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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**

*Failure to account for deductible tax*

**Notice and certificate if tax may be unpaid [<sup>F1</sup>: amounts due under regulation 68]**

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

(2) Condition A is that—

- (a) an employer has not paid any tax under regulation 68 for that tax period, and
- (b) [<sup>F2</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>F3</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>F4</sup>HMRC], on consideration of the employer's record of past payments [<sup>F5</sup>whether of tax or of combined amounts], may—

- (a) specify, to the best of their judgment, the amount of tax [<sup>F6</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>F7</sup>or includes] the full amount [<sup>F8</sup>of tax] the employer is liable to pay, but
- (b) does not satisfy [<sup>F9</sup>HMRC] that this is the case,

the employer may require [<sup>F9</sup>HMRC] to inspect the employer's PAYE records as if the employer had been required to produce those records [<sup>F10</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 [F11HMRC] 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 [F12or as including an amount of tax] which the employer was liable to pay for that tax period under regulation 68, and
  - (b) [F13HMRC] may prepare a certificate showing how much of that [F14amount] 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 [F15HMRC] that no amount, or no further amount, is due for that tax period.
- (10) Paragraph (11) applies if the employer pays an amount [F16of tax, whether separately or as part of a combined amount, which is] certified under this regulation [F17and] 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 [F18tax] 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

- F1** 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**
- F2** 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)**
- F3** 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)**
- F4** 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)**
- F5** 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)**
- F6** 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)**
- F7** 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)**
- F8** 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)**
- F9** 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)**
- F10** 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)**

- F11** 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)**
- F12** 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)**
- F13** 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)**
- F14** 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)**
- F15** 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)**
- F16** 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)**
- F17** 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)**
- F18** 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)**

**Changes to legislation:**

There are currently no known outstanding effects for the The Income Tax (Pay As You Earn) Regulations 2003, Section 78.