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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 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).

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**Commencement Information**

**II** [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)—

*Status: Point in time view as at 12/04/2004.**Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, Cross Heading: Payment and recovery of tax by employer. (See end of Document for details)*

- (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 the Social Security (Contributions) Regulations 2001)(1) paid at the same time.

**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.
- (2) “The average monthly amount” is the average, for tax months falling within the current tax year, of the amounts found by the formula—
- $$\frac{(P + N - L + S)}{(C - SP + CD)}$$
- (3) In paragraph (2)—
- P is the amount which would be payable to the Inland Revenue under regulation 68 disregarding any WTC adjustment;
- 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); and
  - (b) any WTC adjustment;
- 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, and
  - (b) any WTC adjustment;
- 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-

(1) S.I.2001/1004.

(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.

contractors) and regulation 8 of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993(4), disregarding any WTC adjustment;

C is the amount which the employer would be required to pay to employees by way of tax credit under the WTC Regulations;

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(5) or, in Northern Ireland, the Social Security Contribution and Benefits (Northern Ireland) Act 1992(6);

“SSC Regulations” means the Social Security (Contributions) Regulations 2001(7);

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

“WTC adjustment” means an adjustment to the amount in question under regulation 7(2) of the WTC Regulations (funding of payment of working tax credit);

“WTC Regulations” means the Working Tax Credit (Payment by Employers) Regulations 2002(10).

#### **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.

(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.

(10) S.I. 2002/2172.

*Status: Point in time view as at 12/04/2004.*

*Changes to legislation: There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, Cross Heading: Payment and recovery of tax by employer. (See end of Document for details)*

- (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

**14** 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—

- (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>F1</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>F2</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(11).

(11) 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).

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#### Textual Amendments

- F1** 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\(2\)](#)
- F2** [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](#)

### [<sup>F3</sup>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

- F3** 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—
- (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

**F3** 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

**F3** 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.

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(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**

**F3** 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



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