



Neutral Citation Number: [2010] EWHC 938 (Ch)

Case No: 8DH00097

**IN THE HIGH COURT OF JUSTICE**  
**NEWCASTLE-UPON-TYNE DISTRICT REGISTRY**  
**MERCANTILE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 30/04/2010

Before :

**MR JUSTICE DAVID RICHARDS**

Between :

**ELAINE BULLEY (Officer of THE  
COMMISSIONERS FOR HER MAJESTY'S  
REVENUE & CUSTOMS)**

**Claimant**

- and -

**HEMMER INVESTMENTS LIMITED (formerly  
STERLING SCAFFOLDING (NORTHERN)  
LIMITED)**

**Defendant**

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**Mr Eamon McNicholas** (instructed by **Solicitor to HM Revenue & Customs**)  
for the **Claimant**

**Mr Scott Redpath** (instructed by **Patterson Glenton & Stracey**) for the **Defendant**

Hearing dates: 1,2,3,4,10,11 December 2009  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

*David Richards*

MR JUSTICE DAVID RICHARDS

**Mr Justice David Richards:**

*Introduction*

1. This case concerns the operation of the Pay As You Earn income tax system in circumstances where an employer has provided in its payroll records for rebates of income tax payable to employees, has deducted those rebates from the PAYE payments made to HM Revenue & Customs (HMCR) but has not paid them to the employees.
2. HMRC claims PAYE income tax of £15,536.25 and £221,766.65 for the periods ended 5 April 2004 and 5 April 2005 respectively, together with interest in each case. The defendant Hemmer Investments Limited (formerly, and during the relevant periods, called Sterling Scaffolding (Northern) Limited) (the company) denies liability.
3. At the material times, the company carried on a scaffolding business in the North East of England. It provided scaffolders during the refit of an off-shore oil drilling platform on the River Tyne. The platform was taken to a position off the Nigerian coast and the company was contracted to supply scaffolders while work continued in that location. It would appear that about 35 scaffolders and other personnel were provided in the 2003/04 tax year and about 49 in the following year to work in Nigeria. All the personnel were employees of the company and subject to UK income tax on their earnings, which was paid through the PAYE system. The tax claimed in the present case relates to the period when the platform was off the Nigerian coast.
4. The system of working in Nigeria involved the employees working on the platform for periods of four weeks, followed in each case by a four-week period of leave. The employees were paid for the periods of work, but not for the periods of leave. The company ran its payroll for the employees throughout the year, including the periods of leave. For each week of leave, the payroll showed each employee as entitled to a tax rebate of approximately £150 and payslips to that effect were sent to the employees. The rebates were not, however, paid to the employees, and it was complaints about this by employees which brought the matter to the attention of HMRC.
5. The company's payroll system operated in this way because the employees' entitlement to the personal allowance against income tax was spread equally through the year. In the normal situation where an employee is paid each week or month, this makes for equal deductions for each week or month, and an equal credit for the personal allowance. Where, as here, the employees are paid for only some weeks, a tax rebate is needed for the other weeks, to ensure that the employees receive their personal allowance in full. An alternative procedure would have been to confine the credit for the personal allowance to those weeks when the employees were working and so reduce the PAYE deductions in those weeks. Having deducted PAYE tax for the work periods, it is HMRC's case that the company cannot net off the tax rebates from the amounts of PAYE tax deducted unless it paid those rebates to the employees.
6. The company raises a number of defences to this claim, but a primary part of its case is that the employees working on the platform in Nigeria were engaged on the basis that their contractual entitlement was to a net amount after tax and national insurance

contributions, being the amount they were paid. Any tax debits or credits were therefore for the company's account.

7. The statutory authority for the PAYE system applicable to the relevant periods in this case was contained in the Income Tax (Earnings and Pensions) Act 2003 and the Income Tax (Pay as You Earn) Regulations 2003 (the PAYE Regulations) made under it. As Mr Redpath, counsel for the company, succinctly put it, the PAYE system:

*“imposes on employers a duty to deduct tax when relevant payments are made to employees, to account for the tax deducted, and to pay it over to HMRC. The PAYE mechanism aims to match the total tax deducted from relevant payments with the final correct liability.”*

8. Regulation 21 (1) of the PAYE regulations provides that:

*“On making a relevant payment to an employee during a tax year, an employer must deduct or pay tax in accordance with these Regulations by reference to the employee's code, if the employer has one for the employee.”*

“Relevant payments” are income from the employment less any allowable pension contributions and charitable donations. Regulation 22 provides that ordinarily an employer must deduct or repay tax on a cumulative basis.

9. An employer is obliged to account to HMRC for PAYE on a monthly basis, as set out in regulation 68(1) – (4):

- “(1) This regulation applies to determine how much an employer must pay or can recover for a tax period.*
- (2) If A exceeds B, the employer must pay the excess to the Inland Revenue.*
- (3) But if B exceeds A, the employer may recover the excess either—*
- (a) by deducting it from the amount which the employer is liable to pay under paragraph (2) for a later tax period in the tax year, or*
- (b) from the Board of Inland Revenue.*
- (4) In this Regulation—*
- A is—*
- (a) the total amount of tax which the employer was liable to deduct from relevant payments made by the employer in the tax period, plus*

- (b) *the total amount of tax for which the employer was liable to account in respect of notional payments made or treated by virtue of a retrospective tax provision as made, by the employer in that period under regulation 62(5) (notional payments);*

*B is the total amount which the employer was **liable to repay** in the tax period”*

The words in bold are particularly significant in the present case. A “tax period” as referred to in the regulation means a tax month, running from the sixth day of one calendar month to the fifth day of the next (regulation 2). At this stage, the employer is not required to inform HMRC of the amount referable to each employee.

10. An employer is required to submit a return by 19 May following the end of a tax year, showing the deductions for each employee. Regulation 73 provides:

***“73 Annual return of relevant payments liable to deduction of tax (Forms P35 and P14)***

- (1) *Before 20th May following the end of a tax year, an employer must deliver to the Inland Revenue a return containing the following information.*
- (2) *The information is—*
- (a) *the tax year to which the return relates,*
- (b) *the total amount of the relevant payments made by the employer during the tax year to all employees in respect of whom the employer was required at any time during that year to prepare or maintain deductions working sheets, and*
- (c) *the total net tax **deducted** in relation to those payments.*
- (3) *The return must be supported by the following information in respect of each of the employees mentioned in paragraph (2)(b).*
- (4) *The supporting information is—*
- (a) *the employee's name,*
- (b) *the employee's address, if known,*
- (c) *either—*
- (i) *the employee's national insurance number, or*

12. There are different provisions in the Regulations for recovery of amounts alleged to be due.
13. Regulation 76 applies where an employer fails to pay the amount shown as due in a P35 submitted by it, i.e. fails to pay an amount which the employer has acknowledged to be due.
14. Regulation 97 as it applied to the facts of the present case required an employer to produce its PAYE records for inspection, when required to do so by an authorised officer of HMRC. Regulation 79 as it applied in this case provided:

***“79 Certificate after inspection of PAYE records***

- (1) *This regulation applies if there is an inspection of an employer's PAYE records under regulation 97.*
- (2) *The Inland Revenue may, by reference to the information obtained from the inspection, prepare a certificate showing—*
  - (a) *the amount of tax which it appears that the employer is liable to pay for the tax years or tax periods covered by the inspection; and*
  - (b) *any amount of that tax which remains unpaid.*
- (3) *Regulation 218 deals with the use of certificates as evidence that sums are due and unpaid.”*

Regulation 218 (1) provides that:

- “(1) A certificate of HMRC that, to the best of their knowledge and belief, any amount shown in a certificate under the regulations listed in paragraph (2) has not been paid by an employer, is sufficient evidence that the amount mentioned in the certificate is unpaid and due to the Crown.”*

The regulations listed in para (2) include regulation 79.

15. Regulation 84(1) – (3) provides:

***“84 Recovery of tax and interest***

- (1) *In this regulation, “the unpaid amount” means any amount of tax or interest which—*
  - (a) *an employer is liable to pay under regulation 76(2), 77(6), 78(8), 79(2)(b) or 82(2);*

- (b) *an employee is liable to pay under regulation 72(7) or regulation 81(6).*
- (2) *Part 6 of TMA (collection and recovery) applies to the recovery of the unpaid amount or combined amount and any interest on it as if it were income tax charged on the employer or employee (as the case may be) but with the modification indicated in paragraph (3).*
- (3) *Summary proceedings for the recovery of the unpaid amount may be brought in England and Wales or Northern Ireland at any time before the end of the period which applies for the purposes of the regulation in question, as shown in Table 4."*

Table 4 referred to in regulation 84(3) provides that summary proceedings for the recovery of an unpaid amount under regulation 79(2)(b) must be brought within "12 months after the date of the certificate". Sections 66 and 68 in Part 6 of the Taxes Management Act 1970 (TMA) enable tax to be sued for and recovered from the person charged with it as a debt due to the Crown in a county court or the High Court.

16. Regulation 80 applies if it appears to HMRC that there may be tax payable *under regulation 68* by an employer which has neither been paid nor certified under, *inter alia*, regulation 79. HMRC may determine "the amount of that tax to the best of their judgment, and serve notice of their determination on the employer": regulation 80(2). A determination is treated as if it were an assessment for the purposes of appeals and recovery: regulation 80(5). Challenges to determinations would therefore proceed before the General or Special Commissioners, and now before the appropriate Tribunal, not before a court.
17. HMRC began their investigations in relation to the company in about July 2005. There was an inspection of the company's records under regulation 97 in August 2005. Attempts to resolve the matter by agreement failed and on 21 June 2006 HMRC issued determinations under regulation 80 in the same amounts as claimed in this action. The company lodged appeals on 5 July 2006. A hearing before the General Commissioners was fixed for 22 May 2007. The hearing was later re-fixed for September 2007 and at a meeting on 22 May 2007 between representatives of HMRC and the company, the company argued that there was no liability under regulation 68, and therefore no basis for a determination under regulation 80. Following internal specialist advice, HMRC agreed that no liability arose under regulation 68, for reasons to which I will later refer, and reduced the determinations under regulation 80 to nil. At the same time HMRC made clear to the company that they maintained their claim but on different grounds which they explained. They informed the company that they would proceed under regulation 79, but agreed to defer doing so while the company took further advice.
18. On 2 January 2008, HMRC issued documents which they took to be certificates under regulation 79. On 23 January 2008 HMRC, acting by its officer Elaine Bulley, issued the present proceedings in the Durham County Court, which were later transferred to the Newcastle-upon-Tyne County Court and then to the High Court.

19. Before coming to the substantive issues on the claim, there are a number of procedural or similar points taken by the company.
20. First, the company pleads in its amended defence, in response to amended particulars of claim, that the effect of the acceptance by HMRC in August 2007 that there was no tax due under regulation 68, and the reduction of the regulation 80 determinations to nil, was that there was no unpaid tax due whether as raised in the regulation 80 determinations or otherwise and that these matters, combined with HMRC's withdrawal from the appeal proceedings before the General Commissioners, finally concluded the issues between the parties. Mr Redpath, appearing for the company, did not develop this line of defence before me. It is not in my view well-founded, given that a determination under regulation 80 is restricted to liabilities arising under regulation 68 and that HMRC made clear that they maintained their claim but under different provisions. If regulation 68 is the only provision under which a liability to account for PAYE arises, HMRC's present claim will fail, but they are not precluded by the facts mentioned above from pursuing it.
21. Secondly, Mr Redpath submitted, although this was not pleaded, that there was a 12-month time limit on proceedings under regulation 84, calculated from the date of the certificate under regulation 79. The argument proceeded as follows. First, regulation 84(1)(a) defines "the unpaid amount" as any amount of tax or interest which an employer is liable to pay under, among other provisions, regulation 79(2)(b). Secondly, regulation 84(2) provides that Part 6 of TMA applies to the recovery of the unpaid amount as if it were income tax charged on the employer but with the modification indicated in regulation 84(3). Thirdly, regulation 84(3) provides that "summary proceedings" for the recovery of the unpaid amount may be brought within the time limits set out in Table 4, which in the case of regulation 79(2)(b) is 12 months from the date of the certificate referred to in regulation 79(2). Fourthly, the present proceedings were out of time if the relevant certificate was prepared more than 12 months before the issue of proceedings.
22. This time limit applies to "summary proceedings". The provisions of Part 6 of TMA so far as they concern the recovery of tax by court proceedings are contained in ss.65 to 68, dealing respectively with proceedings in magistrates' courts, county courts, inferior courts in Scotland, and the High Court. Section 65 provides that unpaid tax not exceeding £2,000 "shall, without prejudice to any other remedy, be recoverable summarily as a civil debt". There is no similar reference to summary recovery in ss.66 or 68 dealing with proceedings in the county courts and High Court. Summary proceedings for the recovery of a civil debt are proceedings in magistrates' courts: s.58 Magistrates' Courts Act 1980. The time limit of 12 months in regulation 84(3) is designed to achieve consistency with the same time limit in s.65(3). The 12-month time period does not apply to the present proceedings.
23. The argument as to time limits was run at a time when it was unclear when HMRC had issued certificates. HMRC's pleaded case, in paragraph 4 of the amended particulars of claim, was that the certificates were prepared on 2 January 2008. In its amended defence, the company did not admit that any certificates had been prepared and specifically denied that any certificates had been received by or served on it or its advisers.

24. The two documents issued on 2 January 2008 which HMRC assert were the certificates are in a standard form (P31B) headed “Deputed collector’s report”. After giving the date of the visit, details of the company, and details of the person seen on the visit, the form continues “Amount that can be certified for collection” and specifies an amount. There are boxes for further information as regards recovery action and provisional arrangements or proposals for payment and for other “useful information”.
25. The form of these documents gives rise to the company’s third procedural or preliminary objection. It argues that these documents were not certificates under regulation 79 and that such certificates are a necessary pre-condition, by reason of the terms of regulation 84, to any proceedings brought under Part 6 of TMA. The certificates must, it submits, be pleaded as a material fact.
26. In my judgment it is clear that the documents issued on 2 January 2008 are not, and do not purport to be, certificates under regulation 79. On the contrary, they are the deputed collector’s report as to the amount that can be certified. While it is true, as Mr McNicholas for HMRC submitted, that no particular form is required for a certificate under regulation 79, it must in my view be recognisable as and intended to be such a certificate. Moreover, the documents in question, while stating the amounts of tax unpaid, do not state the amounts of tax referred to in regulation 79(2)(a).
27. The question is what flows from the absence of a certificate under regulation 79 prior to the issue of the proceedings. Is such a certificate a pre-condition to the commencement of proceedings for recovery of the unpaid tax, so as to render these proceedings liable to be struck out and to provide a complete defence to the company?
28. I have previously set out the text of regulation 84. Regulation 84(2) applies Part 6 of TMA to the recovery of “the unpaid amount”, which is defined by regulation 84(1) as any amount of tax or interest which an employer is liable to pay under five provisions including regulation 79(2)(b). If a certificate under regulation 79 created the liability under regulation 79(2)(b), I would regard Mr Redpath’s submission as unanswerable. But Mr Redpath himself submitted, rightly in my judgment, that it does not do so. Paragraph 13 of his written closing submissions states:

*“D would add that Regulation 79 does not create a liability. Nor does it create a cause of action as might appear to be suggested by Regulation 84(1) and (3). A Regulation 79 certificate only certifies that a cause of action has arisen by virtue of there being unpaid tax. That unpaid tax, however, only arises in respect of the employer’s liability to pay tax, which is defined by Regulation 68.”*

While, for the reasons given below, I do not agree that the liability in this case arises under regulation 68, I agree that it is not a certificate under regulation 79, or even regulation 79 itself, which creates the liability. The same is equally true of certificates prepared under the other regulations to which regulation 84(1)(a) refers. Further, as Mr Mc Nicholas pointed out, and I did not understand Mr Redpath to disagree, there is no requirement to serve the certificate on the employee or give notice of it to the employer, which surely would be required if it created the liability.

29. If the certificate does not create the liability, I find it hard to deduce a legislative intention that court proceedings could not validly be brought to enforce the liability without a prior certificate under the regulation, particularly as no notice of the certificate need be given and there is no procedure set out in the Regulations for challenging the certificate as a statement of the liability due, as opposed to defending the proceedings. The certificate does not trigger, or form part of, a series of steps laid down in the legislation. There are none of the usual indicia of a legislative intention that the presence of the certificate is essential to the validity of what follows.
30. It would not of course be right for HMRC, any more than any other claimant, to commence proceedings for recovery of an alleged liability without prior demand. In this case, there was extensive discussion and correspondence with the company, which was in no doubt as to the amounts and basis of the sums claimed from it. It has suffered no prejudice from the lack of a certificate in compliance with regulation 79 prior to the issue of the proceedings, which on the facts of this case is an entirely technical matter.
31. My conclusion does not result in the certificate being without purpose. First, it provides the start of a limitation period for summary proceedings: regulation 84(3). Secondly, as made clear by regulation 79(3), a certificate is part of an evidential process, necessary for the issue of a certificate under regulation 218. Certificates standing as evidence of unpaid amounts can also be issued under s.25A of the Commissioners for Revenue and Customs Act 2005, introduced with effect from 21 July 2008. HMRC issued combined certificates under regulations 79 and 82 (interest) and s.25A for the sums claimed in these proceedings on 10 December 2008 and 1 December 2009.
32. Turning to the substantive issues, the company submits that the only source of any liability of an employer to pay PAYE to HMRC is regulation 68. While other regulations refer to certified liabilities and so on, they are all ultimately referable to regulation 68. HMRC submits that there are other sources of liability under the regulations, including so far as relevant to this case regulation 73.
33. I do not accept the company's submission. Regulation 68(1) provides that the regulation applies to determine the amount of tax payable or recoverable by an employer "for a tax period". As already noted, "tax period" is defined by regulation 2(1) to mean a tax month or, in some cases, a tax quarter. The amount payable for a tax period is determined by reference to the total amount of tax which the employer "was liable to deduct" from relevant payments made in the tax period and the total amount which the employer "was liable to repay" in the tax period. The test is liability, not amounts in fact paid. Provided that the employer was liable to repay an amount to an employee in the tax period, it falls to be deducted under regulation 68 from the amount of tax which the employer was liable to deduct, whether or not it was in fact paid in that tax period. The company had paid to HMRC the amounts calculated in this way as required by regulation 68, which is why HMRC reduced the regulation 80 determinations to nil.
34. Regulation 73, on which HMRC bases its claim, requires the submission of the annual return P35. It must state "the total net tax deducted" in relation to the relevant payments made to all employees during the tax year to which the return relates. "Total net tax deducted" is defined by regulation 2(1) as "in relation to the relevant

payments made to an employee during any period, ... the total tax deducted from those payments...less any tax repaid to the employee". This refers not to liabilities to deduct and repay, but sums in fact deducted and repaid. Regulation 73(7) requires the return to include a certificate showing the total net tax deducted or repaid both in respect of each employee and in respect of all employees, which must be signed by the employer or, in the case of a company, by the secretary or a director.

35. Regulation 73 does not itself expressly impose a liability to pay any amount. However, the prescribed form P35, for which provision is made in regulation 211, does so. The obligation to pay the amount of total net tax deducted as shown in the return (but, of course, taking account of payments made during the tax year, as P35 makes clear) is recognised in regulation 76. Regulation 76 is not applicable in the present case, because the company's returns did not show an amount of unpaid tax.
36. HMRC's case is that where in an annual return an employer has calculated the total net tax by subtracting from the figure for total tax deducted a sum for "tax repaid to the employee" which has not in fact been repaid, the employer is liable to HMRC for tax without such subtraction. Unless the employer has proper legal reason for the subtraction, it follows in my judgment that the employer is liable for the greater sum. For the reasons already given, this is not a case for a determination under regulation 80, because the liability does not arise under regulation 68. It is therefore, as HMRC submitted, a debt for which they can sue in the civil courts. The company submitted that the proper place for the determination of issues as to tax liabilities is the relevant tribunal, not the courts. While in general this is true, under the Part 4 of the Regulations it is only appeals against determinations under regulation 80 which lie to the tribunal and for the reasons already given, regulation 80 does not apply to this case. The claim here is, as HMRC submits, for a known amount which is payable to HMRC unless the company is right that it is entitled to set off the tax rebates shown in its payroll records but not paid to employees.
37. The company submitted that it was entitled, in arriving at the figure for net total tax deducted, to subtract the figures for tax rebates shown in its records for the employees' periods of leave and to do so without paying those amounts to the employees. Its case for doing so as presented at the hearing was that the employees' contracts were net pay agreements, that is to say that the employees were entitled to be paid a sum per day net of tax and that all liability for income tax and national insurance contributions rested on the company. It was therefore the company that took the risk and benefit of any increase or reduction in the amounts of tax or contributions payable. The company could show that it had paid the agreed net amount to the employees who were therefore not entitled to tax rebates in the periods of leave, nor to any reduction in the amounts deducted for tax in the periods of work. By deducting tax rebates from the tax deductions, the company had accounted to HMRC for the correct amounts of tax. The company submitted that the accurate approach which it should have adopted was not to operate PAYE at all during leave periods and to show a lower figure for PAYE in the work periods, but the net result was the same.
38. This raises an issue of fact as to the terms of employment. It is permissible as a matter of both employment and tax law for employment to be on net pay terms. HMRC issues a guide (FOT 1) and appropriate tax tables and deductions working sheets for employment on these terms. The guide contains the following:

evidence that the employees were engaged on net pay terms was based, he said, on discussions with Mr T Mulheran, the company's administration manager, Michelle Worthy, the payroll processor, and a supervisor. He had no discussions with any of the employees concerned. He said that he relied also on the timesheets for employees, but agreed that they would have been the same whether the employees' terms were for gross or for net pay.

40. Mr Cox also relied on an inference to be drawn from the fact that the Amec Group, a major competitor to the company in the North East, was also providing men to work on the platform in Nigeria. Amec was paying a daily net rate, after payment of all PAYE and NIC, of £185 per day and the company needed to match it. This provides at best a slender basis for inferring that the same terms were agreed by the company with its employees.
41. There are notes in evidence of a meeting on 13 July 2005 attended by two HMRC officers and by Mr Mulheran and Mr E Jones, a director of the company. The note was prepared by one of the HMRC officers on 14 July 2005 and signed by both of them. Mr Jones said that the employees knew that the company was operating a net pay arrangement, but confirmed that they were given no written terms of employment and that he had not personally spoken to them about it. Mr Mulheran likewise confirmed that he had not spoken to the employees about it. They said that Albert Hemmer had the responsibility to inform the employees. The note continues:

*"I asked Jones if it was necessary for all the employees to visit the premises before being sent to Nigeria. Jones replied that it was preposterous to suggest that the men had not been briefed at the premises before departure. I told him that the men I have spoken to say that they had never visited the premises, Jones disagreed.*

*I therefore asked who would be responsible for this; I was advised that Albert Hemmer would be. I therefore asked if Albert could join the meeting, he did, and the question was asked of him. Albert responded by saying that not all the men are briefed at the premises, and that some go direct to the job.*

*At this point Jones asked Hemmer if all the men had been told of the fact that the company pays them net, and that the company pays the tax/nic. Hemmer paused, and confirmed that was the case."*

42. The contemporaneous evidence contradicts the company's case. The prescribed P35 requires an answer to the question "Did you make any 'free of tax' payments to any employee? In other words, did you bear any of the tax yourself rather than deduct it from the employee?" The answer was no in the P35s for both 2003/04 and 2004/05. Each P35 was signed by Mr Mulheran with a declaration that "All the details on this form ... are fully and truly stated to the best knowledge and belief". Mr Mulheran was not called to give evidence, and so no explanation was given as to why he signed the P35s if the employees were in fact employed on free of tax or net pay terms.

43. HMRC interviewed a number of employees and questionnaires signed by five of them are in the bundles before the Court. All deny that they were told anything about net pay terms. Their answers are inconsistent as to whether they were told that the company would be paying PAYE on their behalf.
44. On the totality of this evidence, the company cannot in my judgment make out its case that net pay or free of tax terms were agreed with employees. I find that the payroll system was operated in accordance with the relevant terms of employment.
45. Mr Cox prepared revised calculations of the PAYE due and paid in respect of a sample of employees and also submitted revised P35s. These, he said, demonstrated that there was no further tax due and that in fact the company had overpaid by some £30,000. There was a good deal of confusion in his evidence as to the various re-workings which he produced, but the fundamental point is that they all proceeded on the basis that the terms of employment provided for free of tax or net payments.

*Conclusion*

46. I conclude therefore that the company was not entitled to deduct in its P35s the unpaid tax rebates from the amounts shown as deducted for PAYE income tax. It follows that the sums claimed, together with interest as claimed, are due from the company to HMRC.
47. The company submitted that any claim for the tax rebates could be brought only by the employees to whom they should have been paid if, as I have found, they were not employed on net pay terms. HMRC may, as it suggested, be required to give credit to the employees through the tax system for the rebates. In any event, at least while the tax rebates are not paid to the employees, there is a clear liability on the company arising under regulation 73 to pay to HMRC the full amount of tax deducted without netting off the rebates.
48. I will therefore give judgment for the amount claimed by HMRC.