

2019 No. 384

INCOME TAX

CORPORATION TAX

**The Income Tax (Construction Industry Scheme) (Amendment)
and the Corporation Tax (Security for Payments) Regulations
2019**

<i>Made</i>	- - - -	<i>27th February 2019</i>
<i>Laid before the House of Commons</i>		<i>28th February 2019</i>
<i>Coming into force</i>	- -	<i>6th April 2019</i>

The Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 70A of the Finance Act 2004^(a) and paragraph 88A of Schedule 18 to the Finance Act 1998^(b), make the following Regulations:

PART 1

Citation and Commencement

1. These Regulations may be cited as the Income Tax (Construction Industry Scheme) (Amendment) and the Corporation Tax (Security for Payments) Regulations 2019 and come into force on 6th April 2019.

PART 2

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

2. The Income Tax (Construction Industry Scheme) Regulations 2005^(c) are amended as follows.

3. In regulation 2 (interpretation), in the definition of “contractor”, before “has” insert “save for the purposes of Part 3A,”.

4. After regulation 17 (in-year repayments of provisional excess credit), insert—

^(a) 2004 c. 12; section 70A was inserted by section 82(1)(b) of Finance Act 2019 (c. 1).
^(b) 1998 c. 36; paragraph 88A was inserted by section 82(2) of Finance Act 2019.
^(c) S.I. 2005/2045, to which there are amendments not relevant to these regulations.

“PART 3A

Security for Payments to HMRC

Interpretation

17A. In this Part—

- “C” has the meaning given in regulation 17B,
- “contractor” for the purposes of this Part excludes the persons named in section 59(1)(b) to (k) of the Act^(a),
- “HMRC” means Her Majesty’s Revenue and Customs,
- “PGS” has the meaning given in regulation 17F(1).

Prescribed circumstances - requirement for security

17B. In circumstances where an officer of Revenue and Customs considers it necessary for the protection of the revenue, that officer may require a person described in regulation 17C(1) to give security^(b) for the payment of amounts in respect of which the contractor (“C”) is, or may be, accountable to HMRC under either section 61 (deductions on account of tax from contract payments) of the Act or these Regulations.

Prescribed persons from whom security can be required

17C.—(1) The persons from whom security may be required for the purposes of this Part are—

- (a) C,
 - (b) any of the following in relation to C—
 - (i) a director,
 - (ii) a company secretary,
 - (iii) any other similar officer,
 - (iv) a scheme representative appointed under regulation 5,
 - (v) a personal representative of C, or
 - (vi) any person purporting to act in such a capacity, and
 - (c) in a case where C is a firm, a partner of the firm.
- (2) An officer of Revenue and Customs may require—
- (a) a person prescribed by paragraph (1) to give security of a specified value in respect of C, and
 - (b) more than one person prescribed by paragraph (1) to give security of a specified value in respect of C and, where the officer of Revenue and Customs does so require, each person shall be jointly and severally liable to give that security.

Notice of requirement

17D.—(1) An officer of Revenue and Customs must give notice of a requirement for security to each person from whom security is required and the notice must specify—

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- (a) 2004 c. 12. Section 59(1)(b) and (c) was amended by paragraphs 107(a) and 107(b) respectively of Schedule 1 to the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I.2007/1388). Section 59(1)(f) was amended by paragraph 82 of Schedule 8 to the Housing and Regeneration Act 2008 (c. 17). Section 59(1)(h) was amended by paragraph 33 of Schedule 9 to the Housing and Regeneration Act 2008. Section 59(1)(f)(a) was amended by paragraph 42(3) of Schedule 19 to the Localism Act 2011 (c. 20).
 - (b) Under section 70A(6) of the Finance Act 2004, “security” includes “further security”.

- (a) the value of security to be given,
 - (b) the manner in which security is to be given,
 - (c) the date on or before which security is to be given, and
 - (d) the period of time for which security is required.
- (2) The notice must include, or be accompanied by, an explanation of—
- (a) C's right to make a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009^(a) (suspension of penalty during currency of agreement for deferred payment), and
 - (b) the effect of regulation 17E(2) and (3).
- (3) In a case which falls within regulation 17C(2)(b), the notice must include, or be accompanied by, the names of every other person from whom security is required.
- (4) The notice may contain such other information as the officer considers necessary.
- (5) No person shall be treated as having been required to provide security unless HMRC has given notice in accordance with this regulation and regulation 17E(1).

Date on which security is due

- 17E.**—(1) The date specified under regulation 17D(1)(c) may not be earlier than the 30th day after the day on which the notice is given.
- (2) If, before the date specified under regulation 17D(1)(c), C makes a request under paragraph 10(1) of Schedule 56 to the Finance Act 2009 (suspension of penalty during currency of agreement for deferred payment), the requirement to give security on or before that date does not apply.
- (3) In a case which falls within paragraph (2), if HMRC does not agree to C's request, security is to be given on or before the 30th day after the day on which HMRC notifies C of that decision.

Application for reduction in the value of security held

- 17F.**—(1) A person who has given security ("PGS") may apply to an officer of Revenue and Customs for a reduction in the value of security held by HMRC if—
- (a) PGS's circumstances have changed since the day the security was given because—
 - (i) of hardship, or
 - (ii) PGS has ceased to be a person described in regulation 17C(1), or
 - (b) since the day the security was given there has been a significant change in C's circumstances such that—
 - (i) the value of the security specified under regulation 17D(1)(a) exceeds the amount necessary to protect the revenue, or
 - (ii) security is no longer necessary to protect the revenue.
- (2) Where regulation 17C(2)(b) applies, any person who has not contributed to the value of the security given may not make an application under paragraph (1).

Outcome of application for reduction in the value of security held

- 17G.**—(1) An officer must inform PGS of the outcome of an application under regulation 17F(1).

(a) 2009 c. 10, commenced in relation to deductions on account of tax under Chapter 3 of Part 3 of Finance Act 2004 (construction industry scheme) by article 3 of Finance Act 2009, Schedule 56 (Appointed Day and Consequential Provisions) Order 2010 (S.I.2010/466).

(2) On receipt of an application under regulation 17F(1)(a), an officer of Revenue and Customs may—

- (a) refuse the application, or
- (b) reduce the amount of security payable by that PGS, or
- (c) withdraw the notice given under 17D(1) to that PGS.

(3) On receipt of an application under regulation 17F(1)(b), an officer of Revenue and Customs may—

- (a) where the officer considers that the security held remains necessary for the protection of the revenue, refuse the application, or
- (b) where the officer considers that security of a lower amount is necessary for the protection of the revenue, inform PGS of the reduced value of security required to be held, or
- (c) where the officer considers that a security is no longer necessary for the protection of the revenue, cancel the security.

(4) HMRC may make such arrangements as they think fit to ensure the necessary reduction in the value of security held.

Outcome of application for reduction in the value of security held: further provision

17H.—(1) This regulation applies—

- (a) in cases which fall within regulation 17C(2)(b), and
- (b) where PGS's application is made under regulation 17F(1)(a).

(2) As a consequence of arrangements made under regulation 17G(4), an officer of Revenue and Customs may require by further notice ("further notice") any other person who was given notice under regulation 17D in relation to the security ("the original security"), or any other person mentioned in regulation 17C(1), to provide security in substitution for the original security.

(3) Regulations 17D, 17E and 17I apply in relation to a further notice.

Appeals

17I.—(1) A person who is given notice under regulation 17D may appeal against the notice or any requirement in it.

(2) PGS may appeal against—

- (a) the rejection by an officer of Revenue and Customs of an application under regulation 17F(1), or
- (b) a smaller reduction in the value of security held than PGS had applied for.

(3) Notice of an appeal under this regulation must be given—

- (a) before the end of the period of 30 days beginning with—
 - (i) in the case of an appeal under paragraph (1), the day after the day on which the notice was given, and
 - (ii) in the case of an appeal under paragraph (2), the day after the day on which PGS was notified of the outcome of the application, and
- (b) to the officer of Revenue and Customs by whom the notice was given or the decision on the application was made, as the case may be.

(4) Notice of appeal under this regulation must state the grounds of appeal.

(5) On an appeal under paragraph (1) that is notified to the tribunal, the tribunal may—

- (a) confirm the requirements in the notice,
- (b) vary the requirements in the notice, or

- (c) set aside the notice.
- (6) On an appeal under paragraph (2) that is notified to the tribunal, the tribunal may—
 - (a) confirm the decision on the application, or
 - (b) vary the decision on the application.
- (7) On the final determination of an appeal under this regulation—
 - (a) any security to be given is due on the 30th day after the day on which the determination is made, subject to any alternative determination by a tribunal or other court, or
 - (b) HMRC may make such arrangements as it sees fit to ensure the necessary reduction in the value of security held.
- (8) An appeal under this regulation is subject to the provisions of Part 5 of the Taxes Management Act^(a) (appeals and other proceedings) apart from—
 - (a) section 46D (questions to be determined by the relevant tribunal),
 - (b) section 47B (special jurisdiction relating to business expansion scheme),
 - (c) section 50(6) to (9) (procedure), and
 - (d) sections 54A to 57.

Appeals: further provision for cases which fall within regulation 17E(2)

17J. In a case which falls within regulation 17E(2), if the request mentioned in that provision is made before an appeal under regulation 17I(1), regulation 17I(3)(a)(i) applies as if the words “the day after the day on which the notice was given” were “the day after the day on which HMRC notifies C of its decision”.

Offence

- 17K.** For the purposes of section 70A(4) (security for payments to HMRC) of the Act—
- (a) in relation to a requirement for security under a notice given under regulation 17D, the prescribed period is the period which starts with the day the notice is given and ends with—
 - (i) the first day after the date specified under regulation 17D(1)(c), or
 - (ii) in a case which falls within regulation 17E(2), the first day after the date determined under regulation 17E(3),
 - (b) in relation to a requirement for security under a further notice, the prescribed period is the period which starts with the day the further notice is given and ends with—
 - (i) the first day after the date specified under regulation 17D(1)(c) as it applies in relation to the further notice, or
 - (ii) in a case which falls within regulation 17E(2), the first day after the date determined under regulation 17D(3) as it applies in relation to the further notice, and
 - (c) in relation to a requirement for security to which regulation 17I(7)(a) applies, the prescribed period is the period which starts with the day the determination is made and ends with the first day after—
 - (i) the day the tribunal or court determines to be the day that the security is to be given, or
 - (ii) the day determined in accordance with that regulation,

(a) 1970 c. 9.

as the case may be.”.

PART 3

Corporation Tax

Interpretation

5. In regulations 6 to 14—

“C” has the meaning given in regulation 6,

“HMRC” means Her Majesty’s Revenue and Customs,

“PGS” has the meaning given in regulation 10(1).

Prescribed circumstances - requirement for security

6. In circumstances where an officer of Revenue and Customs considers it necessary for the protection of the revenue, that officer may require a person described in regulation 7(1) to give security(a) for the payment of tax(b) which a company (“C”) is or may become liable to pay.

Prescribed persons from whom security may be required

7.—(1) The persons from whom security may be required are—

(a) C,

(b) any of the following in relation to C—

(i) a director,

(ii) a company secretary,

(iii) any other similar officer, or

(iv) any person purporting to act in such a capacity.

(2) An officer of Revenue and Customs may require—

(a) a person prescribed by paragraph (1) to give security of a specified value in respect of C,
or

(b) more than one person prescribed by paragraph (1) to give security of a specified value in respect of C and, where the officer of Revenue and Customs does so require, each person shall be jointly and severally liable to give that security.

Notice of requirement

8.—(1) An officer of Revenue and Customs must give notice of a requirement for security to each person from whom security is required and the notice must specify—

(a) the value of the security to be given,

(b) the manner in which the security is to be given,

(c) the date on or before which security is to be given, and

(d) the period of time for which security is required.

(a) Under paragraph 88A(6) of Schedule 18 to the Finance Act 1998, “security” includes “further security”.

(b) The meaning of “tax” is given in paragraph 1 of Schedule 18 to the Finance Act 1998, amended by section 92(3) of the Finance Act 2002 (c. 23), Schedule 1, paragraph 287(1), (2) to the Corporation Tax Act 2010 (c. 4), Schedule 19, paragraphs 60 and 61 to the Finance Act 2011 (c. 11), section 180 of and Schedule 20 paragraphs 15 and 17(1), (2) to the Finance Act 2012 (c. 14), Schedule 30, paragraph 13(1), (2) to the Finance Act 2013 (c. 29) and Schedule 3, paragraph 14 to the Finance (No.2) Act 2015 (c. 33).

(2) In a case which falls within regulation 7(2)(b), the notice must include, or be accompanied by, the names of every other person from whom security is required.

(3) The notice may contain such other information as the officer considers necessary.

(4) No person shall be treated as having been required to provide security unless HMRC has given notice in accordance with this regulation and regulation 9.

Date on which security is due

9. The date specified under regulation 8(1)(c) may not be earlier than the 30th day after the day on which the notice is given.

Application for reduction in the value of security held

10.—(1) A person who has given security (“PGS”) may apply to an officer of Revenue and Customs for a reduction in the value of security held by HMRC if—

- (a) PGS’ circumstances have changed since the day the security was given because—
 - (i) of hardship, or
 - (ii) PGS has ceased to be a person described in regulation 7(1), or
- (b) since the day the security was given there has been a significant change in C’s circumstances such that—
 - (i) the value of the security specified under regulation 8(1)(a) exceeds the amount necessary to protect the revenue, or
 - (ii) security is no longer necessary to protect the revenue.

(2) Where regulation 7(2)(b) applies, any person who has not contributed to the value of the security given may not make an application under paragraph (1).

Outcome of application for reduction in the value of security held

11.—(1) An officer must inform PGS of the outcome of an application under regulation 10(1).

(2) On receipt of an application under regulation 10(1)(a), an officer of Revenue and Customs may—

- (a) refuse the application, or
- (b) reduce the amount of security payable by that PGS, or
- (c) withdraw the notice given under regulation 7(1) to that PGS.

(3) On receipt of an application under regulation 10(1)(b), an officer of Revenue and Customs may—

- (a) where the officer considers that the security held remains necessary for the protection of the revenue, refuse the application, or
- (b) where the officer considers that security of a lower amount is necessary for the protection of the revenue, inform PGS of the reduced value of security required to be held, or
- (c) where the officer considers that a security is no longer necessary for the protection of the revenue, cancel the security.

(4) HMRC may make such arrangements as they think fit to ensure the necessary reduction in the value of security held.

Outcome of application for reduction in the value of security held: further provision

12.—(1) This regulation applies—

- (a) in cases which fall within regulation 7(2)(b), and
- (b) where PGS’ application is made under regulation 10(1)(a).

(2) As a consequence of arrangements made under regulation 11(4), an officer of Revenue and Customs may require by further notice (“further notice”) any other person who was given notice under regulation 8(1) in relation to the security (“the original security”), or any other person mentioned in regulation 7(1), to provide security in substitution for the original security.

(3) Regulations 8, 9 and 13 apply in relation to a further notice.

Appeals

13.—(1) A person who is given notice under regulation 8(1) may appeal against the notice or any requirement in it.

(2) PGS may appeal against—

- (a) the rejection by an officer of Revenue and Customs of an application under regulation 10(1), or
- (b) a smaller reduction in the value of security held than PGS had applied for.

(3) Notice of appeal under this regulation must be given—

- (a) before the end of the period of 30 days beginning with—
 - (i) in the case of an appeal under paragraph (1), the day after the day on which the notice was given, and
 - (ii) in the case of an appeal under paragraph (2), the day after the day on which PGS was notified of the outcome of the application, and
- (b) to the officer of Revenue and Customs by whom the notice was given or the decision on the application was made, as the case may be.

(4) Notice of an appeal under this regulation must state the grounds of appeal.

(5) On an appeal under paragraph (1) that is notified to the tribunal, the tribunal may—

- (a) confirm the requirements in the notice,
- (b) vary the requirements in the notice, or
- (c) set aside the notice.

(6) On an appeal under paragraph (2) that is notified to the tribunal, the tribunal may—

- (a) confirm the decision on the application, or
- (b) vary the decision on the application.

(7) On the final determination of an appeal under this regulation—

- (a) any security to be given is due on or before the 30th day after the day on which the determination is made, subject to any alternative determination by a tribunal or court, or
- (b) HMRC may make such arrangements as it sees fit to ensure the necessary reduction in the value of security held.

(8) An appeal under this regulation is subject to the provisions of Part 5 of the Taxes Management Act 1970(a) (appeals and other proceedings) apart from—

- (a) section 46D (questions to be determined by the relevant tribunal),
- (b) section 47B (special jurisdiction relating to business expansion scheme),
- (c) section 50(6) to (9) (procedure), and
- (d) sections 54A to 57.

(a) 1970 c. 9.

Offence

14. For the purposes of paragraph 88A(4) of Schedule 18 to the Finance Act 1998^(a) (security for payments)—

- (a) in relation to a requirement for security under a notice given under regulation 8(1), the prescribed period is the period which starts with the day the notice is given and ends with the first day after the date specified in regulation 8(1)(c),
- (b) in relation to a requirement for security under a further notice, the prescribed period is the period which starts with the day the further notice is given and ends with the first day after the date specified in regulation 8(1)(c) as it applies to the further notice, and
- (c) in relation to a requirement for security to which regulation 13(7)(a) applies, the prescribed period is the period which starts with the day the determination is made and ends with the first day after—
 - (i) the day the tribunal or court determines to be the day that the security is to be given, or
 - (ii) the day determined in accordance with that regulation,as the case may be.

*Ruth Stanier
Justin Holliday*

27th February 2019

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) (the “2005 Regulations”) to enable Her Majesty's Revenue and Customs (“HMRC”) to require security or further security for the payment of sums in respect of which a contractor is, or may be, accountable to HMRC under either section 61 of the Finance Act 2004 (ch. 12) (“FA 2004”) or the 2005 Regulations.

These Regulations also enable HMRC to require security or further security for the payment of corporation tax in respect of which a company is, or may become, liable to pay.

Part 1 of the Regulations provides for citation and commencement of the Regulations. The Regulations will come into force on 6th April 2019.

Part 2 of the Regulations inserts a new Part 3A into the 2005 Regulations and makes a consequential amendment to the 2005 Regulations.

Regulation 3 amends the definition of “contractor” in the 2005 Regulations.

Regulation 4 inserts a new Part 3A in to the 2005 Regulations to make provision for payments of security to HMRC. Part 3A provides for an officer of Revenue and Customs to require a person to give security, or further security, in respect of certain amounts that a contractor is or may be accountable to HMRC under section 61 (deductions on account of tax from contract payments) of FA 2004 or the 2005 Regulations. New Part 3A does not apply in relation to the persons named in section 59(1)(b) to (k) of FA 2004. An officer may require security where he or she considers that it is necessary for the protection of the revenue.

(a) 1998 c. 36.

New regulation 17C lists the persons from whom security may be required and also makes provision for joint and several liability in cases where security is required from more than one person.

New regulation 17D requires the officer to give notice to a person from whom security is required and specifies the information which must be included in the notice. Regulation 17E prevents the notice from requiring the security on a date that is earlier than the 30th day after the day on which the notice is given. Regulation 17E also disapplies the requirement to give security by the specified date if, before that date, the contractor makes a request to HMRC to enter into a time to pay arrangement. Regulation 17E further provides that, in the event HMRC does not agree to the contractor's request, security will be required on the 30th day after the contractor is notified of that decision.

New regulation 17F makes provision for a person who has given security to apply to an officer of Revenue and Customs for a reduction in the value of security that HMRC holds. Regulation 17G makes provision for the outcome of such an application and permits HMRC to make such arrangements as they think fit where an application under regulation 17F is successful. If an application is made under regulation 17F(1)(a), in circumstances where more than one person has been given notice to provide security under regulation 17C(2)(b), and that application results in a reduction in the value of security held by HMRC, regulation 17H provides that, in certain cases, an officer of Revenue and Customs may require further security in substitution for the original security.

New regulation 17I contains provisions allowing a person from whom security is required to appeal against that requirement, and for a person whose application under regulation 17F(1) is refused (in whole or in part) to appeal against that decision. Together with regulation 17J, it also contains (in part) the procedural requirements and practical arrangements for appeals.

Under section 70A(4) of FA 2004, which was inserted by section 82(1)(b) of Finance Act 2019 (c. 1), it is an offence for a person from whom security is required to fail for a specified period to give security. New regulation 17K specifies the period that applies for that purpose in the different circumstances that might apply.

Part 3 of the Regulations makes similar provision for payments of security to be made to HMRC in respect of corporation tax.

Regulation 5 includes certain definitions that apply to regulations 6 to 14.

Regulation 6 provides for an officer of Revenue and Customs to require a person to give security, or further security, in respect of corporation tax that a company is or may be liable to pay to HMRC. An officer may require security where he or she considers that it is necessary for the protection of the revenue.

Regulation 7 lists the persons from whom security may be required and also makes provision for liability to give security to be joint and several in cases where it is required from more than one person.

Regulation 8 requires the officer to give notice to a person from whom security is required and specifies the information which must be included in the notice. Regulation 9 prevents the notice from requiring the security on a date that is earlier than the 30th day after the day on which the notice is given.

Regulation 10 makes provision for a person who has given security to apply to an officer of Revenue and Customs for a reduction in the value of security that HMRC holds. Regulation 11 makes provision for the outcome of such an application and permits HMRC to make such arrangements as they think fit where an application under regulation 10 is successful. If an application is made under regulation 10(1)(a), in circumstances where more than one person has been given notice to provide security under regulation 7(2)(b), and that application results in a reduction in the value of security held by HMRC, regulation 12 provides that, in certain cases, an officer of Revenue and Customs may require further security in substitution for the original security.

Regulation 13 contains provisions allowing a person from whom security is required to appeal against that requirement, and for a person whose application under regulation 10(1) is refused (in whole or in part) to appeal against that decision. Regulation 13 also contains (in part) the procedural requirements and practical arrangements for appeals.

Under paragraph 88A(4) of Schedule 18 to the Finance Act 1998 (ch. 36), which was inserted by section 82(2) of Finance Act 2019, it is an offence for a person from whom security is required to fail for a specified period to give security. Regulation 14 specifies the period that applies for that purpose in the different circumstances that might apply.

A Tax Information and Impact Note covering this instrument was published on 6 July 2018 and is available at <https://www.gov.uk/government/publications/extension-of-security-deposit-legislation>.

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£6.90

UK201902271014 03/2019 19585

<http://www.legislation.gov.uk/id/uksi/2019/384>

ISBN 978-0-11-118233-8



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