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STATUTORY INSTRUMENTS

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**2004 No. 1075**

**INCOME TAX**

**The Income Tax (Sub-contractors in the Construction Industry) (Amendment) Regulations 2004**

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|-------------------------------------|---------|------------------------|
| <i>Made</i>                         | - - - - | <i>6th April 2004</i>  |
| <i>Laid before House of Commons</i> |         |                        |
|                                     | - - - - | <i>7th April 2004</i>  |
| <i>Coming into force</i>            | - -     | <i>28th April 2004</i> |

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 566(1) of the Income and Corporation Taxes Act 1988<sup>(1)</sup> and section 205 of the Finance Act 2003<sup>(2)</sup> hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Income Tax (Sub-contractors in the Construction Industry) (Amendment) Regulations 2004 and shall come into force on 28th April 2004.

**Amendment to the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993**

2. Amend the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993<sup>(3)</sup> as follows.

3. In regulation 2(1)—

(a) after the definition of “applicant” insert—

““approved method of electronic communications”, in relation to the delivery of information or the making of a payment in accordance with a provision of these Regulations, means a method of electronic communications which has been approved, by specific or general directions issued by the Board of Inland Revenue, for the delivery of information of that kind or the making of a payment of that kind under that provision;”;

(b) after the definition of “education” insert—

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(1) 1988 c. 1.  
(2) 2003 c. 14.  
(3) S.I. 1993/743.

““electronic communications” has the meaning given in section 132(10) of the Finance Act 1999(4);”.

4. In regulation 8—
  - (a) after “within” insert—
    - (a)
    - (b) after “income tax month” insert—

“,or

      - (b) if payment is made by an approved method of electronic communications in respect of amounts deducted from contract payments made by the contractor after 5th April 2004, 17 days of the end of every income tax month ,”.
5. In regulation 9(1)—
  - (a) after “within” insert—
    - (a)
    - (b) after “income tax quarter” insert—

“,or

      - (b) if payment is made by an approved method of electronic communications in respect of amounts deducted from contract payments made by the contractor after 5th April 2004, 17 days of the end of every income tax quarter ,”.
6. In regulations 12(1) and 13(1) for “14” substitute “17”.
- 7.—(1) Amend regulation 16 as follows.
  - (2) In paragraph (1)—
    - (a) after “within” insert—
      - (a)
      - (b) after “end of a year” insert—

“, or

        - (b) if payment is made by an approved method of electronic communications in respect of amounts deducted from contract payments made by the contractor after 5th April 2004, 17 days after the end of a year,”
    - (3) At the end of paragraph (3) add “or the 17th day after the end of that year if payment is made by an approved method of electronic communications in respect of amounts deducted from contract payments made by the contractor after 5th April 2004”.
8. After regulation 46 insert the following Part—

## “PART 6

### ELECTRONIC COMMUNICATIONS

#### **Interpretation**

47. In this Part—

“official computer system” means a computer system maintained by or on behalf of the Board of Inland Revenue or an officer of the Board;

“PAYE Regulations” means the Income Tax (Pay As You Earn) Regulations 2003(5);

“specified payment” means the amount due under regulation 8 (monthly payment of amounts deducted to collector) in respect of contract payments made in the tax year to which the e-payment notice issued under regulation 199 of the PAYE Regulations relates;

“tax year” has the meaning given in regulation 2(1) of the PAYE Regulations.

### **Proof of payment sent electronically**

**48.**—(1) The use of a method of electronic communications is presumed, unless the contrary is proved, to have resulted in the making of a payment—

- (a) to the Inland Revenue, if the making of the payment has been recorded on an official computer system;
- (b) by the Inland Revenue, if despatch of the payment has been recorded on an official computer system.

(2) The use of a method of electronic communications is presumed, unless the contrary is proved, not to have resulted in the making of a payment—

- (a) to the Inland Revenue, if the making of the payment has not been recorded on an official computer system;
- (b) by the Inland Revenue, if despatch of the payment has not been recorded on an official computer system.

(3) The time of receipt or despatch of any payment sent by a method of electronic communications is presumed, unless the contrary is proved, to be the time recorded on an official computer system.

(4) In this regulation “the Inland Revenue” means the Board of Inland Revenue or any officer of the Board.

### **Mandatory electronic payment**

**49.**—(1) If an e-payment notice has been issued to a contractor in respect of a tax year under regulation 199 of the PAYE Regulations (large employers required to make specified payments under those Regulations electronically), he must pay the specified payment using an approved method of electronic communications.

(2) Paragraph (1) applies regardless of whether a payment of tax is due under regulation 68 of the PAYE Regulations (payment and recovery of tax by employer).

(3) If the Board have given a direction under regulation 199(3) of the PAYE Regulations requiring a particular method of electronic communications to be used in the case of a contractor, he must use that method.

### **Contractor in default if specified payment not received by applicable due date**

**50.**—(1) This regulation applies if a contractor is required to make a specified payment by an approved method of electronic communications in accordance with regulation 49.

(2) The contractor is in default if the specified payment is not received in full by the Board (whether by an approved method of electronic communications or otherwise) on or

before the date by which that payment is required in accordance with regulation 8 (“the applicable date”).

- (3) But the contractor is not in default if—
  - (a) the contractor had a reasonable excuse for failing to make the specified payment in a manner which secures that it is received in full by the Board on or before the applicable due date, and
  - (b) the specified payment is received in full by the Board without unreasonable delay after the excuse ceased.
- (4) Inability to pay is not a reasonable excuse for the purposes of sub-paragraph (3)(a).
- (5) A payment is not treated as received in full by the Board on or before the date by which that payment is required in accordance with regulation 8 unless it is made in a manner which secures (in a case where the payment is made otherwise than in cash) that, on or before that date, all transactions can be completed which need to be completed before the whole amount of the payment becomes available to the Board.

#### **Default notice and appeal**

**51.**—(1) The Board must issue a default notice to any person who appears to be in default under regulation 50 in respect of a specified payment.

- (2) A person may appeal against a default notice by giving notice to the Board within 30 days of the issue of the default notice.
- (3) The ground of appeal is that the person is not in default.
- (4) If the appeal is successful the default notice must be withdrawn.
- (5) Regulation 54 (appeals: supplementary provisions) applies to appeals under this paragraph.

#### **Default surcharge**

- 52.**—(1) A contractor in default in respect of any specified payment to whom—
- (a) a default notice under regulation 51, and
  - (b) a surcharge notice under regulation 53,
- have been issued, is liable to a surcharge.
- (2) The surcharge is the sum of the surcharges, calculated in accordance with paragraph (3), in respect of each default relating to the tax year in which were made the contract payments to which the specified payment referred to in paragraph (1) relates.
  - (3) The surcharge in respect of each default is the specified percentage of (A – B).
  - (4) In paragraph (3)—
    - (a) A is the total amount the contractor was liable to deduct under section 559 in respect of contract payments made in the tax year in which the contract payments to which the specified payment relates were made;
    - (b) B is the total of the amounts deducted from A under—
      - (i) rule 5 of regulation 7(2) of the Working Tax Credit (Payment by Employers) Regulations 2002<sup>(6)</sup>;

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(6) S.I. 2002/2172.

- (ii) regulations 4, 5 and 6 of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994(7),
  - (iii) regulations 3 and 5 of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002(8), and
  - (iv) regulation 44B (application by the Board of sums deducted under section 559);
- (c) the specified percentage is determined by reference to the number of the default during a surcharge period in accordance with Table 1.

**Table 1**

Specified percentage for each default in a surcharge period

| <i>1 Default number (within a surcharge period)</i> | <i>2 Specified percentage</i> |
|---|-------------------------------|
| 1st   | 0%                            |
| 2nd   | 0%                            |
| 3rd   | 0.17%                         |
| 4th   | 0.17%                         |
| 5th   | 0.17%                         |
| 6th   | 0.33%                         |
| 7th   | 0.33%                         |
| 8th   | 0.33%                         |
| 9th   | 0.58%                         |
| 10th  | 0.58%                         |
| 11th  | 0.58%                         |
| 12th  | 0.83%                         |

- (5) A surcharge period is a period which—
- (a) begins on the day following the date by which payment is required in accordance with paragraph 10 for the first specified payment in respect of which the contractor is in default, and
  - (b) ends at the end of a tax year in relation to which the contractor has not been in default in respect of any specified payment.
- (6) A surcharge payable under this paragraph is payable 30 days after the issue of the surcharge notice.

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(7) S.I. 1994/1882, amended by S.I. 2003/672.

(8) S.I. 2002/2820.

(7) Section 102 of the Management Act<sup>(9)</sup> (mitigation of penalties) applies to a surcharge payable under this paragraph as if it were a penalty.

### **Surcharge notice and appeal**

**53.**—(1) The Board must issue a surcharge notice to a contractor who has been in default on three or more occasions during a surcharge period and consequently will be liable to a surcharge under regulation 52.

(2) The surcharge notice must show the total surcharge liability for the tax year.

(3) The surcharge notice must be issued within 6 years of—

- (a) the end of the tax year, or
- (b) if earlier, the date on which the contractor delivered a return in accordance with regulation 73 of the PAYE Regulations (annual return of relevant payments liable to deduction of tax (Forms P35 and P14)).

(4) A contractor may appeal against a surcharge notice by giving notice to the Board within 30 days of the issue of the surcharge notice.

(5) The grounds of appeal are—

- (a) that the numbers of defaults stated in the notice is incorrect, or
- (b) that the amount of the surcharge is incorrect.

(6) But paragraph (5)(a) does not apply in respect of a disputed default which has already been the subject of an appeal under regulation 51, following which the default notice was not withdrawn.

### **Appeals: supplementary provisions**

**53.**—(1) The following provisions of the Management Act apply to appeals under regulation 51 (default notices and appeal), as they apply to an appeal under section 31 of that Act<sup>(10)</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).

(2) In an appeal under regulation 51 or regulation 53(4) (surcharge notice and appeal), the relevant place for the purposes of paragraph 3(1)(a) of Schedule 3 to the Management Act<sup>(11)</sup> (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

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<sup>(9)</sup> Section 102 was amended by section 168(4) of the Finance Act 1989 (c. 26).

<sup>(10)</sup> Sections 31 to 31D were substituted by paragraph 11 of Schedule 29 to the Finance Act 2001 (c. 9).

<sup>(11)</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 the Income Tax (Earnings and Pensions) Act 2003 (c. 1).

(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.”.

6th April 2004

*Ann Chant*  
*Dave Hartnett*  
Two of the Commissioners of Inland Revenue

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993 (S.I.1993/743: “the principal Regulations) to provide for electronic payments.

Regulation 1 provides for citation and commencement.

Regulation 2 introduces the amendments to the principal Regulations.

Regulation 3 amends the definitions in regulation 2(1) of the principal Regulations.

Regulations 4 and 5 amend regulations 8 and 9 of the principal Regulations respectively to provide for a later due date for electronic payments.

Regulation 6 amends regulations 12(1) and 13(1) of the principal Regulations to provide for a later date for the issue by the collector of a notice where the contractor has failed to pay amounts deducted to the collector.

Regulation 7 amends regulation 16 of the principal Regulations to provide for a later date from which interest runs on unpaid amounts where payment is made by an approved method of electronic communications.

Regulation 8 inserts a new Part in the principal Regulations to mirror, in relation to the collection of amounts deducted under section 559 of the Income and Corporation Taxes Act 1988 (c. 1), requirements for electronic payments in respect of income subject to PAYE recovery contained in Chapter 4 of Part 10 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682).