

## STATUTORY INSTRUMENTS

# 2003 No. 2682

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

### PART 4

#### PAYMENTS, RETURNS AND INFORMATION

##### [<sup>F1</sup>CHAPTER 3B

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

#### Textual Amendments

**F1** Pt. 4 Ch. 3B inserted (with effect in accordance with s. 14(7) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 14\(4\)\(5\)](#)

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

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

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

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

- (a) the company is an employment intermediary,
- (b) on the basis that section 339A of ITEPA does not apply by virtue of subsection (3) of that section the company has not deducted and paid the amount, but
- (c) the company has not been provided by any other person with evidence from which it would be reasonable in all the circumstances to conclude that subsection (3) of that section applied (and the mere assertion by a person that the manner in which the worker provided the services was not subject to (or to the right of) supervision, direction or control by any person is not such evidence).

(4) An amount within this paragraph is an amount that the company is to deduct and pay in accordance with these Regulations by virtue of section 339A of ITEPA in a case where subsection (4) of that section applies (services provided under arrangements made by intermediaries).

(5) An amount within this paragraph is any interest or penalty in respect of an amount within any of paragraphs (2) to (4) for which the company is liable.

(6) In this Chapter “the relevant date” in relation to a relevant PAYE debt means the date on which the first payment is due on which PAYE is not accounted for.

### **Interpretation of Chapter 3B: general**

**97ZH** In this Chapter—

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

### **Liability of directors for relevant PAYE debts**

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

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

- (a) specifying the amount of relevant PAYE debt in relation to which this regulation applies (“the specified amount”), and
- (b) requiring the director to pay to HMRC—
  - (i) the specified amount, and
  - (ii) specified interest on that amount.

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

- (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 86 of TMA, and
- (b) is to run from the date the notice is served.

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

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

### **Appeals in relation to personal liability notices**

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

(2) A notice of appeal must—

- (a) be given to HMRC within 30 days beginning with the day the personal liability notice is served, and
- (b) specify the grounds of the appeal.

(3) The grounds of appeal are —

- (a) that all or part of the specified amount does not represent an amount of relevant PAYE debt, of the company, to which regulation 97ZI applies, or
- (b) that the person was not a director of the company on the relevant date.

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

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

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

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

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

### **Withdrawal of personal liability notices**

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

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

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

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

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

- (a) the personal liability notice were an assessment, and
- (b) the specified amount, and any interest on that amount under regulation 97ZI(2)(b)(ii), were income tax charged on the director upon whom the notice is served,

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

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

### **Repayment of surplus amounts**

**97ZM.**—(1) This regulation applies if—

- (a) one or more personal liability notices are served in respect of an amount of relevant PAYE debt of a company, and
- (b) the amounts paid to HMRC (whether by directors upon whom notices are served or the company) exceed the aggregate of the specified amount and any interest on it under regulation 97ZI(2)(b)(ii).

(2) HMRC is to repay the difference on a just and equitable basis and without unreasonable delay.

(3) HMRC is to pay interest on any sum repaid.

(4) The interest—

- (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA, and
- (b) is to run from the date the amounts paid to HMRC come to exceed the aggregate mentioned in subsection (1)(b).]

**Changes to legislation:**

There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, CHAPTER 3B.