

2004 No. 851

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment) Regulations
2004**

<i>Made</i> - - - -	<i>19th March 2004</i>
<i>Laid before the House of Commons</i>	<i>22nd March 2004</i>
<i>Coming into force</i> - -	<i>12th April 2004</i>

The Commissioners of Inland Revenue in exercise of the powers conferred upon them by section 684(1) and (2) of the Income Tax (Earnings and Pensions) Act 2003^(a) hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment) Regulations 2004 and shall come into force on 12th April 2004.

Amendment of the Income Tax (Pay As You Earn) Regulations 2003

2. The Income Tax (Pay As You Earn) Regulations 2003^(b) are amended as follows.

3.—(1) Amend regulation 72 as follows.

(2) In paragraph (2) after “In this regulation” insert “and regulations 72A and 72B”.

(3) After regulation (5) insert—

“(5A) Any direction under paragraph (5) must be made by notice (“the direction notice”), stating the date the notice was issued, to—

- (a) the employer and the employee if condition A is met;
- (b) the employee if condition B is met.

(5B) A notice need not be issued to the employee under paragraph (5A)(a) if neither the Inland Revenue nor the employer are aware of the employee’s address or last known address.”.

4. After regulation 72 insert—

“Employer’s request for a direction and appeal against refusal

72A.—(1) In relation to condition A in regulation 72(3), the employer may by notice to the Inland Revenue (“the notice of request”) request that the Inland Revenue make a direction under regulation 72(5).

^(a) 2003 c. 1. Section 684(2) was amended by section 145(1) of the Finance Act 2003 (c. 14).
^(b) S.I. 2003/2682.

- (2) The notice of request must—
 - (a) state—
 - (i) how the employer took reasonable care to comply with these Regulations; and
 - (ii) how the error resulting in the failure to deduct the excess occurred;
 - (b) specify the relevant payments to which the request relates;
 - (c) specify the employee or employees to whom those relevant payments were made; and
 - (d) state the excess in relation to each employee.
- (3) The Inland Revenue may refuse the employer’s request under paragraph (1) by notice to the employer (“the refusal notice”) stating—
 - (a) the grounds for the refusal, and
 - (b) the date on which the refusal notice was issued.
- (4) The employer may appeal against the refusal notice—
 - (a) by notice to the Inland Revenue,
 - (b) within 30 days of the issue of the refusal notice,
 - (c) specifying the grounds of the appeal.
- (5) For the purpose of paragraph (4) the grounds of appeal are that—
 - (a) the employer did take reasonable care to comply with these Regulations, and
 - (b) the failure to deduct the excess was due to an error made in good faith.
- (6) If on appeal under paragraph (4) it appears to the Commissioners that the refusal notice should not have been issued they may direct that the Inland Revenue make a direction under regulation 72(5) in an amount the Commissioners determine is the excess for one or more tax periods falling within the relevant tax year.

Employee’s appeal against a direction notice where condition A is met

- 72B.**—(1) An employee may appeal against a direction notice under regulation 72(5A)(a)—
- (a) by notice to the Inland Revenue,
 - (b) within 30 days of the issue of the direction notice,
 - (c) specifying the grounds of the appeal
- (2) For the purpose of paragraph (1) the grounds of appeal are that—
- (a) the employer did not act in good faith,
 - (b) the employer did not take reasonable care, or
 - (c) the excess is incorrect.
- (3) On an appeal under paragraph (1) the Commissioners may—
- (a) if it appears to them that the direction notice should not have been made, set aside the direction notice; or
 - (b) if it appears to them that the excess specified in the direction notice is incorrect, increase or reduce the excess specified in the notice accordingly.

Employee’s appeal against a direction notice where condition B is met

- 72C.**—(1) An employee may appeal against a direction notice under regulation 72(5A)(b)—
- (a) by notice to the Inland Revenue,
 - (b) within 30 days of the issue of the direction notice,

- (c) specifying the grounds of the appeal.
- (2) For the purpose of paragraph (1) the grounds of appeal are that—
 - (a) the employee did not receive the payments knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments, or
 - (b) the excess is incorrect.
- (3) On an appeal under paragraph (1) the Commissioners may—
 - (a) if it appears to them that the direction notice should not have been made, set aside the direction notice; or
 - (b) if it appears to them that the excess specified in the direction notice is incorrect, increase or reduce the excess specified in the notice accordingly.

Appeals: supplementary provisions

72D.—(1) This regulation applies to appeals under regulations 72A(4), 72B, 72C and 81A.

(2) Subject to paragraph (4), an appeal is to the General Commissioners but the employer or employee as appropriate may elect (in accordance with section 46(1) of TMA(a)) to bring the appeal before the Special Commissioners instead.

(3) Section 31D(2) to (7) of TMA(b) (election to bring appeal before Special Commissioners) has effect in relation to an election under paragraph (2) (as in relation to an election under subsection (1) of that section).

(4) If in respect of the same error by an employer in relation to condition A in regulation 72(3)—

- (a) more than one employee is appealing under regulation 72B; or
- (b) there is an appeal by an employer under regulation 72A(4) and by an employee under regulation 72B

the Commissioners who are to determine the appeals are given in paragraphs (5) to (7).

(5) If—

- (a) the same body of General Commissioners has jurisdiction with respect to all the persons concerned, and
- (b) none of those persons has elected in accordance with section 46(1) of TMA to bring the appeal before the Special Commissioners

the appeals are to be determined by that body of General Commissioners.

(6) If—

- (a) different bodies of General Commissioners have jurisdiction with respect to the persons concerned, and
- (b) none of those persons has elected in accordance with section 46(1) of TMA to bring the appeal before the Special Commissioners

the appeals are to be determined by such of those bodies as the Board of Inland Revenue determine.

(7) In any other case, the appeals are to be determined by the Special Commissioners.

(8) Where paragraph (4) applies or the appeal is material to the liability to tax of the employer and the employee, all the persons concerned are entitled—

(a) 1970 c. 9. In these Regulations “TMA” means the Taxes Management Act. Section 46(1) was amended by paragraph 2 of Schedule 7 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and paragraph 1 of Schedule 6 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order (S.I. 1999/671).

(b) Section 31D(2) to (7) were inserted by section 88 of and paragraph 11 of Schedule 29 to the Finance Act 2001(c. 9).

- (a) to appear before and be heard by the Commissioners, or
- (b) to make representations in writing

(9) On hearing an appeal the General Commissioners or the Special Commissioners may allow the employer or employee as appropriate to put forward grounds not specified in the notice, and take them into consideration, if satisfied that the omission was not wilful or unreasonable.”.

5. In regulation 81 after paragraph (4) insert—

“(4A) If condition A or B is met, any direction under paragraph (4) must be made by notice (“the direction notice”) to the employee stating the date the notice was issued.”.

6. After regulation 81 insert—

“Employee’s appeal against direction notice

81A.—(1) An employee may appeal against a direction notice under regulation 81(4A)—

- (a) by notice to the Inland Revenue,
- (b) within 30 days of the issue of the direction notice,
- (c) specifying the grounds of the appeal.

(2) For the purpose of paragraph (1) the grounds of appeal are that—

- (a) in relation to condition A in regulation 81, the employee did not receive the payments knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments,
- (b) in relation to condition B in regulation 81, the relevant payment was not a notional payment, or
- (c) the excess is incorrect.

(3) On an appeal under paragraph (1) the Commissioners may—

- (a) if it appears to them that the direction notice should not have been made, set aside the notice; or
- (b) if it appears to them that the amount of tax specified in the direction notice is incorrect, increase or reduce the amount specified in the notice accordingly.

(4) Regulation 72D applies to appeals under this regulation.”.

19th March 2004

Nick Montagu
Dave Hartnett
Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (“the PAYE Regulations”) to provide a right of appeal against directions made under regulations 72 and 81 of those Regulations in relation to an amount of tax that an employer was required to deduct under the PAYE Regulations from a payment to an employee but failed to deduct.

Regulation 1 provides for citation and commencement and regulation 2 introduces the amendments to the PAYE Regulations.

Regulation 3 amends regulation 72 to extend the term definition of the “excess” to the new regulations and provide for a notice where a direction is made (“the direction notice”).

Regulation 4 inserts new regulations 72A, 72B, 72C and 72D.

New regulation 72A makes provision for an employer to request the Inland Revenue make a direction where the employer considers an error was made in good faith despite taking reasonable care to comply with the PAYE Regulations and for the employer to appeal if the Inland Revenue refuse to make a direction.

New regulations 72B and 72C makes provision for an employee to appeal against a direction notice.

New Regulation 72D makes supplementary appeals provisions.

Regulation 5 amends regulation 81 of the PAYE Regulations to provide that a direction made where tax has been determined under regulation 80 and the employee is considered to have received payment knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted, or the unpaid tax represents an amount in relation to a notional payment, must be made by notice served on the employee (“the direction notice”).

Regulation 6 inserts new regulation 81A which makes provision for an employee to appeal against a direction notice under regulation 81(4A).

These Regulations do not impose any new costs on business.

STATUTORY INSTRUMENTS

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