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STATUTORY INSTRUMENTS

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**2005 No. 2045**

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

**PART 8**

**SUPPLEMENTARY PROVISIONS**

**Delegation of Commissioners for Her Majesty's Revenue and Customs' functions**

**50.**—(1) The following may be done by an officer of Revenue and Customs on behalf of the Commissioners for Her Majesty's Revenue and Customs—

- (a) the registration of persons under section 63 of the Act (registration for gross payment or payment under deduction);
- (b) the giving of directions under section 64(5) of the Act (power to make directions as to application of conditions to be satisfied by individuals applying for registration for gross payment);
- (c) the cancellation under section 66 of the Act of a person's registration for gross payment.

(2) This regulation is without prejudice to any other power of the Commissioners for Her Majesty's Revenue and Customs to delegate their functions

**Inspection of records of contractors and sub-contractors**

**51.**—(1) Whenever required to do so by a person nominated by the Commissioners for Her Majesty's Revenue and Customs, a contractor must produce to that person all contractor records, or such contractor records as may be specified by that person, for inspection at the prescribed place and at such time as that person may reasonably require.

(2) "Contractor records" means all documents and records relating to—

- (a) the calculation and payment of sums paid by the contractor to sub-contractors (or their nominees) under contracts relating to construction operations, and
- (b) the deductions made from such sums required under section 61 of the Act,

in the tax years or tax periods specified by the nominated person.

(3) Whenever required to do so by a person nominated by the Commissioners for Her Majesty's Revenue and Customs, a person who is or has within the preceding three tax years been a sub-contractor must produce to that person all sub-contractor records, or such sub-contractor records as may be specified by that person, for inspection at the prescribed place and at such time as that person may reasonably require.

(4) "Sub-contractor records" means all documents and records relating to—

- (a) the calculation or payment of sums paid to the sub-contractor pursuant to any contract relating to construction operations under which he is or was a sub-contractor within the previous three years, and

- (b) the direct cost of materials relating to any such contract.
- (5) “The prescribed place” means such place in the United Kingdom as the contractor or sub-contractor and the nominated person may agree upon, or in the absence of agreement—
  - (a) the place in the United Kingdom at which the contractor records or sub-contractor records are normally kept, or
  - (b) if there is no such place, the contractor’s or sub-contractor’s principal place of business in the United Kingdom.
- (6) The nominated person may—
  - (a) take copies of, or make extracts from, any document produced for inspection in accordance with paragraph (1) or (3);
  - (b) remove any document so produced if it appears to the nominated person to be necessary to do so, at a reasonable time and for a reasonable period.
- (7) If any document is removed in accordance with paragraph (6)(b), the nominated person must provide—
  - (a) a receipt for the document, and
  - (b) a copy of the document, free of charge, to the person by whom it was produced or caused to be produced, within seven days of that person requesting a copy, if the document is reasonably required for the proper conduct of a business.
- (8) If a lien is claimed on a document produced in accordance with paragraph (1) or (3), the removal of the document under paragraph (6)(b) is not to be regarded as breaking the lien.
- (9) If records are maintained by computer, the person required to make them available for inspection must provide the nominated person with all facilities necessary for obtaining information from them.
- (10) For the purposes of this regulation, a contractor and a sub-contractor must keep, for not less than three years after the end of the tax year to which they relate, all contractor records or sub-contractor records as the case may be which are not required to be sent to the Commissioners for Her Majesty’s Revenue and Customs by other provisions of these Regulations.

### **Inspection of records of sub-contractors – additional provisions**

- 52.**—(1) Where a sum deducted under section 61 of the Act is treated as paid on account of the liabilities mentioned in regulation 56(2) (application by Commissioners for Her Majesty’s Revenue and Customs of sums deducted under section 61), the sub-contractor, whose liabilities they are, shall—
- (a) maintain the records specified in paragraph (2), and
  - (b) produce to a person nominated by the Commissioners for Her Majesty’s Revenue and Customs for inspection those records, or such of them as may be specified by him, at such time as he may reasonably require, at the prescribed place.
- (2) The records are all documents and records relating to the calculation of—
- (a) the amounts which the sub-contractor would have been liable to pay to the Commissioners for Her Majesty’s Revenue and Customs in the preceding three tax years, under the provisions mentioned in regulation 56(2), but for the withholding by a contractor of sums due to him; and
  - (b) the amounts deducted by a contractor under section 61 of the Act which the sub-contractor claims to be entitled to set off against those liabilities.
- (3) “The prescribed place” means such place in the United Kingdom as the sub-contractor and the nominated person may agree upon, or in the absence of agreement—

- (a) the place in the United Kingdom at which the documents and records mentioned in paragraph (2) are normally kept, or
  - (b) if there is no such place, the sub-contractor's principal place of business in the United Kingdom.
- (4) The nominated person may—
- (a) take copies of, or make extracts from, any document produced for inspection in accordance with paragraph (1)(b);
  - (b) remove any document so produced if it appears to the nominated person to be necessary to do so, at a reasonable time and for a reasonable period.
- (5) If a lien is claimed on a document produced in accordance with paragraph (1)(b), the removal of the document under paragraph (4)(b) is not to be regarded as breaking the lien.
- (6) If records are maintained by computer, the person required to make them available for inspection must provide the nominated person with all facilities necessary for obtaining information from them.

#### **Information as to change of control of close company**

**53.**—(1) This regulation applies to a company which—

- (a) is a close company,
- (b) is a private company limited by shares, and
- (c) is registered for gross payment or is applying to be so registered.

(2) Where there is a change in the control of the company by reason of an issue or transfer of shares in the company to a person who was not a shareholder in the company immediately before the issue or transfer, the company shall, within 30 days of the issue or of receiving information as to the transfer, give notice to the Commissioners for Her Majesty's Revenue and Customs of the name and address of the person to whom the shares were issued or transferred.

(3) In this regulation "control" has the same meaning as in section 840 of ICTA.

#### **Death of contractor**

**54.** If a contractor dies, anything which he would have been liable to do under these Regulations must be done by his personal representatives.

#### **Service by post**

**55.** Any notice which is authorised or required to be given, served or issued under these Regulations may be sent by post.

#### **Application by the Commissioners for Her Majesty's Revenue and Customs of sums deducted under section 61**

**56.**—(1) This regulation applies to sums deducted from contract payments made to a sub-contractor which is a company ("the qualifying sub-contractor").

(2) So much of any sum deducted under section 61 of the Act by a contractor in a tax year and paid to the Commissioners for Her Majesty's Revenue and Customs as is required shall be applied—

- (a) first, in discharge of any liability of the qualifying sub-contractor to account for primary Class 1 contributions in respect of earnings paid to its employees in that year;
- (b) second, in discharge of any liability of the qualifying sub-contractor for secondary Class 1 contributions in respect of earnings paid to its employees in that year;

- (c) third, in discharge of any liability of the qualifying sub-contractor to account for tax deducted from the emoluments of its employees in accordance with Regulations made under section 684 of ITEPA (pay as you earn) in respect of that year;
- (d) fourth, in discharge of any liability of the qualifying sub-contractor to account for deductions made by it in that year from the emoluments of its employees in accordance with regulations made under section 22(5) of the Teaching and Higher Education Act 1998<sup>(1)</sup>, section 73B of the Education (Scotland) Act 1980<sup>(2)</sup>, or Article 3(5) of the Education (Student Support) (Northern Ireland) Order 1998<sup>(3)</sup>;
- (e) fifth, in discharge of any liability of the qualifying sub-contractor to refund to the Commissioners for Her Majesty’s Revenue and Customs any funding payment made by them in respect of statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay under the relevant recovery provision; and
- (f) last, in discharge of any liability of the qualifying sub-contractor to account for sums deducted by it (in its capacity as a contractor) under section 61 of the Act from payments made to other sub-contractors.

(3) So much of any sum deducted under section 61 of the Act as is not required to discharge the sub-contractor’s liabilities specified in paragraph (2) shall be repaid to the qualifying sub-contractor.

This is subject to the qualifications in paragraphs (5) and (6).

(4) Regulation 83 of the PAYE Regulations (interest on tax overpaid) shall apply to any sum repaid under paragraph (3) and any such sum shall be treated as tax repaid for the purposes of that regulation.

(5) The Commissioners for Her Majesty’s Revenue and Customs shall not repay any sum deducted under section 61 of the Act to the qualifying sub-contractor until—

- (a) the tax year in which the deduction was made, has ended; and
- (b) the qualifying sub-contractor has delivered the return required by regulation 73 of the PAYE Regulations (annual return of relevant payments liable to deduction of tax).

(6) If it appears to an officer of Revenue and Customs that there is an outstanding liability of the qualifying sub-contractor in respect of corporation tax due for an accounting period ending before the relevant payment is made under section 61 of the Act, the amount required to discharge that liability shall be retained by the Commissioners for Her Majesty’s Revenue and Customs and applied in discharge of that liability.

(7) In paragraph (2)(e), “the relevant recovery provision” means—

- (a) in respect of statutory paternity pay and statutory adoption pay, regulations 4, 5, 6 and 8 of either the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002<sup>(4)</sup> or the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations (Northern Ireland) 2002<sup>(5)</sup>;
- (b) in respect of statutory maternity pay, regulations 5, 6, 6A and 7A of the Statutory Maternity (Compensation of Employers) and Miscellaneous Amendment Regulations 1994<sup>(6)</sup> or the Statutory Maternity (Compensation of Employers) and Miscellaneous Amendment Regulations (Northern Ireland) 1994<sup>(7)</sup>.

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(1) 1998 c. 30. Regulations made under section 22(5) of the Teaching and Higher Education Act 1998 and section 73B(3) of the Education (Scotland) Act 1980 are the Education (Student Loans) (Repayment) Regulations 2000 (S.I.2000/944).

(2) 1980 c. 44. Section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998.

(3) S.I. 1998/1760 (N.I. 14). Relevant instruments under this Order are S.R. 1999 Nos. 192 and 370.

(4) S.I. 2002/2820.

(5) S.R. 2002 No. 379.

(6) S.I. 1994/1882. The relevant amending instruments are S.I. 1195/566, 2002/225 and 2004/698.

(7) S.R. 1994 No. 271. The relevant amending instruments are S.R. 1995 No. 74, S.I. 2002/225 and 2004/698.

### **Certificate that sum due**

**57.**—(1) A certificate of an officer of Revenue and Customs that, to the best of his knowledge and belief, any amount shown in a certificate under the regulations listed in paragraph (2) has not been paid by a contractor, is sufficient evidence that the amount mentioned in the certificate is unpaid and due to the Crown.

(2) The regulations are—

regulation 10(6) (return and certificate if amount may be unpaid)

regulation 11(8) (notice and certificate if amount may be unpaid)

regulation 12(2) (certificate after inspection of records).

(3) A certificate of an officer of Revenue and Customs that, to the best of his knowledge and belief, any amount of interest payable under the regulation 14 (interest on amounts overdue) has not been paid by a contractor, is sufficient evidence that the amount mentioned in the certificate is unpaid and due to the Crown.

(4) The production of—

(a) the return made by the contractor under regulation 10(4), and

(b) the certificate of an officer of Revenue and Customs under regulation 10(6),

is sufficient evidence that the amount shown in the certificate is the amount of tax which the contractor is liable to pay to the Commissioners for Her Majesty's Revenue and Customs in respect of the tax period in question.

(5) A document which purports to be a certificate under paragraph (1) or (3) is treated as such a certificate until the contrary is proved.

### **Payment by cheque**

**58.**—(1) For the purposes of the following provisions, if—

(a) any payment to the Commissioners for Her Majesty's Revenue and Customs is made by cheque, and

(b) the cheque is paid on its first presentation to the banker on whom it is drawn,

the payment shall be treated as made on the day which the cheque was received by the Commissioners for Her Majesty's Revenue and Customs.

(2) The provisions are—

regulation 7 payment, due date for payment of amounts deducted and receipts for payment of tax

regulation 9 recovery from sub-contractor of tax not deducted by contractor

regulation 11 notice and certificate if tax may be unpaid

regulation 14 interest on amounts overdue

### **Appeals: supplementary provisions**

**59.**—(1) The following provisions of TMA apply to appeals under regulation 47 (default notice and appeal), as they apply to an appeal under section 31 of TMA<sup>(8)</sup>—

(a) section 31A(5) and (6) (notice of appeal);

(b) section 31B (appeals to General Commissioners);

(c) section 31D (election to bring appeal before Special Commissioners).

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<sup>(8)</sup> Sections 31 to 31D were substituted by paragraph 11 of Schedule 29 to the Finance Act 2001 (c. 9).

(2) In an appeal under regulation 47 or regulation 49(4) (surcharge notice and appeal), the relevant place for the purposes of paragraph 3(1)(a) of Schedule 3 to TMA(9) (rules for assigning proceedings to General Commissioners) is the place which at the time of the notice of appeal is—

- (a) the contractor’s place of business in the United Kingdom, or
- (b) if there is no such place, the contractor’s place of residence in the United Kingdom.

(3) In paragraph (2)—

“place of business” means—

- (a) the place where the trade, profession, vocation or business with which the proceedings are concerned is carried out, or
- (b) if more than one such place, the head office or place where it is mainly carried out; and

“place of residence” means the contractor’s usual place of residence or, if that is unknown, the contractor’s last known place of residence.

### **Transitional provisions, savings and revocation**

**60.**—(1) Schedule 1 (transitional provisions and savings) has effect.

(2) The Regulations listed in column 1 of Schedule 2 are revoked to the extent specified in column 3 of that Schedule.

(3) Paragraph (2) is subject to Schedule 1.

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(9) 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.