

1988 No. 640

INCOME TAX

**The Profit-Related Pay (Shortfall Recovery)
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 upon them by section 204 of the Income and Corporation Taxes Act 1970(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Profit-Related Pay (Shortfall Recovery) Regulations 1988 and shall come into force on 19th April 1988.

Interpretation

2. In these Regulations "the Principal Regulations" means the Income Tax (Employments) Regulations 1973(b).

Information

3. Where the registration of a profit-related pay scheme registered under Chapter I of Part I of the Finance (No. 2) Act 1987(c) is cancelled, the scheme employer shall, within 60 days of being required by the Board to do so, make a return to the Board in the prescribed form showing whether there is any shortfall in the deductions made in accordance with the Principal Regulations (an amount equal to which is payable by the scheme employer to the Board pursuant to section 11(2) of the Finance (No. 2) Act 1987) and, if so, the total of it, and the sums attributable to each year where more than one.

Recovery

4. Any such amount shall be payable by the scheme employer to the Board within 60 days of his being required by the Board to make a return in accordance with regulation 3 and, subject to these Regulations, shall be recoverable from the scheme employer as if it were an amount of tax which the scheme employer was liable under regulation 26 of the Principal Regulations to pay to the Collector.

Evidence

5.—(1) Where the scheme employer has shown in a return to the Board that there is a shortfall, and an amount equal to such shortfall has not been paid or not fully paid within the period provided by regulation 4, an officer of the Board may certify the

(a) 1970 c.10; section 204 was extended by the Finance (No. 2) Act 1987 (c.51), section 11(2). (b) S.I. 1973 334; a relevant amending instrument is S.I. 1984/1858. (c) The Finance (No. 2) Act 1987, Chapter I of Part I, is re-enacted for 1988/89 and subsequent years as the Income and Corporation Taxes Act 1988 (c.1), Chapter III of Part V.

amount due to the Collector, and such certificate shall be sufficient evidence that the scheme employer is liable to pay to the Collector the amount shown in the certificate; and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

(2) A certificate of a Collector that any amount so due has not been paid to him or, to the best of his knowledge and belief, to any other Collector or to any person acting on his behalf or on behalf of another Collector, shall be sufficient evidence that the amount mentioned in the certificate is unpaid; and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

Determinations

6.—(1) Where it appears to the Board that there is an amount equal to a shortfall payable to the Board and that it has not been paid or fully paid, the Board may determine to the best of their judgment the amount so unpaid; and such determination shall be subject to the provisions of Parts IV, V and VI of the Taxes Management Act 1970(a) as if it were an assessment and as if the amount determined were income tax charged on the scheme employer, and those Parts of that Act shall, subject to these Regulations, apply accordingly with any necessary modifications.

(2) An appeal against such a determination may be brought before either

- (a) the General Commissioners for the division where the trade, profession or vocation of the scheme employer is carried on or in which the head office or principal place of business of the scheme employer is situated, or
- (b) the Special Commissioners.

Death of a scheme employer

7. If a scheme employer dies, anything which he would have been liable to do under these Regulations shall be done by his personal representatives.

Adjustment to employee's total net tax for the year

8. In paragraph (3) of regulation 49 of the Principal Regulations—

(a) after sub-paragraph (a) there shall be inserted—

“(aa) Any shortfall in deductions made in accordance with these Regulations from the employee, where—

- (i) payments of profit-related pay have been made to the employee in accordance with a profit-related pay scheme registered under Chapter I of Part I of the Finance (No. 2) Act 1987,
 - (ii) in consequence of the relief given by that Chapter less tax has been deducted from those payments than would have been deducted if the scheme had not been registered, and
 - (iii) the registration of the scheme has subsequently been cancelled with effect from a time before that relevant for the purposes of the relief;”;
- and

(a) 1970 c.9; relevant amendments were made to section 29 by the Finance Act 1971 (c.68), sections 37 and 38 and Schedule 14, Part II, and by the Finance (No. 2) Act 1975 (c.45), section 44(5); to section 31 by the Finance Act 1984 (c.43), section 127 and Schedule 22, paragraph 3(1); to section 45 by the Finance Act 1984, section 127 and Schedule 22, paragraph 2, and by section 128(6), and Schedule 23, Part XIII; to section 48 by the Finance (No. 2) Act 1975, section 45(4); to section 50 by the Finance (No. 2) Act 1975, section 67(2); to section 53 by the Finance Act 1972 (c.41), section 129(1); to section 56 by the Finance (No. 2) Act 1975, section 45(3), and by the Finance Act 1984, section 127 and Schedule 22, paragraph 6. Section 56A was inserted by the Finance Act 1984, section 127 and Schedule 22, paragraph 7; and section 57B by the Finance Act 1984, section 127 and Schedule 22, paragraph 4. Relevant amendments were made to sections 58 and 59 by the Judicature (Northern Ireland) Act 1978 (c.23), section 122 and Schedule 5; to section 65 by the Finance Act 1984, section 57(1); to section 66 by the County Courts Act 1984 (c.28), section 148(1) and Schedule 2, paragraph 36 by S.I. 1980/397 (N.I. 3), article 68(2) and Schedule 1, Part II; and to section 67 by the Finance Act 1976 (c.40), section 58(1) and Schedule 15, Part III.

- (b) for the words "an adjustment under sub-paragraph (a) of this paragraph" there shall be substituted—
"an adjustment under sub-paragraph (a) or sub-paragraph (āa) of this paragraph".

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 come into force on 19th April 1988, provide for the collection and recovery of an amount equal to the shortfall of deductions made under PAYE where:

- (a) payments of profit-related pay have been made to employees in accordance with a profit-related pay scheme registered in accordance with the Finance (No. 2) Act 1987, (for 1988/89 and subsequent years Chapter III of Part V, Income and Corporation Taxes Act 1988);
- (b) in consequence of the relief given by that Act less PAYE tax has been deducted from the payments made to the employees than would have been deducted if the scheme had not been registered; and
- (c) the registration of the scheme is subsequently cancelled with effect from a time before the relief was given.

Where a scheme is so cancelled the scheme employer may be required by the Commissioners of Inland Revenue to make a return within 60 days showing whether there is any shortfall in deductions of PAYE and, if so, the amount of it, and the sums attributable to each of the years concerned, if more than one (regulation 3).

The scheme employer is to pay an amount equal to any shortfall to the Commissioners of Inland Revenue within 60 days of being required to make such a return and it may be recovered as if it were PAYE tax which the scheme employer was liable to pay to the Collector (regulation 4).

Regulation 5 provides that, when a return showing a shortfall has been made, a certificate given by an officer of the Commissioners shall be evidence of the amount that the scheme employer is liable to pay and that a certificate given by a Collector shall be evidence that such an amount is unpaid.

Regulation 6 provides that where it appears to the Commissioners that there is an amount in respect of shortfall unpaid, they may determine that amount to the best of their judgment and that the determination shall be treated as if it were an assessment to income tax.

Regulation 7 provides that if the scheme employer dies, his or her personal representatives are to do anything which he or she would have been liable to do under the Regulations.

Regulation 8 provides (by amending the PAYE Regulations) that where employees are assessed to income tax under Schedule E (emoluments of offices and employments) the tax deducted from their emoluments by an employer is to be treated as increased by any shortfall relating to their pay which is recoverable from the scheme employer. Thus the shortfall will not be recoverable by the Revenue from the employee as a result of the assessment; but the employee will be precluded from obtaining any repayment in respect of it.