



# Finance (No. 2) Act 1975

## 1975 CHAPTER 45

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER II

#### SUB-CONTRACTORS IN THE CONSTRUCTION INDUSTRY

#### 68    **Introductory**

- (1) Subject to subsection (2) below, on such date as the Treasury may by order made by statutory instrument appoint (in this Chapter referred to as the appointed day) Chapter II of Part II of the Finance Act 1971 (sub-contractors in construction industry) and all certificates having effect under section 30 thereof shall cease to have effect except in relation to sums payable under section 29 thereof before that date, and on and after the appointed day the provisions of this Chapter other than this section shall (subject to that exception) have effect instead of that Chapter.
- (2) The said provisions shall have effect before the appointed day for the purpose of enabling applications to be made and certificates issued under section 70 of this Act and—
  - (a) after the passing of this Act—
    - (i) no applications for the issue of a certificate under the said section 30 shall be made ; and
    - (ii) no certificate under that section shall be issued except on an application before the appointed day for the renewal of such a certificate or in pursuance of paragraph (b) below;
  - (b) on an application before that day under subsection (2) of section 70 of this Act for a certificate under that section, a certificate under the said section 30 may be issued in addition to the certificate under the said section 70; but
  - (c) all certificates under the said section 30 issued by virtue of paragraph (a)(ii) above or in pursuance of paragraph (b) above shall (like all other certificates

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having effect under that section) cease to have effect on the appointed day ;  
and

- (d) no certificate under section 70 of this Act shall come into force until the appointed day.

**69 Deductions on account of tax etc. from payments to certain sub-contractors in construction industry**

- (1) Where a contract relating to construction operations is not a contract of employment, but—

- (a) one party to the contract is a sub-contractor (as defined in subsection (2) below); and  
(b) another party to the contract (in this section referred to as "the contractor") either is a sub-contractor under another such contract relating to all or any of the construction operations or is a person to whom this paragraph applies,

this section shall apply to any payments which on or after the appointed day are made under the contract and are so made by the contractor to—

- (i) the sub-contractor;  
(ii) a person nominated by the sub-contractor or the contractor; or  
(iii) a person nominated by a person who is a sub-contractor under another such contract relating to all or any of the construction operations,

unless the person to whom the payments are made or, if the payments are made to a nominee, each of the following persons, that is to say, the nominee, the person who nominated him and the person for whose labour (or, where that person is a company, for whose employees' or officers' labour) the payment is made, is excepted from this section in relation to those payments by virtue of section 70 of this Act.

- (2) A party to a contract relating to construction operations is a sub-contractor if, under the contract.—

- (a) he is under a duty to the contractor to carry out the operations, or to furnish his own labour (that is to say, in the case of a company, the labour of employees or officers of the company) or the labour of others in the carrying out of the operations or to arrange for the labour of others to be furnished in the carrying out of the operations ; or  
(b) he is answerable to the contractor for the carrying out of the operations by others, whether under a contract or under other arrangements made or to be made by him.

- (3) Paragraph (b) of subsection (1) above applies to the following persons, that is to say.—

- (a) any person carrying on a business which includes construction operations;  
(b) any local authority ;  
(c) any development corporation or new town commission ;  
(d) the Commission for the New Towns ;  
(e) the Housing Corporation, a housing association, a housing trust, a housing society, the Scottish Special Housing Association, the Northern Ireland Housing Trust and the Northern Ireland Housing Executive.

- (4) On making a payment to which this section applies the contractor shall deduct from it a sum equal to 35 per cent, of so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is made

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relates; and the sum so deducted shall be paid to the Board and shall be treated for the purposes of income tax or, as the case may be, corporation tax—

- (a) as not diminishing the payment; but
  - (b) subject to subsection (5) below, as being income tax or, as the case may be, corporation tax paid in respect of the profits or gains of the trade, profession or vocation of the person for whose (or for whose employees' or officers') labour the contractor makes the payment.
- (5) Where a sum deducted and paid to the Board under subsection (4) above is more than sufficient to discharge the liability to income tax of the person referred to in paragraph (b) of that subsection in respect of the profits or gains mentioned in that paragraph, so much of the excess as is required to discharge any liability of that person for Class 4 contributions shall be treated as being, for the purposes of the Social Security Act, Class 4 contributions paid in respect of the profits or gains so mentioned.
- (6) The Board shall make regulations with respect to the collection and recovery, whether by assessment or otherwise, of sums required to be deducted from any payments under this section and for the giving of receipts by persons receiving the payments to persons making them; and those regulations may include any matters with respect to which regulations may be made under section 204 (pay as you earn) of the Taxes Act.
- (7) References in the preferential payments provisions to sums due on account of tax deductions for any period shall be construed as including references to any amounts due from any person in respect of deductions required to be made by him under this section.
- (8) In section 98 of the Taxes Management Act 1970 (penalty for failure to furnish information, etc.) the following shall be added in the second column of the Table:—

“Regulations under section 69 of the Finance (No. 2) Act 1975”.

- (9) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (10) In this section "Class 4 contributions" means Class 4 contributions within the meaning of the Social Security Act 1975 or, as the case may be, the Social Security (Northern Ireland) Act 1975 ; and " the Social Security Act" means whichever of those Acts is the one under which the contribution in question is payable.

## **70 Exceptions from section 69**

- (1) A person is excepted from section 69 of this Act in relation to payments made under a contract if a certificate under this section has been issued to that person and is in force when the payment is made, but—
  - (a) where the certificate has been issued to a person who becomes a partner in a firm, that person is not excepted in relation to payments made under contracts under which the firm or, where a person has nominated the firm to receive payments, the person who has nominated the firm, is a sub-contractor (as defined in section 69(2) of this Act); and
  - (b) where a certificate has been issued to a person as a partner in a firm, that person is excepted in relation only to payments made under contracts under which the firm or, where a person has nominated the firm to receive payments, the person who has nominated the firm, is a sub-contractor (as so defined).

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- (2) If the Board are satisfied, on the application of an individual or a company, that—
- (a) where the application is for the issue of a certificate to an individual (otherwise than as a partner in a firm), he satisfies the conditions set out in Part I of Schedule 12 to this Act;
  - (b) where the application is for the issue of a certificate to a person as a partner in a firm, that person satisfies the conditions set out in Part II of that Schedule if he is an individual or, if a company, the conditions set out in Part IV of that Schedule and, in either case, the firm itself satisfies the conditions set out in Part III of that Schedule;
  - (c) where the application is for the issue of a certificate to a company, the company satisfies the conditions set out in Part IV of that Schedule and, if the Board have given a direction under subsection (4) below, each of the persons to whom any of the conditions set out in Part I of that Schedule applies by virtue of the direction satisfies the conditions which so apply to him,

the Board shall issue to that individual or company a certificate excepting that individual or company (or, in a case falling within paragraph (b) above, that individual or company as a partner in the firm specified in the certificate) from section 69 of this Act.

- (3) References in paragraphs (a), (b) and (c) of subsection (2) above to an individual, a company or a firm satisfying conditions set out in any Part of Schedule 12 to this Act include, in relation to a condition which may, by virtue of a provision in that Part, be treated as being satisfied, references to that individual, company or firm being treated as satisfying that condition.
- (4) Where it appears to the Board, on an application made under subsection (2) above by a company, that the company—
- (a) was incorporated on a date within the period of three years ending with the date of the application; or
  - (b) has not carried on business continuously throughout that period; or
  - (c) has carried on business continuously throughout that period but the business has not at all times in that period consisted of or included the carrying out of construction operations; or
  - (d) does not at the date of the application hold a certificate which is then in force under this section;

the Board may direct that the conditions set out in Part I of Schedule 12 to this Act or such of them as are specified in the direction shall apply to the directors of the company and, if the company is a close company, to the persons who are the beneficial owners of shares in the company or to such of those directors or persons as are so specified as if each of them were an applicant for a certificate under this section.

- (5) The Board may at any time cancel a certificate which has been issued to a person and is in force under this section if it appears to them that—
- (a) it was issued on information which was false;
  - (b) if an application for the issue of a certificate under this section to that person were made at that time, the Board would refuse to issue a certificate ; or
  - (c) that person has permitted the certificate to be misused;

and may by notice in writing require that person to deliver the certificate to the Board within the time specified in the notice.

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- (6) A person aggrieved by the refusal of an application for a certificate under this section may, by notice in writing given to the Board within thirty days after the refusal, appeal to the General Commissioners or, if he so elects in the notice, to the Special Commissioners; and the jurisdiction of the Commissioners on such an appeal shall include jurisdiction to review any relevant decision taken by the Board in the exercise of their functions under this section other than a decision that an individual, a company or a firm is or is not to be treated as satisfying a condition set out in any Part of Schedule 12 to this Act.
- (7) The Board may make regulations—
- (a) prescribing the period for which certificates under this section are to be issued and the form of such certificates;
  - (b) providing for the renewal of such certificates;
  - (c) providing for the issue, renewal or cancellation of such certificates or the giving of directions under subsection (4) above by inspectors on behalf of the Board ;
  - (d) requiring the production of such certificates to such persons and in such circumstances as may be specified in the regulations and providing for the completion and return to the Board of forms certifying such production ;
  - (e) requiring the surrender to the Board of such certificates in such circumstances as may be specified in the regulations;
  - (f) requiring persons who make payments under contracts relating to construction operations to keep such records and to make to the Board such returns relating to payments so made by them as may be specified in the regulations, and requiring persons who hold such certificates to keep such records relating to payments so made to them as may be so specified; and
  - (g) requiring vouchers for payments made under contracts relating to construction operations to persons who hold such certificates to be obtained by the person making, and given by the person receiving, the payment, prescribing the form of the vouchers, and requiring their production or surrender to the Board in such circumstances as may be specified in the regulations ;
- and any such regulations may make different provision for different circumstances.
- (8) Regulations under subsection (7) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (9) If any person, for the purpose of obtaining a certificate under this section—
- (a) makes any statement, or furnishes any document, which he knows to be false in a material particular; or
  - (b) recklessly makes any statement, or furnishes any document, which is false in a material particular,
- he shall be liable on summary conviction to a fine not exceeding £5,000.
- (10) A person to whom a certificate is issued under this section or a voucher is given as required by regulations under subsection (7) above shall take all reasonable steps to ensure its safety; and any person who, without lawful authority or lawful excuse—
- (a) disposes of any such certificate or voucher or any form supplied by the Board in connection with regulations made by virtue of subsection (1)(d) above ; or
  - (b) possesses such a certificate, voucher or form or any document purporting to be such a certificate, voucher or form,
- shall be liable on summary conviction to a fine not exceeding £5,000.

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- (11) Notwithstanding any enactment prescribing the period within which summary proceedings may be commenced, proceedings for an offence under subsection (9) or (10) above may be commenced at any time within three years from the commission of the offence.
- (12) In section 98 of the Taxes Management Act 1970 (penalty for failure to furnish information etc.) there shall be added—
  - (a) in the first column of the Table, the words " Section 70(5) of the Finance (No. 2) Act 1975."; and
  - (b) in the second column of the Table, the words "Regulations under section 70(7) of the Finance (No. 2) Act 1975."

## 71 Interpretation of Chapter II

- (1) The following provisions of this section shall have effect for the interpretation of this Chapter.
- (2) " Authorised insurer " means a person or body of persons lawfully carrying on in Great Britain insurance business of any class relevant for the purposes of Part I of the Insurance Companies Act 1974 or in Northern Ireland insurance business of any class relevant for the purposes of the Insurance Companies Act (Northern Ireland) 1968.
- (3) " Development corporation " has the same meaning as in the New Towns Act 1965 or the New Towns (Scotland) Act 1968, " housing association " has the same meaning as in the Housing Act 1957, the Housing (Scotland) Act 1966 or section 12 of the Housing and Local Government (Miscellaneous Provisions) Act (Northern Ireland) 1946, "housing trust" has the same meaning as in the Housing Act 1957, " housing society " has the same meaning as in Part I of the Housing Act 1964, and " new town commission " has the same meaning as in the New Towns Act (Northern Ireland) 1965.
- (4) "Director" has the same meaning as in Chapter II of Part VIII of the Taxes Act.
- (5) References to the making of payments under a contract relating to construction operations include references to the lending of money in circumstances in which the lending of the money has the effect of discharging any obligation under the contract.
- (6) " The preferential payments provisions " means section 30 of the Finance Act 1952, section 287 of the Companies Act (Northern Ireland) 1960 and section 1(1) of the Preferential Payments (Bankruptcies and Arrangements) Act (Northern Ireland) 1964.
- (7) References to relevant public liability in respect of the business of an individual, a firm or a company carrying out any description of construction operations are references to any liability—
  - (a) which may be incurred by the individual, firm or company in respect of bodily injury or disease sustained in the United Kingdom by any person (other than that individual or the partners in that firm, as the case may be); and
  - (b) which arises from the carrying out of that description of construction operations in the course of that business;

but not to a liability in respect of which the individual, firm or company is required to maintain insurance under the Employers' Liability (Compulsory Insurance) Act 1969 or Part VI of the Road Traffic Act 1972 or (in Northern Ireland) under Part V of the Road Traffic Act (Northern Ireland) 1970 or Part III of the Employers' Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972.

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- (8) " Construction operations" means operations of any description specified in Part I of Schedule 13 to this Act, not being operations of any description specified in Part II of that Schedule; and references to construction operations shall be taken—
- (a) except where the context otherwise requires, as including references to the work of individuals participating in the carrying out of such operations ; and
  - (b) except in the case of offshore installations (within the meaning of the said Part I), as not including references to operations carried out or to be carried out otherwise than in the United Kingdom.
- (9) The Treasury may by order made by statutory instrument—
- (a) include in Part I of Schedule 13 to this Act any description of operations as to which they are satisfied that it is a normal activity of the construction industry and that its inclusion in that Part of the Schedule is necessary for achieving the object of section 69 of this Act;
  - (b) include in Part II of that Schedule any description of operations as to which they are satisfied that it cannot properly be considered a normal activity of the construction industry and ought to be excluded from Part I of that Schedule.
- (10) An order under this section shall not have effect unless a draft thereof has been laid before and approved by the House of Commons.