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STATUTORY INSTRUMENTS

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**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**

*Payment and recovery of tax by employer*

**Periodic payments to and recoveries from the Revenue**

**68.**—(1) This regulation applies to determine how much an 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 [<sup>F1</sup>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).

[<sup>F2</sup>(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.]

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**Textual Amendments**

**F1** 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)**

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**F2** 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)**

#### Commencement Information

**I1** [Reg. 68](#) in force at 6.4.2004, see [reg. 1](#)

### Due date and receipts for payment of tax

**69.**—(1) An employer must pay amounts due under regulation 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.

(2) The Inland Revenue must give a receipt to the employer for the total amount paid under regulation 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 [<sup>F3</sup>the SSC Regulations])(**1**) paid at the same time.

[<sup>F4</sup>(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

**F3** 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)**

**F4** [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)**

#### Commencement Information

**I2** [Reg. 69](#) in force at 6.4.2004, see [reg. 1](#)

### 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.

[<sup>F5</sup>(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—

[<sup>F6</sup>(P + N + L + S) – (SP + CD)]

(3) In paragraph (2)—

P is the amount which would be payable to the Inland Revenue under regulation 68 [<sup>F7</sup>but disregarding any amount payable in respect of retrospective employment income]<sup>F8</sup>...;

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

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)<sup>(2)</sup>; <sup>F9</sup> ...
- (aa) [<sup>F10</sup>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) <sup>F9</sup> ...

L is the amount which would be payable to the Inland Revenue under regulation 39(1) of the Student Loans Regulations (payment of repayments deducted to the Inland Revenue) disregarding—

- (a) the reduction referred to in paragraph (3) of that regulation, <sup>F9</sup> ...
- (b) <sup>F9</sup> ...

S is the amount which would be payable by the employer to the Inland Revenue under sections 559 and 559A of ICTA<sup>(3)</sup> (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<sup>(4)</sup> <sup>F11</sup> ...;

<sup>F12</sup> ...

SP is the amount which would be payable by the employer to employees by way of statutory sick pay, statutory maternity pay, statutory paternity 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<sup>(5)</sup> or, in Northern Ireland, the Social Security Contribution and Benefits (Northern Ireland) Act 1992<sup>(6)</sup>;

“SSC Regulations” means the Social Security (Contributions) Regulations 2001<sup>(7)</sup>;

“Student Loans Regulations” means the Education (Student Loans) (Repayment) Regulations 2000<sup>(8)</sup> or, in Northern Ireland, the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000<sup>(9)</sup>;

(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.

(7) S.I. 2001/1004.

(8) S.I. 2000/944.

(9) S.R. (N.I.) 2000 No. 121.

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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, CHAPTER 1. (See end of Document for details)*

F13  
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F13  
...

#### Textual Amendments

- F5** 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)**
- F6** 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)**
- F7** 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)**
- F8** Words in reg. 70(3) omitted (6.4.2006) by virtue of [The Income Tax \(Pay As You Earn, etc.\), \(Amendment\) Regulations 2006 \(S.I. 2006/777\)](#), regs. 1(1), **3(b)(i)**
- F9** Words in reg. 70(3) omitted (6.4.2006) by virtue of [The Income Tax \(Pay As You Earn, etc.\), \(Amendment\) Regulations 2006 \(S.I. 2006/777\)](#), regs. 1(1), **3(b)(iii)**
- F10** 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)**
- F11** Words in reg. 70(3) omitted (6.4.2006) by virtue of [The Income Tax \(Pay As You Earn, etc.\), \(Amendment\) Regulations 2006 \(S.I. 2006/777\)](#), regs. 1(1), **3(b)(ii)**
- F12** Words in reg. 70(3) omitted (6.4.2006) by virtue of [The Income Tax \(Pay As You Earn, etc.\), \(Amendment\) Regulations 2006 \(S.I. 2006/777\)](#), regs. 1(1), **3(b)(iv)**
- F13** Words in reg. 70(4) omitted (6.4.2006) by virtue of [The Income Tax \(Pay As You Earn, etc.\), \(Amendment\) Regulations 2006 \(S.I. 2006/777\)](#), regs. 1(1), **3(c)**

#### Commencement Information

- I3** Reg. 70 in force at 6.4.2004, see [reg. 1](#)

#### Modification of regulation 68 in case of trade dispute

**71.—(1)** This regulation modifies the amount payable or recoverable by an employer under regulation 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 68(2) in the cases set out in column 2 for the first and subsequent tax periods.

**Table 3**

## Modified amount payable under regulation 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)
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 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.

**Commencement Information**

**I4** [Reg. 71](#) in force at 6.4.2004, see [reg. 1](#)

**Recovery from employee of tax not deducted by employer**

**72.**—(1) This regulation applies if—

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- (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 [<sup>F14</sup>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.
- [<sup>F15</sup>(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 regulation 82 (interest on tax overdue).
- (8) The tax payable carries interest from the reckonable date until whichever is the earlier of—
- (a) the date on which payment is made, or
- (b) the date (if any) immediately before the date on which it begins to carry interest under section 86 of TMA(10).

#### Textual Amendments

- F14** 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\(2\)](#)
- F15** [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\(3\)](#)

#### Commencement Information

- I5** [Reg. 72](#) in force at 6.4.2004, see [reg. 1](#)

(10) Section 86 was substituted by section 110(1) of the Finance Act 1995 (c. 4) and amended by section 131 of, and paragraph 3 of Schedule 18 to, the Finance Act 1996 (c. 8).

**[F16] 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) it appears to the Commissioners that the refusal notice should not have been issued they may direct that the Inland Revenue make a direction under regulation 72(5) in an amount the Commissioners determine is the excess for one or more tax periods falling within the relevant tax year.

**Textual Amendments**

**F16** 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

**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) the Commissioners may—



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- (a) if it appears to them that the direction notice should not have been made, set aside the direction notice; or
- (b) if it appears to them that the excess specified in the direction notice is incorrect, increase or reduce the excess specified in the notice accordingly.

#### Textual Amendments

**F16** 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

#### 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) the Commissioners may—
- (a) if it appears to them that the direction notice should not have been made, set aside the direction notice; or
  - (b) if it appears to them that the excess specified in the direction notice is incorrect, increase or reduce the excess specified in the notice accordingly.

#### Textual Amendments

**F16** 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

#### Appeals: supplementary provisions

- 72D.**—(1) This regulation applies to appeals under regulations 72A(4), 72B, 72C and 81A.
- (2) Subject to paragraph (4), an appeal is to the General Commissioners but the employer or employee as appropriate may elect (in accordance with section 46(1) of TMA) to bring the appeal before the Special Commissioners instead.
- (3) Section 31D(2) to (7) of TMA (election to bring appeal before Special Commissioners) has effect in relation to an election under paragraph (2) (as in relation to an election under subsection (1) of that section).
- (4) 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

the Commissioners who are to determine the appeals are given in paragraphs (5) to (7).

- (5) If—



- (a) the same body of General Commissioners has jurisdiction with respect to all the persons concerned, and
- (b) none of those persons has elected in accordance with section 46(1) of TMA to bring the appeal before the Special Commissioners

the appeals are to be determined by that body of General Commissioners.

(6) If—

- (a) different bodies of General Commissioners have jurisdiction with respect to the persons concerned, and
- (b) none of those persons has elected in accordance with section 46(1) of TMA to bring the appeal before the Special Commissioners

the appeals are to be determined by such of those bodies as the Board of Inland Revenue determine.

(7) In any other case, the appeals are to be determined by the Special Commissioners.

(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—

- (a) to appear before and be heard by the Commissioners, or
- (b) to make representations in writing

(9) On hearing an appeal the General Commissioners or the Special Commissioners may allow the employer or employee as appropriate to put forward grounds not specified in the notice, and take them into consideration, if satisfied that the omission was not wilful or unreasonable.]

#### **Textual Amendments**

**F16** 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

### *Annual returns of relevant payments and tax*

#### **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

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- (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(11) (special penalties in case of certain returns) applies to paragraph (1).

#### Commencement Information

**I6** [Reg. 73](#) in force at 6.4.2004, see [reg. 1](#)

#### [<sup>F17</sup>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.

(11) 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.

(2) Where this regulation applies, before 20<sup>th</sup> 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.

(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

**F17** 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 20<sup>th</sup> 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

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- (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 [<sup>F18</sup>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

**F18** 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\(2\)](#)

#### Commencement Information

**I7** [Reg. 74](#) in force at 6.4.2004, see [reg. 1](#)

### 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.

#### Commencement Information

**I8** [Reg. 75](#) in force at 6.4.2004, see [reg. 1](#)

*Failure to account for deductible tax*

**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.

**Commencement Information**

**I9** Reg. 76 in force at 6.4.2004, see **reg. 1**

**Return and certificate if tax may be unpaid**

- 77.—(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) 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.

**Commencement Information**

**I10** Reg. 77 in force at 6.4.2004, see **reg. 1**

**Notice and certificate if tax may be unpaid**

- 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—

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*Status: Point in time view as at 06/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, CHAPTER 1. (See end of Document for details)*

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- (a) an employer has not paid any tax under regulation 68 for that tax period, and
  - (b) the Inland Revenue 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) the Inland Revenue 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) The Inland Revenue, on consideration of the employer’s record of past payments, may—
- (a) specify, to the best of their judgment, the amount of tax 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 the full amount the employer is liable to pay, but
  - (b) does not satisfy the Inland Revenue that this is the case,
- the employer may require the Inland Revenue to inspect the employer’s PAYE records as if the employer had been required to produce those records in accordance with regulation 97 (inspection of employer’s PAYE records).
- (7) If there is an inspection by virtue of paragraph (6), regulation 97 applies to that inspection and the notice given by the Inland Revenue under paragraph (4) must be disregarded.
- (8) If the amount of tax 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 which the employer was liable to pay for that tax period under regulation 68, and
  - (b) the Inland Revenue may prepare a certificate showing how much of that tax 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 the Inland Revenue that no amount, or no further amount, is due for that tax period.
- (10) Paragraph (11) applies if the employer pays an amount certified under this regulation 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 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.

**Commencement Information**

**I11** Reg. 78 in force at 6.4.2004, see **reg. 1**

**Certificate after inspection of PAYE records**

**79.**—(1) This regulation applies if there is an inspection of an employer's PAYE records under regulation 97.

(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.

**Commencement Information**

**I12** Reg. 79 in force at 6.4.2004, see **reg. 1**

**Determination of unpaid tax and appeal against determination**

**80.**—(1) This regulation applies if it appears to the Inland Revenue that there may be tax payable for a tax year under regulation 68 by an employer which has neither been—

- (a) paid to the Inland Revenue, nor
- (b) certified by the Inland Revenue under regulation 76, 77, 78 or 79.

(2) The Inland Revenue 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.

(4) A determination under this regulation may—

- (a) cover the tax payable by the employer under regulation 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 (other than section 55) 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.



*Status: Point in time view as at 06/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, CHAPTER 1. (See end of Document for details)*

(6) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA(12) (rules for assigning proceedings to General Commissioners), the relevant place for an appeal against a determination under this regulation is the place where the determination was made.

#### Commencement Information

**I13** Reg. 80 in force at 6.4.2004, see [reg. 1](#)

### 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).

[<sup>F19</sup>(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 regulation 82 (interest on tax overdue).

(7) The tax payable carries interest from the reckonable date until whichever is the earlier of—

- (a) the date on which payment is made, or
- (b) the date (if any) immediately before the date on which it begins to carry interest under section 86 of TMA(13).

#### Textual Amendments

**F19** 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

#### Commencement Information

**I14** Reg. 81 in force at 6.4.2004, see [reg. 1](#)

(12) Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8) and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

(13) Section 86 was substituted by section 110(1) of the Finance Act 1995 (c. 4) and amended by section 131 of, and paragraph 3 of Schedule 18 to, the Finance Act 1996 (c. 8).

[<sup>F20</sup> **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) the Commissioners may—
- (a) if it appears to them that the direction notice should not have been made, set aside the notice; or
  - (b) if it appears to them 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**

**F20** Reg. 81A inserted (12.4.2004) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2004 \(S.I. 2004/851\)](#), regs. 1, 6

*Interest*

**Interest on tax overdue**

**82.**—(1) This regulation applies if an employer has not paid to the Inland Revenue the total net tax payable in respect of a tax year by the reckonable date.

(2) Any unpaid tax carries interest at the prescribed rate from the reckonable date until payment (“the interest period”).

(3) Paragraph (2) applies even if the reckonable date is a non-business day as defined by section 92 of the Bills of Exchange Act 1882(14).

(4) But paragraph (2) does not apply to any tax which the employer does not have to pay as a result of a direction made under regulation 72(5) or 81(4).

(5) Any change made to the prescribed rate during the interest period applies to the unpaid tax from the date of the change.

- (6) The “total net tax payable” in respect of a tax year is—
- (a) the total of any amounts payable by the employer under regulation 68 for tax periods in the tax year, less
  - (b) the total of any amounts recoverable from the Board of Inland Revenue under regulation 68(3)(b) for those tax periods.

(14) 1882 c. 61; section 92 was amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

*Status: Point in time view as at 06/04/2007.*

*Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, CHAPTER 1. (See end of Document for details)*

(7) The “prescribed rate” means the rate applicable under section 178 of the Finance Act 1989<sup>(15)</sup> for the purposes of section 86 of TMA.

(8) [<sup>F21</sup>Except where tax is due in respect of a closed tax year by virtue of a retrospective tax provision,] the “reckonable date” means—

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

[<sup>F22</sup>(9) Where tax is due in respect of a closed tax year by virtue of a retrospective tax provision, the “reckonable date” means 14 days after the end of the tax month following that in which the retrospective tax provision is passed.]

#### Textual Amendments

- F21** Words in reg. 82(8) inserted (6.4.2007) by [The Income Tax \(Pay as You Earn\) \(Amendment\) Regulations 2007 \(S.I. 2007/1077\)](#), regs. 1, **16(2)**
- F22** Reg. 82(9) added (6.4.2007) by [The Income Tax \(Pay as You Earn\) \(Amendment\) Regulations 2007 \(S.I. 2007/1077\)](#), regs. 1, **16(3)**

#### Commencement Information

- I15** Reg. 82 in force at 6.4.2004, see [reg. 1](#)

### Interest on tax overpaid

**83.**—(1) This regulation applies if tax is repaid to an employer after the end of the tax year in respect of which the tax was paid.

(2) The tax repaid carries interest at the prescribed rate from the later of—

- (a) 14 days after the end of the tax year, and
- (b) the date on which the payment of tax for that tax year was made,

until the order for the repayment is issued (“the interest period”).

(3) Any change made to the prescribed rate during the interest period applies to the tax repaid from the date of the change.

(4) “The prescribed rate” means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA<sup>(16)</sup>.

#### Commencement Information

- I16** [Reg. 83](#) in force at 6.4.2004, see [reg. 1](#)

<sup>(15)</sup> 1989 c. 26, to which there are amendments not relevant to these Regulations.

<sup>(16)</sup> Section 824 was amended by paragraph 7 of Schedule 13 to the Finance Act 1988 (c. 39), sections 110(5), 111(4), 158(2) and 179(1) of, and Parts 4, 8 and 10 of Schedule 17 to, the Finance Act 1989 (c. 26), paragraph 14(52) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 41 of Schedule 19 to the Finance Act 1994 (c. 9), section 92 of the Finance Act 1997 (c. 16), section 41 of the Finance Act 1999 (c. 16), section 90 of the Finance Act 2001 (c. 9) and paragraph 104 of Schedule 6 to ITEPA.

## 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 76(2), 77(6), 78(8), 79(2)(b) or 82(2);
- (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 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.

**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 77(6), 78(8) and 82(2)	(a) (a) 12 months after the date on which the unpaid amount 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 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 is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of TMA(17) (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.

(17) 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.

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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, CHAPTER 1. (See end of Document for details)

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**Commencement Information**

**I17** [Reg. 84](#) in force at 6.4.2004, see [reg. 1](#)

**Status:**

Point in time view as at 06/04/2007.

**Changes to legislation:**

There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, CHAPTER 1.