



Finance Act 2004

2004 CHAPTER 12

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 3

CONSTRUCTION INDUSTRY SCHEME

Deductions on account of tax from contract payments to sub-contractors

60 Contract payments

- (1) In this Chapter “contract payment” means any payment which is made under a construction contract and is so made by the contractor (see section 57(3)) to—
 - (a) the sub-contractor,
 - (b) a person nominated by the sub-contractor or the contractor, or
 - (c) a person nominated by a person who is a sub-contractor under another such contract relating to all or any of the construction operations.
- (2) But a payment made under a construction contract is not a contract payment if any of the following exceptions applies in relation to it.
- (3) This exception applies if the payment is treated as earnings from an employment by virtue of Chapter 7 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (agency workers).
- (4) This exception applies if the person to whom the payment is made or, in the case of a payment made to a nominee, each of the following persons—
 - (a) the nominee,
 - (b) the person who nominated him, and
 - (c) the person for whose labour (or, where that person is a company, for whose employees' or officers' labour) the payment is made,

Status: This is the original version (as it was originally enacted).

is registered for gross payment when the payment is made.

But this is subject to subsections (5) and (6).

- (5) Where a person is registered for gross payment as a partner in a firm (see section 64), subsection (4) applies only in relation to payments made under contracts under which—
- (a) the firm is a sub-contractor, or
 - (b) where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor.
- (6) Where a person is registered for gross payment otherwise than as a partner in a firm but he is or becomes a partner in a firm, subsection (4) does not apply in relation to payments made under contracts under which—
- (a) the firm is a sub-contractor, or
 - (b) where a person has nominated the firm to receive payments, the person who has nominated the firm is a sub-contractor.
- (7) This exception applies if such conditions as may be prescribed in regulations made by the Board of Inland Revenue for the purposes of this subsection are satisfied; and those conditions may relate to any one or more of the following—
- (a) the payment,
 - (b) the person making it, and
 - (c) the person receiving it.
- (8) For the purposes of this Chapter a payment (including a payment by way of loan) that has the effect of discharging an obligation under a contract relating to construction operations is to be taken to be made under the contract; and if—
- (a) the obligation is to make a payment to a person (“A”) within paragraph (a) to (c) of subsection (1), but
 - (b) the payment discharging that obligation is made to a person (“B”) not within those paragraphs,
- the payment is for those purposes to be taken to be made to A.

61 Deductions on account of tax from contract payments

- (1) On making a contract payment the contractor (see section 57(3)) must deduct from it a sum equal to the relevant percentage of so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is to be made relates.
- (2) In subsection (1) “the relevant percentage” means such percentage as the Treasury may by order determine.
- (3) That percentage must not exceed—
- (a) if the person for whose labour (or for whose employees' or officers' labour) the payment in question is made is registered for payment under deduction, the percentage which is the basic rate for the year of assessment in which the payment is made, or
 - (b) if that person is not so registered, the percentage which is the higher rate for that year of assessment.

62 Treatment of sums deducted

- (1) A sum deducted under section 61 from a payment made by a contractor—
- (a) must be paid to the Board of Inland Revenue, and
 - (b) is to be treated for the purposes of income tax or, as the case may be, corporation tax as not diminishing the amount of the payment.

- (2) If the sub-contractor is not a company a sum deducted under section 61 and paid to the Board is to be treated as being income tax paid in respect of the sub-contractor's relevant profits.

If the sum is more than sufficient to discharge his liability to income tax in respect of those profits, so much of the excess as is required to discharge any liability of his for Class 4 contributions is to be treated as being Class 4 contributions paid in respect of those profits.

- (3) If the sub-contractor is a company—
- (a) a sum deducted under section 61 and paid to the Board is to be treated, in accordance with regulations, as paid on account of any relevant liabilities of the sub-contractor;
 - (b) regulations must provide for the sum to be applied in discharging relevant liabilities of the year of assessment in which the deduction is made;
 - (c) if the amount is more than sufficient to discharge the sub-contractor's relevant liabilities, the excess may be treated, in accordance with the regulations, as being corporation tax paid in respect of the sub-contractor's relevant profits; and
 - (d) regulations must provide for the repayment to the sub-contractor of any amount not required for the purposes mentioned in paragraphs (b) and (c).
- (4) For the purposes of subsection (3) the “relevant liabilities” of a sub-contractor are any liabilities of the sub-contractor, whether arising before or after the deduction is made, to make a payment to the Inland Revenue in pursuance of an obligation as an employer or contractor.
- (5) In this section—
- (a) “the sub-contractor” means the person for whose labour (or for whose employees' or officers' labour) the payment is made;
 - (b) references to the sub-contractor's “relevant profits” are to the profits from the trade, profession or vocation carried on by him in the course of which the payment was received;
 - (c) “Class 4 contributions” means Class 4 contributions within the meaning of the Social Security Contributions and Benefits Act 1992 (c. 4) or the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7).
- (6) References in this section to regulations are to regulations made by the Board of Inland Revenue.
- (7) Regulations under this section may contain such supplementary, incidental or consequential provision as appears to the Board to be appropriate.