
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

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.”

(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).

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*
