**Form P46/Starter Form - Potential Employer Error**

**Regulation 46(2C) of the Income Tax (PAYE) Regulations 2003 (SI 2003/2682) -** if an appropriate form P46/starter form is not completed, “the employer must deduct tax on the non-cumulative basis using code OT from the employee’s earnings”.

**Champneys Tring Ltd v HMRC TC05685 27.02.17** - confirmed that as the employer did not have a valid form P46, the employer was liable for the underpayment of tax.

**Reg. 97** - the employer has to retain form P46/starter forms for not less than three years after the tax year.

**Reg. 46 (2A)** A form P46/starter form must be-

1. signed by the employee: or
2. delivered by the employer by an approved method of electronic communications after he has complied with paragraph (2B)

**Reg. 46(2B)** - the employer must verify the content of the starter form before the information is delivered to HMRC.

**Reg. 80** – provides that HMRC may direct an employer to pay tax due (under Reg. 68 or Reg. 67G).

**Reg. 72 -** Recover from the employee if:

Condition A: the employer satisfies [HMRC] –

1. that the employer took reasonable care to comply with the PAYE regulations, and

(b) that the failure to deduct the excess was due to an error made in good faith.

OR

Condition B: [HMRC] are of the opinion that the employee has received payments knowing that the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments.

**Possible scenarios:**

1. No starter declaration or employer is unable to provide - employer error?
2. Incorrect starter declaration but employer can show that it was approved / signed by employee – no employer error?
3. Employee disputes the information provided to employer and employer cannot show that they verified information on starter declaration, unsigned etc. – employer error?
4. Correct starter declaration - but innocent mistake made inputting info into RTI – inadvertent error?