
STATUTORY INSTRUMENTS

2005 No. 2045

The Income Tax (Construction Industry Scheme) Regulations 2005

PART 8

SUPPLEMENTARY PROVISIONS

Application by the Commissioners for Her Majesty's Revenue and Customs of sums deducted under section 61

56.—(1) This regulation applies to sums deducted from contract payments made to a sub-contractor which is a company (“the qualifying sub-contractor”).

(2) So much of any sum deducted under section 61 of the Act by a contractor in a tax year and paid to the Commissioners for Her Majesty's Revenue and Customs as is required shall be applied—

- (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 its 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 its 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 in accordance with Regulations made under section 684 of ITEPA (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⁽¹⁾, section 73B of the Education (Scotland) Act 1980⁽²⁾, or Article 3(5) of the Education (Student Support) (Northern Ireland) Order 1998⁽³⁾;
- (e) fifth, in discharge of any liability of the qualifying sub-contractor to refund to the Commissioners for Her Majesty's Revenue and Customs 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; and
- (f) 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 61 of the Act from payments made to other sub-contractors.

(3) So much of any sum deducted under section 61 of the Act as is not required to discharge the sub-contractor's liabilities specified in paragraph (2) shall be repaid to the qualifying sub-contractor.

This is subject to the qualifications in paragraphs (5) and (6).

(1) 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).
(2) 1980 c. 44. Section 73B was inserted by section 29(2) of the Teaching and Higher Education Act 1998.
(3) S.I. 1998/1760 (N.I. 14). Relevant instruments under this Order are S.R. 1999 Nos. 192 and 370.

(4) Regulation 83 of the PAYE Regulations (interest on tax overpaid) shall apply to any sum repaid under paragraph (3) and any such sum shall be treated as tax repaid for the purposes of that regulation.

(5) The Commissioners for Her Majesty's Revenue and Customs shall not repay any sum deducted under section 61 of the Act to the qualifying sub-contractor until—

- (a) the tax year in which the deduction was made, has ended; and
- (b) the qualifying sub-contractor has delivered the return required by regulation 73 of the PAYE Regulations (annual return of relevant payments liable to deduction of tax).

(6) If it appears to an officer of Revenue and Customs 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 61 of the Act, the amount required to discharge that liability shall be retained by the Commissioners for Her Majesty's Revenue and Customs and applied in discharge of that liability.

(7) 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⁽⁴⁾ or the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations (Northern Ireland) 2002⁽⁵⁾;
- (b) in respect of statutory maternity pay, regulations 5, 6, 6A and 7A of the Statutory Maternity (Compensation of Employers) and Miscellaneous Amendment Regulations 1994⁽⁶⁾ or the Statutory Maternity (Compensation of Employers) and Miscellaneous Amendment Regulations (Northern Ireland) 1994⁽⁷⁾.

(4) S.I. 2002/2820.

(5) S.R. 2002 No. 379.

(6) S.I. 1994/1882. The relevant amending instruments are S.I. 1195/566, 2002/225 and 2004/698.

(7) S.R. 1994 No. 271. The relevant amending instruments are S.R. 1995 No. 74, S.I. 2002/225 and 2004/698.