

# Tax Networks Ltd

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## *Risk of HMRC PAYE Regulations applied to the Directors?*

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If an Employer deducted and paid less tax, should the employee then be asked to top up the deficit?"

Commonsense suggests that it is the employer's obligation to operate PAYE and pick up the deficit, but what if the employee was a controlling director involved in voluntary liquidation and has extracted cash?

Where the employer's business records are unreliable or where the director appears to have insufficient income to fund a colourful lifestyle, HMRC will normally extend a CT full enquiry so that it covers the personal taxation and financial affairs of the director. As the enquiry into the CTSA return does not put the director's returns automatically under enquiry, HMRC will also open a s,9A Enquiry into the director's ITSA return if it presents a risk.

Also, HMRC has at its disposal Regulation 72(5) and a condition B direction is considered by HMRC PAYE Directions Unit. Where such a direction is made it enables HMRC to recover an under-deduction of PAYE from the employee where the employer's failure appears to be wilful, and the employee was aware of the situation.

There can be all sorts of reasons why the employer deducted insufficient PAYE. Where an employer fails to deduct tax under PAYE, Regulations 185 and 188 provide for the employee to be given a PAYE credit to prevent the employee having to bear the employer's debt.

On making a discovery assessment or closure amendment based on estimated earnings a PAYE credit has to be given, unless a direction has been made under Regulation 72(5). When such a direction has been given, Regulations 185 and 188 provides for the PAYE credit to be denied and, if already given in the assessment/amendment, to be clawed back. This credit can be withdrawn even though the assessment has become final and conclusive, Regulation 188(5).

In certain circumstances the PAYE deficit can be for genuine reason. For example, tax may be chargeable at 40% because of income elsewhere, but if no code number for the year had been notified to the employer, nor any P46 completed by the employer, deducts tax at the basic rate using the emergency code (Regulation 45 and 46) and there could still be net tax due.

As they say, each case on its own merits and assumptions can often be wrong.

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*The above comments are for general guidance only and more information is available at <http://www.taxnetworks.co.uk/> or you can contact Chris Leslie at [chris.leslie@taxnetworks.co.uk](mailto:chris.leslie@taxnetworks.co.uk)*