Finance Act 2014

2014 CHAPTER 26

PART 1

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 2

INCOME TAX: GENERAL

Other provisions

17 Recovery under PAYE regulations from certain company officers

(1) In Part 4 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (payments, returns and information), after Chapter 3 (PAYE records) insert—

"**CHAPTER 3A**

CERTAIN DEBTS OF COMPANIES UNDER CHAPTER 7 OF PART 2 OF ITEPA (AGENCIES)

97ZA **Interpretation of Chapter 3A**

In this Chapter—

"company" includes a limited liability partnership;

"HMRC" means Her Majesty's Revenue and Customs;

"director" has the meaning given by section 67 of ITEPA;

"personal liability notice" has the meaning given by regulation 97ZB(2);

"relevant PAYE debt", in relation to a company, means—

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(a) any amount that the company is to deduct, or account for, in accordance with these Regulations by virtue of—
  (i) section 44(4) to (6) of ITEPA (persons providing fraudulent documents), or
  (ii) section 46A of that Act (anti-avoidance), and
(b) any interest or penalty, in respect of an amount within paragraph (a), for which the company is liable;

"the relevant date", in relation to a relevant PAYE debt, means—
(a) in a case where the relevant PAYE debt is to be deducted or accounted for, or arises, by virtue of subsections (4) to (6) of section 44 of ITEPA, the date on which the fraudulent document was provided as mentioned in subsection (4) of that section, or
(b) in a case where the relevant PAYE debt is to be deducted or accounted for, or arises, by virtue of section 46A of ITEPA, the date the arrangements mentioned in subsection (1)(b) of that section were entered into;

"the specified amount" has the meaning given by regulation 97ZB(2)(a).

97ZB **Liability of directors for relevant PAYE debts**

(1) This regulation applies in relation to an amount of relevant PAYE debt of a company if the company does not deduct, account for or (as the case may be) pay that amount by the time by which the company is required to do so.

(2) HMRC may serve a notice (a "personal liability notice") on any person who was, on the relevant date, a director of the company—
  (a) specifying the amount of relevant PAYE debt in relation to which this regulation applies ("the specified amount"), and
  (b) requiring the director to pay to HMRC—
    (i) the specified amount, and
    (ii) specified interest on that amount.

(3) The interest specified in the personal liability notice—
  (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 86 of TMA, and
  (b) is to run from the date the notice is served.

(4) A director who is served with a personal liability notice is liable to pay to HMRC the specified amount and the interest specified in the notice within 30 days beginning with the day the notice is served.

(5) If HMRC serve personal liability notices on more than one director of the company in respect of the same amount of relevant PAYE debt, the directors are jointly and severally liable to pay to HMRC the specified amount and the interest specified in the notices.

97ZC **Appeals in relation to personal liability notices**

(1) A person who is served with a personal liability notice in relation to an amount of relevant PAYE debt of a company may appeal against the notice.

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(2) A notice of appeal must—
  (a) be given to HMRC within 30 days beginning with the day the personal liability notice is served, and
  (b) specify the grounds of the appeal.

(3) The grounds of appeal are —
  (a) that all or part of the specified amount does not represent an amount of relevant PAYE debt, of the company, to which regulation 97ZB applies, or
  (b) that the person was not a director of the company on the relevant date.

(4) But a person may not appeal on the ground mentioned in paragraph (3)(a) if it has already been determined, on an appeal by the company, that—
  (a) the specified amount is a relevant PAYE debt of the company, and
  (b) the company did not deduct, account for, or (as the case may be) pay the debt by the time by which the company was required to do so.

(5) Subject to paragraph (6), on an appeal that is notified to the tribunal, the tribunal is to uphold or quash the personal liability notice.

(6) In a case in which the ground of appeal mentioned in paragraph (3)(a) is raised, the tribunal may also reduce or increase the specified amount so that it does represent an amount of relevant PAYE debt, of the company, to which regulation 97ZB applies.

97ZD **Withdrawal of personal liability notices**

(1) A personal liability notice is withdrawn if the tribunal quashes it.

(2) An officer of Revenue and Customs may withdraw a personal liability notice if the officer considers it appropriate to do so.

(3) If a personal liability notice is withdrawn, HMRC must give notice of that fact to the person upon whom the notice was served.

97ZE **Recovery of sums due under personal liability notice: application of Part 6 of TMA**

(1) For the purposes of this Chapter, Part 6 of TMA (collection and recovery) applies as if—
  (a) the personal liability notice were an assessment, and
  (b) the specified amount, and any interest on that amount under regulation 97ZB(2)(b)(ii), were income tax charged on the director upon whom the notice is served,

  and that Part of that Act applies with the modification in paragraph (2) and any other necessary modifications.

(2) Summary proceedings for the recovery of the specified amount, and any interest on that amount under regulation 97ZB(2)(b)(ii), may be brought in England and Wales or Northern Ireland at any time before the end of the period of 12 months beginning with the day after the day on which personal liability notice is served.

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97ZF **Repayment of surplus amounts**

(1) This regulation applies if—

(a) one or more personal liability notices are served in respect of an amount of relevant PAYE debt of a company, and

(b) the amounts paid to HMRC (whether by directors upon whom notices are served or the company) exceed the aggregate of the specified amount and any interest on it under regulation 97ZB(2)(b)(ii).

(2) HMRC is to repay the difference on a just and equitable basis and without unreasonable delay.

(3) HMRC is to pay interest on any sum repaid.

(4) The interest—

(a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA, and

(b) is to run from the date the amounts paid to HMRC come to exceed the aggregate mentioned in subsection (1)(b).”

(2) In Chapter 3 of Part 11 of ITEPA 2003 (PAYE: special types of payer or payee), section 688 (agency workers) (as amended by section 16) is amended as follows.

(3) After subsection (2) insert—

“(2A) PAYE regulations may make provision for, or in connection with, the recovery from a director or officer of a company, in such circumstances as may be specified in the regulations, of—

(a) any amount the company is, by virtue of section 44(4) to (6) or 46A, to deduct, or account for, in accordance with PAYE regulations, and

(b) any interest or penalty, in respect of an amount within paragraph (a), for which the company is liable.”

(4) In subsection (3)—

(a) after the definition of “the client” insert—

““company” includes a limited liability partnership;”, and

(b) after the definition of “the deemed employer” insert—

““director” has the meaning given by section 67;

“officer”, in relation to a company, means any manager, secretary or other similar officer of the company, or any person acting or purporting to act as such;”.

(5) The amendment made by subsection (1) is to be treated as having been made by the Commissioners for Her Majesty's Revenue and Customs in exercise of the power conferred by subsection (2A) of section 688 of ITEPA 2003 (inserted by subsection (3)).

(6) Chapter 3A of Part 4 of the Income Tax (Pay As You Earn) Regulations 2003 (inserted by subsection (1)) has effect in relation to relevant PAYE debts that are to be deducted, accounted for or paid on or after 6 April 2014.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 31 para. 2(3)(b) inserted by 2017 c. 32 Sch. 14 para. 45(2)(a)(iii)
- Sch. 31 para. 2(4A) inserted by 2017 c. 32 Sch. 14 para. 45(2)(c)
- Sch. 31 para. 3(1A) inserted by 2017 c. 32 Sch. 14 para. 45(3)(b)
- Sch. 31 para. 5(b) inserted by 2017 c. 32 Sch. 14 para. 45(4)(c)
- Sch. 31 para. 2(3)(a) words inserted by 2017 c. 32 Sch. 14 para. 45(2)(a)(ii)
- Sch. 31 para. 5(a) words inserted by 2017 c. 32 Sch. 14 para. 45(4)(b)
- Sch. 31 para. 2(3)(a) words renumbered as Sch. 31 para. 2(3)(a) by 2017 c. 32 Sch. 14 para. 45(2)(a)(i)
- Sch. 31 para. 5(a) words renumbered as Sch. 31 para. 5(a) by 2017 c. 32 Sch. 14 para. 45(4)(a)
- Sch. 32 para. 1(2)(b) inserted by 2017 c. 32 Sch. 14 para. 46(2)(a)(iii)
- Sch. 32 para. 1(3A) inserted by 2017 c. 32 Sch. 14 para. 46(2)(c)
- Sch. 32 para. 1(2)(a) words inserted by 2017 c. 32 Sch. 14 para. 46(2)(a)(ii)
- Sch. 32 para. 1(2)(a) words renumbered as Sch. 32 para. 1(2)(a) by 2017 c. 32 Sch. 14 para. 46(2)(a)(i)