
STATUTORY INSTRUMENTS

1995 No. 917

INCOME TAX

The Profit-Related Pay (Shortfall Recovery) Regulations 1995

<i>Made</i>	- - - -	<i>29th March 1995</i>
<i>Laid before the House of Commons</i>	- - - -	<i>29th March 1995</i>
<i>Coming into force</i>	- -	<i>19th April 1995</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by sections 179(2) and 203 of the Income and Corporation Taxes Act 1988(1), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Profit-Related Pay (Shortfall Recovery) Regulations 1995 and shall come into force on 19th April 1995.

Interpretation

2. In these Regulations—

- “the Board” means the Commissioners of Inland Revenue;
- “collector” means a collector of taxes;
- “the Management Act” means the Taxes Management Act 1970(2);
- “the principal Regulations” means the Income Tax (Employments) Regulations 1993(3);
- “the Taxes Act” means the Income and Corporation Taxes Act 1988(4);
- “year” means year of assessment.

(1) 1988 c. 1. Section 179 was amended by paragraph 5 of Schedule 4 to the Finance Act 1989 (c. 26). Section 203 was amended by section 128 of, and paragraph 4 of Schedule 3 to, the Finance Act 1988 (c. 39), section 45(3) of, and Part IV of Schedule 17 to, the Finance Act 1989, and (prospectively) paragraph 38 of Schedule 19 and Part V(23) of Schedule 26 to the Finance Act 1994 (c. 9).

(2) 1970 c. 9.

(3) S.I. 1993/744, amended by S.I. 1993/2276, 1994/775 and 1212, and 1995/216 and 447.

(4) 1988 c. 1.

Information

3.—(1) Where the registration of a profit-related pay scheme registered under Chapter III of Part V of the Taxes Act is cancelled by the Board, the scheme employer shall, within 60 days of being required by the Board to do so, make a return to the Board, in such form as the Board may prescribe, containing the particulars specified in paragraph (2) below.

(2) The particulars specified in this paragraph are particulars of—

- (a) the aggregate amount of the shortfall in the deductions made in accordance with the principal Regulations (an amount equal to which is payable by the scheme employer to the Board pursuant to section 179(2) of the Taxes Act);
- (b) the amount of the shortfall attributable to each year where the shortfall relates to more than one year.

Recovery

4.—(1) Within 60 days of his being required to make a return in accordance with regulation 3, the scheme employer shall pay to the Board an amount equal to the aggregate amount of the shortfall shown in the return.

(2) Subject to these Regulations, the amount payable to the Board pursuant to paragraph (1) above shall be recoverable from the scheme employer as if it were an amount of tax which the scheme employer was liable under regulation 40 or 41 of the principal Regulations⁽⁵⁾ to pay to the collector.

Evidence

5.—(1) Where an amount equal to the aggregate amount of the shortfall shown in a return has not been paid or fully paid within the period specified in regulation 4(1), an officer of the Board may certify the amount due to the collector.

(2) The production of a certificate under paragraph (1) above shall be sufficient evidence that the scheme employer is liable to pay to the collector the amount shown in the certificate.

(3) A certificate of a collector that an amount payable pursuant to regulation 4(1) has not been paid to him or, to the best of his knowledge and belief, to any other collector shall be sufficient evidence that the amount specified in the certificate is unpaid and due to the Crown.

(4) Any document purporting to be a certificate under paragraph (1) or (3) above shall be deemed to be such a certificate until the contrary is proved.

Determinations

6.—(1) Where it appears to the Board that there is an amount payable pursuant to regulation 4(1) which has not been paid or fully paid, the Board may determine to the best of their judgment the amount so unpaid, and shall serve notice of the determination on the scheme employer.

(2) A determination under paragraph (1) above shall be subject to the like provisions as are contained in Parts IV, V and VI of the Management Act as if it were an assessment and as if the amount determined were income tax charged on the scheme employer, and those Parts of that Act shall, subject to these Regulations, apply accordingly with any necessary modifications.

(3) An appeal against a determination under paragraph (1) above may be brought before either—

- (a) the General Commissioners for the division where the trade, profession or vocation of the scheme employer is carried on or in which the head office or principal place of business of the scheme employer is situated, or

(5) Regulation 40 of S.I. 1993/744 was amended by S.I. 1993/2276, and regulation 41 was amended by S.I. 1993/2276 and 1995/216.

- (b) the Special Commissioners.

Interest on unpaid amounts of shortfall

7.—(1) Where—

- (a) there is an amount payable pursuant to regulation 4(1), or
- (b) the Board make a determination of an amount under regulation 6, and
- (c) in either case the amount in question is not paid or fully paid on or before the 14th day after the end of the year to which it is attributable,

the amount unpaid shall carry interest at the prescribed rate from the reckonable date until payment.

(2) In paragraph (1) above “the prescribed rate” means the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 86 of the Management Act(6); and where that rate changes on an operative date within the meaning given by regulation 2 of the Taxes (Interest Rate) Regulations 1989(7) by virtue of those Regulations, the change shall have effect for periods beginning on or after the operative date in relation to interest running from before that date as well as from or from after that date.

(3) In this regulation “the reckonable date” means—

- (a) where the amount referred to in sub-paragraph (a) or (b) of paragraph (1) above arises from a cancellation by the Board of the registration of a scheme under section 178(3) of the Taxes Act, the day immediately following the last day of the period specified in subsection (2) or, as the case may be, subsection (3) of section 180 of that Act(8);
- (b) in any other case, the 14th day after the end of the year to which the amount is attributable.

(4) The amount unpaid referred to in paragraph (1) above shall carry interest from the reckonable date even if that date is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(9).

(5) Interest payable under this regulation shall be recoverable as if it were an amount of tax which an employer is liable under regulation 40 or 41 of the principal Regulations to pay to the collector.

Death of a scheme employer

8. If a scheme employer dies, anything which he would have been liable to do under these Regulations shall be done by his personal representatives.

Revocations

9.—(1) The Profit-Related Pay (Shortfall Recovery) Regulations 1988(10) (“the 1988 Regulations”), so far as not previously revoked, are hereby revoked.

(2) Regulation 14 of the Income Tax (Employments) (Amendment) Regulations 1993(11) is hereby revoked.

(6) Section 86 was substituted by section 46(1) of the Finance (No. 2) Act 1975 (c. 45). The section as substituted was amended by sections 61(3) and 62(1) and (2) of the Finance Act 1980 (c. 48), Part V of Schedule 16 to the Finance Act 1987 (c. 16), section 86(2) of the Finance (No. 2) Act 1987 (c. 51), paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988, sections 156(1), 158(1) and 179(1) of, and Part VIII of Schedule 17 to, the Finance Act 1989, section 73(4) and (5) of, and paragraph 1 of Schedule 15 to, the Finance Act 1991 (c. 31), paragraph 2(1) and (8) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), paragraph 3 of Schedule 11 and Part VII(8) of Schedule 18 to the Finance (No. 2) Act 1992 (c. 48), and paragraph 3 of Schedule 14 to the Finance Act 1993 (c. 34).

(7) S.I. 1989/1297; a relevant amending instrument is S.I. 1991/889.

(8) Section 180(3) was amended by paragraph 38(2) of Schedule 10 to the Companies Act 1989 (c. 40).

(9) 1882 c. 61; section 92 was amended by sections 3(1) and 4(4) of the Banking and Financial Dealings Act 1971 (c. 80).

(10) S.I. 1988/640, regulation 8 of which was revoked by regulation 14 of S.I. 1993/2276.

(11) S.I. 1993/2276.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) Anything done pursuant to the 1988 Regulations which, if done on or after the coming into force of these Regulations, could have been done pursuant to these Regulations, shall have effect as if done pursuant to these Regulations.

29th March 1995

S.C.T. Matheson
G.H. Bush
Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Profit-Related Pay (Shortfall Recovery) Regulations 1988 (S.I. 1988/640) (“the 1988 Regulations”), as amended.

The 1988 Regulations provided for the collection and recovery of an amount equal to the shortfall in deductions made under PAYE where—

- (a) payments of profit-related pay were made to employees in accordance with a profit-related pay scheme registered under Chapter 1 of Part I of the Finance (No. 2) Act 1987 (c. 51) (subsequently re-enacted as Chapter III of Part V of the Income and Corporation Taxes Act 1988 (c. 1));
- (b) in consequence of the relief given by those Acts less PAYE tax was deducted from the payments made to the employees than would have been deducted if the scheme had not been registered; and
- (c) the registration of the scheme was subsequently cancelled with effect from a time before the relief was given, resulting in a shortfall in deductions made under PAYE.

Apart from minor and drafting amendments, including amendments consequential on the consolidation of the Income Tax Acts by the Income and Corporation Taxes Act 1988, these Regulations contain an additional provision to those contained in the 1988 Regulations, namely a regulation providing that unpaid amounts of shortfall in deductions made under PAYE shall carry interest (regulation 7).