CHAPTER 22

PAYE END OF YEAR RETURNS

22.1 Introduction

A number of end of year return forms have to be filed by the employer with HMRC. It is the employer's responsibility to provide certain details to the Tax Office at the end of the year and there are a variety of specific forms to enable the employer to do so.

The form P60 contains details of taxable earnings paid by an employer to an employee in the year along with details of any tax and National Insurance deducted from those earnings. The P60 will also contain basic details such as the employer's name and address and the employee's National Insurance number. SI 2003/2682 Reg 67

The **P60 is given by the employer to the employee no later than 31 May following the end of the tax year**. The employee will then use the details on the P60 to prepare his own Self Assessment tax return.

The employer will also complete a **form P14 for each employee**. The details on the P14 are the same as those on the P60. The difference here is that the P14 is **given by the employer to HMRC**.

All the forms P14 are effectively rolled together to form an **end of year summary** which is called the form **P35**. The P35 summarises all the individual deduction sheets for each and every employee.

Forms P14 and P35 must be submitted by the employer to HMRC no later than 19 May following the end of the tax year. SI 2003/2682 Reg 73

A form **P11D** is provided to every **higher paid employee** who receives benefits in the tax year. A higher paid employee is any employee who earns £8,500 or more per annum. If benefits are provided to **lower paid employees,** these are summarised on **form P9D**.

Each of these forms contains details of the cash equivalent of each benefit provided. The deadline for the submission of forms P11D and P9D to HMRC is 6 July following the end of the tax year. The employer will give a copy of the P11D to the employee to enable the employee to put together his Self Assessment Return. SI 2003/2682 Reg 85

A form **P45** is given by the employer to every **employee who leaves that particular employment.** P45s are also provided in respect of employees whose employment terminates as a result of death.

The form P45 has four parts. The employer will send the first part of the form to HMRC and give the other three parts of the form to the employee. The employee will keep one part of the P45 for his own record purposes and give the other two parts of the form to his new employer. The new employer fills in details of the new employment, then keeps one part of the P45 for his own record purposes. The employer sends the final part to HMRC. SI 2003/2682 Reg 36&42

The P45 contains details of pay and tax from the start of the tax year to the date the employment terminated. The P45 also contains the code number operated by the previous employer. This code number will then be operated by the new employer until a new one is issued by HMRC.

In certain circumstances, an employee will be asked to fill in a form P46. A P46 is completed by employees who join an employer but do not have a P45. This will be the case if this is the employee's first job since leaving education or if the employee has another job and does not have a form P45. SI 2003/2682 Reg 46

The form **P46** will ask the employee to certify one of three things.

a) If the employee certifies that this is his **first job** since 6 April and he has not been receiving taxable jobseekers allowance, employment and support allowance, incapacity benefit or a pension the employer will be able to **deduct tax on a cumulative basis**. This means the employee will get the benefit of the personal allowance from the beginning of the tax year.

b) If the employee certifies that this is now his only job but he has had another job in the tax year or received jobseeker's allowance or employment and support allowance, incapacity benefit (but not a pension), the employer will operate an "emergency code" which operates on a non-cumulative basis. This means that the employee will simply be given a proportion of the normal personal allowance as his tax free amount e.g. one month's worth of personal allowance against one month's worth of pay.

c) If the employee certifies on form P46 that he has another job or receives a pension, the employer will operate code BR. This means that tax will be deducted from earnings at the basic rate of 20% without any personal allowances being given.

22.2 Late payment of PAYE - Interest

Tax and National Insurance should be paid over to HMRC no later than the **19th of each month**. If an employer makes these payments late, HMRC will charge the employer interest on the late paid tax.

If tax has been overpaid by the employer and a repayment of tax is due, then repayment interest will run for the same period.

22.3 Late payment of PAYE - penalties

Penalties will be levied where a person is late making payments of PAYE and Class 1 NIC in the tax year. The amount of the penalty will depend on **the number of late payments (known as "defaults")**, in the tax year. The first late payment of tax does not count as a default. A penalty will not be charged in respect of the first late payment, unless the payment is more than 6 months late. Para 6 Sch 56 FA 2009

Where a person makes **1, 2 or 3 defaults** in the tax year, a penalty will be levied equal to **1%** of the total amount of the defaults (ie the total amount of tax and NIC that was paid late). The amount of the penalty increases to **2%** where there are **4, 5 or 6** defaults and to **3%** if there are **7, 8 or 9 defaults.** If the number of defaults is **10 or more**, the amount of the penalty will be **4%** of the total defaults.

In addition, if any amount of tax/NIC due is **more than 6 months late**, a further **penalty of 5%** of the amount outstanding will be levied. If the tax/NIC is still outstanding after 12 months from the due date, an **additional 5%** penalty will be levied. These penalties will apply to the first late payment of tax even though the first late payment does not count as a default.

Taxpayers who fail to make payments of tax by the due date may request that **payment be deferred** for a period. If HMRC agree to the deferral request (known **as 'an agreed time to pay arrangement'**), the taxpayer will not be charged any late payment penalties.

However, if the terms of the agreement are broken, for example if the taxpayer fails to pay the amount due at the end of the deferral period, HMRC can charge the late payment penalties.

Late payment penalties must be **paid within 30 days** of the date the notice assessing the penalty is issued, or interest will be charged.

The decision to issue a penalty or the amount of the penalty payable **can be appealed against** by the taxpayer. Para 13 Sch 56 FA 2009

Penalties will not be charged if the taxpayer has a reasonable excuse for the late payment. An insufficiency of funds is not a **reasonable excuse** (unless due to events outside the taxpayers control). Relying on a third party is also not a reasonable excuse, unless the taxpayer took reasonable care. Para 16 Sch 56 FA 2009

22.4 Penalties for Late Returns

FA 2009 contains new provisions in respect of the late filing of returns, including form P34 and P15. Although the new rules have not yet been implemented you are only required to know the new rules for the purposes of the examination.

Under the FA 2009 rules, an **intial penalty of £100** will apply if a return is late, even where there are no amounts outstanding. Additional **daily penalties of £10 per day may** be levied in respect of returns which are more than 3 months late. The daily penalty can be imposed for a maximum of 90 days. FA 2009 Sch 55 Paras 3 & 4

If a return is **more than 6 months late**, there will be an additional penalty of **5% of** any liability to tax which would have been shown in the return (ie the amount which would have been shown to be due and payable), or **£300 if greater**. FA 2009 Sch 55 Para 5

An additional penalty of **5% of any liability to tax** (or £300 if greater) will also be levied if the return **is more than 12 months late**. If the return has not been submitted within 12 months and by failing to make the return the taxpayer is deliberately withholding, but not concealing information, which would enable HMRC to assess the tax liability, the maximum amount of the penalty increases to **70%** (or £300 if greater). If the withholding of information is deliberate and concealed, the maximum amount of the penalty is **100% of the tax liability** (or £300 if greater). FA 2009 Sch 55 Para 6

Penalties that apply where a person has deliberately withheld information, can be reduced for both prompted and unprompted disclosure of the information. FA 2009 Sch 55 Para 14

Disclosure takes place where a taxpayer **tells HMRC** about the relevant information, **gives HMRC reasonable help** in quantifying the tax unpaid as a result of the information being withheld and **allows HMRC access to records** to check the amount of unpaid tax.

Disclosure is unprompted if it is made when there is no reason to believe that HMRC have discovered or are about to discover the information.

The actual reduction in the penalty depends on the quality of the disclosure, including timing, nature and extent.

The table below details the maximum and minimum penalties that could apply:

Behaviour	**Max penalty**	**Min penalty with unprompted disclosure**	**Min penalty with prompted disclosure**
Deliberate but not concealed	70%	20%	35%
Deliberate and concealed	100%	30%	50%

The minimum penalty is £300 if greater.

HMRC have the power to reduce the penalty if there are special circumstances.

The maximum aggregate penalty (calculated as a percentage of the liability to tax) that can be charged in respect of the late filing of a return is **100% of the liability to tax** . FA 2009 Sch 55 Para 17(3)

The late filing penalty is not reduced by a penalty for late payment of tax. In other words, if a return is filed late and the tax liability is paid late, **the taxpayer will incur both late filing and late payment penalties**.

Late payment penalties must be **paid within 30 days** of the date the notice of assessing the penalty is issued, or interest will be charged. FA 2009 Sch 55 Para 18

The decision to issue a penalty or the amount of the penalty payable **can be appealed against** by the taxpayer. FA 2009 Sch 55 Para 20

Penalties will not be charged if the taxpayer has a reasonable excuse for the failure. An insufficiency of funds is not a **reasonable excuse** (unless due to events outside the taxpayer's control). Relying on a third party is also not a reasonable excuse, unless the taxpayer took reasonable care. FA 2009 Sch 55 Para 23

The term "reasonable excuse" is not defined in the legislation and HMRC's view is that each claim should be considered on its own unique merits.

Forms **P11D and P9D** should be submitted **no later than 6 July following the end of the tax year**. If these forms are late, HMRC can charge an **initial penalty** of up to **£300 per late form** and can **thereafter** charge a further penalty of up to **£60 per day** for each day that the failure continues. These penalties can be mitigated.

22.5 Incorrect Returns

Sch 24 FA 2007

Penalties will be charged in respect of a document containing an inaccuracy if the error occurred due to **lack of reasonable care**. In addition, greater penalties will be charged if the error is **deliberate** i.e. the employer knowingly and intentionally submits an incorrect document but does not take steps to hide the error. Finally an even greater penalty will be levied if the error is **deliberate and concealed** i.e. an incorrect document was sent knowingly and intentionally and active steps were taken to hide the error.

A penalty will not be charged if reasonable care was taken.

The penalty charged will be **a % of the potential lost revenue, i.e. the extra tax and NIC due**.

The table below details the maximum and minimum penalties that could apply. Para 10 Sch 24 FA 2007

Behaviour	Maximum penalty	Min penalty with unprompted disclosure	Min penalty with prompted disclosure
Deliberate and concealed	100%	30%	50%
Deliberate but not concealed	70%	20%	35%
Careless	30%	0%	15%

Reductions are available for both 'unprompted' and 'prompted' disclosures.

Disclosure is unprompted if the employer has no reason to believe HMRC have discovered or are about to discover the error.

Disclosure takes place where a taxpayer **tells HMRC** about the error, gives HMRC **reasonable help** in calculating the resulting unpaid tax and NIC and **allows HMRC access to records** to check the amount of unpaid tax. Para 9 Sch 24 FA 2007

The actual reduction in the penalty depends on the quality of the elements of the disclosure, including timing, nature and extent.

If a penalty is charged because a taxpayer failed to take reasonable care, the penalty may be suspended by HMRC for up to 2 years. If the conditions set by HMRC are met by the taxpayer at the end of the suspension period, the penalty will be cancelled.

Inaccuracies in forms P11D and P9D are not dealt with by these rules. If an incorrect form P11D or P9D is filed fraudulently or negligently a penalty of up to £3,000 can be levied in respect of each form. TMA 1970, s.98

22.6 Recovery of tax

SI 2003/2682 Reg 80

Where an **employer fails to operate Pay As You Earn correctly** and this results in an underpayment of tax, HMRC can either recover the tax from the employer or from the employee. In the majority of instances HMRC will choose to recover the tax from the employer by using a **Regulation 80 determination**.

Having quantified the tax underpaid, HMRC will issue a notice under Regulation 80 of the PAYE Regulations. The employer has a right to appeal this determination if he thinks it is incorrect but if no appeal is lodged, the determination becomes final and conclusive within 30 days.

If HMRC are satisfied that the employer took reasonable care to comply with the PAYE Regulations and any underpayment of tax arose due to an error made in good faith, HMRC will instead seek recovery of the tax from the employee. SI 2003/2682 Reg 72

HMRC will also seek collection of the tax from the employee if they have reason to believe that the employee accepted his earnings in the full knowledge that the employer had under deducted tax.

22.7 Electronic filing

All employers are required to file their End of Year returns forms P14 and P35, **electronically**. This can be done either directly by the employer or via an intermediary such as a payroll bureau or agent.

A penalty will be levied if a paper return is filed instead of an electronic return. This will be up to £3,000 per annum per PAYE scheme depending on the number of P14s included in the return. This penalty is in addition to the usual array of penalties for late filing. SI 2003/2682 Reg 210AA

From 6 April 2009, employers with 50 or more employees have been required to send HMRC Forms P45 (parts 1 and 3) and P46 electronically. All employers will have to do this from 6 April 2011. If an employer fails to do so, a penalty of between £100 and £3,000 will be charged, depending on the number of forms that should have been filed online. SI 2003/2682 Reg 210B

Forms P11D and P9D can be submitted electronically if the employer wishes.

Example 1

What is the due date for:
- Form P35
- Form P11D

Example 2

Form P35 for Tardy Ltd for 2010/11 is submitted on 19th October 2011.

What are the potential late filing penalties?

Example 3

Octagon Ltd does not have adequate procedures in place in respect of PAYE as the focus has been on developing the business. As a result, form P35 for the tax year 2009/10 understated the tax and NIC due by £5,000.

Explain the maximum and minimum penalty that could be charged in relation to the error.

Example 4

Shape Ltd paid 7 monthly payments of PAYE late during 2010/11. Each payment was in the amount of £15,000. The payments were made within 2 weeks of the due date, apart from the payment for the final month of the year, which was not paid until 1 December 2011.

Calculate the penalties for late payment of PAYE.

Answer 1

Due date for Form P35:

19 May following the end of the tax year.

Due date for form P11D

6 July following the end of the tax year.

Answer 2

As the P35 was not submitted by the due date, a £100 penalty will be charged.

As the return was more than 3 months late, daily penalties of £10 per day could have been imposed.

Answer 3

Octagon Ltd has failed to take reasonable care in producing the P35, as it does not have adequate procedures in place in relation to PAYE. However, it does not appear to have deliberately submitted an incorrect P35.

The maximum penalty will be 30% of the potential lost revenue, i.e. 30% x 5,000 = £1,500.

However, if there is an unprompted disclosure to HMRC, this can be reduced to nil. If there is a prompted disclosure the minimum penalty will be 15% x 5,000 = £750.

The amount of the reduction will depend on the quality of the disclosure.

Answer 4

Shape Ltd made 7 late payments in respect of 2010/11. The first late payment is not a default, so there are 6 defaults, giving a penalty % of 2%.

6 x £15,000 =	£90,000
£90,000 @ 2% =	£1,800

In addition, £15,000 was outstanding for more than 6 months (due 19th April) and therefore an additional 5% penalty will be charged.

5% x £15,000 = £750.