
STATUTORY INSTRUMENTS

1987 No. 530

INCOME TAX

The Income Tax (Entertainers and Sportsmen) Regulations 1987

<i>Made</i>	- - - -	<i>26th March 1987</i>
<i>Laid before the House of Commons</i>	- - - -	<i>26th March 1987</i>
<i>Coming into force</i>	- -	<i>1st May 1987</i>

The Treasury, in exercise of the powers conferred on them by Schedule 11 to the Finance Act 1986⁽¹⁾, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Entertainers and Sportsmen) Regulations 1987 and shall come into force on 1st May 1987.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires—

“associate” has the meaning given to it by section 303(3) of the Taxes Act;

“Board” means Commissioners of Inland Revenue;

“control” shall be construed in accordance with section 302(2) to (6) of the Taxes Act⁽²⁾;

“entertainer” means any description of individuals (and whether performing alone or with others) who give performances in their character as entertainers or sportsmen in any kind of entertainment or sport; and “entertainment or sport” in this definition includes any activity of a physical kind, performed by such an individual, which is or may be made available to the public or any section of the public and whether for payment or not;

“Management Act” means the Taxes Management Act 1970⁽³⁾;

a payment or transfer to which regulation 3 applies is described as “connected”;

“relevant activity” has the meaning given to it by regulation 6;

“Schedule 11” means Schedule 11 to the Finance Act 1986;

“the Taxes Act” means the Income and Corporation Taxes Act 1970;

(1) 1986 c. 41.

(2) 1970 c. 10; subsections (2) to (4) were substituted by paragraph 5 of Schedule 17 to the Finance Act 1972 (c. 41).

(3) 1970 c. 9.

- “the Tax Acts” has the meaning given to it by section 526(2) of the Taxes Act;
“tax payment” has the meaning given to it by regulation 4;
“tax year” means year of assessment;
“value transferred” in relation to a transfer means the gross amount to which regulation 17(1) refers.

(2) Section 533 of the Taxes Act (meaning of connected persons) applies for the purposes of these Regulations.

Payments or transfers with prescribed connection

3.—(1) This regulation applies for the purposes of and subject to the provisions of paragraph 2 of Schedule 11, the other provisions of that Schedule and these Regulations.

(2) Subject to paragraph (3) a payment or a transfer made for, in respect of, or which in any way derives either directly or indirectly from, the performance of a relevant activity, has a connection of a prescribed kind with the relevant activity.

- (3) The following are descriptions of payments to which paragraph (2) shall not apply—
- (a) a payment out of which a sum representing tax is or falls to be deducted under the Taxes Act apart from Schedule 11 or these Regulations;
 - (b) (i) a payment (to which paragraph (ii) applies) made to a person who is resident and ordinarily resident in the United Kingdom, not being a person who is connected with or an associate of the entertainer concerned;
(ii) a payment to which paragraph (i) refers is a payment—
 - (a) which falls to be made for the provision of services ancillary to the performance of a relevant activity, and
 - (b) which is of an amount or value which does not exceed what would be reasonable for that provision between persons dealing with each other at arms' length;
 - (c) any payment made to an entertainer in respect of the proceeds of sale of records deriving from a sound recording made by the entertainer, being payments calculated by reference to those proceeds or payments on accounts of those proceeds.

Tax Payments—rules for calculation

4.—(1) Each of the sums mentioned in paragraph 2(2) and (3) of Schedule 11 (“tax payment”) shall be calculated in accordance with the rules prescribed by this regulation.

(2) Except where it is otherwise provided by these Regulations or there is an arrangement to which this regulation refers, the tax payment shall be a proportion of the connected payment or of the value transferred by a connected transfer equal to the basic rate of income tax for the tax year in which the payment or transfer is made.

- (a) (3) (a) Subject to sub-paragraph (b), where the connected payments and the value transferred by connected transfers for a tax year made to an entertainer, or to a person who is connected with him or who is an associate of his, do not together exceed £1000 the tax payment shall be a nil amount;
- (b) connected payments and the value transferred by connected transfers made by any person who is connected with any other person by whom connected payments or connected transfers are made to the entertainer, or by any associate of such other person, shall together be treated as constituting a single connected payment in determining whether they exceed £1000.

(4) An arrangement to which paragraph (2) refers is an arrangement in writing between the Board and the person by whom the connected payment or connected transfer is made, the entertainer, or the recipient of the connected payment or connected transfer, made following a decision by the Board on an application to which regulation 5 refers, under which the tax payment is an amount which, as a proportion of the connected payment or value transferred by the connected transfer, is an amount less than the said basic rate (“reduced tax payment”).

(5) The reduced tax payment may be arrived at by reference to a percentage of the connected payment or of the value transferred by a connected transfer or as a lump sum calculated without reference to any such percentage.

(6) In making an arrangement of the kind to which paragraph (2) refers the Board—

- (a) shall, subject to sub-paragraph (b) and paragraph (7) below, at all times aim at securing that the tax payment shall be, as nearly as may be, the amount of the liability to tax of the entertainer or other person arising in relation to the connected payment or connected transfer under the Tax Acts, Schedule 11 and these Regulations, and
- (b) may take into account the fact that the liability to the Board for tax has, in a manner satisfactory to them, been secured or otherwise provided for, whether by a guarantee (of whatever person) or other means.

(7) Where—

- (a) a person makes a connected payment or connected transfer in relation to a relevant activity, and
- (b) in respect of the same relevant activity that person has received a connected payment or connected transfer in respect of which the amount of the tax payment has been paid under these Regulations,

the person concerned shall not be required to deduct out of the connected payment or pay in respect of the connected transfer (to which sub-paragraph (a) refers) any sum to which paragraph 2 of Schedule 11 applies unless, and to the extent that, the tax payment which then falls to be made exceeds the amount of the tax payment to which sub-paragraph (b) refers.

Reduced tax payment—application to be made to the Board

5.—(1) Where a connected payment or connected transfer falls to be made subject to a tax payment to which regulation 4(2) refers the person by whom the connected payment or connected transfer is made, the entertainer, or recipient of the connected payment or connected transfer, may make an application in writing to the Board, not later than 30 days before the connected payment or connected transfer falls to be made, that it shall be subject instead to a reduced tax payment (within the meaning of regulation 4).

(2) Unless and until there is in force an arrangement under which such a reduced tax payment falls to be made regulation 4(2) shall at all times continue to apply to the connected payment or connected transfer.

Relevant activity

6.—(1) Subject to this regulation, any activity performed in the United Kingdom by an entertainer (whether alone or involving others) of any of the descriptions in paragraph (2) is an activity of a prescribed description (“relevant activity”) for the purposes of paragraph 1 of Schedule 11, that Schedule and these Regulations.

(2) A relevant activity to which paragraph (1) refers is an activity performed in the United Kingdom by an entertainer in his character as entertainer on or in connection with a commercial occasion or event and includes—

- (a) any appearance of the entertainer by way of or in connection with the promotion of any such occasion or event;
 - (b) any participation by the entertainer in or for sound recording, films, videos, radio, television or other similar transmissions (whether live or recorded).
- (3) A commercial occasion or event to which paragraph (2) refers includes any description of occasion or event—
- (a) for which an entertainer (or other person) might receive or become entitled, for or by virtue of the entertainer’s performance of the activity, to receive anything by way of cash or any other form of property; or
 - (b) which is designed to promote commercial sales or activity by advertising, the endorsement of goods or services, sponsorship, or other promotional means of any kind.
- (4) For the purpose of this regulation—

“film” includes any record (with or without sound), however made, of a sequence or series of one or more visual images, which is a record capable of being used as a means of showing part or all of that sequence or series as a moving or still picture, and “record” in this definition includes video.

Persons other than entertainers receiving connected payments or transfers

7.—(1) Any description of person in paragraph (2) is a person (not being the entertainer) to whom paragraph 7(1) of Schedule 11 refers.

- (2) The descriptions of persons to whom paragraph (1) refers are—
- (a) any person who is under the control of the entertainer;
 - (b) any person who is—
 - (i) not resident in the United Kingdom, and
 - (ii) not liable to tax by reason of residence, domicile, place of management or otherwise, in a territory outside the United Kingdom where the rate of tax charged on the profits or income of such a person is a rate exceeding 25 per cent.;
 - (c) (i) subject to paragraph (ii), any person in receipt (whether directly or indirectly) of a connected payment or value transferred by a connected transfer which is, is treated as, or falls to be included in the computation of, income arising under a settlement in relation to which the entertainer is a settlor;
 - (ii) for the purposes of paragraph (i)—
 - “income arising under a settlement” and “settlor” have the meanings given to them by section 454 of the Taxes Act⁽⁴⁾, and
 - “settlement” has the meaning given to it by section 444(2) of the Taxes Act;
 - (d) (i) any person to whom paragraph (2) of this regulation does not otherwise apply who receives any connected payment or connected transfer (whether directly or indirectly) at or in respect of a time when there is in force between that person and the entertainer concerned a contract or arrangement to which paragraph (ii) applies;
 - (ii) a contract or arrangement to which paragraph (i) refers is a contract or arrangement by or under which it is reasonable to suppose that the entertainer (or other person who is connected with or is an associate of the entertainer) is, will or may become, entitled to receive amounts, whether by way of cash or other value, not substantially less than the appropriate amount of profits or gains arising from the connected payment or connected transfer to which paragraph 8(1) of Schedule 11 applies.

(4) 1970 c. 10; relevant amendments were made by paragraph 26 of Schedule 24 to the Finance Act 1972 (c. 41).

Computation of profits arising from certain payments and transfers attributed to entertainer

8.—(1) Subject to the provisions of these Regulations, the profits or gains (to which paragraph 7(2) of Schedule 11 refers) arising from the connected payment or connected transfer (to which paragraph 7(1) of that Schedule refers) shall be computed in accordance with the provisions of the Taxes Act relating to the charging of profits or gains under Case I or II (as the case may be) of Schedule D, so that a just and reasonable amount of such a payment or value transferred by such a transfer is charged to tax as such profits or gains; and

(2) notwithstanding any provision of the Taxes Act, in computing the said profits or gains such deductions of expenses incurred by any person (not being the entertainer) in relation to the payment or transfer concerned shall be made as are just and reasonable.

Returns of information to be furnished by maker of connected payments or connected transfers

9.—(1) A person who makes a connected payment or connected transfer shall, in accordance with this regulation, make a return to the Board of the connected payment or connected transfer which he makes and of any tax payment (including a nil amount) for which he is accountable to the Board.

(2) A return shall be made in the tax year for each successive period ending on 30th June, 30th September, 31st December and 5th April.

(3) The return for each period shall be made within 14 days after the end of the period.

(4) The Board may by notice in writing require any person who makes a connected payment or connected transfer, within such time as may be specified in the notice, to furnish to them particulars of such payments or transfers including—

- (a) the dates and the amounts of each payment;
- (b) the dates of and the value transferred by each transfer;
- (c) a sufficient description to enable any asset or money's worth transferred to be identified;
- (d) the business and private name and address of the person to whom each payment or transfer was made;
- (e) the name and address of the entertainer concerned;
- (f) the relevant activity to which the payment or transfer relates, including full particulars of all performances.

(5) The Management Act(5) shall apply to a return to which this regulation relates as it applies to a return under the Taxes Acts.

Tax payments—due date

10.—(1) A tax payment (including any reduced tax payment), whether any deduction out of a connected payment or provision in respect of a connected transfer has been made or not, shall be due at the time by which the return under regulation 9(1) is to be made (“the due date”) and payment shall be made before, or at the time when, that return is made.

(2) A payment at any time so due shall be payable by the person who makes the connected payment or connected transfer concerned, without the making of any assessment in respect of it.

(3) Subject to the provisions of regulation 11, tax which has become due and payable under this regulation (whether or not it has been paid when the assessment is made) may be assessed on the person from whom it is due if that tax, or any part of it, is not paid on or before the due date.

Assessment of tax payments

11.—(1) Assessments in respect of any tax due and payable in respect of any period to which regulation 9(2) refers may be made by the Board in relation to a tax year or to the period in question.

(2) Notwithstanding that an assessment under paragraph (1) may be said to relate to a period which is not a tax year—

- (a) all the provisions of the Income Tax Acts as to the time within which an assessment may be made or the tax year to which an assessment relates shall apply to such an assessment, and
 - (b) the provisions of sections 36 and 37 of the Management Act as to the circumstances in which an assessment may be made out of time shall apply accordingly, but on the footing that the assessment relates to the tax year in which the period (to which regulation 9(2) refers) ends.
- (3) Any tax which becomes due under an assessment made under paragraph (1)—
- (a) shall be payable on or before whichever is earlier of the due date to which regulation 10(1) refers or the 14th day after the date of the notice of the assessment, and
 - (b) shall be treated for all the purposes of Parts VI and IX of the Management Act (including the purposes of section 69 of that Act) as tax with which the person assessed is charged by an assessment to income tax under Schedule D.

Tax liabilities and tax payments—supplementary

12.—(1) Where under these Regulations there is accounted for and paid to the Board an amount of tax which is—

- (a) in respect of a connected payment or connected transfer, or
- (b) paid under an assessment made under regulation 11,

that amount shall, subject to this regulation, be treated as a payment of tax on account of the tax liability (of whatever person) in respect of the connected payment or connected transfer concerned.

(2) Where, in respect of a connected payment or connected transfer, there is a liability to tax under the Tax Acts as well as under Schedule 11 or these Regulations, the Board shall allocate any payment made to them to which paragraph (1) refers as is just and reasonable in discharge of some or all of those liabilities of the entertainer or other person concerned to whom these Regulations apply.

(3) Where—

- (a) by virtue of paragraph 8 of Schedule 11 and these Regulations a connected payment or the value transferred by a connected transfer falls to be included in the amount of profits or gains to which paragraph 8(1)(a) refers, and
- (b) the amount of the connected payment or the value transferred (or an amount in respect of that value) is charged to tax under Schedule E

the amount charged under Schedule E (to which sub-paragraph (b) refers) shall be treated as expenditure which falls to be deducted in computing the profits or gains to which sub-paragraph (a) refers.

(4) Where a payment is a connected payment—

- (a) which is, is treated as, or falls to be included in a computation of, income of the entertainer chargeable to tax by virtue of the provisions of Part XVI of the Taxes Act(6), or
- (b) which is a receipt of a company which provides the services of the entertainer to perform the relevant activity, being a receipt which falls to be included in the computation of its profits which are chargeable to tax under Schedule D,

(6) 1970 c. 10.

the charge under Schedule 11 shall have effect and the charges to which sub-paragraphs (a) and (b) refer shall be disregarded.

(5) A person making a connected payment or connected transfer in respect of which a tax payment has been made by virtue of these Regulations shall furnish the recipient with a certificate showing the gross amount of the payment or the value transferred, the amount of the tax payment, and the amount actually paid.

Claim that tax payment excessive to be made to Board

13.—(1) Notwithstanding any other provision of these Regulations, where there has been made to a recipient a connected payment or connected transfer in respect of which a tax payment has been made, the entertainer or any person who, by virtue of Schedule 11 or these Regulations is, or is treated as, the person to whom (in relation to the connected payment or connected transfer) any tax liability arises may, by a claim in writing made to the Board, claim that the amount of the tax payment made is excessive.

(2) Subject to paragraph (3) the claim shall be treated as a claim made to an inspector to which section 42 of the Management Act applies.

(3) The claim shall be made not before, but within six years after, the end of the tax year in which the connected payment or connected transfer was made.

Administration of tax—supplementary

14.—(1) Nothing in these Regulations shall be taken to prejudice any powers conferred by or under the Tax Acts for the recovery of tax, penalties or interest by means of an assessment or otherwise.

(2) Subject to the provisions of these Regulations, the Management Act shall apply in relation to any tax assessable under these Regulations as if—

- (a) an assessment of such tax was an assessment specified in section 55(1)(7) (recovery of tax not postponed); and
- (b) section 87 of that Act(8) applied—
 - (i) with the insertion of the words “or the Income Tax (Entertainers and Sportsmen) Regulations 1987” after “Finance Act 1972” in subsection (1), and after “Schedule 20” in subsections (2)(b), (5) and (6),
 - (ii) with the insertion after “company” in subsection (5) of the words “or individual”, and
 - (iii) with the insertion after “Schedules” in subsection (7) of the words “or those Regulations”.

Modifications and adaptations of enactments in relation to trades etc

15.—(1) In this regulation—

- (a) “world-wide trade” means a trade of an entertainer which is a trade apart from Schedule 11 and these Regulations, and a “Schedule 11 trade” means a trade which is a separate trade of an entertainer only by virtue of Schedule 11 and these Regulations;
- (b) “trade” includes profession or vocation.

(7) 1970 c. 9; section 55 was substituted by section 45(1) of the Finance (No. 2) Act 1975 (c. 45); relevant amendments were made by section 68 of the Finance Act 1982 (c. 39).

(8) Section 87 was substituted by paragraph 10 of Schedule 24 to the Finance Act 1972 (c. 41); relevant amendments were made by section 46(3)(b) of the Finance (No. 2) Act 1975 and section 62 of the Finance Act 1980 (c. 48).

(2) For the purposes of section 171 of the Taxes Act (carry forward of losses) the world-wide trade and the Schedule 11 trade shall be treated as the same trade.

(3) For the purposes of section 174 of the Taxes Act (carry back of terminal losses) a loss sustained for any relevant period under a Schedule 11 trade (to which otherwise that section would apply) shall not be a terminal loss except where the world-wide trade is permanently discontinued in that period, in which case such a loss in either trade shall be available under that section to be deducted or set off against profits or gains of those trades.

(4) For the purposes of section 30 of the Finance Act 1978⁽⁹⁾ (losses in early years of trade) the world-wide trade and the Schedule 11 trade shall be treated as the same trade, but that section shall apply to any such loss of an entertainer only in the tax year in which the world-wide trade was first carried on and in the next 3 succeeding tax years.

Apportionment of payments, transfers etc

16.—(1) The provisions of paragraph (2) are by way of supplementation of the provisions of section 127 of the Taxes Act.

(2) Where, in the case of any payment, value transferred or profits or gains to which Schedule 11 or these Regulations apply, it is necessary, in order to arrive at the appropriate amount of such payment, value or profits or gains for any tax year or other period, to make any apportionment, division or aggregation of any amounts or values, any such apportionment, division or aggregation, shall be made as is just and reasonable.

Value of transfers—rules for calculation and grossing up

- (a) **17.** (1) (a) The actual worth of what is transferred by a transfer to which paragraph 2(3) of Schedule 11 applies (“the net value”) shall be treated as a net amount corresponding to a gross amount from which income tax at the basic rate has been deducted; and
- (b) the said gross amount shall be treated as the value of what is transferred for the purposes of paragraph 2(4) of Schedule 11.
- (a) (2) (a) The net value to which paragraph (1) refers shall be the cost of what is transferred, and
- (b) the cost of what is transferred to which sub-paragraph (a) refers is the cost in or in connection with its provision (including its provision to the person who makes the transfer) or transfer, less so much of that cost which has been borne by the entertainer.

Tony Durant

Tim Sainsbury

Two of the Lords Commissioners of Her Majesty’s Treasury

26th March 1987

(9) 1978 c. 42.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, made by the Treasury under the provisions of Schedule 11 to the Finance Act 1986 (“Schedule 11”), provide for a scheme of deduction of tax by payers out of payments (and for payment of tax in respect of transfers of value) made to non-resident entertainers and sportsmen in relation to their appearances in the United Kingdom. Credit for the tax will be given against tax on their assessed profits derived from the payments and transfers.

Regulation 1 provides for the title and commencement.

Regulation 2 provides for interpretation.

Regulation 3 prescribes the payments and transfers in respect of which tax is to be deducted and paid.

Regulation 4 provides rules for calculating the tax payments.

Regulation 5 provides for reduced tax payments.

Regulation 6 prescribes those activities, the payments and transfers in relation to the performance of which, are to be subject to tax payments.

Regulation 7 prescribes persons for the purposes of paragraph 7 of Schedule 11, to whom payments (attributable to entertainers or sportsmen) are made and Regulation 8 provides rules for computing profits and gains in respect of those payments.

Regulations 9, 10, 11, prescribe with modifications standard Inland Revenue procedures for returns, due dates for tax payments and assessments.

Regulation 12 makes supplementary provisions in relation to tax liabilities and payments.

Regulation 13 provides for a standard claim procedure in respect of tax payments which may be excessive.

Regulation 14 makes supplementary provisions for the administration of tax in relation to the regulatory scheme.

Regulation 15 adapts and modifies statutory provisions relating to reliefs for losses etc. for trades, professions and vocations.

Regulation 16 provides for apportionments of payments, transfers and profits or gains, where necessary.

Regulation 17 provides rules for calculating the value of what is transferred by a transfer for the purpose of calculating the appropriate tax payment.