), and

(b) any interest or penalty, in respect of an amount within paragraph (a), for which the company is liable;

“the relevant date”, in relation to a relevant PAYE debt, means—

(a) in a case where the relevant PAYE debt is to be deducted or accounted for, or arises, by virtue of subsections (4) to (6) of section 44 of ITEPA, the date on which the fraudulent document was provided as mentioned in subsection (4) of that section, or

(b) in a case where the relevant PAYE debt is to be deducted or accounted for, or arises, by virtue of section 46A of ITEPA, the date the arrangements mentioned in subsection (1) (b) of that section were entered into;

“the specified amount” has the meaning given by regulation 97ZB(2)(a).

Liability of directors for relevant PAYE debts

97ZB.—(1) This regulation applies in relation to an amount of relevant PAYE debt of a company if the company does not deduct, account for or (as the case may be) pay that amount by the time by which the company is required to do so.

(2) HMRC may serve a notice (a “personal liability notice”) on any person who was, on the relevant date, a director of the company—

(a) specifying the amount of relevant PAYE debt in relation to which this regulation applies (“the specified amount”), and

(b) requiring the director to pay to HMRC—

(i) the specified amount, and

(ii) specified interest on that amount.

(3) The interest specified in the personal liability notice—

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

(a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 86 of TMA, and

(b) is to run from the date the notice is served.

(4) A director who is served with a personal liability notice is liable to pay to HMRC the specified amount and the interest specified in the notice within 30 days beginning with the day the notice is served.

(5) If HMRC serve personal liability notices on more than one director of the company in respect of the same amount of relevant PAYE debt, the directors are jointly and severally liable to pay to HMRC the specified amount and the interest specified in the notices.

Appeals in relation to personal liability notices

97ZC.—(1) A person who is served with a personal liability notice in relation to an amount of relevant PAYE debt of a company may appeal against the notice.

(2) A notice of appeal must—

(a) be given to HMRC within 30 days beginning with the day the personal liability notice is served, and

(b) specify the grounds of the appeal.

(3) The grounds of appeal are —

(a) that all or part of the specified amount does not represent an amount of relevant PAYE debt, of the company, to which regulation 97ZB applies, or

(b) that the person was not a director of the company on the relevant date.

(4) But a person may not appeal on the ground mentioned in paragraph (3)(a) if it has already been determined, on an appeal by the company, that—

(a) the specified amount is a relevant PAYE debt of the company, and

(b) the company did not deduct, account for, or (as the case may be) pay the debt by the time by which the company was required to do so.

(5) Subject to paragraph (6), on an appeal that is notified to the tribunal, the tribunal is to uphold or quash the personal liability notice.

(6) In a case in which the ground of appeal mentioned in paragraph (3)(a) is raised, the tribunal may also reduce or increase the specified amount so that it does represent an amount of relevant PAYE debt, of the company, to which regulation 97ZB applies.

Withdrawal of personal liability notices

97ZD.—(1) A personal liability notice is withdrawn if the tribunal quashes it.

(2) An officer of Revenue and Customs may withdraw a personal liability notice if the officer considers it appropriate to do so.

(3) If a personal liability notice is withdrawn, HMRC must give notice of that fact to the person upon whom the notice was served.

Recovery of sums due under personal liability notice: application of Part 6 of TMA

97ZE.—(1) For the purposes of this Chapter, Part 6 of TMA (collection and recovery) applies as if—

(a) the personal liability notice were an assessment, and

(b) the specified amount, and any interest on that amount under regulation 97ZB(2)(b)(ii), were income tax charged on the director upon whom the notice is served, and that Part of that Act applies with the modification in paragraph (2) and any other necessary modifications.

(2) Summary proceedings for the recovery of the specified amount, and any interest on that amount under regulation 97ZB(2)(b)(ii), may be brought in England and Wales or Northern Ireland at any time before the end of the period of 12 months beginning with the day after the day on which personal liability notice is served.

Repayment of surplus amounts

97ZF.—(1) This regulation applies if—

- (a) one or more personal liability notices are served in respect of an amount of relevant PAYE debt of a company, and
 - (b) the amounts paid to HMRC (whether by directors upon whom notices are served or the company) exceed the aggregate of the specified amount and any interest on it under regulation 97ZB(2)(b)(ii).
- (2) HMRC is to repay the difference on a just and equitable basis and without unreasonable delay.
- (3) HMRC is to pay interest on any sum repaid.
- (4) The interest—
- (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA, and
 - (b) is to run from the date the amounts paid to HMRC come to exceed the aggregate mentioned in subsection (1)(b).]

[^{F159}CHAPTER 3B

Certain debts of companies under section 339A of ITEPA (travel expenses of workers providing services through employment intermediaries)

Textual Amendments

F159 Pt. 4 Ch. 3B inserted (with effect in accordance with s. 14(7) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 14\(4\)\(5\)](#)

Interpretation of Chapter 3B: “relevant PAYE debt” and “relevant date”

97ZG.—(1) In this Chapter “relevant PAYE debt”, in relation to a company means an amount within any of paragraphs (2) to (5).

(2) An amount within this paragraph is an amount that the company is to account for in accordance with these Regulations by virtue of section 339A(7) to (9) of ITEPA (persons providing fraudulent documents).

(3) An amount within this paragraph is an amount which a company is to deduct and pay in accordance with these Regulations by virtue of section 339A of ITEPA in circumstances where—

- (a) the company is an employment intermediary,
- (b) on the basis that section 339A of ITEPA does not apply by virtue of subsection (3) of that section the company has not deducted and paid the amount, but

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (c) the company has not been provided by any other person with evidence from which it would be reasonable in all the circumstances to conclude that subsection (3) of that section applied (and the mere assertion by a person that the manner in which the worker provided the services was not subject to (or to the right of) supervision, direction or control by any person is not such evidence).
- (4) An amount within this paragraph is an amount that the company is to deduct and pay in accordance with these Regulations by virtue of section 339A of ITEPA in a case where subsection (4) of that section applies (services provided under arrangements made by intermediaries).
- (5) An amount within this paragraph is any interest or penalty in respect of an amount within any of paragraphs (2) to (4) for which the company is liable.
- (6) In this Chapter “the relevant date” in relation to a relevant PAYE debt means the date on which the first payment is due on which PAYE is not accounted for.

Interpretation of Chapter 3B: general

97ZH In this Chapter—

- “company” includes a limited liability partnership;
- “director” has the meaning given by section 67 of ITEPA;
- “personal liability notice” has the meaning given by regulation 97ZI(2);
- “the specified amount” has the meaning given by regulation 97ZI(2)(a).

Liability of directors for relevant PAYE debts

97ZI.—(1) This regulation applies in relation to an amount of relevant PAYE debt of a company if the company does not deduct that amount by the time by which the company is required to do so.

(2) HMRC may serve a notice (a “personal liability notice”) on any person who was, on the relevant date, a director of the company—

- (a) specifying the amount of relevant PAYE debt in relation to which this regulation applies (“the specified amount”), and
 - (b) requiring the director to pay to HMRC—
 - (i) the specified amount, and
 - (ii) specified interest on that amount.
- (3) The interest specified in the personal liability notice—
- (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 86 of TMA, and
 - (b) is to run from the date the notice is served.

(4) A director who is served with a personal liability notice is liable to pay to HMRC the specified amount and the interest specified in the notice within 30 days beginning with the day the notice is served.

(5) If HMRC serve personal liability notices on more than one director of the company in respect of the same amount of relevant PAYE debt, the directors are jointly and severally liable to pay to HMRC the specified amount and the interest specified in the notices.

Appeals in relation to personal liability notices

97ZJ.—(1) A person who is served with a personal liability notice in relation to an amount of relevant PAYE debt of a company may appeal against the notice.

- (2) A notice of appeal must—
- (a) be given to HMRC within 30 days beginning with the day the personal liability notice is served, and
 - (b) specify the grounds of the appeal.
- (3) The grounds of appeal are —
- (a) that all or part of the specified amount does not represent an amount of relevant PAYE debt, of the company, to which regulation 97ZI applies, or
 - (b) that the person was not a director of the company on the relevant date.
- (4) But a person may not appeal on the ground mentioned in paragraph (3)(a) if it has already been determined, on an appeal by the company, that—
- (a) the specified amount is a relevant PAYE debt of the company, and
 - (b) the company did not deduct, account for, or (as the case may be) pay the debt by the time by which the company was required to do so.
- (5) Subject to paragraph (6), on an appeal that is notified to the tribunal, the tribunal is to uphold or quash the personal liability notice.
- (6) In a case in which the ground of appeal mentioned in paragraph (3)(a) is raised, the tribunal may also reduce or increase the specified amount so that it does represent an amount of relevant PAYE debt, of the company, to which regulation 97ZI applies.

Withdrawal of personal liability notices

- 97ZK.**—(1) A personal liability notice is withdrawn if the tribunal quashes it.
- (2) An officer of Revenue and Customs may withdraw a personal liability notice if the officer considers it appropriate to do so.
- (3) If a personal liability notice is withdrawn, HMRC must give notice of that fact to the person upon whom the notice was served.

Recovery of sums due under personal liability notice: application of Part 6 of TMA

- 97ZL.**—(1) For the purposes of this Chapter, Part 6 of TMA (collection and recovery) applies as if—
- (a) the personal liability notice were an assessment, and
 - (b) the specified amount, and any interest on that amount under regulation 97ZI(2)(b)(ii), were income tax charged on the director upon whom the notice is served,
- and that Part of that Act applies with the modification in paragraph (2) and any other necessary modifications.
- (2) Summary proceedings for the recovery of the specified amount, and any interest on that amount under regulation 97ZI(2)(b)(ii), may be brought in England and Wales or Northern Ireland at any time before the end of the period of 12 months beginning with the day after the day on which the personal liability notice is served.

Repayment of surplus amounts

- 97ZM.**—(1) This regulation applies if—
- (a) one or more personal liability notices are served in respect of an amount of relevant PAYE debt of a company, and

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (b) the amounts paid to HMRC (whether by directors upon whom notices are served or the company) exceed the aggregate of the specified amount and any interest on it under regulation 97ZI(2)(b)(ii).
- (2) HMRC is to repay the difference on a just and equitable basis and without unreasonable delay.
- (3) HMRC is to pay interest on any sum repaid.
- (4) The interest—
 - (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA, and
 - (b) is to run from the date the amounts paid to HMRC come to exceed the aggregate mentioned in subsection (1)(b).]

[^{F160}CHAPTER 4

DEBTS OF MANAGED SERVICE COMPANIES

Textual Amendments

F160 Pt. 4 Ch. 4 inserted (6.8.2007) by [The Income Tax \(Pay as You Earn\) \(Amendment No. 2\) Regulations 2007 \(S.I. 2007/2069\)](#), regs. 1, 2

Interpretation of Chapter 4

97A.—(1) In this Chapter—

“HM Revenue and Customs” means Her Majesty’s Revenue and Customs;

“lower amount” means the amount mentioned in regulation 97C(5);

“managed service company” has the meaning given by section 61B of ITEPA;

“paragraph (b) associate” means a person who—

(a) is within section 688A(2)(d), and

(b) is within that provision by virtue of a connection with a person who is within section 688A(2)(b);

“paragraph (c) associate” means a person who—

(a) is within section 688A(2)(d), and

(b) is within that provision by virtue of a connection with a person who is within section 688A(2)(c);

“qualifying period” means a tax period beginning on or after 6th August 2007;

[^{F161}“relevant apprenticeship levy debt” means a debt specified in regulation 97B;]

“relevant PAYE debt” means a debt specified in regulation 97B;

“specified amount” means the amount mentioned in regulation 97C(1)(b);

“transfer notice” means the notice mentioned in regulation 97C(4);

“transferee” means the person mentioned in regulation 97C(4).

(2) In this Chapter references to section 688A, however expressed, are references to section 688A of ITEPA.

Textual Amendments

F161 Words in [reg. 97A\(1\)](#) inserted (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), [regs. 1, 2\(5\)](#)

Relevant PAYE^{F162} and apprenticeship levy] debts of managed service companies

97B.—^{F163}(1) A managed service company has a relevant PAYE debt or a relevant apprenticeship levy debt if a managed service company must pay an amount of tax or apprenticeship levy for a qualifying period, and—

- (a) in the case of a relevant PAYE debt one of conditions A to E is met, and
 - (b) in the case of a relevant apprenticeship levy debt one of conditions F or G is met.]
- (2) Condition A is met if—
- (a) an amount of tax for a qualifying period has been determined in accordance with regulation 80 (determination of unpaid tax and appeal against determination), and
 - (b) any part of the tax determined has not been paid within 14 days from the date on which the determination became final and conclusive.

^{F164}(2A) Condition A2 is met if—

- (a) HMRC serve a notice on an employer under regulation 75A(5) (power of HMRC to issue a notice and certificate in cases where regulation 67B or 67D returns are not made, etc) requiring payment of the amount of tax they consider the employer is liable to pay, and
 - (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.]
- (3) Condition B is met if—
- (a) an employer delivers a return under regulation 73 (annual return of relevant payments) for the tax year 2007-08, or any later tax year, showing an amount of total net tax deducted by the employer for that tax year,
 - (b) HM Revenue and Customs prepare a certificate under regulation 76 (certificate if tax in regulation 73 return is unpaid) showing how much of that amount remains unpaid, and
 - (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.
- (4) Condition C is met if—
- (a) HM Revenue and Customs prepare a certificate under regulation 77(6) (return and certificate if tax may be unpaid) showing an amount of tax which the employer is liable to pay for a qualifying period, and
 - (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.
- (5) Condition D is met if—
- (a) HM Revenue and Customs serve notice on an employer under regulation 78(4) (notice and certificate if tax may be unpaid) requiring payment of the amount of tax which they consider the employer is liable to pay, and
 - (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.
- (6) Condition E is met if—

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

- (a) HM Revenue and Customs prepare a certificate under regulation 79(2) (certificate after inspection of PAYE records) showing an amount of tax which it appears that the employer is liable to pay for a qualifying period,
- (b) HM Revenue and Customs make a written demand for payment of that amount of tax, and
- (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the written demand for payment is made.

^{F165} (7) Condition F is met if—

- (a) an amount of apprenticeship levy for a qualifying period has been assessed in accordance with regulation 147L (assessment of unpaid apprenticeship levy), and
- (b) any part of the apprenticeship levy assessed has not been paid within 14 days beginning with the date on which the assessment is served.

(8) Condition G is met if—

- (a) an employer delivers a return under regulation 147D (duty to report the amount of apprenticeship levy to be paid), showing an amount of apprenticeship levy payable by the employer for the tax year,
- (b) HM Revenue and Customs assesses the amount of apprenticeship levy under regulation 147L showing how much of that amount remains unpaid, and
- (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the assessment is served.]

Textual Amendments

F162 Words in reg. 97B heading inserted (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), regs. 1, **2(6)(a)**

F163 Reg. 97B(1) substituted (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), regs. 1, **2(6)(b)**

F164 Reg. 97B(2A) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **42**

F165 Reg. 97B(7)(8) added (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), regs. 1, **2(6)(c)**

Transfer of debt of managed service company

97C.—(1) This regulation applies if—

- (a) a managed service company has a relevant PAYE debt [^{F166}or a relevant apprenticeship levy debt], and
- (b) an officer of Revenue and Customs is of the opinion that the relevant PAYE debt [^{F167}or the relevant apprenticeship levy debt] or a part of the relevant PAYE debt [^{F167}or part of the relevant apprenticeship levy debt] (the “specified amount”) is irrecoverable from the managed service company within a reasonable period.

(2) HM Revenue and Customs may make a direction authorising the recovery of the specified amount from the persons specified in section 688A(2) (managed service companies: recovery from other persons).

(3) Upon the making of a direction under paragraph (2), the persons specified in section 688A(2) become jointly and severally liable for the relevant PAYE debt [^{F168}or the relevant apprenticeship levy debt], but subject to what follows.

(4) HM Revenue and Customs may not recover the specified amount from any person in accordance with a direction made under paragraph (2) until they have served a notice (a “transfer notice”) on the person in question (the “transferee”).

(5) If an officer of Revenue and Customs is of the opinion that it is appropriate to do so, HM Revenue and Customs may accept an amount less than the specified amount (the “lower amount”) from a transferee; but this acceptance shall not prejudice the recovery of the specified amount from any other transferee.

(6) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c), or on a paragraph (c) associate, if the relevant PAYE debt is incurred before 6th January 2008.

(7) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c), or on a paragraph (c) associate, unless an officer of Revenue and Customs certifies that, in his opinion, it is impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) and from paragraph (b) associates.

(8) In determining, for the purposes of paragraph (7), whether it is impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) and from paragraph (b) associates, the officer of Revenue and Customs may have regard to all managed service companies in relation to which a person is a person mentioned in paragraph (a) or (b) of section 688A(2) or a paragraph (b) associate.

(9) In determining which of the persons mentioned in section 688A(2)(c) and which of the paragraph (c) associates are to be served with transfer notices and the amount of those notices, HM Revenue and Customs must have regard to the degree and extent to which those persons are persons who (directly or indirectly) have encouraged or been actively involved in the provision by the managed service company of the services of the individual mentioned in that provision.

Textual Amendments

F166 Words in reg. 97C(1)(a) inserted (6.4.2017) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2017 (S.I. 2017/414), regs. 1, 2(7)(a)

F167 Words in reg. 97C(1)(b) inserted (6.4.2017) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2017 (S.I. 2017/414), regs. 1, 2(7)(b)

F168 Words in reg. 97C(3) inserted (6.4.2017) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2017 (S.I. 2017/414), regs. 1, 2(7)(c)

Time limits for issue of transfer notices

97D.—(1) A transfer notice must be served before the end of the period determined in accordance with this regulation.

(2) Paragraphs [F169(3) to (7B)] apply if the transfer notice is served on a person mentioned in paragraph (a) or (b) of section 688A(2) or on a paragraph (b) associate.

(3) In a case in which condition A in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which the determination became final and conclusive.

[
F170(3A) In a case in which condition A2 in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HMRC serve notice to the employer under regulation 75A(5).]

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

(4) In a case in which condition B in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs received the return delivered under regulation 73.

(5) In a case in which condition C in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs prepare the certificate under regulation 77(6).

(6) In a case in which condition D in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs serve notice to the employer under regulation 78(4).

(7) In a case in which condition E in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs carry out the inspection of the employer's PAYE records.

[
^{F171}(7A) In a case in which condition F in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which the assessment became final and conclusive.

(7B) In a case in which condition G in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs serves the assessment under regulation 147L.]

(8) If the transfer notice is served on a person mentioned in paragraph (c) of section 688A(2) or on a paragraph (c) associate, the transfer notice must be served before the end of a period of [^{F172}three months] beginning with the date on which the officer of Revenue and Customs certifies the matters specified in regulation 97C(7).

Textual Amendments

F169 Words in reg. 97D(2) substituted (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), regs. 1, **2(8)(a)**

F170 Reg. 97D(3A) inserted (6.4.2012) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#), regs. 1(1), **43**

F171 Reg. 97D(7A)(7B) inserted (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), regs. 1, **2(8)(b)**

F172 Words in reg. 97D(8) substituted (6.8.2007) by [The Income Tax \(Pay As You Earn\) \(Amendment\) No. 3 Regulations 2007 \(S.I. 2007/2296\)](#), regs. 1, **2**

Contents of transfer notice

97E.—(1) A transfer notice must contain the following information—

- (a) the name of the managed service company to which the relevant PAYE debt [^{F173}or the relevant apprenticeship levy debt] relates;
- (b) the address of the managed service company to which the relevant PAYE debt [^{F173}or the relevant apprenticeship levy debt] relates;
- (c) the amount of the relevant PAYE debt [^{F173}or the relevant apprenticeship levy debt];
- (d) the tax periods to which the relevant PAYE debt [^{F173}or the relevant apprenticeship levy debt] relates;

- (e) if the tax periods to which the relevant PAYE debt [^{F173}or the relevant apprenticeship levy debt] relates are comprised in more than one tax year, the apportionment of the relevant PAYE debt among those tax years;
- (f) which of the [^{F174}conditions A to G] specified in regulation 97B is met;
- (g) the transferee's name;
- (h) the transferee's address;
- (j) whether the transferee is a person mentioned in paragraph (a), (b) or (c) of section 688A, a paragraph (b) associate or a paragraph (c) associate;
- (k) if the transferee is a person mentioned in paragraph (c) of section 688A or a paragraph (c) associate—
 - (i) the date on which the officer of Revenue and Customs certified the matters specified in regulation 97C(7), and
 - (ii) the names of the persons from whom it has been impracticable to recover the specified amount;
- (l) the specified amount;
- (m) the tax periods to which the specified amount relates;
- (n) if the tax periods to which the specified amount relates are comprised in more than one tax year, the apportionment of the specified amount among those tax years;
- (o) the address to which payment must be sent;
- (p) the address to which an appeal must be sent.

(2) The transfer notice may specify the lower amount if HM Revenue and Customs are prepared to accept the lower amount from the transferee.

(3) The transfer notice must also contain a statement, made by the officer of Revenue and Customs serving the notice, that in his opinion the specified amount is irrecoverable from the managed service company within a reasonable period.

Textual Amendments

F173 Words in [reg. 97E\(1\)\(a\)-\(e\)](#) inserted (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), [regs. 1, 2\(9\)\(a\)](#)

F174 Words in [reg. 97E\(1\)\(f\)](#) substituted (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), [regs. 1, 2\(9\)\(b\)](#)

Payment of the specified amount

97F.—(1) If a transfer notice is served, the transferee must pay the specified amount to HM Revenue and Customs at the address specified in the transfer notice.

(2) The transferee must pay the specified amount within 30 days beginning with the date on which the transfer notice is served (the “specified period”).

(3) If a transfer notice is served on a person mentioned in paragraph (a) or (b) of section 688A(2), or on a paragraph (b) associate, the specified amount carries interest from the reckonable date until the date on which payment is made.

(4) If a transfer notice is served on a person mentioned in paragraph (c) of section 688A(2), or on a paragraph (c) associate, the specified amount carries interest from the day following the expiry of the specified period until the date on which payment is made.

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

Appeals

- 97G.—(1) A transferee may appeal against the transfer notice.
(2) A notice of appeal must—
(a) be given to HM Revenue and Customs at the address specified in the transfer notice within 30 days beginning with the date on which the transfer notice was served, and
(b) specify the grounds of the appeal.
(3) The grounds of appeal are any of the following—
(a) that the relevant PAYE debt (or part of the relevant PAYE debt) [F175or the relevant apprenticeship levy debt (or part of the relevant apprenticeship levy debt)] is not due from the managed service company to HM Revenue and Customs;
(b) that the specified amount does not relate to a company which is a managed service company;
(c) that the specified amount is not irrecoverable from the managed service company within a reasonable period;
(d) that the transferee is not a person mentioned in section 688A(2);
(e) that the transferee was not a person mentioned in section 688A(2) during the tax periods to which the specified amount relates;
(f) that the transferee was not a person mentioned in section 688A(2) during some part of the tax periods to which the specified amount relates
(g) that the transfer notice was not served before the end of the period specified in regulation 97D;
(h) that the transfer notice does not satisfy the requirements specified in regulation 97E;
(j) in the case of a transferee mentioned in section 688A(2)(c) or of a paragraph (c) associate, that it is not impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) or from paragraph (b) associates;
(k) in the case of a transferee mentioned in section 688A(2)(c) or of a paragraph (c) associate, that the amount specified in the transfer notice does not have regard to the degree and extent to which the transferee is a person who (directly or indirectly) has encouraged or been actively involved in the provision by the managed service company of the services of the individual mentioned in that provision.
(4) Paragraph (3)(a) is subject to regulation 97H(4).
(5)

Textual Amendments

F175 Words in reg. 97G(3)(a) inserted (6.4.2017) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2017 (S.I. 2017/414), regs. 1, 2(10)

Procedure on appeals

- 97H.—(1) On an appeal [F176that is notified to the tribunal, the tribunal] shall uphold or quash the transfer notice.
(2) The general rule in paragraph (1) is subject to the following qualifications.
(3) In the case of the ground of appeal specified in regulation 97G(3)(a), the [F177tribunal] shall investigate the matter and shall—

- (a) uphold the amount of the relevant PAYE debt [^{F178}or the relevant apprenticeship levy debt] specified in the transfer notice, or
- (b) reduce or increase the amount of the relevant PAYE debt [^{F179}or the relevant apprenticeship levy debt] specified in the transfer notice to such amount as in [^{F180}the tribunal's opinion] is just and reasonable.

(4) If the [^{F181}tribunal determines] the amount of the relevant PAYE debt of a managed service company under paragraph (3), that amount is conclusive as to the amount of that relevant PAYE debt [^{F182}or the relevant apprenticeship levy debt] in any later appeal relating to that debt.

(5) In the case of the ground of appeal specified in regulation 97G(3)(f), the [^{F183}tribunal] may reduce the amount specified in the transfer notice to an amount determined in accordance with the equation—

$$RA = PTP \times AS$$

- (6) In paragraph (5)—

RA means the reduced amount;

P means the number of days in the tax periods specified in the transfer notice during which the transferee was a person mentioned in section 688A(2);

TP means the number of days in the tax periods specified in the transfer notice;

AS means the amount specified in the transfer notice.

(7) In the case of the ground of appeal specified in regulation 97G(3)(k), the [^{F184}tribunal] may reduce the amount specified in the transfer notice to such amount as in [^{F185}the tribunal's opinion] is just and reasonable.

Textual Amendments

- F176** Words in reg. 97H(1) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 2 para. 104(2)**
- F177** Word in reg. 97H(3) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 2 para. 104(3)(a)**
- F178** Words in reg. 97H(3)(a) inserted (6.4.2017) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2017 (S.I. 2017/414), regs. 1, **2(11)**
- F179** Words in reg. 97H(3)(b) inserted (6.4.2017) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2017 (S.I. 2017/414), regs. 1, **2(11)**
- F180** Words in reg. 97H(3)(b) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 2 para. 104(3)(b)**
- F181** Words in reg. 97H(4) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 2 para. 104(4)**
- F182** Words in reg. 97H(4) inserted (6.4.2017) by The Income Tax (Pay As You Earn) (Amendment) Regulations 2017 (S.I. 2017/414), regs. 1, **2(11)**
- F183** Word in reg. 97H(5) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 2 para. 104(5)**
- F184** Word in reg. 97H(7) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 2 para. 104(6)(a)**
- F185** Words in reg. 97H(7) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 2 para. 104(6)(b)**

Status: Point in time view as at 06/04/2018.

Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4. (See end of Document for details)

Withdrawal of transfer notices

97J.—(1) A transfer notice shall be withdrawn if the [^{F186}tribunal quashes] it.

(2) A transfer notice may be withdrawn if, in the opinion of an officer of Revenue and Customs, it is appropriate to do so.

(3) If a transfer notice is withdrawn, HM Revenue and Customs must give written notice of that fact to the transferee.

Textual Amendments

F186 Words in [reg. 97J](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 2 para. 105](#)

Application of Part 6 of TMA

97K.—(1) For the purposes of this Chapter, Part 6 of TMA (collection and recovery) applies as if—

- (a) the transfer notice were an assessment, and
- (b) the amount specified in the transfer notice, and any interest payable on that amount under paragraph (3) or (4) of regulation 97F, were income tax charged on the transferee;

and that Part of that Act applies with the modification specified in paragraph (2) and any other necessary modifications.

(2) Summary proceedings for the recovery of the specified amount may be brought in England and Wales or Northern Ireland at any time before the end of a period of 12 months beginning immediately after the expiry of the period mentioned in regulation 97F(2).

(3) The specified amount is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of TMA (magistrates' courts, county courts and inferior courts in Scotland).

(4) But paragraph (3) does not prevent the bringing of separate proceedings for the recovery of each of the amounts which the transferee is liable to pay for any tax period.

Repayment of surplus amounts

97L.—(1) This regulation applies if the amounts paid to HM Revenue and Customs in respect of a relevant PAYE debt [^{F187}or a relevant apprenticeship levy debt] exceed the specified amount.

(2) HM Revenue and Customs shall repay the difference on a just and equitable basis and without unreasonable delay.

(3) Interest on any sum repaid shall be paid in accordance with [^{F188}section 102 of the Finance Act 2009 (repayment interest on sums to be paid by HMRC).]

Textual Amendments

F187 Words in [reg. 97L\(1\)](#) inserted (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), regs. 1, [2\(12\)\(a\)](#)

F188 Words in [reg. 97L\(3\)](#) substituted (6.4.2017) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2017 \(S.I. 2017/414\)](#), regs. 1, [2\(12\)\(b\)](#)

Status:

Point in time view as at 06/04/2018.

Changes to legislation:

There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, PART 4.