
STATUTORY INSTRUMENTS

2005 No. 2045

The Income Tax (Construction Industry Scheme) Regulations 2005

PART 3

PAYMENT AND RECOVERY OF AMOUNTS DEDUCTED UNDER SECTION 61

Recovery from sub-contractor of amount not deducted by contractor

9.—(1) This regulation applies if—

- (a) it appears to an officer of Revenue and Customs that the deductible amount exceeds the amount actually deducted, and
- (b) condition A or B is met.

(2) In this regulation—

“the deductible amount” is the amount which a contractor was liable to deduct on account of tax from a contract payment under section 61 of the Act in a tax period;

“the amount actually deducted” is the amount actually deducted by the contractor on account of tax from a contract payment under section 61 of the Act during that tax period;

“the excess” means the amount by which the deductible amount exceeds the amount actually deducted.

(3) Condition A is that the contractor satisfies an officer of Revenue and Customs—

- (a) that he took reasonable care to comply with section 61 of the Act and these Regulations, and
- (b) that—
 - (i) the failure to deduct the excess was due to an error made in good faith, or
 - (ii) he held a genuine belief that section 61 of the Act did not apply to the payment.

(4) Condition B is that—

- (a) an officer of Revenue and Customs is satisfied that the person to whom the contractor made the contract payments to which section 61 of the Act applies either—
 - (i) was not chargeable to income tax or corporation tax in respect of those payments, or
 - (ii) has made a return of his income or profits in accordance with section 8 of TMA (personal return) or paragraph 3 of Schedule 18 to the Finance Act 1998⁽¹⁾ (company tax return), in which 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;

and

- (b) the contractor requests that the Commissioners for Her Majesty’s Revenue and Customs make a direction under paragraph (5).
- (5) An officer of Revenue and Customs may direct that the contractor is not liable to pay the excess to the Commissioners for Her Majesty’s Revenue and Customs.
- (6) If condition A is not met an officer of Revenue and Customs may refuse to make a direction under paragraph (5) by giving notice to the contractor (“the refusal notice”) stating—
 - (a) the grounds for the refusal, and
 - (b) the date on which the refusal notice was issued.
- (7) A contractor may appeal against the refusal notice—
 - (a) by notice to an officer of Revenue and Customs,
 - (b) within 30 days of the refusal notice,
 - (c) specifying the grounds of the appeal.
- (8) For the purpose of paragraph (7) the grounds of appeal are that—
 - (a) that the contractor took reasonable care to comply with section 61 of the Act and these Regulations, and
 - (b) that—
 - (i) the failure to deduct the excess was due to an error made in good faith, or
 - (ii) the contractor held a genuine belief that section 61 of the Act did not apply to the payment.
- (9) If on an appeal under paragraph (7) it appears to the tax appeal Commissioners that the refusal notice should not have been issued they may direct that an officer of Revenue and Customs make a direction under paragraph (5) in an amount the tax appeal Commissioners determine is the excess for one or more tax periods falling within the relevant year.
- (10) If a contractor has deducted an amount under section 61 of the Act, but has not paid it to the Commissioners for Her Majesty’s Revenue and Customs as required by regulation 7 (payment, due date etc. and receipts), that amount is treated, for the purposes of determining the liability of any sub-contractor in respect of whose liability the sum was deducted, as having been paid to the Commissioners for Her Majesty’s Revenue and Customs at the time required by regulation 8 (quarterly tax periods).