

1988 No. 636

INCOME TAX

The Income Tax (Sub-Contractors in the Construction Industry) Regulations 1988

Made - - - - - *29th March 1988*

Laid before the House of Commons *29th March 1988*

Coming into force *19th April 1988*

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by sections 69 and 70 of the Finance (No. 2) Act 1975(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1988 and shall come into force on 19th April 1988.

Interpretation

2. In these Regulations "the Principal Regulations" means the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1975(b).

Amendments to the Principal Regulations

3. In regulation 7 of the Principal Regulations there shall be added—

"(4) If the amount which a contractor is liable to pay to the Collector under paragraph (1) of this Regulation exceeds the amount, if any, actually deducted by him from payments made during the relevant month but the Inspector (whether or not an assessment under Regulation 12 has been made) is satisfied that the person to whom the contractor made such payments either—

(a) was not chargeable to income tax or corporation tax in respect of those payments, or

(b) has made a return of his income or profits in accordance with section 8 or section 11 of the Taxes Management Act 1970(c), in computing which income or profits 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,

then the Inspector shall, if the contractor so requests, direct that the contractor shall not be liable to pay the said excess (or any interest in respect of it) to the Collector.

(5) If a contractor is aggrieved by the failure of a Collector to make a direction under paragraph (3) of this Regulation, he may, by notice in writing to the Collector within thirty days after the date of a notice given after 19th April 1988 of a refusal by

(a) 1975 c.45; section 70(7) was amended by the Finance Act 1982 (c.39), section 47 and Schedule 8, paragraph 4 and by the Finance (No. 2) Act 1987 (c.51), section 93(5).

(b) S.I. 1975/1960; relevant amending instruments are S.I. 1982/1391, 1985/351.

(c) 1970 c.9; relevant amendments were made to section 8 by the Finance Act 1971 (c.68), sections 37 and 38, Schedule 6, paragraphs 81 and 82, and Schedule 14, Part II.

the Collector to make such a direction, appeal to the General Commissioners against such refusal.”.

4.—(1) In regulation 11(1) of the Principal Regulations for the words “at the contractor’s premises” there shall be substituted—

“at such time as that officer may reasonably require at the prescribed place”.

(2) In regulation 11(2) of the Principal Regulations for the words “at the sub-contractor’s premises” there shall be substituted—

“at such time as that officer may reasonably require at the prescribed place”.

(3) After regulation 11(2) of the Principal Regulations there shall be inserted—

“(2A) In paragraphs (1) and (2) of this Regulation

“the prescribed place” means—

(a) such place in the United Kingdom as the contractor or the person such as is mentioned in paragraph (2) (in this paragraph called “the sub-contractor”) and the authorised officer may agree upon; or

(b) in default of such agreement, the place in the United Kingdom at which the documents and records mentioned in paragraphs (1) and (2) of this Regulation are normally kept; or

(c) in default of such agreement and if there is no such place as is referred to in sub-paragraph (b) above, the contractor’s or the sub-contractor’s principal place of business in the United Kingdom.

(2B) The authorised officer may—

(a) take copies of, or make extracts from, any document produced to him for inspection in accordance with paragraph (1) or paragraph (2) of this Regulation;

(b) if it appears to him to be necessary to do so, at a reasonable time and for a reasonable period, remove any document so produced, and, if he does so, shall provide a receipt for any documents so removed; and where a lien is claimed on a document produced in accordance with paragraph (1) or paragraph (2) of this Regulation the removal of the document under this sub-paragraph shall not be regarded as breaking the lien;

and where a document removed in accordance with sub-paragraph (b) of this paragraph is reasonably required for the proper conduct of a business the authorised officer shall, within 7 days, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced.”.

5. After regulation 12 of the Principal Regulations there shall be inserted—

“12A.—(1) Where an amount is charged by an assessment made by the Inspector under Regulation 12 at any time after 19th April 1988 and becomes due and payable, the amount so due and payable shall carry interest at the prescribed rate from the reckonable date until payment.

(2) Subject to paragraph (3) of this Regulation, “reckonable date” in this Regulation means the 14th day after the end of the year to which the assessment relates, and for the purposes of this Regulation, where the assessment is made in respect of one or more income tax months, that assessment shall relate to the year of which that month or months forms or form part.

(3) Where, at any time after 19th April 1988, the Inspector makes an assessment such as is mentioned in paragraph (1) of this Regulation, and that assessment relates to a year earlier than the year ended on 5th April 1988, then the amount due and payable under the assessment shall carry interest at the prescribed rate from 19th April 1988 until payment and in those circumstances that date shall be the reckonable date.

(4) In this Regulation “the prescribed rate” has the same meaning as in section 89 of the Taxes Management Act 1970(a) as from time to time increased or decreased by the Treasury in accordance with that section for the purposes of section 86 of that

(a) 1970 c.9; section 89 was amended by the Finance (No. 2) Act 1987, section 89.

Act; any such increase or decrease shall apply to interest for periods beginning on or after the date when the order is expressed to come into force, whether or not interest runs from before that date.

(5) An amount due and payable under an assessment such as is mentioned in paragraph (1) of this Regulation shall carry interest from the reckonable date even if that date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(a).

(6) Interest payable under this Regulation shall be recoverable as if it were an amount charged by an assessment made under Regulation 12.”.

6. For regulation 26 of the Principal Regulations there shall be substituted—

“26.—(1) A contractor, whenever called upon to do so by an authorised officer of the Commissioners of Inland Revenue, shall produce for inspection the records referred to in Regulation 24 at such time as that officer may reasonably require at the prescribed place.

(2) In paragraph (1) of this Regulation “the prescribed place” means—

(a) such place in the United Kingdom as the contractor and the authorised officer may agree upon; or

(b) in default of such agreement, the place in the United Kingdom at which the records are normally kept; or

(c) in default of such agreement and if there is no such place as is referred to in sub-paragraph (b) above, the contractor’s principal place of business in the United Kingdom.

(3) The authorised officer may—

(a) take copies of, or make extracts from, any document produced to him for inspection in accordance with paragraph (1) of this Regulation;

(b) if it appears to him to be necessary to do so, at a reasonable time and for a reasonable period, remove any document so produced, and, if he does so, shall provide a receipt for any documents so removed; and where a lien is claimed on a document produced in accordance with paragraph (1) of this Regulation the removal of the document under this sub-paragraph shall not be regarded as breaking the lien;

and where a document removed in accordance with sub-paragraph (b) of this paragraph is reasonably required for the proper conduct of a business the authorised officer shall, within 7 days, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced.”.

Information as to changes in control of close companies

7.—(1) Where—

(a) a company is a close company and is a private company limited by shares; and

(b) either the company holds a certificate in force under section 70 of the Finance (No. 2) Act 1975(b) or has applied for such a certificate; and

(c) there is a change in the control of that company by reason of an issue or transfer of shares in the company to a person who was not immediately before such issue or transfer a shareholder in that company;

the company shall, within 30 days of such issue or of receiving information as to the transfer, furnish in writing to the Inspector the name and address of the person to whom such shares were issued or transferred.

(a) 1882 c.61; section 92 was amended by the Banking and Financial Dealings Act 1971 (c.80), sections 3(1) and 4(4).
(b) 1975 c.45; section 70 was amended by the Finance Act 1980 (c.48), sections 43 and 122, Schedule 8, paragraphs 2 and 3, and Schedule 20, Part IX; by the Finance Act 1982 (c.39), section 47 and Schedule 8, paragraphs 1 to 4; and by the Finance (No. 2) Act 1987 (c.51), section 93. By virtue of the Income and Corporation Taxes Act 1988 (c.1), Schedule 30, paragraph 21(3) in relation to tax for the year 1988–89 and subsequent years of assessment, and for companies’ accounting periods ending after 5th April 1988, the reference to section 70 shall be construed as a reference to section 561 of that Act.

(2) In this regulation "control" has the same meaning as in section 534 of the Income and Corporation Taxes Act 1970(a).

T. J. Painter
A. B. Fallows

29th March 1988

Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which amend the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1975, and which come into force on 19th April 1988—

(1) provide that, where a contractor has failed to make the appropriate deduction from a payment made to a sub-contractor but the Inspector is satisfied that the sub-contractor was not liable to tax or has made a tax return which took account of those payments and has paid any tax and Class 4 Social Security contributions due thereon, the Inspector, at the request of the contractor, is to direct that the amount undeducted shall not be recovered from the contractor; and provide a right of appeal for the contractor where the Collector has refused to make a direction that an amount undeducted by a contractor shall not be recovered from the contractor who claims that the failure to deduct was due to an error made in good faith or that, in spite of reasonable care, he was led to the genuine belief that the deduction was not required (regulation 3);

(2) extend the provisions for the inspection of sub-contractor payment records enabling an authorised officer to inspect such records at such time as he may reasonably require at an agreed place, or in default of agreement the place where the records are usually kept, or, if there is no such place, the contractor's or sub-contractor's principal place of business, as the case may be; and permit the officer to take copies of, or remove, documents (providing copies where the documents are reasonably required for the proper conduct of a business) (regulation 4);

(3) provide for interest to be payable on amounts liable to be deducted but unpaid by contractors to the Collector which are the subject of an assessment under regulation 12 of the Sub-Contractors in the Construction Industry Regulations; the interest will run from the 19th April after the fiscal year to which the assessment relates until payment (but will not run from any date earlier than 19th April 1988) and will be at the rate applicable to unpaid tax; the interest will be recoverable in the same way as amounts assessed under regulation 12 and unpaid (regulation 5);

(4) extend the provisions for the inspection of contractors' records relating to certificated sub-contractors and payments made to them by enabling an authorised officer to inspect such records at such time as he may reasonably require at an agreed place, or in default of agreement the place where the records are usually kept, or, if there is no such place, the contractor's principal place of business; and permit the officer to take copies of, or remove, documents (providing copies where the documents are reasonably required for the proper conduct of a business) (regulation 6);

(5) provide that where, by reason of an issue or transfer of shares to a person who was not a shareholder immediately before the issue or transfer, there is a change in the control of a close company which is a private company limited by shares and which holds, or has applied for, a sub-contractor's certificate, the company shall, within 30 days of the issue or of receiving information as to the transfer, furnish the Inspector with the name and address of the person to whom the shares were issued or transferred (regulation 7).

(a) 1970 c.10; by virtue of the Income and Corporation Taxes Act 1988, Schedule 30, paragraph 21(3) in relation to tax for the year 1988-89 and subsequent years of assessment, and for companies' accounting periods ending after 5th April 1988, the reference to section 534 shall be construed as a reference to section 840 of that Act.

85p net

ISBN 0 11 086636 3

Printed in the United Kingdom for Her Majesty's Stationery Office

745/WO 0651 C28 4/88 452/1 9385/1921/3391 PS 8910371