

2014 No. 1283

INCOME TAX

SOCIAL SECURITY

The Finance Act 2009, Sections 101 and 102 (Interest on Late Payments and Repayments) (Consequential Amendments) Order 2014

<i>Made</i> - - - -	<i>16th May 2014</i>
<i>Laid before the House of Commons</i>	<i>19th May 2014</i>
<i>Coming into force</i> - -	<i>20th May 2014</i>

The Treasury make the following Order in exercise of the powers conferred by section 104(5), (6) and (7) of the Finance Act 2009(a):

Citation, commencement and effect

1.—(1) This Order may be cited as the Finance Act 2009, Sections 101 and 102 (Interest on Late Payments and Repayments) (Consequential Amendments) Order 2014 and comes into force on 20th May 2014.

(2) This Order has effect in relation to payments in respect of Class 1 national insurance contributions(b) and construction industry scheme payments made on or after 20th May 2014 which are made for the tax year 2014-15 or for a subsequent tax year.

(3) In paragraph (2) “construction industry scheme payments” means any amount deducted by a contractor from a contract payment under section 61 of the Finance Act 2004 (deductions on account of tax from contract payments)(c).

Consequential amendments

2. The Schedule to this Order contains amendments in connection with sections 101 and 102 of the Finance Act 2009.

Sam Gyimah
Anne Milton

16th May 2014

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) 2009 c. 10.

(b) Class 1 national insurance contributions are defined in section 1 of the Social Security Contributions and Benefits Act 1992 (c. 4) and in section 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7).

(c) 2004 c. 12.

Social Security Contributions and Benefits Act 1992

1. After paragraph 6(4B) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (power to combine collection of contributions with tax)(a) insert—

“(4C) Interest payable under section 101 of the Finance Act 2009 (late payment interest on sums due to HMRC) on sums due in respect of Class 1 contributions is not to be taken into account in computing any income, profits or losses for any tax purposes.”.

Social Security Administration Act 1992

2. In section 121C of the Social Security Administration Act 1992 (liability of directors etc. for company’s contributions)(b)—

- (a) in subsection (5) for “at the prescribed rate” substitute “at the Class 1 rate on the Class 1 element of the specified sum, and otherwise at the prescribed rate,”;
- (b) in subsection (7)(c) after “interest on it” insert “at the Class 1 rate on the Class 1 element of it and otherwise”; and
- (c) in subsection (9)—
 - (i) before the definition of “contributions” insert—
 - ““the Class 1 rate”—
 - (a) in subsection (5) means the rate from time to time applicable under section 103(1) of the Finance Act 2009; and
 - (b) in subsection (7)(c) means the rate from time to time applicable under section 103(2) of that Act;
 - “the Class 1 element”, in relation to any amount, means so much of that amount as is calculated by—
 - (a) multiplying that amount by so much of the specified amount as consists of Class 1 contributions; and
 - (b) dividing the product of that multiplication by the specified amount;”;
 - (ii) in the definition of “contributions” after “in respect of contributions” insert “(and accordingly, in the definition of “the Class 1 element” given by this subsection, “Class 1 contributions” includes any interest or penalty in respect of Class 1 contributions)”.

Social Security Contributions and Benefits (Northern Ireland) Act 1992

3. In paragraph 6 of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (power to combine collection of contributions with tax) after sub-paragraph (4B)(c) insert—

“(4C) Interest payable under section 101 of the Finance Act 2009 (late payment interest on sums due to HMRC) on sums due in respect of Class 1 contributions is not to be taken into account in computing any income, profits or losses for any tax purposes.”.

(a) 1992 c. 4. Paragraph 6(4B) was inserted by section 147(2) of the Finance Act 2003 (c. 14).
 (b) 1992 c. 5. Section 121C was inserted by section 64 of the Social Security Act 1998 (c. 14) and has been amended by paragraph 10 of Schedule 5 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2) and by section 5(3) of the National Insurance Contributions and Statutory Payments Act 2004 (c. 3).
 (c) 1992 c. 7. Paragraph 6(4B) was inserted by section 147(2) of the Finance Act 2003.

Social Security Administration (Northern Ireland) Act 1992

4. In section 115B of the Social Security Administration (Northern Ireland) Act 1992 (liability of directors, etc. for company's contributions)(a)—

- (a) in subsection (5) for “at the prescribed rate” substitute “at the Class 1 rate on the Class 1 element of the specified sums, and otherwise at the prescribed rate,”;
- (b) in subsection (7)(c) after “interest on it” insert “at the Class 1 rate on the Class 1 element of it and otherwise”; and
- (c) in subsection (9)—

(i) before the definition of “contributions” insert—

““the Class 1 rate”—

(a) in subsection (5) means the rate from time to time applicable under section 103(1) of the Finance Act 2009; and

(b) in subsection (7)(c) means the rate from time to time applicable under section 103(2) of that Act;

“the Class 1 element”, in relation to any amount, means so much of that amount as is calculated by—

(a) multiplying that amount by so much of the specified amount as consists of Class 1 contributions; and

(b) dividing the product of that multiplication by the specified amount;”; and

(ii) in the definition of “contributions” after “in respect of contributions” insert “(and accordingly, in the definition of “the Class 1 element” given by this subsection, “Class 1 contributions” includes any interest or penalty in respect of Class 1 contributions)”.

Income Tax (Trading and Other Income) Act 2005

5. In section 54(2) of ITTOIA 2005 (penalties and interest that are not deductible for the purposes of computing profits of a trade)(b), for the entry relating to regulations made under section 71 of FA 2004, substitute—

“Interest under section 101 of FA 2009(c) in connection with sums required to be deducted under section 61 of FA 2004 (construction industry)”	
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Corporation Tax Act 2009

6. In section 1303(2) of CTA 2009 (penalties and interest that are not deductible for the purposes of calculating profits)(d), for the entry relating to regulations made under section 71 of FA 2004, substitute—

“Interest under section 101 of FA 2009(e) in connection with sums required to be deducted under section 61 of FA 2004 (construction industry)”	
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(a) 1992 c. 8. Section 115B was inserted by article 60 of S.I. 1998/1506 (N.I. 10) and has been amended by section 6 of the National Insurance Contributions and Statutory Payments Act 2004 and by paragraph 9 of Schedule 4 to S.I. 1999/671.

(b) 2005 c. 5. The Table in section 54(2) has been amended by paragraph 438 of Schedule 1 to S.I. 2009/56; by paragraphs 27 and 28 of Schedule 1 to S.I. 2009/571 and by paragraphs 7 and 8 of the Schedule to S.I. 2010/530. The term “ITTOIA 2005” is defined in section 126(1) of the Finance Act 2009.

(c) The term “FA” followed by a year is defined in Schedule 4 to the Income Tax (Trading and Other Income) Act 2005.

(d) 2009 c. 4. The table has been amended by paragraph 10 of the Schedule to S.I. 2010/530.

(e) The term “FA” followed by a year is defined in section 1312 of the Corporation Tax Act 2009.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order comes into force on 20th May 2014 and has effect in relation to payments in respect of Class 1 national insurance contributions and payments deducted under section 61 of the Finance Act (“FA”) 2004 (c. 12) (“CIS payments”) made on or after 20th May 2014 which are for the tax year 2014-15 or for a later tax year.

In relation to payments of income tax deducted at source, Class 1 national insurance contributions and CIS payments, the Treasury appointed 6th May 2014 as the date on which sections 101 and 102 of FA 2009 (c. 10) come into force (see S.I. 2014/992). As a consequence any such payment which is not paid to the Commissioners for Her Majesty’s Revenue and Customs (“HMRC”) by the due date (which is set out in the relevant legislation) is liable to late payment interest under the single interest regime in section 101 of FA 2009. Any amount which is overpaid will attract repayment interest under the single repayment interest regime in section 102 of FA 2009 when repaid by HMRC.

Article 2 and the Schedule provide for consequential amendments to primary legislation. As a consequence of the amendments made by paragraphs 1, 3, 5 and 6 of the Schedule where an employer or a contractor fails to make a payment to HMRC of Class 1 national insurance contributions or of a CIS payment, by the due date, the employer or contractor will not be entitled to take any interest paid on those sums into account when computing income, profits or losses for tax purposes. The amendment made by paragraph 2 amends the Social Security Administration Act 1992 (“SSAA”) (c. 5) and the amendment made by paragraph 4 amends the Social Security Administration (Northern Ireland) Act 1992 (“the Northern Ireland Act”) (c. 8) to reflect that where the specified amount for which an officer of a company is made personally liable (under section 121C of SSAA or section 115B of the Northern Ireland Act) is in respect of Class 1 contributions, interest is charged at the rate applicable under section 101 or 102 of FA 2009.

A Tax Information and Impact Note has not been prepared for this Instrument as it gives effect to previously announced policy.

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