
STATUTORY INSTRUMENTS

2003 No. 536

INCOME TAX

The Income Tax (Sub-contractors in the Construction Industry and Employments) (Amendment) Regulations 2003

<i>Made</i>	- - - -	<i>7th March 2003</i>
<i>Laid before the House of Commons</i>	- - - -	<i>7th March 2003</i>
<i>Coming into force</i>	- -	<i>6th April 2003</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by sections 203, 559A and 566 of the Income and Corporation Taxes Act 1988⁽¹⁾, and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Income Tax (Sub-contractors in the Construction Industry and Employments) (Amendment) Regulations 2003 and shall come into force on 6th April 2003.

(2) In these Regulations—

“the Employments Regulations” means the Income Tax (Employments) Regulations 1993⁽²⁾; and

“the Sub-contractors Regulations” means the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993⁽³⁾.

Amendment of the Sub-contractors Regulations

2. Amend the Sub-contractors Regulations in accordance with regulations 3 to 8.

3. In regulation 2(2) (interpretation of expressions used in Chapter 4 of Part 13 of the Taxes Act)⁽⁴⁾ after “registration card” insert “relevant liabilities”.

4. For regulation 9(2) (circumstances in which a contractor may account quarterly for sums deducted under section 559) ⁽⁵⁾ substitute—

(1) 1988 c. 1. Section 559A was inserted by section 40 of the Finance Act 2002 (c. 2).

(2) S.I. 1993/744.

(3) S.I. 1993/743.

(4) Regulation 2(2) was amended by regulation 3(3) of S.I. 1998/2622 and regulation 3 of S.I. 1999/2159.

(5) Regulation 9(2) was amended by regulation 2 of S.I. 2000/1151 and regulation 2 of S.I. 2000/2742.

“(2) The condition is that, for income tax months falling within the current year, the average monthly amount found by the formula below will be less than £1500.

The formula is—

$$(S+P+N-L) - (C+SP+CD)$$

The expressions used in the formula have the following values.

S is the amount which would be payable by the contractor to the collector under regulation 8.

P is the amount which would be payable by the contractor to the collector under regulation 40 of the Income Tax (Employments) Regulations 1993⁽⁶⁾ if any adjustment to that amount under regulation 7(2) of the Working Tax Credit (Payments by Employers) Regulations 2002⁽⁷⁾ (funding of payment of working tax credit) were disregarded.

N is the amount which would be payable by the contractor to the collector under the Social Security Contributions and Benefits Act 1992⁽⁸⁾ or, in Northern Ireland, the Social Security Contributions and Benefits (Northern Ireland) Act 1992⁽⁹⁾ and (in either case) under the Social Security (Contributions) Regulations 2001⁽¹⁰⁾ but disregarding—

- (a) any amount of secondary Class 1 contributions in respect of which liability has been transferred to the employed earner by an election made jointly by the employed earner and the secondary contributor for the purpose of paragraph 3B(1) of Schedule 1 to either of those Acts⁽¹¹⁾ (transfer of liability to be borne by the earner); and
- (b) any adjustment to the amount so payable to the collector under regulation 7(2) of the Working Tax Credit (Payments by Employers) Regulations 2002.

L is the amount which would be payable by the contractor to the collector under regulation 39(1) of the Education (Student Loans) (Repayment) Regulations 2000⁽¹²⁾ or of the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000⁽¹³⁾ (payment of repayments deducted to the Inland Revenue) if the reduction referred to in paragraph (3) of the respective regulation and in regulation 7(2) of the Working Tax Credit (Payment by Employers) Regulations 2002 were disregarded.

C is the amount which would be payable by the contractor to his employees by way of tax credit under the Working Tax Credit (Payment by Employers) Regulations 2002.

SP is the amount which would be recoverable from the Board by the contractor in respect of payments to his employees by way of statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay.

Here statutory sick say, statutory maternity pay, statutory paternity pay and statutory adoption have the same meanings as they do in the Social Security

(6) Regulation 40 has been amended by regulation 6 of S.I. 1993/2776.

(7) S.I.2002/2172.

(8) 1992 c. 4.

(9) 1992 c. 7.

(10) S.I.2001/1004.

(11) Paragraph 3B was inserted in Schedule 1 to the Social Security Contributions and Benefits Act 1992 by section 77(2), and in Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 by section 81(2), of the Child Support, Pensions and Social Security Act 2000 (c. 19).

(12) S.I.2000/944.

(13) S.R. 2000 No. 121.

Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992, as the case requires.

CD is—

- (a) in the case of a company, the amount which others would deduct from payments to it (in its capacity as a sub-contractor) under section 559 of the Taxes Act; and
- (b) in any other case, nil.”.

5. After regulation 10(4) (payment of amounts deducted to collector— further provisions)(14) insert—

“(4A) If a contractor has deducted an amount under section 559, but has not paid it to the collector as required by regulation 8 or 9(1), that amount shall be treated, for the purpose of determining the liability of any sub-contractor in respect of whose liability the sum was deducted, as having been paid to the collector at the time required by regulation 8 or 9(1).”.

6. In regulation 14(5)(b) (formal determination of amounts payable by contractor) for “be treated as an overpayment of income tax or corporation tax” substitute “, except where regulation 44B applies, be treated as an overpayment of income tax”.

7. After regulation 41 (inspection of records of contractors)(15) insert—

“Inspection of records of sub-contractors – additional provisions

41A.—(1) Where a sum deducted under section 559 is treated as paid on account of the liabilities mentioned in regulation 44B(2), the sub-contractor, whose liabilities they are, shall—

- (a) maintain the records specified in paragraph (2); and
 - (b) produce to an authorised officer of the Board for inspection those records, or such of them as may be specified by him, at such time as he may reasonably require, at the prescribed place.
- (2) The records are all documents and records relating to the calculation of—
- (a) the amounts which the sub-contractor would have been liable to pay to the collector in the preceding three years, under the provisions mentioned in regulation 44B(2), but for the withholding by a contractor of sums due to him; and
 - (b) the amounts deducted by a contractor under section 559 which the sub-contractor claims to be entitled to set off against those liabilities.
- (3) In this regulation the “prescribed place” means—
- (a) such place in the United Kingdom as the subcontractor and the authorised officer may agree upon; or
 - (b) in default of such agreement, at such place in the United Kingdom where the documents and records mentioned in paragraph (2) are normally kept, or
 - (c) in default of such agreement and if there is no such place referred to in subparagraph (b), the sub-contractor’s principal place of business in the United Kingdom.
- (4) The authorised officer may—
- (a) take copies of, or make extracts from, any document produced to him for inspection in accordance with paragraph (1)(b); and

(14) Regulation 10 was amended by regulation 3 of S.I. 1996/961.

(15) There are amendments to regulation 41 which are not relevant for present purposes.

(b) remove any document so produced if it appears to him to be necessary to do so, at a reasonable time and for a reasonable period.

(5) Where a lien is claimed on a document produced in accordance with paragraph (1)(b), the removal of the document under paragraph (4)(b) shall not be treated as breaking the lien.

(6) Where records are maintained by computer, the person required to make them available for inspection shall provide the authorised officer with all facilities necessary for obtaining information from them.”

8. After regulation 44A (electronic transmission)(16) insert—

“Application by the Board of sums deducted under section 559

44B.—(1) In the case of sums deducted from payments made to a sub-contractor which is a company (“the qualifying sub-contractor”) the following provisions of this regulation apply.

(2) So much of any sum deducted under section 559 by a contractor in a year of assessment and paid to the collector as is required shall be applied by the Board—

- (a) first, in discharge of any liability of the qualifying sub-contractor to account for primary Class 1 contributions in respect of earnings paid to his employees in that year;
- (b) second, in discharge of any liability of the qualifying sub-contractor for secondary Class 1 contributions in respect of earnings paid to his employees in that year;
- (c) third, in discharge of any liability of the qualifying sub-contractor to account for tax deducted from the emoluments of its employees under section 203 of the Taxes Act (pay as you earn) in respect of that year;
- (d) fourth, in discharge of any liability of the qualifying sub-contractor to account for deductions made by it in that year from the emoluments of its employees in accordance with regulations made under section 22(5) of the Teaching and Higher Education Act 1998(17), section 73B(3) of the Education (Scotland) Act 1980(18), or Article 3(5) of the Education (Student Support) (Northern Ireland) Order 1998(19);
- (e) fifth, in discharge of any liability of the qualifying sub-contractor to refund to the Board any funding payment made by them in respect of statutory sick pay, statutory maternity pay, statutory paternity pay or statutory adoption pay under the relevant recovery provision;
- (f) sixth, in respect of any liability of the qualifying sub-contractor to account for sums recoverable by the Board in respect of tax credits under regulation 12 of the Tax Credits (Payment by Employers) Regulations 2002(20); and
- (g) last, in discharge of any liability of the qualifying sub-contractor to account for sums deducted by it (in its capacity as a contractor) under section 559 from payments made to other sub-contractors.

(3) So much of any sum deducted under section 559 as is not required to discharge the employer’s liabilities specified in paragraph (2) shall be repaid to the qualifying sub-contractor.

(16) Regulation 44A was inserted by regulation 35 of S.I. 1998/2622.

(17) 1998 c. 30. Regulations made under section 22(5) of the Teaching and Higher Education Act 1998 and section 73B(3) of the Education (Scotland) Act 1980 are the Education (Student Loans) (Repayment) Regulations 2000 (S.I. 2000/944).

(18) 1980 c. 44. Section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998.

(19) S.I. 1998/1760 (N.I. 14). Relevant instruments under this Order are S.R. 1999 Nos. 192 and 370.

(20) S.I. 2002/2172.

This is subject to the qualifications in paragraphs (4) and (5).

(4) The Board shall not repay any sum deducted under section 559 to the qualifying sub-contractor until—

- (a) the year of assessment, in which the deduction was made, has ended; and
- (b) the qualifying sub-contractor has delivered the return required by regulation 43 of the Income Tax (Employments) Regulations 1993⁽²¹⁾.

(5) If it appears to an officer of the Board that there is an outstanding liability of the qualifying sub-contractor in respect of corporation tax due for an accounting period ending before the relevant payment is made under section 559, the amount required to discharge that liability shall be retained by the Board and applied in discharge of that liability.

(6) In paragraph (2)(e) “the relevant recovery provision” means—

- (a) in respect of statutory paternity pay and statutory adoption pay, regulations 4, 5, 6 and 8 of either the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002⁽²²⁾ or the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations (Northern Ireland) 2002⁽²³⁾;
- (b) in respect of statutory maternity pay, regulations 5, 6, 6A and 7A of the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations 1994⁽²⁴⁾ or the Statutory Maternity Pay (Compensation of Employers) and Miscellaneous Amendment Regulations (Northern Ireland) 1994⁽²⁵⁾.”.

Amendment of regulation 41 of the Employments Regulations

9. For regulation 41(3) of the Employments Regulations (circumstances in which employer may pay tax quarterly) ⁽²⁶⁾ substitute—

“(3) The condition is that for income tax months falling within the current year, the average monthly amount found by the formula below will be less than £1500.

The formula is—

$$(S+P+N+T) - (C+SP+CT)$$

The expressions used in the formula have the following values.

S is the amount payable by the employer to the collector under sections 559 and 559A of the Taxes Act and regulation 8 of the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993 during the tax month from payments made by him.

P is the amount which would be payable by the employer to the collector under regulation 40 if any adjustment to that amount under regulation 7(2) of the Working Tax Credit (Payments by Employers) Regulations 2002 (funding of payment of working tax credit) were disregarded.

(21) Regulation 43 has been amended by regulation 14 of S.I. [1998/2484](#) and regulation 15 of S.I. [2001/1081](#).

(22) S.I. [2002/2820](#).

(23) [S.R. 2002 No. 379](#).

(24) S.I. [1994/1882](#). The relevant amending instruments are S.I. [1195/566](#), [2002/225](#) and the Statutory Maternity Pay (Compensation of Employers) Amendment Regulations 2003.

(25) [S.R. 1994 No. 271](#). The relevant amending instruments are [S.R. 1995 No. 74](#), S.I. [2002/225](#) and the Statutory Maternity Pay (Compensation of Employers) Amendment Regulations 2003.

(26) Regulation 41 has been amended. The relevant amendments were those made by regulation 2 of S.I. [2000/1152](#) and regulation 3 of S.I. [2000/2742](#).

N is the amount which would be payable to the collector under the Social Security Contributions and Benefits Act 1992 or, in Northern Ireland, the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and (in either case) under the Social Security (Contributions) Regulations 2001 but disregarding—

- (a) any amount of secondary Class 1 contributions in respect of which liability has been transferred to the employed earner by an election made jointly by the employed earner and the secondary contributor for the purpose of paragraph 3B(1) of Schedule 1 to either of those Acts (transfer of liability to be borne by the earner); and
- (b) any adjustment to the amount so payable to the Collector under regulation 7(2) of the Working Tax Credit (Payments by Employers) Regulations 2002;

L is the amount which would be payable by the employer to the collector under regulation 39(1) of the Education (Student Loans) (Repayment) Regulations 2000 or of the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2000 (payment of repayments deducted to the Inland Revenue) if the reduction referred to in paragraph (3) of the respective regulation and in regulation 7(2) of the Working Tax Credit (Payment by Employers) Regulations 2002 (payment by employers) were disregarded.

C is the amount payable by the employer to his employees by way of tax credit under the Working Tax Credit (Payment by Employers) Regulations 2002.

SP is the amount which would be payable by the employer to his employees by way of statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay.

Here references to statutory sick say, statutory maternity pay, statutory paternity pay and statutory adoption pay are references to payments of that kind under the Social Security Contributions and Benefits Act 1992 or in Northern Ireland under the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

CD is—

- (a) if the employer is a company, the amount which others would deduct from payments to it, in its position as a sub-contractor, under section 559 of the Taxes Act; and
- (b) in any other case, nil.”.

7th March 2003

Nick Montagu
Dave Hartnett
Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Sub-contractors in the Construction Industry) Regulations 1993 (S.I.1993/743: “the Sub-contractors Regulations”) and the Income Tax (Employments) Regulations 1993 (S.I. 1993/744: “the Employments Regulations”).

Regulation 1 provides for the citation and commencement of these Regulations.

Regulation 2 introduces the amendments to the Sub-contractors Regulations.

Regulation 3 inserts a reference to “relevant liabilities”, as defined by section 559A(4) of the Income and Corporation Taxes Act 1988 (c. 1: “the Taxes Act”), in the list of defined expressions in regulation 2(2) of the Sub-contractors Regulations.

Regulation 4 substitutes a new paragraph (2) in regulation 9 of the Sub-contractors Regulations, allowing an employer which is a company to take into account amounts deductible by others for whom it has worked as a subcontractor, on account of its relevant liabilities, in determining whether its is entitled to account to the Collector quarterly in respect of sums deducted by it from payments to its own sub-contractors.

Regulation 5 amends regulation 10 of the Sub-contractors Regulations, inserting a new paragraph (4A), the effect of which is to protect the position of a sub-contractor which has had a sum deducted under section 559 of the Taxes Act, but which the contractor has not paid over to the collector of taxes.

Regulation 6 inserts a new regulation 41A into the Sub-contractors Regulations, providing for the inspection of the records of a sub-contractor where sums, deducted by others from payments due to it, fall to be applied against its liabilities for tax, national insurance, student loan recoveries, overpaid social security benefits, tax credits and sums which it has itself deducted under section 559 of the Taxes Act.

Regulation 7 inserts new regulation 44B prescribes the order in which sum deducted under section 559, and paid to a Collector of Inland Revenue, are to be applied by the Commissioners of Inland Revenue (“the Board”) in discharge of relevant liabilities.

Regulation 8 amends regulation 41 of the Employments Regulations in respect of the quarterly payments of PAYE tax, allowing the same liabilities and payments to be taken into account in determining whether an employer may account quarterly for PAYE tax as are to be taken into account in determining whether he may account quarterly in respect of sums deducted under section 559 of the Taxes Act.