
STATUTORY INSTRUMENTS

1993 No. 744

The Income Tax (Employments) Regulations 1993

PART VI

SPECIAL PROVISIONS

CHAPTER I

COUNCILLORS' ATTENDANCE ALLOWANCES

Interpretation of Chapter I

56. In this Chapter unless the context otherwise requires—

“attendance allowance” means a payment by way of attendance allowance within section 173(1) of the Local Government Act 1972(1), regulations made under section 18 of the Local Government and Housing Act 1989(2) or regulation 4(1) of the Local Government (Payments to Councillors) Regulations (Northern Ireland) 1981(3);

“council” and “joint committee” shall be construed in accordance with section 148(1) of the Local Government Act (Northern Ireland) 1972(4);

“councillor” means any person who is entitled to receive a payment by way of attendance allowance by virtue of section 173(1) of the Local Government Act 1972 or regulations made under section 18 of the Local Government and Housing Act 1989 and any member of a council entitled to receive a payment by way of attendance allowance by virtue of regulation 4(1) of the Local Government (Payments to Councillors) Regulations (Northern Ireland) 1981;

“employer” includes the local authority, council, joint authority or joint committee paying the attendance allowance;

“local authority” in England and Wales has the meaning assigned to it by section 270(1) of the Local Government Act 1972 and in Scotland has the meaning assigned to it by section 235(1) of the Local Government (Scotland) Act 1973(5).

Councillor’s option to have tax deducted at basic rate

57.—(1) This regulation applies where a councillor is entitled to receive an attendance allowance.

(2) Where a councillor is aggrieved by the inspector’s determination under regulation 7 or 9, he may, by notice to the inspector, opt to have income tax deducted from the attendance allowance at the basic rate in force at the time of payment of the attendance allowance.

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- (1) 1972 c. 70; section 173(1) was amended by section 24(1) of the Local Government, Planning and Land Act 1980 (c. 65) and by paragraph 26 of Schedule 11 to the Local Government and Housing Act 1989 (c. 42).
- (2) 1989 c. 42; the Regulations in force on the date these Regulations are made are the Local Authorities (Members' Allowances) Regulations 1991 (S.I.1991/351) and the Local Authorities Etc. (Allowances) (Scotland) Regulations 1991 (S.I. 1991/397 (S.39)).
- (3) S.R. (N.I.) 1981 No. 354.
- (4) 1972 c. 9 (N.I.).
- (5) 1973 c. 65.

(3) On receipt of any such notice the inspector shall give notice to the employer of the exercise of the option.

(4) On receipt of a notice given by the inspector to the employer under paragraph (3), and subject to paragraph (5), the employer, on making any payment of an attendance allowance to the councillor, shall deduct income tax at the basic rate in force at the time of that payment.

(5) Where a councillor has exercised his option under paragraph (2) and the inspector considers that the councillor may be obliged to expend money wholly, exclusively and necessarily in the performance of his duties as a councillor, the inspector may direct the employer to disregard an appropriate amount of the councillor's attendance allowance in calculating the tax to be deducted when any payment of attendance allowance is made to the councillor.

(6) Where the inspector has given notice to the employer of the exercise by a councillor of the option in paragraph (2), the employer shall record, on a deductions working sheet, the particulars specified in paragraph (7) regarding every payment of attendance allowance which he makes to the councillor.

(7) The particulars specified in this paragraph are—

- (a) the date of the payment,
- (b) the amount of the attendance allowance,
- (c) where paragraph (5) applies, the net amount of the attendance allowance from which tax has been deducted, and
- (d) the amount of tax deducted from the attendance allowance.

Application of Part V of these Regulations

58. Part V of these Regulations shall apply to tax liable to be deducted under regulation 57(4).

CHAPTER II

RESERVE AND AUXILIARY FORCES

Interpretation of Chapter II

59.—(1) In this Chapter unless the context otherwise requires—

“the Ministry” means—

- (a) in relation to emoluments paid to members of the Merchant Navy Reserve, the Department of Transport, and,
- (b) in all other cases, the Ministry of Defence;

“reserve and auxiliary forces” includes the forces specified in paragraph (2);

“reserve pay” means emoluments paid by the Ministry to members of the reserve and auxiliary forces;

“reservist” means any person in receipt of reserve pay other than a person who is not resident in the United Kingdom and is serving outside the United Kingdom.

(2) The forces specified in this paragraph are—

- (a) Royal Naval Reserve,
- (b) Royal Marines Reserve,
- (c) Royal Fleet Reserve,
- (d) Royal Naval Special Reserve (Special List),

- (e) Women's Royal Naval Reserve,
- (f) Women's Royal Naval Supplementary Reserve,
- (g) Queen Alexandra's Royal Naval Nursing Service Reserve,
- (h) Voluntary Aid detachment (Naval Reserve),
- (j) Regular Army Reserve of Officers,
- (k) Army Reserves, including Regular Reserves and Army General Reserve,
- (l) Territorial and Army Volunteer Reserve,
- (m) Officer cadets of University Officers Training Corps,
- (n) Royal Air Force Reserve of Officers,
- (o) Royal Air Force Volunteer Reserve (including University Air Squadron members),
- (p) Class E of the Royal Air Force Reserve,
- (q) Women's Royal Air Force Reserve of Officers,
- (r) Women's Royal Air Force Volunteer Reserve,
- (s) Royal Auxiliary Air Force,
- (t) Women's Royal Auxiliary Air Force,
- (u) Princess Mary's Royal Air Force Nursing Service Reserve,
- (v) Officers, Adult Instructors and Adult Warrant Officers of the Sea Cadet Corps, Army Cadet Forces, Air Training Corps and Combined Cadet Force, and
- (w) Merchant Navy Reserve.

Disapplication of Parts III and IV of these Regulations

60. Parts III and IV of these Regulations shall not apply to reserve pay.

Deduction of tax

61.—(1) Subject to paragraph (2), the Ministry, on making any payment of reserve pay to a reservist during any year, shall deduct income tax at the basic rate in force at the time payment is made.

(2) The Ministry shall not deduct income tax if—

- (a) it has received notice from the inspector of a determination for that year under any of the following provisions of this Chapter that tax shall not be deducted from reserve pay, and
- (b) it has not received notice of any amendment of that determination.

(3) Regulation 8 shall not apply to any notice within paragraph (2).

(4) This regulation shall apply on the making of any payment of reserve pay notwithstanding that an objection or appeal has been made under regulation 63 or 64.

Determination by inspector

62.—(1) The inspector may make a determination that tax shall not be deducted from reserve pay if he is satisfied that the reservist will not be liable to income tax on the full amount of the reserve pay in that year, on the footing that any reliefs from income tax to which the reservist is entitled are allowable primarily against his income from other sources.

(2) The inspector may make the determination referred to in paragraph (1) either prior to or at any time during any year.

(3) If the inspector makes the determination referred to in paragraph (1), he shall give notice of that determination to the reservist and to the Ministry.

Objections and appeals

63.—(1) A reservist from whose reserve pay tax has been deducted in accordance with regulation 61 may give notice of objection to the inspector stating the grounds of his objection if he is aggrieved by that deduction.

(2) On receipt of the notice of objection the inspector shall make a determination whether income tax at the basic rate shall be deducted from the reserve pay, and shall give notice of that determination to the reservist.

(3) The inspector may amend his determination by agreement with the reservist, and, in default of such agreement, the reservist, on giving notice to the inspector, may appeal against the determination.

(4) An appeal under paragraph (3) may be made to the General or Special Commissioners.

(5) Subject to paragraph (6), an appeal to the General Commissioners shall be heard in accordance with the like rules as are contained in paragraph 3 of Schedule 3 to the Management Act.

(6) The like provisions as are contained in section 44(2) of the Management Act shall apply to the appeal as they apply to appeals against assessments.

(7) On appeal, the Commissioners shall determine whether income tax at the basic rate shall be deducted from the reserve pay having regard to the circumstances by reference to which the inspector may determine under regulation 62 that income tax at the basic rate shall not be deducted from reserve pay.

(8) Subject to regulation 64, the determination of the Commissioners shall be final.

(9) If, on appeal, the Commissioners determine that tax shall not be deducted from the reserve pay, the inspector shall give notice of that determination to the Ministry.

Amended determinations

64.—(1) If a determination by the inspector or the Commissioners under regulation 62 or 63 is found to be inappropriate because the actual circumstances are different from the circumstances by reference to which it was made, the inspector shall amend that determination.

(2) The inspector shall give notice of his amendment of that determination to the reservist and to the Ministry.

(3) Regulation 63 shall apply in relation to an amendment of a determination as it applies in relation to a determination under regulation 63(2).

Certificate of tax deducted

65.—(1) The Ministry may, and when required to do so shall, give the reservist a certificate in a form authorised by the Board showing the particulars specified in paragraph (2) in respect of any payment of reserve pay made during the year from which tax is deducted.

(2) The particulars specified in this paragraph are—

- (a) the date of the payment,
- (b) the amount of the payment, and
- (c) the amount of tax deducted on making the payment.

Repayment to reservist during the year

66.—(1) The Ministry shall not repay tax in respect of reserve pay to a reservist.

(2) On application being made to him by the reservist, the inspector may make such repayment to the reservist as may be appropriate at any time during the year having regard to the matters specified in paragraph (3).

(3) The matters specified in this paragraph are—

- (a) the reserve pay of the reservist for the period from the beginning of the year up to and including the date of that application,
- (b) the amount of tax deducted from that reserve pay as evidenced by certificates of pay and tax supplied under regulation 65, and
- (c) any reliefs from income tax to which the reservist is entitled, and his income for the year from all other sources and his liability to tax on that income, as estimated by the inspector.

Ministry records

67.—(1) The Ministry shall record, on a deductions working sheet, the particulars specified in paragraph (2) regarding every payment of reserve pay made to a reservist.

(2) The particulars specified in this paragraph are—

- (a) the date of the payment,
- (b) the amount of the payment, and
- (c) the amount of tax, if any, deducted on making the payment.

End of year certificate

68.—(1) After the end of the year the Ministry shall give the certificate specified in paragraph (2) to a reservist to whom paragraph (3) applies.

(2) The certificate specified in this paragraph is a certificate in the form provided or authorised by the Board showing—

- (a) the total amount of reserve pay paid by the Ministry to the reservist during the year,
- (b) the total tax deducted from the reserve pay,
- (c) the force in which the reservist was serving and his service number, and
- (d) in the case of a form not provided by the Board, that it has been authorised by them in substitution for such a form.

(3) A reservist to whom this paragraph applies is a reservist who—

- (a) is a member of the reserve and auxiliary forces on the last day of the year and from whose reserve pay tax has been deducted during that year, and
- (b) has not been given a certificate under regulation 65 in respect of each payment of reserve pay during that year.

Application of Parts V and VIII of these Regulations

69.—(1) Part V of these Regulations shall apply with any necessary modifications to tax liable to be deducted under regulation 61.

(2) Part VIII of these Regulations shall apply with any necessary modifications to reserve pay.

Other emoluments of reservist

70. Nothing in this Chapter shall affect the application of these Regulations to any other emoluments of a reservist.

*CHAPTER III
HOLIDAY PAY*

Interpretation of Chapter III

71. In this Chapter unless the context otherwise requires—

“fund” means a person who pays holiday pay to an individual who is not employed by him (or, on the death of that individual, to some other person);

“holiday pay” means any payment obtained by an individual (or, on his death, by some other person) in exchange for a voucher, stamp or similar document purchased by a person who employs (or employed) that individual for any holiday period;

“recipient” means an individual (or, on that individual’s death, some other person claiming in respect of that individual’s right) who is paid holiday pay by a fund.

Disapplication of Parts III and IV of these Regulations

72. Parts III and IV of these Regulations shall not apply to holiday pay paid by a fund.

Deduction of tax

73. A fund, on making any payment of holiday pay to a recipient, shall deduct income tax at the basic rate in force at the time the payment is made.

Certificate of tax deducted

74.—(1) A fund, on making any payment of holiday pay, shall give the recipient a certificate in a form authorised by the Board showing the particulars specified in paragraph (2).

(2) The particulars specified in this paragraph are—

- (a) the recipient’s name,
- (b) the tax year in which the payment is made,
- (c) the date of the payment,
- (d) the amount of the payment, and
- (e) the amount of tax deducted on making the payment.

Repayment to recipient during the year

75.—(1) A fund shall not repay tax deducted from a payment of holiday pay to a recipient.

(2) On application being made to him by the recipient, the inspector may make such repayment to the recipient as may be appropriate at any time during the year having regard to the matters specified in paragraph (3).

(3) The matters specified in this paragraph are—

- (a) the holiday pay of the recipient (or of the individual in respect of whose right the recipient is paid) for the period from the beginning of the year up to and including the date of that application,
- (b) the amount of tax deducted from that holiday pay as evidenced by certificates of pay and tax supplied under regulation 74, and

- (c) any reliefs from income tax to which the recipient is (or the individual in respect of whose right the recipient is paid was) entitled, his income for the year from all other sources and his liability to tax on that income, as estimated by the inspector.

Fund records

76.—(1) A fund shall record, on a deductions working sheet, the particulars specified in paragraph (2) regarding every payment of holiday pay made to a recipient.

- (2) The particulars specified in this paragraph are—
 - (a) the recipient’s name,
 - (b) the tax year to which the deductions working sheet relates,
 - (c) the date of the payment,
 - (d) the amount of the payment, and
 - (e) the amount of tax deducted on making the payment.

Application of Parts V and VIII of these Regulations

77.—(1) Part V of these Regulations shall apply with any necessary modifications to tax liable to be deducted under regulation 73.

- (2) Part VIII of these Regulations shall apply with any necessary modifications to holiday pay.

Other emoluments of recipient

78. Nothing in this Chapter shall affect the application of these Regulations to any other emoluments of a recipient.

CHAPTER IV

OTHER CASES

Death of employer

79. If an employer dies, anything which he would have been liable to do under these Regulations shall be done by—

- (a) his personal representatives, or
- (b) where an employer paid emoluments on behalf of another person, the person succeeding him, or
- (c) where an employer paid emoluments on behalf of another person and no person succeeds him, the person on whose behalf he paid emoluments.

Succession to a business, etc.

80.—(1) This regulation applies where there has been a change in the employer from whom an employee receives—

- (a) emoluments in respect of his employment in any trade, business, concern or undertaking, or in connection with any property, or
 - (b) any annuity or pension.
- (2) Subject to paragraphs (3) and (4), where this regulation applies—

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- (a) the change shall not be treated as a cessation of employment for the purposes of regulation 23, but,
 - (b) in relation to any matter arising after the change, the employer after the change shall be liable to do anything which the employer before the change would have been liable to do under these Regulations if the change had not taken place.
- (3) The employer after the change shall not be liable for the payment of any tax which was deductible from emoluments paid to the employee before the change took place.
- (4) If a trade dispute began, but did not end, before the change took place—
- (a) regulations 36(5), 42(7) and 45 shall apply to the employer before the change as though the time limit of 42 days had expired when the change took place, and
 - (b) the employer after the change shall be liable to make repayment of any tax withheld by the employer before the change in accordance with regulation 36(3) in the year in which the change took place, and regulation 42(6) shall apply in such a case.
- (5) The employer before the change shall furnish the employer after the change with such particulars as may be necessary to enable the employer after the change to comply with this regulation.