
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

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.