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STATUTORY INSTRUMENTS

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**2012 No. 820**

**INCOME TAX**

**CORPORATION TAX**

The Income Tax (Construction Industry Scheme) (Amendment) Regulations 2012

<i>Made</i>	- - - -	<i>14th March 2012</i>
<i>Laid before the House of Commons</i>	- - - -	<i>15th March 2012</i>
<i>Coming into force</i>	- -	<i>6th April 2012</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 113(1) of the Taxes Management Act 1970<sup>(1)</sup>, section 136 of the Finance Act 2002<sup>(2)</sup>, section 205 of the Finance Act 2003<sup>(3)</sup> and sections 62(3), (6) and (7), 71, 73 and 75 of, and paragraphs 4(3), 8(2) and 12(2) of Schedule 11 to, the Finance Act 2004<sup>(4)</sup> and now exercisable by them<sup>(5)</sup>:

**Citation and commencement**

1. These Regulations may be cited as the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2012 and shall come into force on 6th April 2012.

**Amendment of the Income Tax (Construction Industry Scheme) Regulations 2005**

2. The Income Tax (Construction Industry Scheme) Regulations 2005<sup>(6)</sup> are amended as follows.

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(1) 1970 c. 9.

(2) 2002 c. 23.

(3) 2003 c. 14.

(4) 2004 c. 12.

(5) Section 94(8) of the Finance Act 2007 amended section 205 of the Finance Act 2003 (c.11) so that the Commissioners for Her Majesty's Revenue and Customs have the power to make the Regulations. The functions of the Commissioners of Inland Revenue under section 113(1) of the Taxes Management Act 1970, section 136 of the Finance Act 2002, and the sections of the Finance Act 2004 cited, were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, in so far as is appropriate in consequence of section 5, a reference, howsoever expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(6) S.I. 2005/2045; relevant amending instruments are S.I. 2008/740 and 2010/717.

### Interpretation

3. In regulation 2 (interpretation), for the definition of “Student Loan Regulations” substitute—  
 ““Student Loan Regulations” means the Education (Student Loans) (Repayment) Regulations 2009(7) or, in Northern Ireland, the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009(8);”.

### Quarterly tax periods

4. In regulation 8(3) (quarterly tax periods)—
- (a) in the definition of “P” before “68” insert “67G(9) or”, and
  - (b) in the definition of “L”—
    - (i) for “39(1)” substitute “54(1) or, in Northern Ireland, 49(1)”, and
    - (ii) for “that regulation” substitute “those regulations”.

### Gross payment: exceptions from compliance obligations

5. In Table 3 in regulation 32(2) (exceptions from compliance obligations), in the entry in column 1 relating to the obligation to submit a return under regulations 73, 74 and 85 of the PAYE Regulations(10), before “73” insert “67B or 67D (real time returns) and”.

### Mandatory electronic payment

6. In regulation 45(2) (mandatory electronic payment), before “68” insert “67G or”.

### Application by the Commissioners for Her Majesty’s Revenue and Customs of sums deducted under section 61 of the Finance Act 2004

7. In regulation 56 (application by the Commissioners for Her Majesty’s Revenue and Customs of sums deducted under section 61 of the Finance Act 2004)—

- (a) after paragraph (2) insert—

“(2A) For any tax period where as a consequence of paragraph (2) the qualifying sub-contractor pays an amount to the Commissioners for Her Majesty’s Revenue and Customs in respect of any liability referred to in that paragraph that is less than the amount the qualifying sub-contractor would have paid but for that paragraph, paragraph (2B) applies if the qualifying sub-contractor is a Real Time Information employer for the purposes of the PAYE Regulations.

(2B) The qualifying sub-contractor must deliver to the Commissioners for Her Majesty’s Revenue and Customs a return under this paragraph stating the value of the sums deducted from contract payments made to the qualifying sub-contractor under section 61 of the Act (11) in the tax year to date.

(2C) The return required by paragraph (2B) must be delivered within 14 days after the end of the tax period.

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(7) S.I. 2009/470, to which there are amendments not relevant to these Regulations.

(8) S.R. (NI) 2009 No. 128, to which there are amendments not relevant to these Regulations.

(9) Regulations 67B to 67H of the [Income Tax \(Pay As You Earn\) Regulations 2003 \(S.I. 2003/2682\)](#) were inserted by regulation 47 of the [Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2012 \(S.I. 2012/822\)](#).

(10) “PAYE Regulations” is defined in regulation 2 of the [Income Tax \(Construction Industry Scheme\) Regulations 2005](#) (“the 2005 Regulations”) as the [Income Tax \(Pay As You Earn\) Regulations 2003](#).

(11) “The Act” is defined in regulation 2 of the [2005 Regulations](#) as the [Finance Act 2004](#).

(2D) If an employer makes an error in a return under paragraph (2B), the employer must provide the correct information in the first return made under that paragraph after the discovery of the error.

(2E) But if the information given has not been corrected before 20th April following the end of the year in question, the employer must provide the correct information for the year in question in a return under this paragraph.”,

(b) in paragraph (5), for “until” substitute “unless”,

(c) for paragraph (5)(b) substitute—

“(b) either—

(i) 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), or

(ii) the qualifying sub-contractor has delivered to the Commissioners for Her Majesty’s Revenue and Customs each return required under paragraph (2B) for the tax year.”, and

(d) after paragraph (7) insert—

“(8) A return under this regulation must—

(a) state—

(i) the employer’s HMRC office number,

(ii) the employer’s PAYE reference for the purposes of the PAYE Regulations,

(iii) the employer’s accounts office reference, and

(iv) the tax year to which the return relates, and

(b) be delivered using an approved method of electronic communications unless the qualifying sub-contractor is one to whom regulation 67D of the PAYE Regulations applies, in which case the return must be made in a document or format provided or approved by the Commissioners for Her Majesty’s Revenue and Customs.”.

*Steve Lamey*

*Stephen Banyard*

Two of the Commissioners for Her Majesty’s  
Revenue and Customs

14th March 2012

**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 (Construction Industry Scheme) Regulations 2005 (“the 2005 Regulations”).

The 2005 Regulations make provision in relation to the construction industry scheme established by Chapter 3 of the Finance Act 2004. They include cross references to some of the provisions of the Income Tax (Pay As You Earn) Regulations 2003 (“the 2003 Regulations”) which deal with the payment by employers of tax deducted from employees’ wages under the Pay As You Earn system to HM Revenue and Customs (“HMRC”) and also to certain reporting obligations under those Regulations.

The Income Tax (Pay As You Earn) (Amendment) Regulations 2012 make various amendments to the 2003 Regulations to give effect to changes to the way that employers are required to report information to HMRC about pay and deductions. The changes made by these Regulations to the 2005 Regulations are a consequence of those amendments.

In particular, regulation 7 of these Regulations amends regulation 56 of the 2005 Regulations to provide for a new form of return to be made by contractors who have suffered deductions from payments under the construction industry scheme if the contractor is a Real Time Information employer for the purposes of the 2003 Regulations. The return is to be made in respect of each tax period in which such deductions are suffered. The amendments to the 2003 Regulations include the insertion into regulation 2(1) of those Regulations of a definition of the term “Real Time Information employer”. Regulation 7 of these Regulations reflects the fact that under the amended 2003 Regulations, a Real Time Information employer will be required to report to HMRC the payments made to its employees at the time they are made and will not be required to make annual returns to HMRC under regulation 73 of those Regulations.

These Regulations also amend the definition of “Student Loan Regulations” in the 2005 Regulations, following the consolidation of the Education (Student Loans) (Repayment) Regulations 2000.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.