
STATUTORY INSTRUMENTS

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

Certificate if tax in regulation 73 return is unpaid

- 76.**—(1) Paragraph (2) applies if an employer—
- (a) delivers a return under regulation 73 showing an amount of total net tax deducted by the employer for a tax year, and
 - (b) does not pay that amount to the Inland Revenue before 20th April following the end of the tax year.
- (2) The Inland Revenue may prepare a certificate showing how much of that amount remains unpaid.
- (3) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Return and certificate if tax may be unpaid

- 77.**—(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) the Inland Revenue are unaware of the amount (if any) which the employer is liable to pay.
- (3) Condition B is that—
- (a) an employer has paid an amount of tax under regulation 68 for that period, but
 - (b) the Inland Revenue are not satisfied that it is the full amount which the employer is liable to pay for that period.
- (4) The Inland Revenue may give notice to the employer requiring the employer within 14 days of the issue of the notice to deliver a return showing the amount of tax which the employer is liable to pay under regulation 68 in respect of the tax 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 one tax period.

(6) On receiving a return made by the employer under paragraph (4), the Inland Revenue may prepare a certificate showing the amount of tax which the employer is liable to pay for the tax period and how much (if any) of that amount remains unpaid.

(7) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Notice and certificate if tax may be unpaid

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) the Inland Revenue 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) the Inland Revenue 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) The Inland Revenue, on consideration of the employer’s record of past payments, may—

- (a) specify, to the best of their judgment, the amount of tax 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 the full amount the employer is liable to pay, but
- (b) does not satisfy the Inland Revenue that this is the case,

the employer may require the Inland Revenue to inspect the employer’s PAYE records as if the employer had been required to produce those records in accordance with regulation 97 (inspection of employer’s PAYE records).

(7) If there is an inspection by virtue of paragraph (6), regulation 97 applies to that inspection and the notice given by the Inland Revenue under paragraph (4) must be disregarded.

(8) If the amount of tax 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 which the employer was liable to pay for that tax period under regulation 68, and
- (b) the Inland Revenue may prepare a certificate showing how much of that tax 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 the Inland Revenue that no amount, or no further amount, is due for that tax period.

(10) Paragraph (11) applies if the employer pays an amount certified under this regulation 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 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.

Certificate after inspection of PAYE records

79.—(1) This regulation applies if there is an inspection of an employer's PAYE records under regulation 97.

(2) The Inland Revenue may, by reference to the information obtained from the inspection, prepare a certificate showing—

- (a) the amount of tax which it appears that the employer is liable to pay for the tax years or tax periods covered by the inspection; and
- (b) any amount of that tax which remains unpaid.

(3) Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.

Determination of unpaid tax and appeal against determination

80.—(1) This regulation applies if it appears to the Inland Revenue that there may be tax payable for a tax year under regulation 68 by an employer which has neither been—

- (a) paid to the Inland Revenue, nor
- (b) certified by the Inland Revenue under regulation 76, 77, 78 or 79.

(2) The Inland Revenue may determine the amount of that tax to the best of their judgment, and serve notice of their determination on the employer.

(3) A determination under this regulation must not include tax in respect of which a direction under regulation 72(5) has been made; and directions under that regulation do not apply to tax determined under this regulation.

(4) A determination under this regulation may—

- (a) cover the tax payable by the employer under regulation 68 for any one or more tax periods in a tax year, and
- (b) extend to the whole of that tax, or to such part of it as is payable in respect of—
 - (i) a class or classes of employees specified in the notice of determination (without naming the individual employees), or
 - (ii) one or more named employees specified in the notice.

(5) A determination under this regulation is subject to Parts 4, 5 (other than section 55) and 6 of TMA (assessment, appeals, collection and recovery) as if—

- (a) the determination were an assessment, and
- (b) the amount of tax determined were income tax charged on the employer,

and those Parts of that Act apply accordingly with any necessary modifications.

(6) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA(1) (rules for assigning proceedings to General Commissioners), the relevant place for an appeal against a determination under this regulation is the place where the determination was made.

Employee liability if tax unpaid after regulation 80 determination

81.—(1) This regulation applies if—

- (a) any part of the tax determined under regulation 80 is not paid within 30 days from the date on which the determination became final and conclusive, and
- (b) condition A or B is met in relation to an employee.

(2) Condition A is that the Inland Revenue are of the opinion that the employee in respect of whose relevant payments the determination was made has received those payments knowing that the employer has wilfully failed to deduct the amount of tax which should have been deducted from those payments.

(3) Condition B is that the unpaid tax represents an amount for which the employer was required to account under regulation 62(5) (notional payments) in relation to a notional payment to the employee.

(4) The Inland Revenue may direct that the employer is not liable to pay the amount of tax which appears to them should have been but was not—

- (a) deducted on making those relevant payments, or
- (b) accounted for under regulation 62(5).

(5) If a direction is made, the amount of tax must not be added under regulation 185(5) or 188(3) (a) (adjustments for self-assessments and other assessments) in relation to the employee.

(6) 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).

(7) 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(2).

(1) Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8) and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

(2) 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).