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## STATUTORY INSTRUMENTS

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### 2005 No. 2045

### The Income Tax (Construction Industry Scheme) Regulations 2005

#### PART 2

#### CONTRACTORS

##### **Multiple contractors**

**3.—**(1) A contractor may elect, for the purposes of these Regulations, to be treated as different contractors in relation to different groups of sub-contractors.

(2) Where the contractor makes an election these Regulations apply as if—

- (a) in respect of each group the contractor were a different contractor; and
- (b) each group constituted all the sub-contractors to whom the contractor makes payments under contracts relating to construction operations.

(3) While an election is in force, a contractor must allocate any new sub-contractors to one of the groups.

(4) An election must be made by notice to an officer of Revenue and Customs containing—

- (a) such information as may be necessary to identify the groups of sub-contractors, and
- (b) a certificate that the contractor makes no payments under contracts relating to construction operations other than to sub-contractors in the groups so identified.

(5) A contractor must, subject to paragraph (6), make an election before the beginning of the tax year for which it is to have effect.

(6) A contractor who acquires the whole or part of any business of another contractor may, within 90 days of the acquisition, elect—

- (a) to be treated as a different contractor in relation to the acquired sub-contractors, or two or more different contractors in relation to groups of the acquired sub-contractors, whether or not an election is already in force in respect of the existing sub-contractors, or
- (b) to add some or all of the acquired sub-contractors to existing groups of sub-contractors in respect of whom an election is already in force,

and such election has effect for the tax year in which the acquisition takes place.

(7) In paragraph (6)—

“business” includes any trade, concern or undertaking;

“acquired sub-contractor” means a sub-contractor who contracted with the acquired business.

(8) An election continues in effect until revoked by notice given to an officer of Revenue and Customs.

(9) A notice of revocation must be given before the beginning of the tax year for which the election is to be revoked, but the revocation of an election does not prevent the making of a new election for that or a later tax year.

(10) An election which has not yet come into effect may be revoked at any time before the beginning of the tax year for which it is to have effect.

### **Monthly return**

**4.—**(1) A return must be made to the Commissioners for Her Majesty's Revenue and Customs in a document or format provided or approved by the Commissioners—

- (a) not later than 14 days after the end of every tax month, by a contractor making contract payments or payments which would be contract payments but for section 60(4) of the Act (contract payments: exceptions), and
  - (b) not later than 14 days after the end of the tax month following the appointed day, by a contractor who has made a payment in the 12 months preceding the appointed day which would be a contract payment or a payment which would be a contract payment but for section 60(4) of the Act if made after the appointed day.
- (2) The return under paragraph (1) must contain the following information—
- (a) the contractor's name,
  - (b) the contractor's unique taxpayer reference (UTR) and Accounts' Office reference,
  - (c) the tax month to which the return relates, and
  - (d) in respect of each sub-contractor to whom, or to whose nominee, payments under construction contracts were made by the contractor during that month,—
    - (i) the sub-contractor's name;
    - (ii) the sub-contractor's national insurance number (NINO) or company registration number (CRN), if known; and
    - (iii) the information specified in paragraph (3).
- (3) The information specified is—
- (a) if the sub-contractor is registered for gross payment—
    - (i) the sub-contractor's unique taxpayer reference (UTR), and
    - (ii) the total amount of payments which would be contract payments but for section 60(4) of the Act (contract payments: exceptions) made by the contractor to the sub-contractor during the tax month;
  - (b) if the sub-contractor is registered for payment under deduction—
    - (i) the sub-contractor's unique taxpayer reference (UTR),
    - (ii) the total amount of contract payments made by the contractor to the sub-contractor during the tax month,
    - (iii) the total amount included in those payments which the contractor is satisfied represents the direct cost to any person other than the contractor of materials used or to be used in carrying out the construction contract to which the contract payment relates, and
    - (iv) the total amount deducted from the payments mentioned in paragraph (3)(b)(ii) under section 61 of the Act (deduction on account of tax from contract payments);
  - (c) if the sub-contractor is not registered for gross payment or payment under deduction—
    - (i) the sub-contractor's unique taxpayer reference (UTR), if known,

- (ii) the total amount of contract payments made by the contractor to the sub-contractor during the tax month,
  - (iii) the total amount included in those payments which the contractor is satisfied represents the direct cost to any person other than the contractor of materials used or to be used in carrying out the construction contract to which the contract payment relates,
  - (iv) the total amount deducted from the payments mentioned in paragraph (3)(c)(ii) under section 61 of the Act, and
  - (v) the verification reference for higher rate deduction.
- (4) The return may be transmitted electronically to the Commissioners for Her Majesty's Revenue and Customs.
- (5) The return must include a declaration by the person making the return—
  - (a) that none of the contracts to which the return relates is a contract of employment;
  - (b) indicating whether he has complied with the requirements of regulation 6 (verification etc of registration status of sub-contractor) in the case of each person to whom a payment to which the return relates is made; and
  - (c) that the return contains all the information, particulars and supporting information required by this regulation to be included in the return, and such information, particulars and supporting information are complete and accurate to the best of the contractor's knowledge and belief.
- (6) If the return is not transmitted electronically, it must be signed by the contractor or a person duly authorised by the contractor to make the return.
- (7) The contractor must make and keep such records as will enable him to comply with this regulation.
- (8) The contractor must give the following information in writing to the sub-contractor to whom it relates not later than 14 days after the end of the tax month either in respect of the total payments made in that month or in respect of each payment made in that month—
  - (a) if the sub-contractor is registered for payment under deduction—
    - (i) the contractor's name,
    - (ii) the contractor's employer's reference,
    - (iii) the tax month to which the payments relate or the date of the payment,
    - (iv) the sub-contractor's name,
    - (v) the sub-contractor's unique taxpayer reference (UTR),
    - (vi) the total amount of contract payments made by the contractor to the sub-contractor during the tax month,
    - (vii) the total amount included in those payments which the contractor is satisfied represents the direct cost to any person other than the contractor of materials used or to be used in carrying out the construction contract to which the contract payment relates, and
    - (viii) the total amount deducted from the payments mentioned in paragraph (vi) under section 61 of the Act;
  - and
  - (b) if the sub-contractor is not registered under Chapter 3 of the Act, the verification reference.
- (9) The information required under paragraph (8) may be given by means of electronic communications if—

- (a) the contractor has indicated to the sub-contractor that he intends to use electronic communications for the purposes of giving this information;
- (b) the sub-contractor has consented to information being given by the contractor by means of electronic communications, and that consent has not been withdrawn;
- (c) the information is given in an electronic format—
  - (i) in which the statement may be stored; and
  - (ii) which permits a paper copy of the information contained in the statement to be printed.

(10) If a contractor who has made a return, or should have made a return, under this regulation makes no payments under construction contracts in the tax month following that return, the contractor must make a nil return not later than 14 days after the end of that tax month. This is subject to paragraph (11).

(11) Paragraph (10) does not apply if the contractor has notified the Commissioners for Her Majesty's Revenue and Customs that the contractor will make no further payments under construction contracts within the following six months.

(12) Subject to paragraph (13), section 98A of TMA(1) (special penalties in the case of certain returns) applies to the requirements in—

- (a) paragraph (1),
- (b) paragraph (3)(b),
- (c) paragraph (3)(c),
- (d) paragraph (10).

(13) A penalty under section 98A of TMA in relation to a failure to make a return in accordance with paragraphs (1) or (10) arises for each month (or part of a month) during which the failure continues after the 19th day of the sixth month following the appointed day.

### **Scheme representative**

5.—(1) A company ("the appointing company") which makes payments under construction contracts may appoint another company in the same group ("a scheme representative") to act on its behalf in connection with any such requirements imposed on the company by these Regulations as the appointment specifies.

(2) An appointment under paragraph (1) shall not have effect until the appointing company has notified the Commissioners for Her Majesty's Revenue and Customs .

(3) A scheme representative must make returns and payments under these Regulations in the name of the appointing company.

(4) The appointing company remains liable in relation to all the requirements imposed on it by these Regulations notwithstanding any appointment under paragraph (1).

(5) For the purposes of paragraph (1) section 413(3)(a) of ICTA applies to determine whether two companies are in the same group.

### **Verification etc of registration status of sub-contractor and nominee**

6.—(1) A contractor must verify with the Commissioners for Her Majesty's Revenue and Customs whether a person to whom he is proposing to make—

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(1) Section 98A was inserted by section 165 of the Finance Act 1989 (c. 26) and amended by sections 722 and 723 of, and paragraphs 123 and 138 of Schedule 6 and Schedule 7 to, ITEPA and prospectively amended by sections 76 and 77 of and paragraph 8 of Schedule 12 to, the Finance Act 2004.

- (a) a contract payment, or
- (b) a payment which would be a contract payment but for section 60(4) of the Act (contract payments:exceptions),

and, where that person has appointed a nominee, his nominee, are registered for gross payment, for payment under deduction or is not registered under Chapter 3 of the Act. This is subject to paragraph (3).

(2) For the purpose of verification the contractor must provide—

- (a) his name, unique taxpayer reference (UTR), accounts office reference and employer's reference, and
- (b) in relation to the person to whom he is proposing to make the payment and, where that person has appointed a nominee, his nominee—
  - (i) if that person or nominee is an individual, his name, unique taxpayer reference (UTR) and national insurance number;
  - (ii) if that person or nominee is a partner in a firm, the name of the firm and that partner, the unique taxpayer reference (UTR) of the firm, and if the partner is an individual his unique taxpayer reference (UTR) or national insurance number or if the partner is a company the unique taxpayer reference (UTR) or the company registration number;
  - (iii) if that person or nominee is a company, the name of the company, unique taxpayer reference (UTR) and the company registration number.

(3) A contractor may not verify under paragraph (1) unless the contractor has a contract with the sub-contractor or has formally accepted a tender for work under a contract.

(4) A contractor need not verify if—

- (a) the person to whom he is proposing to make the payment has been included in a return under regulation 4 in the current or previous two tax years;
- (b) the payment is made within two years of the appointed day, if the person to whom he is proposing to make the payment has been included in a return under regulation 4 or a return under regulation 40A of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993<sup>(2)</sup> for the current or previous two years;
- (c) the contractor is a company and the person to whom he is proposing to make the payment has been included in a return under regulation 4 or a return under regulation 40A of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993 for the current or previous two tax years made by another company in the same group;
- (d) the contractor has made an election under regulation 3 and the person to whom he is proposing to make the payment has been included in a return under regulation 4 in the current or previous two years in respect of a different group of sub-contractors in relation to which the contractor is treated as a different contractor;
- (e) the contractor acquired the contract under which the payment is to be made in a transfer of a business as a going concern where the transferor was within one of paragraphs (a) to (d) and the contractor has notified the Commissioners for Her Majesty's Revenue and Customs of the transfer.

(5) For the purposes of paragraph (4)(c) section 413(3)(a) of ICTA applies to determine whether two companies are in the same group.

(6) The Commissioners for Her Majesty's Revenue and Customs must notify a contractor that—

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(2) S.I.1993/743. Regulation 40A was inserted by the Income Tax (Sub-contractors in the Construction Industry) (Amendment) Regulations 1998 (1998/2622) and amended by regulation 8 of the Income Tax (Sub-contractors in the Construction Industry) (Amendment) Regulations 2001 (2001/1531).

- (a) a person registered for gross payment has become registered for payment under deduction or has ceased to be registered under Chapter 3 of the Act, or
- (b) a person registered for payment under deduction has become registered for gross payment or has ceased to be registered under Chapter 3 of the Act,

if a payment to that person has been included in the contractor's return under regulation 4, or a return under regulation 40A of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993, in the current or previous two tax years or that person has been verified under paragraph (1) by the contractor in that period.

(7) A contractor is entitled to assume that—

- (a) a person verified or notified as being registered for gross payment, or
- (b) a person verified or notified as being registered for payment under deduction,

has not subsequently ceased to be so registered.