STATUTORY INSTRUMENTS

2012 No. 822

The Income Tax (Pay As You Earn) (Amendment) Regulations 2012

PART 2

Real Time Information

CHAPTER 1

Amendments to the 2003 Regulations

Interpretation

3. In regulation 2(1) (interpretation), insert in the appropriate places—

""non-Real Time Information employer" means an employer other than one within regulation 2A;";

""non-Real Time Information pension payer" means a pension payer other than one within regulation 2B;";

""Real Time Information employer" has the meaning given in regulation 2A;";

""Real Time Information pension payer" has the meaning given in regulation 2B;".

4. After regulation 2 insert—

"**Real Time Information employers**

2A.—(1) The following are Real Time Information employers—

(a) an employer who has entered into an agreement with HMRC to comply with the provisions of these Regulations which are expressed as relating to Real Time Information employers,

(b) an employer within paragraph (2),

(c) on and after 6th April 2013, employers to whom regulation 67D (exceptions to regulation 67B) applies, and

(d) on and after 6th October 2013, all employers.

(2) An employer is within this paragraph if the employer has been given a general or specific direction by the Commissioners for Her Majesty's Revenue and Customs before 6th October 2013 to deliver to HMRC returns under regulation 67B (real time returns of information about relevant payments).

Real Time Information pension payers

2B.—(1) The following are Real Time Information pension payers—

(a) a pension payer who has entered into an agreement with HMRC to comply with
the provisions of these Regulations which are expressed as relating to Real Time
Information pension payers or Real Time Information employers,

(b) a pension payer within paragraph (2),

(c) on and after 6th April 2013, pension payers to whom regulation 67D (exceptions
to regulation 67B) applies, and

(c) on and after 6th October 2013, all pension payers.

(2) A pension payer is within this paragraph if the pension payer has been given a general
or specific direction by the Commissioners for Her Majesty's Revenue and Customs before
6th October 2013 to deliver to HMRC returns under regulation 67B (real time returns of
information about relevant payments).".

Application of the 2003 Regulations to pension payers and pensioners

5. In the list in regulation 11(2) (application to pension payers and pensioners), in the entry
relating to regulation 71, for "regulation 68" substitute "regulations 67G and 68".

Cessation of employment: Form P45

6. In regulation 36 (cessation of employment: Form P45)—

(a) in paragraph (2)(a), after "Revenue" insert "if the employer is one to whom paragraph (2A)
applies", and

(b) after paragraph (2) insert—

"(2A) This paragraph applies to—

(a) non-Real Time Information employers, and

(b) Real Time Information employers to whom HMRC has given a notice requiring
the employer to send to HMRC Form P45 or Form P46 on the commencement
of a new employee's employment.".

Death of employee

7. In regulation 38(1) (death of employee), before paragraph (1) insert—

"(A1) This regulation applies to—

(a) non-Real Time Information employers, and

(b) Real Time Information employers to whom HMRC has given a notice requiring
the employer to send to HMRC Form P45 or Form P46 on the commencement
of a new employee's employment.".

Death of pensioner

8. In regulation 39(1) (death of pensioner), before paragraph (1) insert—

"(A1) This regulation applies to—

(a) non-Real Time Information pension payers, and

(b) Real Time Information pension payers to whom HMRC has given a notice
requiring the pension payer to send to HMRC Form P45 or Form P46(Pen) on the
commencement of a new pensioner's pension.".

Employee's duty to provide Form P45

9. In regulation 40 (employee's duty to provide Form P45)—

(a) in paragraph (3), for "But paragraph (4) applies" substitute "But paragraphs (4) and (6) apply",

(b) in paragraph (4), for "The" substitute "If the employer is a non-Real Time Information employer or a Real Time Information employer to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee's employment, the", and

(c) after paragraph (5) insert—

"(6) If the employer is a Real Time Information employer, the employee need not comply with paragraphs (1) and (2).".

Duty of employee to assist with completion of new employee fields

10. After regulation 40 and before the heading "Chapter 2" insert—

"**Duty of employee to assist with completion of new employee fields in returns under regulations 67B and 67D**

40A.—(1) An employee who commences employment with a Real Time Information employer must provide the information required to allow the employer to complete the new employee fields in the first return required by regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) which includes information in respect of the employee.

(2) The employer must verify the information given under paragraph (1) before making that return.

(3) In this regulation, "the new employee fields" means the information required under paragraphs 36 to 44 of Schedule A1.".

Procedure if employer receives Form P45

11. After regulation 42(6) (procedure if employer receives Form P45) insert—

"(6A) Paragraphs (7) and (8) apply if the employer is either—

(a) a non-Real Time Information employer, or

(b) a Real Time Information employer to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee's employment.".

Procedure where information missing and code not known: employers

12. After regulation 45 (other Forms P45) insert—

"**Application of regulations 46 to 49E: Real Time Information employers and non-Real Time Information employers**

45A.—(1) Regulations 46 to 49 (procedure where no Form P45) apply in relation to—

(a) non-Real Time Information employers, and

(b) Real Time Information employers to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee's employment.

(2) Regulations 49A to 49E (procedure where employee fails to assist with completion of new employee fields or no Form P45) apply in relation to Real Time Information employers other than those within paragraph (1)(b).".

Form P46 where employer does not receive Form P45 and code not known

13. In regulation 46(7) (Form P46 where employer does not receive Form P45 and code not known), for "51(2)" substitute "51(2)(a)".

14. After regulation 49 insert—

"**Procedure where employee fails to assist with completion of new employee fields in returns under regulations 67B and 67D**

49A.—(1) If, despite the requirements of regulation 40A(1) and (2) (duty of employee to assist with completion of new employee fields in returns under regulations 67B and 67D) and regulations 67B (real time returns of information about relevant payments) and 67D (exceptions to regulation 67B), a return is sent to HMRC under those regulations without the new employee fields being completed in respect of the employee, the employer must deduct tax on the non-cumulative basis using code 0T.

(2) In paragraph (1), "the new employee fields" has the same meaning as in regulation 40A.

Procedure where no Form P45 and code not known: application of regulations 49C to 49E

49B.—(1) Regulations 49C to 49E (procedure where no Form P45) apply if—

(a) regulation 49A does not apply,

(b) an employee commences employment without giving the employer Parts 2 and 3 of Form P45 and the circumstances mentioned in regulation 51(2)(b) (late presentation of Form P45) do not apply, and

(c) a code in respect of the employee has not otherwise been issued to the employer.

(2) For the purposes of paragraph (1)(c), the employer must ignore any code issued to the employer in respect of an employee's earlier employment which has ceased.

Procedure where no Form P45 and: (a) employee is not a seconded expatriate and paragraph 41(a) of Schedule A1 applies; or (b) seconded expatriate is national of EEA state

49C.—(1) This regulation applies where—

(a) the employee is not a seconded expatriate and has indicated in accordance with regulation 40A(1) (duty of employee to assist with completion of new employee fields in returns under regulations 67B and 67D) that the statement in paragraph 41(a) of Schedule A1 (real time returns) is correct, or

(b) the employee is a seconded expatriate and has confirmed in accordance with regulation 40A(1) being a national of an EEA state.

(2) On making the first relevant payment which equals or exceeds the lower earnings limit to the employee, the employer must—

(a) prepare a deductions working sheet and enter the total payments to date, and

(b) deduct tax on the cumulative basis using the emergency code.

(3) On making any subsequent relevant payment before HMRC issue a code for use in respect of the employee, the employer must continue to deduct or repay tax on the cumulative basis using the emergency code.

Procedure where no Form P45 and: (a) employee is not a seconded expatriate and paragraph 41(b) of Schedule A1 applies; or (b) employee is a seconded expatriate and paragraph 43(b) or 43(c) of Schedule A1 applies

49D.—(1) This regulation applies where—

(a) the employee is not a seconded expatriate and has indicated in accordance with regulation 40A(1) that the statement in paragraph 41(b) of Schedule A1 is correct, or

(b) the employee is a seconded expatriate to whom regulation 49C does not apply and has indicated in accordance with regulation 40A(1) that the statement in paragraph 43(b) or 43(c) of Schedule A1 is correct.

(2) On making the first relevant payment which equals or exceeds the lower earnings limit to the employee, the employer must—

(a) prepare a deductions working sheet and enter the total payments to date, and

(b) deduct tax on the non-cumulative basis using the emergency code.

(3) On making any subsequent relevant payment before the employee's code is issued, the employer must continue to deduct or repay tax on the non-cumulative basis using the emergency code.

Procedure where no Form P45 and: (a) employee is a not seconded expatriate and paragraph 41(c) of Schedule A1 applies; or (b) employee is a seconded expatriate and paragraph 43(a) of Schedule A1 applies

49E.—(1) This regulation applies in any case which is not dealt with by regulation 49C or 49D.

(2) On making the first relevant payment to the employee, the employer must—

(a) prepare a deductions working sheet and enter both the total payments to date and the total tax to date before the first payment as nil,

(b) deduct tax on the cumulative basis using the basic rate code.

(3) On making any subsequent relevant payment before the employee's code is issued, the employer must continue to deduct tax on the cumulative basis using the basic rate code.

(4) In the case of a seconded expatriate, the emergency code must be used instead of the basic rate code mentioned in paragraphs (2)(b) and (3).".

No Form P45: code treated as issued by HMRC

15. For the heading to regulation 50 (procedure in Form P46 cases: code treated as issued by HMRC) substitute "No Form P45: code treated as issued by HMRC".

16. In regulation 50—

(a) for "The" substitute "Code 0T, the",

(b) for "47" substitute "46"

(c) for "49", in both places, substitute "49E", and

(d) omit "Form P46 procedure and".

Procedure in cases of retrospective earnings: code treated as issued by HMRC

17. In regulation 50A(3) (procedure in cases of retrospective earnings: code treated as issued by HMRC), for "49" substitute "49E".

Late presentation of Form P45

18. In regulation 51 (late presentation of Form P45)—

(a) for paragraph (2) substitute—

"(2) If the employee gives Parts 2 and 3 of Form P45 to the employer before, as the case may be—

(a) the employer is required to send Form P46 to HMRC under regulations 47 to 49, or

(b) the employer is required to send the first return in relation to the employee under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) to HMRC,

regulation 42 (procedure if employer receives Form P45) applies.", and

(b) for paragraph (3)(a) substitute—

"(a)   after, as the case may be—

(i) Form P46 is required to have been sent to HMRC, or

(ii) the employer is required to send the first return in relation to the employee under regulation 67B or 67D to HMRC,

but".

Late presentation of Form P45: employer's duties

19. After regulation 52(1) (late presentation of Form P45: employer's duties) insert—

"(1A) Paragraphs (2) and (3) apply if the employer is either—

(a) a non-Real Time Information employer, or

(b) a Real Time Information employer to whom HMRC has given a notice requiring the employer to send to HMRC Form P45 or Form P46 on the commencement of a new employee's employment.".

No Form P45: subsequent procedure on issue of employee's code

20. For the heading to regulation 53 (Form P46 cases: subsequent procedure on issue of employee's code) substitute "No Form P45: subsequent procedure on issue of employee's code".

21. In regulation 53—

(a) in paragraph (1), for "49 (procedure in Form P46 cases)" substitute "49E (procedure where no Form P45)", and

(b) in paragraph (2)(b)(ii), for "or 49" substitute ", 49, 49C, 49D or 49E".

Application of Chapter 3 of Part 3 of the 2003 Regulations to Real Time Information pension payers

22. After regulation 54 (scope of Chapter 3 of Part 3) insert—

> "**Application of this Chapter to Real Time Information pension payers**
>
> **54ZA.**—(1) Any requirement in this Chapter to complete (howsoever expressed) and send to HMRC Part 3 of Form P45 or Form P46(Pen) applies only to—
>
> > (a) non-Real Time Information pension payers, and
> >
> > (b) Real Time Information pension payers to whom HMRC has given a notice requiring the pension payer to send to HMRC Form P45 or Form P46(Pen) on the commencement of a new pensioner's pension.
>
> (2) Paragraph (1) is without prejudice to the requirement in regulation 55(3)(b) (PAYE pension income paid by former employer) to complete and give Form P46(Pen) to the pensioner.".

Procedure in regulation 54A cases: code treated as issued by HMRC

23. For the heading to regulation 54B (procedure in Form P46(Pen) cases: code treated as issued by HMRC) substitute "Procedure in regulation 54A cases: code treated as issued by HMRC".

24. In regulation 54B(2), omit "Form P46(Pen)) procedure,".

Procedure if no Form P45 and code not known: UK pensioners

25. For the heading to regulation 58 (information (Form P46(Pen)) and procedure if code not known: UK residents) substitute "Procedure if no Form P45 and code not known: UK pensioners".

UK resident pensioner's code treated as issued by HMRC

26. In regulation 59(2) (UK resident pensioner's code treated as issued by HMRC), omit "Form P46(Pen) procedure,".

Real time returns, payments and associated matters

27. In Chapter 1 of Part 4—

> (a) omit the cross heading "Payment and recovery of tax by employer" which appears before regulation 68, and
>
> (b) before regulation 68 insert—

> *"Real time returns*
>
> **Real time returns of information about relevant payments**
>
> **67B.**—(1) On or before making a relevant payment to an employee, a Real Time Information employer must deliver to HMRC the information specified in Schedule A1 in accordance with this regulation unless the employer is not required by regulation 66 (deductions working sheets) to maintain a deductions working sheet for any employees.
>
> (2) The information must be included in a return.

(3) Subject to paragraph (4), if relevant payments are made to more than one employee at the same time, the return under paragraph (2) must include the information required by Schedule A1 in respect of each employee to whom a relevant payment is made at that time.

(4) If relevant payments are made to more than one employee at the same time but the employer operates more than one payroll, the employer must make a return in respect of each payroll.

(5) The return is to be made using an approved method of electronic communications.

(6) Section 98A of TMA (special penalties in case of certain returns) applies to returns within paragraph (7).

(7) A return is within this paragraph if it is one of the following—

(a) a return under this regulation which relates to the relevant payments made on the final normal pay day in the tax year 2012-13 for any of the employees in respect of whom information is included in the return, or

(b) a return under this regulation which contains information about the final relevant payment made to any employee in the tax year 2012-13 where—

(i) the relevant payment is made after the employee's final normal pay day in the tax year, or

(ii) the employee is paid at irregular intervals.

Modification of the requirements of regulation 67B: notional payments

67C.—(1) This regulation applies if an employer makes a relevant payment which is a notional payment (including a notional payment arising by virtue of a retrospective tax provision) to an employee.

(2) If the employer is unable to comply with the requirement in regulation 67B(1) to deliver the information required by that regulation on or before making the relevant payment, the employer must instead deliver the information as soon as reasonably practicable after the payment is made and in any event no later than—

(a) the time at which the employer deducts tax in respect of the relevant payment in accordance with regulation 62 (deductions in respect of notional payments), or

(b) 14 days after the end of the tax month the payment is made in,

whichever is the earliest.

Exceptions to regulation 67B

67D.—(1) This regulation applies to—

(a) an individual who is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications,

(b) a partnership, if all the partners fall within sub-paragraph (a),

(c) a company, if all the directors and the company secretary fall within sub-paragraph (a), and

(d) a care and support employer.

(2) A Real Time Information employer to whom this regulation applies may proceed in accordance this regulation instead of regulation 67B.

(3) A Real Time Information employer must deliver to HMRC the information specified in Schedule A1 in respect of each employee to whom relevant payments are made in a tax month unless the employer is not required by regulation 66 (deductions working

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sheets) to maintain a deductions working sheet for any employees and, for the purposes
of this regulation, references in Schedule A1 to a relevant payment shall be read as if they
were references to all the relevant payments made to the employee in the tax month.

(4) The information must be included in a return.

(5) The return required under paragraph (4) must be delivered within 14 days after the
end of the tax month the return relates to.

(6) If relevant payments have been made to more than one employee in the tax month,
the return under paragraph (4) must include the information required by Schedule A1 in
respect of each employee to whom a relevant payment has been made.

(7) Section 98A of TMA (special penalties in case of certain returns) applies to returns
within paragraph (8).

(8) A return is within this paragraph if it is one of the following—

(a) a return under this regulation which contains information about the relevant
payments made on the final normal pay day in the tax year 2012-13 for any of
the employees in respect of whom information is included in the return, or

(b) a return under this regulation which contains information about the final relevant
payment made to any employee in the tax year 2012-13 where—

(i) the relevant payment is made after the employee's final normal pay day
in the tax year, or

(ii) the employee is paid at irregular intervals.

(9) In paragraph (1)(c), "company" means a body corporate or unincorporated
association but does not include a partnership.

(10) In paragraph (1)(d), "a care and support employer" means an individual ("the
employer") who employs a person to provide domestic or personal services at or from the
employer's home where—

(a) the services are provided to the employer or a member of the employer's family,

(b) the recipient of the services has a physical or mental disability, or is elderly or
infirm, and

(c) it is the employer who delivers the return (and not some other person on the
employer's behalf).

Returns under regulations 67B and 67D: amendments

67E.—(1) This regulation applies where an employer discovers an error in a return
made under regulation 67B (real time returns of information about relevant payments) or
67D (exceptions to regulation 67B) and paragraph (2), (3) or (4) applies.

(2) This paragraph applies where the error relates to the information given in the return
in respect of an employee under paragraph 16 or 17 of Schedule A1 (real time returns).

(3) This paragraph applies where the error was the omission of details of a relevant
payment to an employee.

(4) This paragraph applies where the error arises because, as a result of a retrospective
tax provision, the total amount of the relevant payments made by an employer to an
employee increases for any tax year in which the employer was a Real Time Information
employer.

(5) The employer must provide the correct information in the first return made after
the discovery of the error under regulation 67B or 67D for the tax year in question.

(6) But if the information has not been corrected before 20th April following the end of the tax year in question, the employer must make a return under this paragraph.

(7) A return under paragraph (6)—

    (a) must include the following—

        (i) the information specified in paragraphs 2 to 4, 8 to 13 and 15 of Schedule A1,

        (ii) the tax year to which the return relates,

        (iii) the value of the adjustment to the information given under paragraphs 16 or 17 of Schedule A1 in the final return under regulation 67B or 67D containing information in respect of the employee in the tax year in question,

        (iv) in any case where information given under paragraph 17 of Schedule A1 is corrected, the tax code operated in arriving at the value of the correction, and

        (v) if paragraph (8) applies, the information specified in paragraphs 36 to 44 of Schedule A1,

    (b) must be made as soon as reasonably practicable after the discovery of the error, and

    (c) must be made by an approved method of electronic communications.

(8) This paragraph applies if—

    (a) the error is within paragraph (3),

    (b) the relevant payment was the first relevant payment to the employee in the employment, and

    (c) the information specified in paragraphs 36 to 44 of Schedule A1 has not otherwise been provided.

(9) In the application of paragraphs (6) and (7) to cases within paragraph (3), if no information was given in any returns under regulation 67B or 67D in respect of the employee in the tax year, the value of the adjustments required must be calculated as if there was a final return containing information for the employee in the year and the figure requiring adjustment was zero.

(10) Paragraph (7)(c) does not apply if the employer is one to whom regulation 67D applies.

Additional information about payments

67F.—(1) A Real Time Information employer may send to HMRC a notification if—

    (a) for a tax period, the employer was not required to make any returns in accordance with regulation 67B or 67D because no relevant payments were made during the tax period, or

    (b) the employer has sent the final return under regulation 67B or 67D that the employer expects to make—

        (i) in the circumstances described in paragraph 5 of Schedule A1 (real time returns), or

        (ii) for the tax year.

(2) A notification under paragraph (1)(b) must—

    (a) include the information specified in paragraph 7 of Schedule A1,

(b) be sent within 14 days of the end of final tax period of the tax year.

(3) A notification under this regulation must—

(a) state—

(i) the tax year to which it relates,

(ii) the employer's HMRC office number,

(iii) the employer's PAYE reference, and

(iv) the employer's accounts office reference, and

(b) be sent using an approved method of electronic communications unless the employer is one to whom regulation 67D applies.

Payment and recovery of tax by employer

Payments to and recoveries from HMRC for each tax period by Real Time Information employers

67G.—(1) For each tax period, a Real Time Information employer must pay to, or may recover from, HMRC the amount arrived at under the formula in paragraph (4).

(2) If the amount arrived at under the formula in paragraph (4) is a positive amount, the employer must pay the excess to HMRC.

(3) If the amount arrived at under the formula in paragraph (4) is a negative amount, the employer may recover that amount either—

(a) by deducting it from the amount which the employer is liable to pay under paragraph (2) for a later period in the tax year, or

(b) from the Commissioners for Her Majesty's Revenue and Customs.

(4) The formula in this paragraph is $A - B$, where—

A is the sum total of the relevant amounts for each of the employer's employees, and

B is amount A for the previous tax period in the tax year, if any.

(5) For the purposes of paragraph (4), a "relevant amount" is the amount shown under paragraph 17 of Schedule A1 (real time returns) for an employee in the most recent return made in the tax year by the employer under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) which contains information about that employee.

(6) In paragraph (5) "the most recent return" means the return which, as at the end of the tax period, contains the most up to date information under paragraph 17 of Schedule A1 about the employee.

(7) This regulation is subject to regulations 67H (payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under regulation 67E(6)), 71 (modification of regulations 67G and 68 in case of trade dispute) and 75B (certificates under regulation 75A: excess payments).

Payments to and recoveries from HMRC for each tax period by Real Time Information employers: returns under regulation 67E(6)

67H.—(1) This regulation applies if, during any tax period, an employer makes a return under regulation 67E(6) (returns under regulations 67B and 67D: amendments) other than by virtue of regulation 67E(4).

(2) The amount arrived at by the employer under regulation 67G for the final tax period of the tax year covered by the return is to be adjusted to take account of the information in the return.

(3) If the value of the adjustment required by paragraph (2) is a negative amount, the employer may recover that amount—

(a) by setting it off against the amount the employer is liable to pay under regulation 67G for the tax period the return was made in, or

(b) from the Commissioners for Her Majesty's Revenue and Customs.".

28. For the heading to regulation 68 (periodic payments to and recoveries from HMRC), substitute "Periodic payments to and recoveries from HMRC: non-Real Time Information employers".

29. In regulation 68(1), for "an employer" in the first place it appears substitute "a non-Real Time Information employer".

Due date and receipts for payment of tax

30. In regulation 69 (due date and receipts for payment of tax), in both places, before "68(2)" insert "67G(2) or".

Quarterly tax periods

31. In regulation 70(3) (quarterly tax periods), in the definition of "P", before "68" insert "67G or".

Modification of regulations 67G and 68 in case of trade dispute

32. In the heading to regulation 71 (modification of regulation 68 in case of trade dispute), for "regulation 68" substitute "regulations 67G and 68".

33. In regulation 71—

(a) in paragraph (1), for "regulation 68" substitute "regulations 67G and 68",

(b) in paragraph (3)—

(i) before "68(2)", insert "67G(2) or, as the case may be,",

(ii) in the heading to table (3), before "68" insert "67G or", and

(c) in paragraph (4), before "68(3)" insert "67G or, as the case may be,".

Annual returns

34. Before regulation 73 and below the cross heading "Annual returns of relevant payments of tax" insert—

"**Application of regulations 73 to 75**

72H. Regulations 73 to 75 apply to—

(a) non-Real Time Information employers,

(b) Real Time Information employers in relation to tax years in which they were, for the whole of the tax year, non-Real Time Information employers, and

(c) Real Time Information employers to whom HMRC has given a notice requiring a return under regulation 73 in respect of a tax year.".

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Failure to account for deductible tax

35. Before regulation 76 and below the cross heading "Failure to account for deductible tax"
insert—

> **"Power of HMRC to issue a notice and certificate in cases where regulation 67B or
> 67D returns are not made, etc**
>
> **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), but
>
> (b) HMRC are not satisfied, after seeking the employer's explanation, that the amount
> due under regulation 67G 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.
>
> (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
>
> (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(**1**) (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, 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.

Certificates under regulations 75A: excess payments

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 for any subsequent tax period or, if the tax year in question has ended, the excess of tax paid may be repaid.".

36. In the heading to regulation 77 (return and certificate if tax may be unpaid), after "unpaid" insert ": amounts due under regulation 68".

37. In the heading to regulation 78 (notice and certificate if tax may be unpaid), after "unpaid" insert ": amounts due under regulation 68".

Determination of unpaid tax and appeal against determination

38. In regulation 80 (determination of unpaid tax and appeal against determination)—

(a) in paragraph (1)—

(i) before "68" insert "67G or", and

(ii) before "76," insert "75A,",

(b) after paragraph (1) insert—

"(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).", and

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(**1**) 2008 c.9. Schedule 36 was amended by Schedules 47 and 48 to the Finance Act 2009, Schedules 23 and 24 to the Finance Act 2011 and S.I. 2009/56 and 2009/3054. It has been prospectively amended by Schedule 6 to the Finance Act 2010 (c.13).

 (c) in paragraph (4), before "68" insert "67G or".

Interest on tax overdue

 39. In regulation 82(6) (interest on tax overdue)—

  (a) in sub-paragraph (a), before "68" insert "67G or", and

  (b) in sub-paragraph (b), before "68(3)(b)" insert "67G(3)(b) or".

Recovery of tax and interest

 40. In regulation 84 (recovery of tax and interest)—

  (a) in paragraph (1)(a) before "76(2)" insert "75A(10),", and

  (b) in Table 4 in paragraph (3), before "77(6)" insert "75A(10),".

Retention by employer of PAYE records

 41. In regulation 97(3)(a) (retention by employer of PAYE records), after "46)" insert ", information provided under regulation 40A(1) (duty of employee to assist with completion of new employee fields in returns under regulations 67B and 67D)".

Relevant debts of managed service companies

 42. In regulation 97B (debts of managed service companies), after paragraph (2) insert—

  "(2A) Condition A2 is met if—

   (a) HMRC serve a notice on an employer under regulation 75A(5) (power of HMRC to issue a notice and certificate in cases where regulation 67B or 67D returns are not made, etc) requiring payment of the amount of tax they consider the employer is liable to pay, and

   (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.".

Time limits for issue of transfer notices: managed service companies

 43. In regulation 97D (time limits for issue of transfer notices), after paragraph (3) insert—

  "(3A) In a case in which condition A2 in regulation 97B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HMRC serve notice to the employer under regulation 75A(5).".

Succession to a business: trade disputes

 44. In regulation 104 (succession to a business: trade disputes)—

  (a) in paragraph (4), before "68(3)(b)" insert "67G(3)(b) (payments to and recoveries from HMRC for each tax period by Real Time Information employers) or, as the case may be,", and

  (b) in paragraph (5), before "68" insert "67G or".

Effect of PAYE settlement agreement

 45. In regulation 107(7)(a) (effect of PSA), before "73" insert "67B, 67D, 67E,".

Electronic payment by large employers: meaning of "large employer"

46. In regulation 198A(2)(b) (large employers), after "employee" insert "or, as the case may
be, has not indicated in a return under regulation 67B or 67D that the employee's employment has
ceased".

Large employers required to make specified payments electronically

47. In regulation 199(2) (large employers required to make specified payments electronically),
for "68 (periodic payments to and recoveries from HMRC)" substitute "67G (payments to and
recoveries from HMRC: Real Time Information employers) or 68 (periodic payments to and
recoveries from HMRC: non-Real Time Information employers)".

Electronic communications

48. In the heading to Chapter 4 of Part 10 (mandatory use of electronic communications), after
"communications" insert ": specified information".

49. After Chapter 4 of Part 10 insert—

"CHAPTER 4A

Mandatory use of electronic communications: real time returns of
information about relevant payments of tax and associated matters

**Application of Chapter 4 to real time returns of information about relevant
payments of tax and associated matters**

210D. Regulation 205(3) applies to the delivery of the following as if they were specified
information within the meaning given by regulation 207—

(a) returns under regulation 67B (real time returns of information about relevant
payments),

(b) returns under regulation 67E(6) (returns under regulation 67B and 67D:
amendments), unless the employer is one to whom regulation 67D (exceptions to
regulation 67B) applies, and

(c) notifications under regulation 67F (additional information about payments)
unless the employer is one to whom regulation 67D applies.".

Certificate that sum due

50. In the list in regulation 218(2) (certificate that sum due), before the entry relating to
regulation 76 insert—

"regulation 75A(10)	unpaid amounts from regulation 75A specification".

Payment by cheque

51. In the list in regulation 219(2) (payment by cheque), after the entry relating to regulation 72
insert—

"regulation 75A	notice and certificate in cases where regulation 67B or 67D returns are not made".

New Schedule: information to be included in returns under regulations 67B and 67D

52. Before Schedule 1 insert Schedule A1 as set out in the Schedule to these Regulations.