

## PART 6

### CHAPTER 1

#### DEATH OF EMPLOYER AND SUCCESSION

##### **Death of employer**

79—(1) If an employer dies, anything which the employer would have been liable to do under these Regulations is to be done by the employer's personal representatives.

(2) But paragraph (1) does not apply to the extent that regulation 79A applies.

##### **Death of employer paying [net PAYE income] on behalf of another**

79A—(1) This regulation applies if an employer who has been paying [net PAYE income] on behalf of another person dies.

(2) Anything which the employer would have been liable to do under these Regulations in respect of or in connection with such payments is to be done—

(a) by the person succeeding the employer, or

(b) if there is no such person, by the person on whose behalf the employer paid [net PAYE income].

##### **Succession to a business etc**

80—(1) This regulation applies if there is a change in an employee's employer while the employee remains in employment in the same business.

(2) This regulation also applies if there is a change in the [employer] paying a pension or annuity to an [employee].

(3) But this regulation does not apply if the reason for the change is the death of a person who has been paying [net PAYE income] on behalf of another person.

(4) The change is not to be treated as a cessation of employment for the purposes of regulation 23 (Form P45 etc).

(5) Subject to paragraphs (6) and (7), in relation to any matter arising after the change, the new employer is liable to do anything which the former employer would have been liable to do under these Regulations if the change had not taken place.

(6) The new employer is not liable for the payment of any tax which was deductible, [or accountable in accordance with section 710 of the 2003 Act (notional payments)], from [emoluments] paid to the employee before the change took place, unless those [emoluments] were paid by the new employer.

(7) The former employer must give the new employer any particulars needed to comply with this regulation.

(8) In paragraph (1), "business" includes any trade, concern or undertaking.

##### **Succession to a business: trade disputes**

80A—(1) This regulation applies if a trade dispute began, but did not end, before a change to which regulation 80 applies took place.

(2) The former employer must comply with regulations 36(5) and 45 as though the time limit of 42 days expired on the date on which the change took place.

(3) The new employer must comply with regulation 36(3) and may accordingly be liable to repay any tax that was withheld by the former employer in the [tax] year in which the change took place; and regulations 40(2) and 40B(4) apply in such a case.

## **CHAPTER 2 COUNCILLORS' ALLOWANCES**

### **Interpretation of Chapter 2**

56—(1) In this Chapter—

“allowances” means—

- (a) payments by way of attendance allowance within section 173(1) or 175(1) of the Local Government Act 1972,
- (b) payments within regulations made under section 18(1) of the Local Government and Housing Act 1989,
- (c) payments within regulations made under section 100(1)(a) or (c) of the Local Government Act 2000,
- (d) payments by way of attendance allowance within section 47(1) of the Local Government (Scotland) Act 1973, or
- (e) payments within regulation 3(1), 4(1) or 5(1) of the Local Government (Payments to Councillors) Regulations (Northern Ireland) 1999;

“councillor” means a person entitled to receive any allowances;

“local council” includes the local authority, council, joint authority or joint committee paying allowances.

(2) For the purposes of paragraph (1)—

“council” and “joint committee” are to be construed in accordance with section 148(1) of the Local Government Act (Northern Ireland) 1972; and

“local authority” in England and Wales has the meaning assigned to it by section 270(1) of the Local Government Act 1972, and in Scotland has the meaning assigned to it by section 235(1) of the Local Government (Scotland) Act 1973.

### **Councillor's option to have tax deducted at basic rate**

57—(1) A councillor may, by notice to the Inland Revenue, opt to have income tax deducted from allowances at the basic rate in force at the time of payment of the allowances (the “basic rate option”).

(2) On receipt of any such notice the Inland Revenue must notify the local council of the councillor's exercise of the basic rate option.

(3) On being so notified, the local council, when making any payment of allowances to the councillor, must deduct income tax at the basic rate in force at the time of that payment on the non-cumulative basis.

(4) Where a councillor has exercised the basic rate option and the Inland Revenue consider that the councillor may incur deductible expenses, the Inland Revenue may direct the local council to disregard an appropriate amount of the allowances in calculating the tax to be deducted.

(5) In paragraph (5), “deductible expenses” means expenses of a kind which would be deductible under [sections 336 to 338 ] of the 2003 Act (expenses incurred wholly, exclusively and necessarily in performance of duties, and travel expenses).

### **Local council to keep records**

57A—(1) If the Inland Revenue have given notice to the local council of the exercise by a councillor of the basic rate option, the local council must record, on a deductions working sheet (which it must prepare for the purpose unless it has already prepared one) the following particulars regarding every payment of allowances which it makes to the councillor.

(2) Those particulars are—

- (a) the councillor's name,
- (b) the councillor's national insurance number,
- (c) the date of the payment,
- (d) the amount of the allowances,
- (e) where regulation 57(4) applies, the net amount of the allowances from which tax has been deducted, and
- (f) the amount of tax deducted from the allowances.

### **[Regulations apply as if basic rate option were issue of code**

58 Where a councillor exercises the basic rate option, these Regulations apply as if [the Inland Revenue] had issued the basic rate code in respect of the allowances.]

## **CHAPTER 3 RESERVE FORCES**

### **Interpretation of Chapter 3**

59—(1) In this Chapter—

“the Ministry” means—

- (a) in relation to emoluments paid to members of the Merchant Navy Reserve, the Department for Transport, and,
- (b) in all other cases, the Ministry of Defence;

“reserve forces” means the forces specified in paragraph (2);

“reserve pay” means [emoluments] paid by the Ministry to members of the reserve forces;

“reservist” means any person in receipt of reserve pay, but does not include a person who is not resident in the United Kingdom and is serving outside the United Kingdom.

(2) The forces specified in this paragraph are—

- (a) Royal Fleet Reserve,
- (b) Royal Naval Reserve (including Queen Alexandra's Royal Naval Nursing Service Reserve),
- (c) Royal Marines Reserve,
- (d) Army Reserve,
- (e) Territorial Army,
- (f) Air Force Reserve including—
  - (i) Royal Air Force Reserve of Officers,
  - (ii) Royal Air Force Volunteer Reserve (including University Air Squadron members), and
  - (iii) Class E Reserve of Airmen,
- (g) Royal Auxiliary Air Force,

- (h) Officers, Adult Instructors and Adult Warrant Officers of the Sea Cadet Corps, Army Cadet Force, Air Training Corps or Combined Cadet Force, and
- (j) Merchant Navy Reserve.

### **Application of other Parts**

60—(1) Parts 3 and 4 do not apply to reserve pay.

[(2) Part 5 applies with any necessary modifications to tax liable to be deducted under regulation 61.

(3) Part 8 applies with any necessary modifications to reserve pay.]

OR [(2) The [rest of these] Regulations apply as if the Inland Revenue had issued the basic rate code in respect of reserve pay.]

### **Deduction of tax**

61—(1) On making any payment of reserve pay to a reservist during any [tax] year, the Ministry must deduct income tax at the basic rate in force at the time payment is made.

(2) But the Ministry must not deduct income tax if—

(a) it has received notice from the Inland Revenue of a determination for that year under regulation 62(3), 63A(3) or 64(2) that tax is not to be deducted from reserve pay, and

(b) it has not received notice of any amendment of that determination.

(3) This regulation applies on the making of any payment of reserve pay notwithstanding that an objection or appeal has been made under regulation 63 or 64.

### **Determination by Inland Revenue**

62—(1) The Inland Revenue may make a determination that tax is not to be deducted from reserve pay if the Inland Revenue are satisfied that the reservist will not be liable to income tax on the full amount of the reserve pay in [a tax] year.

(2) For the purpose of making such a determination, the Inland Revenue must assume—

(a) that any reliefs from income tax to which the reservist is entitled are allowable primarily against the reservist's [net] PAYE income from other sources, and

(b) unless the reservist objects, that the balance (if any) of such reliefs is next allowable against the reservist's income other than [net] PAYE income.

(3) The Inland Revenue may make a determination before, or at any time during, [the tax] year.

(4) On making a determination the Inland Revenue must notify the reservist and the Ministry.

### **Objection against deduction of tax**

63—(1) A reservist from whose reserve pay tax has been deducted in accordance with regulation 61 may object by giving notice of objection to the Inland Revenue stating the grounds of objection.

(2) On receipt of the notice of objection, the Inland Revenue must make a determination whether income tax at the basic rate is to be deducted from the reserve pay, having regard to the assumptions mentioned in regulation 62(2).

(3) The Inland Revenue must give notice of that determination to the reservist.

- (4) The Inland Revenue may amend their determination by agreement with the reservist.
- (5) If the Inland Revenue and reservist do not reach an agreement, the reservist may appeal against the determination by giving notice to the Inland Revenue.

### **Appeal to Commissioners**

- 63A—(1) On appeal, the General Commissioners must determine whether income tax at the basic rate is to be deducted from the reserve pay, having regard to the assumptions mentioned in regulation 62(2).
- (2) Subject to regulation 64, the determination of the Commissioners is final.
- (3) If, on appeal, the Commissioners determine that tax is not to be deducted from the reserve pay, the Inland Revenue must give notice of that determination to the Ministry.

### **Appeals: supplementary provisions**

- 63B—(1) An appeal under regulation 63 is to be heard by the General Commissioners for the division in which the reservist lives.
- (2) Paragraph (1) is subject to section 44(2) of the TMA (agreement by parties as to Commissioners who will hear appeal) and paragraph 3(1)(b) of Schedule 3 to that Act (employee may elect alternative Commissioners).

### **Amended determinations**

- 64—(1) If a determination by the Inland Revenue or the Commissioners under regulation 62, 63 or 63A is found to be inappropriate because the actual circumstances are different from the circumstances by reference to which it was made, the Inland Revenue must amend that determination.
- (2) The Inland Revenue must give notice of their amended determination to the reservist and to the Ministry.
- (3) Regulations 63 to 63B apply in relation to an amended determination as they apply in relation to a determination under regulation 63(2).

### **Certificate of tax deducted**

- 65—(1) The Ministry [may, and if the reservist so requires] must [,] give the reservist a certificate in a form authorised by the Board showing the following particulars in respect of any payment of reserve pay made during the year from which tax is deducted.
- (2) Those particulars are—
- (a) the date of the payment,
  - (b) the amount of the payment, and
  - (c) the amount of tax deducted on making the payment.

### **Repayment to reservist during the year**

- 66—(1) The Ministry must not repay tax in respect of reserve pay to a reservist.
- (2) On application being made by the reservist, the Inland Revenue may make such repayment to the reservist as may be appropriate at any time during the year having regard to the following matters.
- (3) Those matters are—

- (a) the reserve pay of the reservist for the period from the beginning of the year up to and including the date of that application,
- (b) the amount of tax deducted from that reserve pay [as evidenced by certificates of pay and tax supplied under regulation 65], and
- (c) any reliefs from income tax to which the reservist is entitled, and
- (d) unless the reservist objects, the reservist's income for the year from [all other sources] and liability to tax on that income, as estimated by the Inland Revenue.

### **Ministry to keep records**

67—(1) The Ministry must record, on a deductions working sheet, the following particulars regarding every payment of reserve pay made to a reservist.

(2) Those particulars are—

- (a) the reservist's name,
- (b) the reservist's national insurance number,
- (c) the tax year to which the deductions working sheet relates,
- (d) the date of the payment,
- (e) the amount of the payment, and
- (f) the amount of tax, if any, deducted on making the payment.

### **End of year certificate**

68—(1) Not later than [31st May] following the end of the [tax] year, the Ministry must give a certificate to a reservist to whom paragraph (3) applies.

(2) The certificate is to be in the form provided or authorised by the Board and is to show—

- (a) the reservist's national insurance number,
- (b) the total amount of reserve pay paid by the Ministry to the reservist during the [tax] year,
- (c) the total tax deducted from the reserve pay,
- (d) the force in which the reservist was serving and the reservist's service number, and
- (e) in the case of a form not provided by the Board, that it has been authorised by them in substitution for such a form.

(3) A reservist to whom this paragraph applies is a reservist who—

- (a) is a member of the reserve forces on the last day of the tax year and from whose reserve pay tax has been deducted during that year, and
- (b) has not been given a certificate under regulation 65 in respect of each payment of reserve pay during that year.

### **Other [net PAYE income] of reservist**

70 Nothing in this Chapter affects the application of these Regulations to any other [net PAYE income] of a reservist.

## **CHAPTER 4 HOLIDAY PAY FUNDS**

### **Interpretation of Chapter [4]**

71—(1) In this Chapter—

“fund” means a person who pays holiday pay to an individual who is not employed by him,

“holiday pay” means any payment made by a fund to an individual in exchange for a voucher, stamp or similar document purchased by a person who employs (or employed) that individual for any holiday period;

“recipient” means an individual who is paid holiday pay.

(2) For the purposes of those definitions, where the individual in question has died, references to the individual are to be read as references to another person claiming in respect of that individual’s right.

### **Disapplication of Parts 3 and 4**

72 Parts 3 and 4 do not apply to holiday pay.

### **Deduction of tax**

73 On making any payment of holiday pay to a recipient, a fund must deduct income tax at the basic rate in force at the time the payment is made.

### **Certificate of tax deducted**

74—(1) On making any payment of holiday pay, a fund must give the recipient a certificate in a form authorised by the Board showing the following particulars.

(2) Those particulars are—

- (a) the recipient’s name,
- (b) the recipient’s national insurance number,
- (c) the tax year in which the payment is made,
- (d) the date of the payment,
- (e) the amount of the payment, and
- (f) the amount of tax deducted on making the payment.

### **Repayment to recipient during the year**

75—(1) A fund must not repay tax deducted from a payment of holiday pay to a recipient.

(2) If the recipient makes an application to the Inland Revenue, [they] may make such repayment to the recipient as may be appropriate at any time during the [tax] year having regard to the following matters.

(3) Those matters are—

- (a) the holiday pay of the recipient for the period from the beginning of the [tax] year up to and including the date of the application,
- (b) the amount of tax deducted from that holiday pay as evidenced by certificates supplied under regulation 74,
- (c) any entitlement of the recipient to relief from income tax, and
- (d) [unless the recipient objects], the recipient’s income for the year [from all other sources] and liability to tax on that income, as estimated by the Inland Revenue.

(4) References in paragraph (3) to the recipient are, where appropriate, to be read as references to the individual in respect of whose right the recipient is paid.

### **Fund records**

76—(1) A fund must record, on a deductions working sheet, the following particulars regarding every payment of holiday pay made to a recipient.

(2) Those particulars are—

- (a) the recipient's name,
- (b) the recipient's national insurance number,
- (c) the tax year to which the deductions working sheet relates,
- (d) the date of the payment,
- (e) the amount of the payment, and
- (f) the amount of tax deducted on making the payment.

### **Other [net PAYE income] of recipient**

78 Nothing in this Chapter affects the application of these Regulations to any other [net PAYE income] of a recipient.