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STATUTORY INSTRUMENTS

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**2005 No. 2045**

**The Income Tax (Construction Industry Scheme) Regulations 2005**

**PART 3**

**PAYMENT AND RECOVERY OF AMOUNTS DEDUCTED UNDER SECTION 61**

**Payment, due date for payment of amounts deducted and receipts**

7.—(1) A contractor must pay to the Commissioners for Her Majesty's Revenue and Customs all amounts he was liable under section 61 of the Act to deduct on account of tax from contract payments made by him during that tax period—

- (a) within 17 days after the end of the tax period, where payment is made by an approved method of electronic communications, or
- (b) within 14 days after the end of the tax period, in any other case.

(2) The Commissioners for Her Majesty's Revenue and Customs must give a receipt to the contractor for the total amount paid under paragraph (1) if asked.

(3) But no separate receipt for the total amount paid under paragraph (1) need be given if a receipt is given for the total of—

- (a) the amount paid under paragraph (1),
- (b) any tax deducted under the Pay As You Earn Regulations, and
- (c) any earnings-related contributions (as defined by regulation 1(2) of the Social Security (Contributions) Regulations 2001<sup>(1)</sup>),

paid at the same time.

**Quarterly tax periods**

8.—(1) This regulation applies so that the tax period is a tax quarter if a contractor—

- (a) has reasonable grounds for believing that the average monthly amount will be less than £1,500, and
- (b) chooses to pay tax quarterly.

(2) "The average monthly amount" is the average, for tax months falling within the current tax year, of the amounts found by the formula—

$$(\mathbf{P} - \mathbf{N} + \mathbf{L} - \mathbf{S}) \quad (\mathbf{SP} - \mathbf{C'D}).$$

(3) In paragraph (2)—

P is the amount which would be payable to an officer of Revenue and Customs under regulation 68 of the PAYE Regulations (periodic payments to and recoveries from the Revenue);

N is the amount which would be payable to an officer of Revenue and Customs under the SSCBA and the SSC Regulations disregarding any amount of secondary Class 1 contributions in respect of which liability has been transferred to the employed earner by an election made jointly by the employed earner and the secondary contributor for the purposes of paragraph 3B(1) of Schedule 1 to the SSCBA (transfer of liability to be borne by earner)<sup>(2)</sup>;

L is the amount which would be payable to an officer of Revenue and Customs under regulation 39(1) of the Student Loans Regulations (payment of repayments deducted to the Commissioners for Her Majesty's Revenue and Customs) disregarding the reduction referred to in paragraph (3) of that regulation;

S is the amount which would be payable by the contractor to the Commissioners for Her Majesty's Revenue and Customs under regulation 7 during the tax month;

SP is the amount which would be payable by the contractor to employees by way of statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay under the SSCBA; and

CD is—

- (a) if the contractor is a company, the amount which others would deduct from payments to it, in its position as a sub-contractor, under section 61 of the Act;
- (b) in any other case, nil.

(4) In this regulation—

“employed earner” has the same meaning as in the SSCBA;

“SSCBA” means the Social Security Contributions and Benefit Act 1992<sup>(3)</sup> or, in Northern Ireland, the Social Security Contributions and Benefit (Northern Ireland) Act 1992<sup>(4)</sup>;

“SSC Regulations” means the Social Security (Contributions) Regulations 2001<sup>(5)</sup>;

“Student Loan Regulations” means the Education (Student Loans) (Repayment) Regulations 2000<sup>(6)</sup> or, in Northern Ireland, the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000<sup>(7)</sup>.

### **Recovery from sub-contractor of amount not deducted by contractor**

9.—(1) This regulation applies if—

- (a) it appears to an officer of Revenue and Customs that the deductible amount exceeds the amount actually deducted, and
- (b) condition A or B is met.

(2) In this regulation—

“the deductible amount” is the amount which a contractor was liable to deduct on account of tax from a contract payment under section 61 of the Act in a tax period;

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(2) Paragraph 3B was inserted in Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c. 4) by section 77(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19), and in Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) by section 88(2) of the Child Support, Pensions and Social Security Act 2000.

(3) 1992 c. 4.

(4) 1992 c. 7.

(5) S.I. 2001/1004.

(6) S.I. 2000/944.

(7) S.R. (N.I.) 2000 No.121.

“the amount actually deducted” is the amount actually deducted by the contractor on account of tax from a contract payment under section 61 of the Act during that tax period;

“the excess” means the amount by which the deductible amount exceeds the amount actually deducted.

- (3) Condition A is that the contractor satisfies an officer of Revenue and Customs—
  - (a) that he took reasonable care to comply with section 61 of the Act and these Regulations, and
  - (b) that—
    - (i) the failure to deduct the excess was due to an error made in good faith, or
    - (ii) he held a genuine belief that section 61 of the Act did not apply to the payment.
- (4) Condition B is that—
  - (a) an officer of Revenue and Customs is satisfied that the person to whom the contractor made the contract payments to which section 61 of the Act applies either—
    - (i) was not chargeable to income tax or corporation tax in respect of those payments, or
    - (ii) has made a return of his income or profits in accordance with section 8 of TMA (personal return) or paragraph 3 of Schedule 18 to the Finance Act 1998<sup>(8)</sup> (company tax return), in which those payments were taken into account, and paid the income tax and Class 4 contributions due or corporation tax due in respect of such income or profits;and
  - (b) the contractor requests that the Commissioners for Her Majesty’s Revenue and Customs make a direction under paragraph (5).
- (5) An officer of Revenue and Customs may direct that the contractor is not liable to pay the excess to the Commissioners for Her Majesty’s Revenue and Customs.
- (6) If condition A is not met an officer of Revenue and Customs may refuse to make a direction under paragraph (5) by giving notice to the contractor (“the refusal notice”) stating—
  - (a) the grounds for the refusal, and
  - (b) the date on which the refusal notice was issued.
- (7) A contractor may appeal against the refusal notice—
  - (a) by notice to an officer of Revenue and Customs,
  - (b) within 30 days of the refusal notice,
  - (c) specifying the grounds of the appeal.
- (8) For the purpose of paragraph (7) the grounds of appeal are that—
  - (a) that the contractor took reasonable care to comply with section 61 of the Act and these Regulations, and
  - (b) that—
    - (i) the failure to deduct the excess was due to an error made in good faith, or
    - (ii) the contractor held a genuine belief that section 61 of the Act did not apply to the payment.
- (9) If on an appeal under paragraph (7) it appears to the tax appeal Commissioners that the refusal notice should not have been issued they may direct that an officer of Revenue and Customs make

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(8) 1998 c. 36.

a direction under paragraph (5) in an amount the tax appeal Commissioners determine is the excess for one or more tax periods falling within the relevant year.

(10) If a contractor has deducted an amount under section 61 of the Act, but has not paid it to the Commissioners for Her Majesty's Revenue and Customs as required by regulation 7 (payment, due date etc. and receipts), that amount is treated, for the purposes of determining the liability of any sub-contractor in respect of whose liability the sum was deducted, as having been paid to the Commissioners for Her Majesty's Revenue and Customs at the time required by regulation 8 (quarterly tax periods).

### **Return and certificate if amount may be unpaid**

**10.**—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B is met.

(2) Condition A is that—

- (a) a contractor has not paid any amount under regulation 7 for that tax period, and
- (b) an officer of Revenue and Customs is unaware of the amount (if any) which the contractor is liable to pay for that tax period.

(3) Condition B is that—

- (a) a contractor has paid an amount under regulation 7 for that tax period, but
- (b) an officer of Revenue and Customs is not satisfied, that it is the full amount which the contractor is liable to pay for that period.

(4) An officer of Revenue and Customs may give notice to the contractor requiring the contractor within 14 days of the issue of the notice to deliver a return showing the amount which the contractor is liable to pay under regulation 7 in respect of the tax period.

(5) If the notice extends to two or more consecutive tax periods in a tax year, this regulation has effect as if they were one tax period.

(6) On receiving a return made by the contractor under paragraph (4), an officer of Revenue and Customs may prepare a certificate showing the amount which the contractor is liable to pay for the tax period and how much (if any) of that amount remains unpaid.

(7) Regulation 57 (certificate that sum due) deals with the use of certificates as evidence that sums are due and unpaid.

### **Notice and certificate if amount may be unpaid**

**11.**—(1) This regulation applies if, 17 days or more after the end of a tax period, condition A or B is met.

(2) Condition A is that—

- (a) a contractor has not paid any amount under regulation 7 for that tax period, and
- (b) an officer of Revenue and Customs has reason to believe that the contractor is liable to pay an amount for that tax period.

(3) Condition B is that—

- (a) a contractor has paid an amount under regulation 7 for that tax period, but
- (b) an officer of Revenue and Customs is not satisfied, after seeking the contractor's explanation, that it is the full amount which the contractor is liable to pay for that period.

(4) An officer of Revenue and Customs, on consideration of the contractor's record of past payments, may—

- (a) specify, to the best of his judgment, the amount which he considers the contractor is liable to pay, and
  - (b) serve notice on the contractor requiring payment of that amount within 7 days of the issue of the notice (“the notice period”).
- (5) If condition A is met an officer of Revenue and Customs may give notice under paragraph (4) which extends to two or more consecutive tax periods in a tax year and these Regulations have effect as if they were the latest tax period specified in the notice.
- (6) If, during the notice period, the contractor—
- (a) claims that any payment made in respect of the tax period specified in the notice is the full amount the contractor is liable to pay, but
  - (b) does not satisfy an officer of Revenue and Customs that this is the case,
- the contractor may require an officer of Revenue and Customs to inspect the contractor’s documents and records as if the contractor had been required to produce those documents in accordance with regulation 51 (inspection of records of contractors and sub-contractors).
- (7) If there is an inspection by virtue of paragraph (6), regulation 51 applies to that inspection and the notice given by an officer of Revenue and Customs under paragraph (4) must be disregarded.
- (8) If the amount specified in the notice, or any part of it, is not paid during the notice period—
- (a) the amount unpaid is treated as an amount which the contractor was liable to pay for that tax period under regulation 7, and
  - (b) an officer of Revenue and Customs may prepare a certificate showing how much of that amount remains unpaid.
- (9) But paragraph (8) does not apply if during the notice period—
- (a) the contractor pays the full amount which the contractor is liable to pay under regulation 7 for that tax period, or
  - (b) the contractor satisfies an officer of Revenue and Customs that no amount, or no further amount, is due for that tax period.
- (10) Paragraph (11) applies if the contractor pays an amount certified under this regulation which exceeds the amount the contractor would have been liable to pay in respect of that tax period apart from this regulation.
- (11) The contractor is entitled to set off the excess against any amount which the contractor is liable to pay under regulation 7 for any subsequent tax periods in the tax year.
- (12) Regulation 57 deals with the use of certificates as evidence that sums are due and unpaid.

### **Certificate after inspection of records of contractors and sub-contractors**

- 12.**—(1) This regulation applies if there is an inspection of a contractor’s documents and records under regulation 51.
- (2) An officer of Revenue and Customs may, by reference to the information obtained from the inspection, prepare a certificate showing—
- (a) the amount which it appears that the contractor is liable to pay for the tax years or tax periods covered by the inspection; and
  - (b) any amount which remains unpaid.
- (3) Regulation 57 deals with the use of certificates as evidence that sums are due and unpaid.

### **Determination of amounts payable by contractor and appeal against determination**

13.—(1) This regulation applies if—

- (a) there is a dispute between a contractor and a sub-contractor as to—
  - (i) whether a payment is made under a construction contract, or
  - (ii) the amount, if any, deductible by the contractor under section 61 of the Act from a contract payment to a sub-contractor or his nominee, or
- (b) an officer of Revenue and Customs has reason to believe, as a result of an inspection under regulation 51 or otherwise, that there may be an amount payable for a tax year under these Regulations by a contractor that has not been paid to them, or
- (c) an officer of Revenue and Customs considers it necessary in the circumstances.

(2) An officer of Revenue and Customs may determine the amount which to the best of his judgment a contractor is liable to pay under these Regulations, and serve notice of his determination on the contractor.

(3) A determination under this regulation must not include amounts in respect of which a direction under regulation 9(5) has been made and directions under that regulation do not apply to amounts determined under this regulation.

(4) A determination under this regulation may—

- (a) cover the amount payable by the contractor under section 61 of the Act for any one or more tax periods in a tax year, and
- (b) extend to the whole of that amount, or to such part of it as is payable in respect of—
  - (i) a class or classes of sub-contractors specified in the notice of determination (without naming the individual sub-contractors), or
  - (ii) one or more named sub-contractors specified in the notice.

(5) A determination under this regulation is subject to Parts 4, 5 and 6 of TMA (assessment, appeals, collection and recovery) as if—

- (a) the determination were an assessment, and
- (b) the amount determined were income tax charged on the contractor,

and those Parts of that Act apply accordingly with any necessary modifications, except that the amount determined is due and payable 14 days after the determination is made.

(6) If paragraph (1)(a) applies and an officer of Revenue and Customs does not make a determination under paragraph (2), either the contractor or the sub-contractor may on giving notice to an officer of Revenue and Customs, apply to the General Commissioners to determine the matter.

(7) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA<sup>(9)</sup> (rules for assigning proceedings to General Commissioners), the relevant place for an appeal against a determination under this regulation is the place where the determination was made.

(8) If paragraph (1)(a) applies—

- (a) the contractor must make the deduction required by section 61 of the Act from the contract payment or the part of the contract payment, to which the dispute relates, and the amount so deducted is treated as a sum which he is liable to pay to the Commissioners for Her Majesty's Revenue and Customs under these Regulations; and
- (b) any amount which, on a final determination of the dispute, is shown not to have been so payable is, except where regulation 56 (application by the Commissioners for Her

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<sup>(9)</sup> Schedule 3 was substituted by paragraph 10 of Schedule 22 to the Finance Act 1996 (c. 8) and paragraph 3 of Schedule 3 was amended by paragraph 142 of Schedule 6 to ITEPA.

Majesty's Revenue and Customs of sums deducted under section 61 of the Act) applies, treated as an overpayment of income tax or corporation tax by the sub-contractor.

### **Interest on amounts overdue**

**14.**—(1) This regulation applies if a contractor has not paid to the Commissioners for Her Majesty's Revenue and Customs the total amount which he is liable under these Regulations to pay in respect of a tax year by the reckonable date.

(2) Any unpaid amount carries interest at the prescribed rate from the reckonable date until payment ("the interest period").

(3) Paragraph (2) applies even if the reckonable date is a non-business day as defined by section 92 of the Bills of Exchange Act 1882(**10**).

(4) But paragraph (2) does not apply to any amount which the contractor does not have to pay as a result of a direction under regulation 9(5).

(5) Any change made to the prescribed rate during the interest period applies to the unpaid amount from the date of the change.

(6) The "prescribed rate" means the rate applicable under section 178 of the Finance Act 1989(**11**) (setting of rates of interest) for the purposes of section 86 of TMA (interest on overdue tax).

(7) The "reckonable date" means—

- (a) 17 days after the end of the tax year, if payment is made using an approved method of electronic communication, or
- (b) 14 days after the end of the tax year, in any other case.

### **Interest on amount overpaid**

**15.**—(1) This regulation applies if an amount is repaid to a contractor after the end of the tax year in respect of which the amount was paid.

(2) The amount repaid carries interest at the prescribed rate from the relevant time until the order for the repayment is issued ("the interest period").

(3) In paragraph (2) "the relevant time" means—

- (a) in the case of a repayment of an amount which was paid more than 12 months after the end of the tax year in respect of which the payment was made, the end of the tax year in which that amount was paid; and
- (b) in any other case, the end of the tax year after the tax year in respect of which the payment was made.

(4) Any change made to the prescribed rate during the interest period applies to the amount repaid from the date of the change.

(5) "The prescribed rate" means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA(**12**) (repayment supplements).

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(10) 1882 c. 61; section 92 was amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

(11) 1989 c. 26, to which there are amendments not relevant to these Regulations.

(12) Section 824 was amended by paragraph & of Schedule 17 to the Finance Act 1988 (c. 39), sections 110(5), 111(4), 158(2) and 179(1) of, and Parts 4, 8 and 10 of Schedule 17 to, the Finance Act 1989 (c. 26), paragraph 14(52) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 41 of Schedule 19 to the Finance Act 1994 (c. 9), section 92 of the Finance Act 1997 (c. 16), section 41 of the Finance Act 1999 (c. 16), section 90 of the Finance Act 2001 (c. 9) and paragraph 104 of Schedule 6 to ITEPA.

## Recovery of amount unpaid and interest

16.—(1) In this regulation, “the unpaid amount” means any amount or interest which a contractor is liable to pay under regulation 10(6), 11(8), 12(2)(b) or 13(2).

(2) Part 6 of TMA (collection and recovery) applies to the recovery of the unpaid amount as if it were income tax charged on the contractor 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, as shown in Table 1.

**Table 1**

### Period for summary proceedings for the recovery of unpaid amount

<i>1. Regulation</i>	<i>2. Period</i>
Regulation 10(6), 11(8) and 13(2)	(a) (a) 12 months after the date on which the unpaid amount became payable, or (b) if a return has been required under regulation 10, 12 months after the date of the delivery of that return to the Commissioners for Her Majesty’s Revenue and Customs.
Regulation 12(2)	12 months after the date of the certificate.

(4) Proceedings against a contractor may be brought for the recovery of the unpaid amount without distinguishing the amounts which the employer is liable to pay in respect of each sub-contractor and without specifying the sub-contractor in question.

(5) The unpaid amount is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of TMA(13) (magistrates' courts, county courts and inferior courts in Scotland).

(6) But paragraphs (4) and (5) do not prevent the bringing of separate proceedings for the recovery of each of the amounts which the contractor is liable to pay for any tax period in respect of each of the sub-contractors.

## In-year repayments of provisional excess credit

17.—(1) This regulation applies if—

- (a) a sub-contractor is an individual or a firm,
- (b) an application is made by that individual or a partner in the firm (“the applicant”) to the Commissioners for Her Majesty’s Revenue and Customs in accordance with paragraph (4),
- (c) any income tax and Class 4 contributions due from the applicant, or the sub-contractor, on the applicant’s share of the annual profits or gains arising or accruing from the trade, profession or vocation of the sub-contractor, for any earlier year, have been paid, and

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(13) Section 65 was amended by section 57(1) of the Finance Act 1984 (c. 43) and paragraph 30 of Schedule 19 to the Finance Act 1998 (c. 36); section 66 was amended by section 57(2) of the Finance Act 1984, section 89(1) of the Finance Act 2001 (c. 9), S.I. 1980/397 (N.I. 3) and S.I. 1991/724; section 67 was amended by section 58 of the Finance Act 1976 (c. 40), section 156 of the Finance Act 1995 (c. 4) and section 89(1) of the Finance Act 2001.

- (d) all relevant tax payment vouchers issued to the sub-contractor under regulation 7 of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993(14) in relation to payments made before the appointed day are produced to the Commissioners for Her Majesty's Revenue and Customs.
- (2) If the Commissioners for Her Majesty's Revenue and Customs are satisfied by evidence produced by the applicant that A exceeds B, the applicant shall, subject to paragraph (5), be entitled to repayment of the excess by the Commissioners for Her Majesty's Revenue and Customs.
- (3) In paragraph (2)—
- A is the amount of the applicant's share of the total of sums deducted under section 61 of the Act from contract payments made to the sub-contractor and paid to the Commissioners for Her Majesty's Revenue and Customs, in so much of the year as has elapsed at the date when the application is made; and
- B is the aggregate of the following amounts—
- (a) the income tax and any Class 4 contributions payable (whether or not yet due and payable) by the applicant, on his share of the annual profits or gains arising from the trade, profession or vocation of the sub-contractor which are chargeable to tax for the whole of that year, after deducting any cumulative entitlement of the applicant at the date of the application to an allowance under section 257 or 257A of ICTA(15) (personal allowance and married couple's allowance);
- (b) the income tax and any Class 4 contributions payable (whether or not yet due and payable) by the applicant, on any income arising during so much of the year as has elapsed at the date of the application, from which income tax has not been deducted at source, within the meaning given by section 59B(7) of TMA(16) (payment of income tax and capital gains tax); and
- (c) any sum due and payable by the sub-contractor under ICTA or TMA, and, without prejudice to the generality of the foregoing, this includes any sums deducted by the sub-contractor in the capacity of a contractor, under section 61 of the Act.
- (4) An application under this regulation must be made to the Commissioners for Her Majesty's Revenue and Customs containing a declaration that all of the information given in relation to paragraph (3) is correctly stated to the best of the knowledge and belief of the applicant, and where the applicant is a partner in a firm, the form shall be signed by all the partners in the firm who are individuals and, where the partner is a company, by the secretary or a director of the company.
- (5) No repayment under this regulation shall be made after the end of the year to which the application relates.

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(14) S.I. 1993/743. Regulation 7 was amended by regulation 7 of S.I. 1998/2622.

(15) Section 257 and 257A were substituted by section 33 of the Finance Act 1988. Section 257 was amended by section 33(4) (a) and (5)(b) of the Finance Act 1989 (c. 26), paragraph 13 of Schedule 20 and Schedule 41 Part V(10) to the Finance Act 1996 (c. 8), section 29(1) of the Finance Act 2002 (c. 23), article 2(1) of S.I. 2001/3773 and article 2(2) of S.I. 2002/2930. Section 257A was amended by section 33(8) (a) and (9)(b) of the Finance Act 1989 (c. 26), paragraph 14 of Schedule 20 to the Finance Act 1996 (c. 8), section 77 (2) and (7) of the Finance Act 1994 (c. 9), section 30(7) and (11), section 31 and Schedule 20 Part III(3) of the Finance Act 1999 (c. 16), section 60 and Schedule 6 of the Tax Credit Act 2002 (c. 21) and article 2(3) of S.I. 2002/2930.

(16) Section 57B was inserted by sections 193 and 199(1) and (2)(a) of the Finance Act 1994 and modified by paragraph 31(1) and (3) of Schedule 21 to the Finance Act 1995 (c. 4).