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STATUTORY INSTRUMENTS

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**2005 No. 2045**

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

**PART 7**

**ELECTRONIC COMMUNICATIONS**

**Interpretation**

**38.** In this Part—

“official computer system” means a computer system maintained by or on behalf of the Commissioners for Her Majesty’s Revenue and Customs or an officer of Revenue and Customs;

“specified payment” means the amount due under regulation 7 (payment, due date for payment of amounts deducted and receipts) 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 (large employers required to make specified payments electronically).

**Whether information has been delivered electronically**

**39.** For the purpose of these Regulations, information is taken to have been delivered to an official computer system by an approved method of electronic communications only if it is accepted by that official computer system.

**Proof of content of electronic delivery**

**40.—**(1) A document certified by an officer of Revenue and Customs to be a printed-out version of any information delivered by an approved method of electronic communications is evidence, unless the contrary is proved, that the information—

- (a) was delivered by an approved method of electronic communications on that occasion, and
- (b) constitutes everything which was delivered on that occasion.

(2) A document which purports to be a certificate given in accordance with paragraph (1) is presumed to be such a certificate unless the contrary is proved.

**Proof of identity of person sending or receiving electronic delivery**

**41.** The identity of—

- (a) the person sending any information by an approved method of electronic communications to Her Majesty’s Revenue and Customs, or
- (b) the person receiving any information delivered by an approved method of electronic communications by Her Majesty’s Revenue and Customs,

is presumed, unless the contrary is proved, to be the person recorded as such on an official computer system.

**Information sent electronically on behalf of a person**

**42.**—(1) Any information delivered by an approved method of electronic communications—

- (a) to Her Majesty’s Revenue and Customs, or
- (b) to an official computer system,

on behalf of a person is taken to have been delivered by that person.

(2) But this does not apply if the person proves that the information was delivered without the person’s knowledge or connivance.

**Proof of delivery of information sent electronically**

**43.**—(1) The use of an approved method of electronic communications is presumed, unless the contrary is proved, to have resulted in the delivery of information—

- (a) to Her Majesty’s Revenue and Customs, if the delivery of the information has been recorded on an official computer system;
- (b) by Her Majesty’s Revenue and Customs, if the despatch of the information 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 delivery of information—

- (a) to Her Majesty’s Revenue and Customs, if the delivery of the information has not been recorded on an official computer system;
- (b) by Her Majesty’s Revenue and Customs, if despatch of the information has not been recorded on an official computer system.

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

**Proof of payment sent electronically**

**44.**—(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 Her Majesty’s Revenue and Customs, if the making of the payment has been recorded on an official computer system;
- (b) by Her Majesty’s Revenue and Customs, 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 Her Majesty’s Revenue and Customs, if the making of the payment has not been recorded on an official computer system;
- (b) by Her Majesty’s Revenue and Customs, 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.

### **Mandatory electronic payment**

**45.**—(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, 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 Commissioners for Her Majesty’s Revenue and Customs have given directions under regulation 199(3) of the PAYE Regulations in relation to a contractor, the specified payment must be made in accordance with those directions.

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

**46.**—(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 45.

(2) The contractor is in default if the specified payment is not received in full by Her Majesty’s Revenue and Customs (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 7 (“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 Her Majesty’s Revenue and Customs on or before the applicable due date, and
- (b) the specified payment is received in full by Her Majesty’s Revenue and Customs 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 Her Majesty’s Revenue and Customs on or before the date by which that payment is required in accordance with regulation 7 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 Commissioners for Her Majesty’s Revenue and Customs.

### **Default notice and appeal**

**47.**—(1) An officer of Revenue and Customs must issue a default notice to any person who appears to be in default under regulation 46 in respect of a specified payment.

(2) A person may appeal against a default notice by giving notice to an officer of Revenue and Customs 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 59 (appeals: supplementary provisions) applies to appeals under this paragraph.

### **Default surcharge**

**48.**—(1) A contractor in default in respect of any specified payment to whom—

- (a) a default notice under regulation 47, and
- (b) a surcharge notice under regulation 49,

have been issued, is liable to a surcharge.

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*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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(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 section 61 of the Act on account of tax from 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) regulations 4, 5 and 6 of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994(1),
  - (ii) regulations 3 and 5 of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002(2), and
  - (iii) regulation 56 (application by the Commissioners for Her Majesty's Revenue and Customs of sums deducted under section 61);
- (c) the specified percentage is determined by reference to the number of the default during a surcharge period in accordance with Table 4.

**Table 4**

Specified percentage for each default in a surcharge period

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

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

(2) S.I. 2002/2820.

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*1 Default number (within a surcharge period) 2 Specified percentage*

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12<sup>th</sup>

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- (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 7 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.
- (7) Section 102 of TMA(3) (mitigation of penalties) applies to a surcharge payable under this paragraph as if it were a penalty.

### **Surcharge notice and appeal**

**49.**—(1) An officer of Revenue and Customs 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 48.

- (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 an officer of Revenue and Customs 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 49, following which the default notice was not withdrawn.