
STATUTORY INSTRUMENTS

1993 No. 744

The Income Tax (Employments) Regulations 1993

PART V

PAYMENT AND RECOVERY OF TAX, ETC.

Unpaid tax

Notice and certificate when tax not paid

47.—(1) This regulation applies where, within 14 days of the end of any income tax period, the employer has paid no amount of tax to the collector under regulation 40 or 41 for that income tax period, and the collector is unaware of the amount, if any, which the employer is liable so to pay.

(2) Where this regulation applies, the collector may give notice to the employer, requiring him to render, within 14 days, a return in such form as the Board may prescribe showing the amount of tax which the employer is liable to pay to the collector under regulation 40 or 41 in respect of the income tax period in question.

(3) Where a notice given by the collector under paragraph (2) extends to two or more consecutive income tax periods, these Regulations shall have effect as if those consecutive income tax periods were one income tax period.

(4) The collector may give a notice under paragraph (2) notwithstanding that an amount of tax has been paid to him by the employer under regulation 40 or 41 for an income tax period, if he is not satisfied that the amount so paid is the full amount which the employer is liable to pay to him for that income tax period, and this regulation shall have effect accordingly.

(5) Upon receipt of a return made by the employer under paragraph (2), the collector may prepare a certificate showing the amount of tax which the employer is liable to pay to him for the income tax period in question.

(6) Paragraphs (1) to (5) of regulation 54 shall apply to the amount shown in a certificate under paragraph (5).

(7) The production of the return made by the employer under paragraph (2) and of the certificate of the collector under paragraph (5) shall be sufficient evidence that the amount shown in the certificate is the amount of tax which the employer is liable to pay to the collector in respect of the income tax period in question.

(8) Any document purporting to be a certificate under paragraph (5) shall be deemed to be such a certificate until the contrary is proved.

Notice of specified amount and certificate when tax not paid

48.—(1) This regulation applies where, after 14 days following the end of any income tax period, the employer has paid no amount of tax to the collector under regulation 40 or 41 for that income tax period, despite demand being made, and there is reason to believe that the employer is liable so to pay.

(2) Where this regulation applies, the collector, upon consideration of the employer's record of past payments, may to the best of his judgment specify the amount of tax which he considers the employer is liable to pay, and serve notice on the employer of that amount.

(3) Where the employer has paid no amount under regulation 40 or 41 for the relevant income tax periods, the collector may give a notice under paragraph (2) which extends to two or more consecutive income tax periods, and these Regulations shall have effect as if those income tax periods were the latest income tax period specified in the notice.

(4) The collector may give a notice under paragraph (2) notwithstanding that an amount of tax has been paid to him by the employer under regulation 40 or 41 for any income tax period, if he is not satisfied, after seeking the employer's explanation, that the amount so paid is the full amount which the employer is liable to pay to him for that income tax period, and this regulation shall have effect accordingly.

(5) If, during the period allowed in a notice given by the collector under paragraph (2), the employer claims, but does not satisfy the collector, that the payment made in respect of the income tax period specified in the notice is the full amount he is liable to pay to the collector for that income tax period, then—

- (a) the employer may require the collector to inspect the employer's documents and records as if the collector had called upon the employer to produce those documents and records in accordance with regulation 55(1), and
- (b) regulation 55 shall apply to that inspection, and the notice given by the collector under paragraph (2) shall be disregarded.

(6) Subject to paragraph (7), if the specified amount of tax, or any part of it, is unpaid on the expiration of the period of seven days allowed in the notice, the amount so unpaid shall—

- (a) be certified by the collector, and
- (b) be deemed to be an amount of tax which the employer was liable to pay for that income tax period in accordance with regulation 40 or 41.

(7) Paragraph (6) shall not apply if, during the period allowed in the notice—

- (a) the employer pays the full amount of tax which he is liable to pay to the collector under regulation 40 or 41 for that income tax period, or
- (b) the employer satisfies the collector that no amount, or no further amount, is due for that income tax period.

(8) Paragraphs (1) to (5) of regulation 54 shall apply to the amount shown in a certificate under paragraph (6).

(9) The production of a certificate under paragraph (6) shall be sufficient evidence that the employer is liable to pay the amount shown in the certificate to the collector.

(10) Any document purporting to be a certificate under paragraph (6) shall be deemed to be such a certificate until the contrary is proved.

(11) Notwithstanding anything in this regulation, if the employer pays any amount certified by the collector under this regulation and that amount exceeds the amount which he would have been liable to pay in respect of that income tax period apart from this regulation, he shall be entitled to set off such excess against any amount which he is liable to pay to the collector under regulation 40 or 41 for any subsequent income tax period.

(12) If the employer renders the return required by regulation 43(1) after the end of the year, and pays the total net tax which he is liable to pay, any excess of tax paid, and not otherwise recovered by set-off in accordance with this regulation shall be repaid.

Formal determination of tax payable by employer

49.—(1) This regulation applies where it appears to the inspector that there may be tax payable under regulation 40 or 41 which—

- (a) has not been paid to the collector, and
- (b) has not been certified by the collector under regulation 43, 47, 48 or 55.

(2) Where this regulation applies, the inspector may determine the amount of that tax to the best of his judgment, and shall serve notice of his determination on the employer.

(3) A determination under this regulation shall not include tax in respect of which a direction under regulation 42(2) or (3) has been made; and directions under that regulation shall 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 40 or 41 for any one or more income tax periods in a year, and
- (b) extend to the whole of that tax or to such part of it as is payable in respect of a class or classes of employees specified in the notice of determination (without naming the individual employees) or of one or more named employees so specified.

(5) Where—

- (a) any part of the tax determined under this regulation is not paid within 30 days from the date on which the determination became final and conclusive, and
- (b) the Board consider that a direction under regulation 42(3) would, but for paragraph (3) of this regulation, have been made,

the Board may direct that such part of that tax as it appears to them should have been but was not deducted under these Regulations by the employer on payment of the relevant emoluments shall (without prejudice to the right of recovery from the employer) be recovered from the employee.

(6) If tax recoverable from an employee under paragraph (5) does not carry interest under section 88 of the Management Act, it shall be recoverable from the employee together with interest in accordance with—

- (a) regulation 50, in relation to any year not later than the year ended 5th April 1992, from the reckonable date (as defined in that regulation), or
- (b) regulation 51, in relation to the year ended 5th April 1993 or any subsequent year, from the reckonable date (as defined in that regulation)

until whichever is the earlier of—

- (i) the date on which payment is made, or
- (ii) the date (if any) immediately before the date on which it begins to carry interest under section 86 of the Management Act.

(7) A determination under this regulation shall be subject to the like provisions as are contained in Parts IV, V and VI of the Management Act as if it was an assessment, and as if the amount of tax determined was income tax charged on the employer, and those Parts of that Act shall apply accordingly with any necessary modifications.

(8) Regulation 100 shall apply, with the necessary modifications, to appeals against determinations under this regulation as it applies to appeals against assessments of emoluments.

(9) A certificate of the collector that any amount of interest payable under paragraph (6) has not been paid to him, or, to the best of his knowledge and belief, to any other collector or to any person acting on his behalf or on behalf of another collector, shall be sufficient evidence that the sum mentioned in the certificate is unpaid and due to the Crown.

(10) Any document purporting to be a certificate under paragraph (9) shall be deemed to be such a certificate until the contrary is proved.

Interest on unpaid tax which has been formally determined

50.—(1) Where—

- (a) an employer has not paid an amount of tax to the collector under regulation 40 or 41, and
- (b) the inspector, at any time after 19th April 1988, makes a determination of the amount of such tax under regulation 49, and
- (c) the determination does not relate to a year later than the year ended 5th April 1992, and
- (d) tax is payable pursuant to that determination,

the tax so payable shall carry interest at the prescribed rate from the reckonable date until payment.

(2) Subject to paragraph (3), in this regulation “the reckonable date” means the 14th day after the end of the year to which the determination relates and, for the purposes of this regulation, where tax payable by the employer for any one or more income tax periods is covered by a determination, that determination shall relate to the year of which that period forms part.

(3) Where, at any time after 19th April 1988, an inspector makes a determination that relates to a year earlier than the year ending on 5th April 1988, then tax payable in accordance with that determination shall carry interest at the prescribed rate from 19th April 1988 until payment and in those circumstances that date shall be the reckonable date.

Interest on tax overdue—general

51.—(1) Subject to paragraph (2), where, in relation to the year ended 5th April 1993 or any subsequent year, an employer has not within 14 days after the end of a year paid to the collector the total net tax deductible by him in respect of all his employees during that year, the tax not so paid shall carry interest at the prescribed rate from the reckonable date until payment.

(2) Paragraph (1) shall not apply to any tax in respect of which a direction under regulation 42(2) or (3) has been made.

(3) In this regulation “the reckonable date”, in relation to any year, means the 14th day after the end of that year.

(4) A certificate of the collector that any amount of interest payable under this regulation has not been paid to him, or, to the best of his knowledge and belief, to any other collector or to any person acting on his behalf or on behalf of another collector, shall be sufficient evidence that the sum mentioned in the certificate is unpaid and due to the Crown.

(5) Any document purporting to be a certificate under paragraph (4) shall be deemed to be such a certificate until the contrary is proved.

Interest on tax overdue—further provisions

52.—(1) In regulation 50 and 51 “the prescribed rate” means the rate applicable under section 178 of the Finance Act 1989(1) for the purposes of section 86 of the Management Act; and where that rate changes on an operative date within the meaning given by regulation 2 of the Taxes (Interest Rate) Regulations 1989(2) by virtue of those Regulations, the change shall have effect for periods

(1) Section 178 was amended by section 17(10) of the Social Security Act 1990 (c. 27), paragraph 107 of Schedule 2 to the Social Security (Consequential Provisions) Act 1992 (c. 6), paragraph 19(4) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 and paragraph 5 of Schedule 11 to the Finance (No.2) Act 1992.

(2) S.I.1989/1297, to which there are amendments not relevant to these Regulations.

beginning on or after the operative date in relation to interest running from before that date as well as from or from after that date.

(2) The tax payable to which regulation 50(1) or 51(1) applies shall carry interest from the reckonable date even if that date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(3).

(3) Interest payable under regulation 50 or 51 shall be recoverable as if it were an amount of tax which an employer is liable under regulation 40 or 41 to pay to the collector.