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STATUTORY INSTRUMENTS

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**1993 No. 744**

**The Income Tax (Employments) Regulations 1993**

**PART V**

**PAYMENT AND RECOVERY OF TAX, ETC.**

*Payment*

**Payment of tax monthly by employer**

**40.**—(1) Subject to regulations 41 and 48(11), the employer shall pay the amount specified in paragraph (2) to the collector within 14 days of the end of every income tax month.

(2) The amount specified in this paragraph shall be determined by the formula—

$$(A + B) - (C + D)$$

where—

A is all amounts of tax which the employer was liable under these Regulations to deduct from emoluments paid by him in that income tax month;

B is all amounts of tax by which deductions in that income tax month were reduced in accordance with regulation 36(3)(b), being amounts in respect of which a reduction was claimed in an earlier income tax month in accordance with C below;

C is any amounts calculated as due to be repaid in that income tax month, but whose repayment was precluded during that income tax month by regulation 36(3); and

D is any amounts which he was liable to repay in that income tax month (excepting any amounts for which a reduction was claimed in any previous income tax month, or which are being recovered from the Board under regulation 42(6)).

**Payment of tax quarterly by employer**

**41.**—(1) Subject to regulation 48(11), the employer shall pay the amount specified in paragraph (2) to the collector within 14 days of the end of every income tax quarter where—

(a) the employer has reasonable grounds for believing that the condition specified in paragraph (3) applies and so chooses, or

(b) regulation 20 applies.

(2) The amount specified in this paragraph shall be determined by the formula—

$$(A + B) - (C + D)$$

where—

A is all amounts of tax which the employer was liable under these Regulations to deduct from emoluments paid by him in that income tax quarter;

B is all amounts of tax by which deductions in that income tax quarter were reduced in accordance with regulation 36(3)(b), being amounts in respect of which a reduction was claimed in an earlier income tax quarter in accordance with C below;

C is any amounts calculated as due to be repaid in that income tax quarter, but whose repayment was precluded during that income tax quarter by regulation 36(3); and

D is any amounts which he was liable to repay in that income tax quarter (excepting any amounts for which a reduction was claimed in any previous income tax quarter, or which are being recovered from the Board under regulation 42(6)).

(3) The condition specified in this paragraph is that the average monthly total amount to be paid to the collector under—

- (a) regulation 40,
- (b) the Social Security Contributions and Benefits Act 1992 and the Social Security (Contributions) Regulations 1979(1) or, in Northern Ireland, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Social Security (Contributions) Regulations (Northern Ireland) 1979(2), and
- (c) section 559 of the Taxes Act(3) and the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993(4),

will be less than £450 for income tax months falling within the current year.

#### **Payment of tax by employer—further provisions**

**42.**—(1) The collector shall give a receipt to the employer for the total amount paid under regulation 40 or 41 if so requested; but if a receipt is given for the total amount of tax and any earnings-related contributions paid at the same time, then no separate receipt for tax only need be given.

(2) If the amount specified in regulation 40(2) or 41(2) which the employer is liable to pay to the collector exceeds the amount actually deducted by him from emoluments paid during the relevant income tax period, the collector, on being satisfied by the employer that he took reasonable care to comply with these Regulations and that the under-deduction was due to an error made in good faith, may direct that the amount of the excess shall be recovered from the employee, and, where the collector so directs, the employer shall not be liable to pay the amount of that excess to the collector.

(3) If the amount specified in regulation 40(2) or 41(2) which the employer is liable to pay to the collector exceeds the amount actually deducted by him from emoluments paid during the relevant income tax period, the Board, if they are of the opinion that an employee has received his emoluments knowing that the employer has wilfully failed to deduct the amount of tax which he was liable to deduct under these Regulations from those emoluments, may direct that the amount of the excess shall be recovered from the employee, and, where the Board so direct, the employer shall not be liable to pay the amount of that excess to the collector.

(4) If tax recoverable from an employee under paragraph (3) does not carry interest under section 88 of the Management Act(5), it shall carry interest in accordance with regulation 51 from the reckonable date until whichever is the earlier of—

- (a) the date on which payment is made, or

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(1) S.I.1979/591.

(2) S.R. (N.I.) 1979 No. 186.

(3) Section 559 was amended by section 28 of the Finance Act 1988 and by S.I. 1989/2405 (N.I. 19).

(4) S.I. 1993/743.

(5) Section 88 was amended by paragraph 87 of Schedule 6 to the Finance Act 1971 (c. 68), section 46(4) of the Finance (No. 2) Act 1975, section 61(4) of the Finance Act 1980 (c. 48), paragraph 32 of Schedule 29 and Schedule 31 to the Income and Corporation Taxes Act 1988, and sections 159, 160(1), 161 and 179(1) of the Finance Act 1989, and (prospectively) by section 86(4) of the Finance (No. 2) Act 1987 (c. 51).

(b) the date (if any) immediately before the date on which it begins to carry interest under section 86 of the Management Act(6).

(5) If a difference arises between the employer and the employee—

(a) as to whether the employer has deducted tax, or

(b) as to whether, having regard to regulation 22, the employer is deemed to have deducted tax, or

(c) as to the amount of the tax that has been deducted, or

(d) as to the amount of the tax that is deemed, having regard to regulation 22, to have been deducted

from emoluments paid to the employee, the matter shall, for the purpose of ascertaining the amount of any tax to be recovered from the employee under paragraph (2) or (3), be determined by—

(i) such General Commissioners as the Board, having regard to all the circumstances, shall direct, or

(ii) in the case of a non-resident employee, the Special Commissioners, and the determination of those Commissioners shall be final.

(6) If the total of the amounts which the employer was liable to repay during any income tax period exceeds the total of the amounts which he was liable to deduct during that income tax period, the employer shall be entitled to deduct the excess from any subsequent payment which he is liable to make to the collector under regulation 40 or 41 or to recover that excess from the Board; but that excess shall not include any amount for which a reduction was made in a payment under regulation 40 or 41 in a previous income tax period, or any amount which is otherwise being recovered from the Board.

(7) If he has not made any repayment of tax withheld under paragraph (3) of regulation 36 within 42 days after the relevant event specified in sub-paragraph (a) of that paragraph, the employer shall pay the tax not repaid to the collector forthwith, and paragraph (1) of this regulation shall apply to the amount paid.

(8) A certificate of the collector that any amount of interest payable under paragraph (4) has not been paid to him, or, to the best of his knowledge and belief, to any other collector or to any person acting on his behalf or on behalf of another collector, shall be sufficient evidence that the sum mentioned in the certificate is unpaid and due to the Crown.

(9) Any document purporting to be a certificate under paragraph (8) shall be deemed to be such a certificate until the contrary is proved.

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(6) Section 86 was substituted by section 46(1) of the Finance (No. 2) Act 1975; the section as substituted was amended by sections 61(3) and 62(1) and (2) of the Finance Act 1980, Part V of Schedule 16 to the Finance Act 1987 (c. 16), paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988, sections 156(1) and 179(1) of the Finance Act 1989, section 73(4) and (5) of, and paragraph 1 of Schedule 15 to, the Finance Act 1991, sub-paragraphs (1) and (8) of paragraph 2 of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12) and paragraph 3 of Schedule 11 to, and Part VII(8) of Schedule 18 to, the Finance (No. 2) Act 1992, and (prospectively) by section 86(2) of the Finance (No. 2) Act 1987 and section 158(1) of, and Part VIII of Schedule 17 to, the Finance Act 1989.