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STATUTORY INSTRUMENTS

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**2003 No. 2682**

**The Income Tax (Pay As You Earn) Regulations 2003**

PART 4 **U.K.**

PAYMENTS, RETURNS AND INFORMATION

CHAPTER 1 **U.K.**

PAYMENT OF TAX AND ASSOCIATED RETURNS

*Failure to account for deductible tax*

**[<sup>F1</sup>Power of HMRC to issue a notice and certificate in cases where regulation 67B or 67D returns are not made, etc **U.K.****

**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) [<sup>F2</sup>as adjusted by regulation 67H(2) where appropriate,] but
- (b) HMRC are not satisfied, after seeking the employer's explanation, that the amount due under regulation 67G [<sup>F3</sup>, 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 [<sup>F4</sup>, 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

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- (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 [<sup>F5</sup>, 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

- F1** 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**
- F2** 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)**
- F3** 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)**
- F4** 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)**
- F5** 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 [<sup>F6</sup>regulation] 75A: excess payments **U.K.**

**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 [<sup>F7</sup>, 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

- F1** 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**
- F6** 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)**
- F7** 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 **U.K.**

**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 [<sup>F8</sup>: amounts due under regulation 68] **U.K.**

**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.

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(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

**F8** 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 <sup>[F9]</sup>: amounts due under regulation 68] **U.K.**

**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) <sup>[F10]</sup>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) <sup>[F11]</sup>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) <sup>[F12]</sup>HMRC, on consideration of the employer’s record of past payments <sup>[F13]</sup>whether of tax or of combined amounts], may—

- (a) specify, to the best of their judgment, the amount of tax <sup>[F14]</sup>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 <sup>[F15]</sup>or includes] the full amount <sup>[F16]</sup>of tax] the employer is liable to pay, but
- (b) does not satisfy <sup>[F17]</sup>HMRC that this is the case,

the employer may require <sup>[F17]</sup>HMRC to inspect the employer’s PAYE records as if the employer had been required to produce those records <sup>[F18]</sup>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 <sup>[F19]</sup>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 <sup>[F20]</sup>or as including an amount of tax] which the employer was liable to pay for that tax period under regulation 68, and
- (b) <sup>[F21]</sup>HMRC may prepare a certificate showing how much of that <sup>[F22]</sup>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 [<sup>F23</sup>HMRC] that no amount, or no further amount, is due for that tax period.
- (10) Paragraph (11) applies if the employer pays an amount [<sup>F24</sup>of tax, whether separately or as part of a combined amount, which is] certified under this regulation [<sup>F25</sup>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 [<sup>F26</sup>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

- F9** 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**
- F10** 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)**
- F11** 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)**
- F12** 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)**
- F13** 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)**
- F14** 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)**
- F15** 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)**
- F16** 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)**
- F17** 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)**
- F18** 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)**
- F19** 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)**
- F20** 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)**
- F21** 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)**
- F22** 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)**
- F23** 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)**

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- F24** 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)**
- F25** 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)**
- F26** 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 **U.K.**

**79.**—(1) This regulation applies if there is an inspection of an employer’s PAYE records under [F27]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

- F27** 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 **U.K.**

**80.**—(1) This regulation applies if it appears to [F28]HMRC] that there may be tax payable for a tax year under regulation [F29]67G [F30], as adjusted by regulation 67H(2) where appropriate,] or] 68 by an employer which has neither been—

- (a) paid to [F28]HMRC], nor
- (b) certified by [F28]HMRC] under regulation [F31]75A,] 76, 77, 78 or 79.

[F32](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) [F33]HMRC] 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.

[F34](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 [F35]67G [F36], 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 [<sup>F37</sup>, 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**

- F28** 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)**
- F29** 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)**
- F30** 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**
- F31** 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)**
- F32** 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)**
- F33** 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)**
- F34** 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)**
- F35** 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)**
- F36** 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**
- F37** 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** **U.K.**

**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.

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(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>F38</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 [<sup>F39</sup>section 101 of the Finance Act 2009].

(7) .....

**Textual Amendments**

**F38** 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

**F39** 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)**

[<sup>F40</sup>**Employee’s appeal against direction notice** **U.K.**

**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) [<sup>F41</sup>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**

**F40** Reg. 81A inserted (12.4.2004) by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2004 \(S.I. 2004/851\)](#), regs. 1, 6

**F41** 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)**



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