

2021 No. 321

INCOME TAX

**The Income Tax (Construction Industry Scheme) (Amendment)
Regulations 2021**

<i>Made</i> - - - -	<i>15th March 2021</i>
<i>Laid before House of Commons</i>	<i>16th March 2021</i>
<i>Coming into force</i> - -	<i>6th April 2021</i>

The Commissioners for Her Majesty’s Revenue and Customs make the following Regulations pursuant to section 1(1) and (2) of the Provisional Collection of Taxes Act 1968(a) and a resolution passed by the House of Commons on 9th March 2021(b), and in exercise of the powers conferred by section 136(1) of the Finance Act 2002(c) and sections 62(3), (6) and (7) and 73(1) and (3) of the Finance Act 2004(d), and now exercisable by them(e).

PART 1

Introduction

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2021 and come into force on 6th April 2021.

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- (a) 1968 c. 2 (“the 1968 Act”).
- (b) Budget resolution no 27, recorded in the House of Commons Votes and Proceedings for the 9th March 2021. The resolution contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under the provisions of the 1968 Act. Section 1(3) to (5) of the 1968 Act set out the circumstances in which the resolution will cease to have statutory effect. By virtue of section 1(5), the resolution will cease to have effect once provisions corresponding to those are enacted by the next Finance Act. The resolution will in any case cease to have effect after 9th October 2021 by virtue of section 1(3). Section 1 of the 1968 Act was relevantly amended by section 88(1) to (7) of the Finance Act 2011 (c. 11). Other relevant amendments to section 1(3) to (5) of the 1968 Act were made by section 60 of the Finance Act 1968 (c. 44), section 205(5) of the Finance Act 1993 (c. 34) and section 112(1) of the Finance Act 2007 (c. 11).
- (c) 2002 c. 23.
- (d) 2004 c. 12 (“the 2004 Act”).
- (e) The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty’s Revenue and Customs (“HMRC”) by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11) (“the 2005 Act”). Section 50(1) of the 2005 Act provides that a reference to the Commissioners of Inland Revenue, however expressed, shall be taken as a reference to the Commissioners for HMRC. Subsection (2) of section 7 of the 2005 Act provides that, in connection with former Inland Revenue functions, a function conferred by an enactment (in whatever terms) on any of the persons specified in subsection (3) of that section shall vest in an officer of Revenue and Customs. The persons specified in subsection (3) include “an officer of the Board of Inland Revenue”. Section 50(2) of the 2005 Act provides that, in so far as is appropriate in consequence of section 7, a reference in an enactment to any of the persons specified in section 7(3), including “an officer of the Board of Inland Revenue” shall be taken as a reference to an officer of Revenue and Customs.

(2) Regulations 5 to 8 have effect in relation to any direct costs to a sub-contractor(a) of materials(b) where—

- (a) the materials are used or are to be used to carry out a construction operation(c), and
- (b) the costs are incurred on or after 6th April 2021.

(3) Part 3 of these Regulations has effect in relation to any set-off claim(d) which—

- (a) is contained in an employer return submitted on or after 6th April 2021, and
- (b) is made in respect of the tax year 2021-22 or any subsequent tax year.

Interpretation

2. In these Regulations—

“the 2005 Regulations” means the Income Tax (Construction Industry Scheme) Regulations 2005(e);

“agency” has the meaning given in section 44 of the Income Tax (Earnings and Pensions) Act 2003(f);

“employer return” means a return made to Her Majesty’s Revenue and Customs(g) by a PAYE employer for the purposes of the PAYE Regulations(h); and

“PAYE employer” includes—

- (a) a Real Time Information employer within regulation 2A (Real Time Information employers) of the PAYE Regulations(i),
- (b) any agency which is treated as an employer for the purposes of the PAYE Regulations by regulation 10 (application to agencies and agency workers) of those Regulations(j),
- (c) any employer, agency or other payer which is treated as an employer for the purposes of the PAYE Regulations by regulation 12 (application to other payers and payees) of those Regulations(k).

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- (a) For the purposes of Chapter 3 of Part 3 of the 2004 Act, “sub-contractor” is defined at section 58 of the 2004 Act.
 - (b) With the amendments made by clause 30 of, and paragraph 4 of Schedule 6 to, the Finance (No. 2) Bill, and given effect by Budget resolution no. 27 recorded in the House of Commons Votes and Proceedings for the 9th March 2021, section 61(1) of the 2004 Act provides that, on making a contract payment, the contractor (see section 57(3) of the 2004 Act for definition) must deduct from it a sum equal to the relevant percentage of so much of the payment as is not shown to represent the direct cost to the sub-contractor of materials used or to be used in carrying out the construction operations to which the contract under which the payment is to be made relates.
 - (c) “Construction operation” is defined at section 74 of the 2004 Act.
 - (d) A new subsection (3C) will be inserted into section 62 of the 2004 Act by Clause 30 of, and paragraph 6 of Schedule 6 to, the Finance (No. 2) Bill and is given effect by Budget resolution no. 27 recorded in the House of Commons Votes and Proceedings for 9th March 2021. The new section 62(3C) will define “set-off claim” as “a claim for treating a sum deducted under section 61 [of the 2004 Act] as paid on account of any relevant liabilities”.
 - (e) S.I. 2005/2045 (“the 2005 Regulations”). The definition of “approved method of electronic communications” in regulation 2 of the 2005 Regulations was amended by S.I. 2016/348. Regulation 4 of the 2005 Regulations was amended by Schedule 55 to the Finance Act 2009 (c. 10), Schedule 10 to the Finance (No. 3) Act 2010 (c. 33), S.I. 2011/2391, S.I. 2015/429 and S.I. 2016/348. Regulation 19 of the 2005 Regulations was amended by S.I. 2007/672. Regulation 56 of the 2005 Regulations was amended by S.I. 2010/2495, S.I. 2012/820, S.I. 2013/620, S.I. 2014/992, S.I. 2015/125, S.I. 2015/429 and S.I. 2020/240.
 - (f) 2003 c. 1 (“ITEPA”). Section 44 was substituted by section 16(1) and (2) of the Finance Act 2014 (c. 26).
 - (g) Schedule 1 to the Interpretation Act 1978 (c. 30) provides that “Her Majesty’s Revenue and Customs” has the meaning given by section 4 of the 2005 Act. Section 4 of the 2005 Act provides that the Commissioners for Her Majesty’s Revenue and Customs and the officers of Revenue and Customs may together be referred to as Her Majesty’s Revenue and Customs.
 - (h) Schedule 1 to the Interpretation Act 1978 provides that “PAYE Regulations” means regulations under section 684 of ITEPA. The principal regulations made and subsequently amended under that provision are S.I. 2003/2682 (“the PAYE Regulations”).
 - (i) Regulation 2A was inserted by S.I. 2012/822 and amended by S.I. 2013/521.
 - (j) Regulation 10 was amended by S.I. 2013/521.
 - (k) Regulation 12 was amended by S.I. 2013/521.

PART 2

Consequential Amendments to the 2005 Regulations

3. The 2005 Regulations are amended as follows.

4. In regulation 2 (interpretation), in the definition of “approved method of electronic communications”, after the first occurrence of “the delivery of information” insert “(except in relation to Part 4A)”.

5. In regulation 4 (monthly return), for “any person other than the contractor”, wherever that phrase occurs, substitute “the sub-contractor”.

6. In regulation 18(3) (small payments), after “direct cost of materials” insert “to the sub-contractor”.

7. In regulation 19(3)(b) (work carried out on land owned by person to whom payment is made), after “direct cost of materials” insert “to the sub-contractor”.

8. In regulation 51(4)(b) (inspection of records of contractors and sub-contractors), after “direct cost of materials” insert “to the sub-contractor”.

9. In regulation 56(8)(a) (application by the Commissioners for Her Majesty’s Revenue and Customs of sum deducted under section 61)—

(a) omit the “and” at the end of each of paragraphs (iii) and (iv); and

(b) after paragraph (iv) insert—

“(v) the employer’s Company Registration Number (CRN), and

(vi) the employer’s Unique Taxpayer Reference (UTR), and”.

PART 3

Restrictions on set-off claims

10. After regulation 24 (charities) of the 2005 Regulations, insert—

“PART 4A

Restrictions on set-off claims

Interpretation

24A. In this Part—

“agency” has the meaning given in section 44 of ITEPA(a);

“CIS deductions made” means the total of the sums deducted by contractors(b) under section 61 of the Act(c) from contract payments(d) made to a sub-contractor;

(a) Regulation 2 of the 2005 Regulation provides that, in those Regulations, “ITEPA” means the Income Tax (Earnings and Pensions) Act 2003.

(b) Regulation 2 of the 2005 Regulations provides that, in those Regulations, “contractor” for all relevant purposes has the meaning given in section 57 of the 2004 Act.

(c) Regulation 2 of the 2005 Regulations provides that, in those Regulations, “the Act” means the 2004 Act.

(d) Regulation 2 of the 2005 Regulations provides that, in those Regulations, “contract payment” has the meaning given in section 60 of the 2004 Act.

“claim figure” means the amount—

- (a) specified by a claimant in a set-off claim as the CIS deductions made during the tax period(a) specified in that set-off claim; and
- (b) which the claimant believes that they are entitled to set off against their relevant liabilities(b) for that tax period;

“claimant” means a person making a set-off claim;

“employer return” means a return made to Her Majesty’s Revenue and Customs by a PAYE employer for the purposes of the PAYE Regulations;

“error” includes an omission;

“late payment interest” means interest payable under section 101 of the Finance Act 2009(c) (late payment interest on sums due to HMRC);

“late payment interest start date” has the meaning given in section 101(4) of the Finance Act 2009;

“the later period” has the meaning given in regulation 24C(11);

“PAYE employer” includes—

- (a) a Real Time Information employer within regulation 2A (Real Time Information employers) of the PAYE Regulations,
- (b) any agency which is treated as an employer for the purposes of the PAYE Regulations by regulation 10 (application to agencies and agency workers of those Regulations),
- (c) any employer, agency or other payer which is treated as an employer for the purposes of the PAYE Regulations by regulation 12 (application to other payers and payees) of those Regulations;

“the relevant evidence” has the meaning given in regulation 24C(2);

“the relevant period” has the meaning given in regulation 24C(4), except where the claimant is a person to whom regulation 67D of the PAYE Regulations(d) (exceptions to regulation 67B) applies, in which case the phrase has the meaning given in regulation 24C(5);

“repayment interest” means interest payable under section 102 of the Finance Act 2009 (repayment interest on sums to be paid by HMRC);

“repayment interest start date” has the meaning given in Part 1 (repayment interest start date: general rule) and paragraph 6 of Part 2 (special provision as to repayment interest start date) of Schedule 54 to the Finance Act 2009;

“the revised verifiable figure” has the meaning given in regulation 24E;

“the specified compliance period” has the meaning given in regulation 24F(5); and

“the verifiable figure” has the meaning given in regulation 24C(7)(d).

(a) Regulation 2 of the 2005 Regulations provides that, in those Regulations, “tax period” means a tax quarter if regulation 8 (quarterly tax periods) applies, or a tax month, in every other case.

(b) Subsection (4) of section 62 of the 2004 Act provides that, for the purposes of subsection (3) of that section, the relevant liabilities of a sub-contractor are any liabilities of the sub-contractor, whether arising before or after the deduction is made, to make a payment to HMRC in pursuance of an obligation as an employer or contractor.

(c) S.I. 2014/992 provides that 6th May 2014 is the day appointed for the coming into force of section 101 for the purposes of any PAYE amounts or Class 1 contributions amount payable by a PAYE employer to Revenue and Customs which are due and payable for the tax year 2014-15 or for any subsequent tax year. This includes PAYE amounts and Class 1 contributions amounts which would be payable as a result of an officer of Revenue and Customs correcting or removing a set-off claim.

(d) Regulation 67D of the PAYE Regulations was inserted by S.I. 2012/822. It was subsequently amended by S.I. 2013/521 and S.I. 2014/472.

Delivery of notices, notifications, information and applications

24B.—(1) Unless regulation 67D of the PAYE Regulations (exceptions to regulation 67B) applies to a claimant—

- (a) any notice, notification or information to be given by a claimant or by Her Majesty's Revenue and Customs under this Part, or
- (b) any application to be made by a claimant under this Part,

must be delivered using a method of electronic communications approved by the specific Directions made by the Commissioners for Her Majesty's Revenue and Customs on 13th March 2012 under regulations 189 and 205(2) of the PAYE Regulations, and published on 16th March 2012(a).

(2) Where regulation 67D of the PAYE Regulations applies to a claimant—

- (a) any notice, notification or information to be given by a claimant or by Her Majesty's Revenue and Customs under this Part, or
- (b) any application to be made by a claimant under this Part,

must be made in a document or format provided or approved by the Commissioners for Her Majesty's Revenue and Customs.

Requirement for a sub-contractor to give evidence in support of a set-off claim

24C.—(1) This regulation applies if an officer of Revenue and Customs reasonably believes that there may be an error relating to a set-off claim made by a claimant who is—

- (a) a company; and
- (b) a sub-contractor that is—
 - (i) registered for payment under deduction(b), or
 - (ii) not registered for either payment under deduction or gross payment(c).

(2) An officer of Revenue and Customs may by notice (“an information notice”) require the claimant to give to the Commissioners for Her Majesty's Revenue and Customs such information in the claimant's possession or under their control (“the relevant evidence”) as is necessary to ascertain, in relation to the set-off claim, whether—

- (a) the claimant was entitled to make that set-off claim; or
- (b) the claimant was entitled to make that set-off claim in the claim figure or whether it should have been made in another claim figure.

(3) For the purposes of paragraph (2), “information in the claimant's possession or under their control” includes—

- (a) documents, records or other evidence, and
- (b) information given by a contractor to the claimant under regulation 4(8) (monthly return).

(4) The relevant evidence specified in an information notice must be given to the Commissioners for Her Majesty's Revenue and Customs within the period of 14 days

(a) The Directions made by the Commissioners for Her Majesty's Revenue and Customs on 13 March 2012, and published on 16 March 2012, can be found at the following link: <http://81.144.160.101/ebu/directions-reg-189-205.pdf>. The Directions have effect from 6 April 2012. The methods of electronic communications approved for the delivery of information by an employer or a person acting on behalf of an employer by the Directions are: the internet services provided through PAYE Online for Employers and PAYE Online for Agents, or the Electronic Data Interchange services provided through PAYE Online for Employers and PAYE Online for Agents.

(b) Section 57(4)(b) of the 2004 Act provides that, in Chapter 3 of Part 3 of that Act, references to “registration for payment under deduction” are to registration under section 63(3) of that Act.

(c) Section 57(4) of the 2004 Act provides that, in Chapter 3 of Part 3 of that Act, references to “registration for gross payment” are to registration under section 63(2) of that Act.

beginning with the day after the date that the information notice is issued by an officer of Revenue and Customs (“the relevant period”).

(5) In the case of a claimant to whom regulation 67D of the PAYE Regulations (exceptions to regulation 67B) applies, references to “the relevant period” in this Part are to be read as meaning the period of 28 days beginning with the day after the date that the information notice is issued by an officer of Revenue and Customs.

(6) An information notice may be given in relation to a set-off claim made in respect of a tax period falling within—

- (a) the current tax year^(a); or
- (b) any of the preceding three tax years.

(7) An information notice must specify—

- (a) the date of the notice;
- (b) the tax period and the tax year to which the set-off claim in respect of which the relevant evidence is required relates;
- (c) the claim figure specified in that set-off claim;
- (d) in any case where the officer of Revenue and Customs considers that the claim figure is not supported by information which is held by Her Majesty’s Revenue and Customs, the figure of CIS deductions made which is supported by that information (“the verifiable figure”);
- (e) the relevant period; and
- (f) that a failure to comply with the information notice may result in—
 - (i) that set-off claim being removed under regulation 24F(11) or corrected under regulation 24F(12)^(b); and
 - (ii) the claimant being prohibited under regulation 24J(1)^(c) from making further set-off claims.

(8) An information notice may specify such other information as the officer of Revenue and Customs considers necessary in order to determine whether the set-off claim—

- (a) contained an error; or
- (b) was made on the basis of an error.

(9) A claimant who is given an information notice must, within the relevant period, either—

- (a) comply with the notice; or
- (b) make an application for an extension of time to comply with the notice.

(10) Any application for an extension of time to comply with an information notice must explain why the claimant cannot give the relevant evidence within the relevant period.

(11) Where—

- (a) a claimant has made an application for an extension of time to comply with an information notice; and
- (b) an officer of Revenue and Customs considers that the claimant has a reasonable excuse for not giving the relevant evidence within the relevant period,

the officer must notify the claimant that the relevant evidence must be given to the Commissioners for Her Majesty’s Revenue and Customs within the period of 42 days, beginning with the day after the date that the information notice was issued by an officer of Revenue and Customs (“the later period”).

(a) Regulation 2 of the 2005 Regulations provides that, in those Regulations, “tax year” means a year for which any Act provides for income tax to be charged.
(b) Regulation 24F(11) and (12) are inserted by this instrument.
(c) Regulation 24J is inserted by this instrument.

(12) Where—

- (a) a claimant has made an application for an extension of time to comply with an information notice; and
- (b) an officer of Revenue and Customs considers that the claimant does not have a reasonable excuse for not giving the relevant evidence within the relevant period,

the officer must notify the claimant, within the period of 7 days beginning with the day on which that decision is made by the officer, that an extension of time to comply with the information notice has not been granted.

Allowing a set-off claim made by a sub-contractor

24D.—(1) Where—

- (a) a claimant has complied with an information notice within the relevant period or, if applicable, the later period, and
- (b) an officer of Revenue and Customs is satisfied that the claimant was entitled to make the set-off claim in the claim figure specified in that set-off claim,

the officer must allow that set-off claim.

(2) Where an officer of Revenue and Customs has allowed a set-off claim under paragraph (1), they must notify the claimant of this decision within the period of 7 days beginning with the day on which the decision is made by the officer.

Determining the revised verifiable figure in relation to a set-off claim made by a sub-contractor

24E. Where—

- (a) a claimant has complied with an information notice in relation to a set-off claim within the relevant period or, if applicable, the later period; and
- (b) based on the relevant evidence given to the Commissioners for Revenue and Customs in consequence of that notice, an officer of Revenue and Customs reasonably believes that the set-off claim contains an error because the claimant had CIS deductions made during the tax period specified in the set-off claim in a lesser sum than the claim figure, but in a greater sum than the verifiable figure,

the officer must re-determine the figure of CIS deductions made during that tax period (“the revised verifiable figure”).

Correcting or removing a set-off claim made by a sub-contractor

24F.—(1) This regulation applies where—

- (a) an officer of Revenue and Customs has given an information notice to a claimant, and
- (b) either paragraph (2) or (3) is satisfied.

(2) This paragraph is satisfied where the claimant has not complied with the information notice within the relevant period or, if applicable, the later period.

(3) This paragraph is satisfied where—

- (a) the claimant has complied with the information notice within the relevant period or, if applicable, the later period, and
- (b) based on the relevant evidence given to the Commissioners for Revenue and Customs in consequence of that notice, an officer of Revenue and Customs reasonably believes that the set-off claim made in respect of the tax period specified in the information notice either—
 - (i) contains an error, or

(ii) was made on the basis of an error.

(4) The officer of Revenue and Customs must by notice require the claimant either—

- (a) to remove the set-off claim if that officer considers that the claimant was not entitled to make the set-off claim at all because the claimant had no CIS deductions made during the tax period specified in the set-off claim, or
- (b) to correct the set-off claim by substituting the verifiable figure, or, where regulation 24E applies, the revised verifiable figure, for the claim figure if that officer is not satisfied that the claimant was entitled to make that set-off claim in the amount of the claim figure.

(5) A notice given under paragraph (4) must specify that the claimant must remove or correct the set-off claim within the period of 14 days, beginning with the day after the date that the notice is issued by an officer of Revenue and Customs (“the specified compliance period”).

(6) A notice given under paragraph (4) must specify—

- (a) the date of the notice;
- (b) the tax period and the tax year to which the set-off claim relates;
- (c) the claim figure specified in the set-off claim;
- (d) in a case where a set-off claim is to be corrected under paragraph (4)(b), the verifiable figure or, if applicable, the revised verifiable figure, relating to the set-off claim;
- (e) the specified compliance period; and
- (f) that a failure to comply with the notice may result in—
 - (i) the set-off claim being removed under paragraph (11) or corrected under paragraph (12), as the case may be, and
 - (ii) the claimant being prohibited under regulation 24J(1) from making further set-off claims.

(7) A notice given under paragraph (4) may specify such other information as the officer of Revenue and Customs considers necessary.

(8) A claimant who has been given a notice under paragraph (4) may, within the specified compliance period, make an application to an officer of Revenue and Customs for an extension of time to remove or correct the set-off claim, as the case may be, and any such application must explain why the claimant cannot remove or correct the set-off claim within the specified compliance period.

(9) Where—

- (a) a claimant has made an application for an extension of time to remove or correct a set-off claim, and
- (b) an officer of Revenue and Customs considers that the claimant has a reasonable excuse for being unable to remove or correct the set-off claim within the specified compliance period,

that officer must notify that claimant that they must remove or correct their set-off claim, as the case may be, within the period of 42 days, beginning with the day after the date that the notice was issued by an officer of Revenue and Customs (“the later compliance period”).

(10) Where—

- (a) a claimant has made an application for an extension of time to remove or correct a set-off claim, and
- (b) an officer of Revenue and Customs considers that the claimant does not have a reasonable excuse for being unable to remove or correct the set-off claim within the specified compliance period,

the officer must notify the claimant, within the period of 7 days beginning with the day on which that decision is made by the officer, that an extension of time to remove or correct the set-off claim has not been granted.

(11) Where an officer of Revenue and Customs has given a notice to a claimant under paragraph (4)(a) to remove a set-off claim, that officer may remove the set-off claim where the claimant either—

- (a) has not removed the set-off claim within the specified compliance period and—
 - (i) has not made an application for an extension of time to remove the set-off claim; or
 - (ii) has made such an application but that application has not been granted; or
- (b) has been granted an extension of time to remove the set-off claim, but has not removed the set-off claim within the later compliance period.

(12) Where an officer of Revenue and Customs has given a notice to a claimant under paragraph (4)(b) to correct a set-off claim, that officer may correct the set-off claim where the claimant either—

- (a) has not corrected the set-off claim within the specified compliance period and—
 - (i) has not made an application for an extension of time to correct the set-off claim; or
 - (ii) has made such an application but that application has not been granted; or
- (b) has been granted an extension of time to correct the set-off claim, but has not corrected the set-off claim within the later compliance period.

(13) Where an officer of Revenue and Customs corrects a set-off claim under paragraph (12), they must substitute the claim figure on the employer return with—

- (a) in a case where the officer has redetermined, under regulation 24E, the CIS deductions made during that tax period, the revised verifiable figure; and
- (b) in any other case, the verifiable figure.

(14) An officer of Revenue and Customs may exercise the power of removal under paragraph (11) or the power of correction under paragraph (12) in relation to a set-off claim made in respect of a tax period falling within—

- (a) the current tax year; or
- (b) any of the preceding three tax years.

Removing a set-off claim where a claimant is not eligible to make set-off claims

24G.—(1) An officer of Revenue and Customs may remove any set-off claim made by a claimant to whom any of paragraphs (2), (3) or (4) applies.

(2) This paragraph applies to a claimant who is not eligible to make set-off claims because they are not a sub-contractor.

(3) This paragraph applies to a claimant who is not eligible to make set-off claims because they are not a company.

(4) This paragraph applies to a claimant who is not eligible to make the set-off claim because, throughout the tax period in respect of which the set-off claim was made, they—

- (a) were registered for gross payment, and
- (b) did not have any CIS deductions made.

(5) An officer of Revenue and Customs may exercise the power of removal under paragraph (1) in relation to a set-off claim made in respect of a tax period falling within—

- (a) in the case of a claimant who is a sub-contractor, the current tax year or any of the preceding three tax years; and
- (b) in any other case, any tax year.

Revoking the removal of a set-off claim by an officer of Revenue and Customs

24H.—(1) Where a set-off claim has been removed under regulation 24G (removing a set-off claim where a claimant is not eligible to make set-off claims), an officer of Revenue and Customs may revoke the removal of the set-off claim if they are satisfied that the set-off claim was removed due to an error made by an officer of Revenue and Customs.

(2) For the purposes of paragraph (1), an error is deemed to have been made by an officer of Revenue and Customs where—

- (a) in the case of a set-off claim removed because the officer was of the view that the claimant was not a sub-contractor, information held by, or given to, Her Majesty's Revenue and Customs demonstrates that the claimant was a sub-contractor during the tax period in respect of which the set-off claim was made;
- (b) in the case of a set-off claim removed because the officer was of the view that the claimant was not a company, information held by, or given to, Her Majesty's Revenue and Customs demonstrates that the claimant was a company during the tax period in respect of which the set-off claim was made; and
- (c) in the case of a set-off claim removed because the officer was of the view regulation 24G(4) applied to the claimant, information held by, or given to, Her Majesty's Revenue and Customs demonstrates that the claimant—
 - (i) was not registered for gross payment at any time during the tax period in respect of which the set-off claim was made; or
 - (ii) was registered for gross payment during the tax period in respect of which the set-off claim was made, but had CIS deductions made during that tax period.

Service of notice correcting or removing a set-off claim or revoking the removal of a set-off claim

24I.—(1) Where an officer of Revenue and Customs—

- (a) removes a set-off claim under regulation 24F(11) or corrects a set-off claim under regulation 24F(12);
- (b) removes a set-off claim under regulation 24G(1); or
- (c) revokes the removal of a set-off claim under regulation 24H(1),

that officer must give a notice to the claimant of the removal, correction or revocation, as the case may be, within the period of 7 days beginning with the day on which the set-off claim was removed or corrected, or the revocation was made.

(2) Where a notice is given to a claimant in a case falling within paragraph (1)(a) or (b), that notice must specify—

- (a) whether the officer has—
 - (i) removed the set-off claim under regulation 24F(11);
 - (ii) corrected the set-off claim under regulation 24F(12); or
 - (iii) removed the set-off claim under regulation 24G(1);
- (b) the tax period and the tax year to which the set-off claim which has been removed or corrected relates;
- (c) the reason for the removal or correction of the set-off claim;
- (d) in a case where the officer has removed a set-off claim, the claim figure specified in the set-off claim which was removed; and
- (e) in a case where the officer has corrected a set-off claim, the verifiable figure, or if regulation 24E applies the revised verifiable figure, determined in relation to that set-off claim.

(3) Where an additional amount of tax due under the PAYE Regulations or an additional amount of earnings-related contributions due under the SSC Regulations^(a) has become payable by a claimant as a result of the removal or correction of a set-off claim by an officer of Revenue and Customs, a notice given under paragraph (1) must also specify—

- (a) that late payment interest will apply to that additional amount from the late payment interest start date until the date of a payment being made by the claimant to Her Majesty's Revenue and Customs either—
 - (i) in the amount of the claim figure specified in the set-off claim which has been removed by the officer of Revenue and Customs; or
 - (ii) in the amount representing the difference between—
 - (aa) the claim figure specified on the set-off claim and
 - (bb) the verifiable figure, or if regulation 24E applies the revised verifiable figure, determined in relation to that set-off claim; and
- (b) the late payment interest start date in respect of the amount mentioned in subparagraph (a)(i) or (ii).

(4) Where no additional amount of tax due under the PAYE Regulations or additional amount of earnings-related contributions due under the SSC Regulations has become payable by a claimant as a result of the removal or correction of a set-off claim by an officer of Revenue and Customs, a notice given under paragraph (1) must also specify the amount of CIS deductions made which will be available to that claimant to apply against their relevant liabilities (in accordance with regulation 56(2)) in future tax periods.

(5) Where a notice is given to a claimant in a case falling within paragraph (1)(a), that notice must also specify, or be accompanied by, an explanation of the claimant's right of appeal under regulation 24L(1).

(6) Where—

- (a) a notice is given to a claimant in a case falling within paragraph (1)(b), and
- (b) the set-off claim was removed on the basis that the claimant fell within regulation 24G(2),

that notice must also specify, or be accompanied by, an explanation of the claimant's right of appeal under regulation 24L(3).

(7) Where a notice is given to a claimant in a case falling within paragraph (1)(c), that notice must also specify—

- (a) the reason for the revocation;
- (b) if applicable, the amount of any repayment which is due to the claimant from the Commissioners for Her Majesty's Revenue and Customs as a result of the revocation; and
- (c) where a repayment is due to the claimant from the Commissioners for Her Majesty's Revenue and Customs—
 - (i) that repayment interest may apply from the repayment interest start date until the date on which the repayment is made; and
 - (ii) the repayment interest start date in respect of the repayment.

(8) Any notice given under this regulation may specify such further information as the officer of Revenue and Customs considers necessary.

(a) Regulation 2 of the 2005 Regulations provides that "SSC Regulations" means the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

Prohibiting further set-off claims made by a sub-contractor

24J.—(1) Where, during the tax year in respect of which a set-off claim was made, that set-off claim has been—

- (a) removed by an officer of Revenue and Customs under regulation 24F(11), or
- (b) corrected by an officer of Revenue and Customs under regulation 24F(12),

the officer of Revenue and Customs may also prohibit the claimant from making any further set-off claims for the remainder of that tax year.

(2) Where an officer of Revenue and Customs prohibits, under paragraph (1), a claimant from making any further set-off claims for the remainder of a tax year, that officer must serve a notice (“prohibition notice”) on the claimant specifying—

- (a) the date of the prohibition notice;
- (b) details of the set-off claim which was removed under regulation 24F(11) or corrected under regulation 24F(12), giving rise to the prohibition;
- (c) the start date of the prohibition; and
- (d) that the claimant has a right of appeal under regulation 24L(5) against the prohibition.

(3) The start date of the prohibition must be 14 days from the date that the prohibition notice was issued by an officer of Revenue and Customs.

(4) A prohibition notice—

- (a) must be given within the period of 7 days, beginning with the date on which the officer’s decision to prohibit the claimant was made; and
- (b) may specify such further information as the officer of Revenue and Customs considers necessary.

Revoking a prohibition on further set-off claims made by an officer of Revenue and Customs

24K.—(1) An officer of Revenue and Customs may revoke a prohibition under regulation 24J(1) on making further set-off claims where that officer is satisfied that the claimant was entitled to make the set-off claim giving rise to the prohibition in the amount of the claim figure.

(2) Where an officer of Revenue and Customs revokes a prohibition under paragraph (1), that officer must give a notice of that decision to the claimant specifying—

- (a) the date of the notice;
- (b) that the prohibition on any further set-off claims being made by the claimant for the remainder of a particular tax year has been revoked; and
- (c) that, as from the date of the notice, the claimant is entitled to make further set-off claims.

(3) A notice given under paragraph (2)—

- (a) must be given within the period of 7 days beginning with the date on which the officer’s decision to revoke the prohibition was made; and
- (b) may specify such further information as the officer of Revenue and Customs considers necessary.

Appeals

24L.—(1) A claimant who has been given a notice under regulation 24I(1) (service of notice correcting or removing a set-off claim or revoking the removal of a set-off claim) that an officer of Revenue and Customs has either—

- (a) removed their set-off claim under regulation 24F(11) (removing a set-off claim made by a sub-contractor); or
- (b) corrected their set-off claim under regulation 24F(12) (correcting a set-off claim made by a sub-contractor),

may appeal to a tribunal^(a) against that removal or correction, but only on the ground set out in paragraph (2).

(2) The ground on which an appeal may be brought under paragraph (1) is that, when deciding whether to remove or correct the set-off claim, the officer of Revenue and Customs did not take account of particular information about CIS deductions made during the tax period to which the set-off claim relates and which was given by the claimant to Her Majesty's Revenue and Customs in consequence of an information notice.

(3) A claimant who has been given a notice under regulation 24I(1) that an officer of Revenue and Customs has removed their set-off claim on the basis that the claimant fell within regulation 24G(2) may appeal to a tribunal against that removal, but only on the ground set out in paragraph (4).

(4) The ground on which an appeal may be brought under paragraph (3) is that the claimant was a sub-contractor during the tax period in respect of which the set-off claim that was removed under regulation 24G(1) was made.

(5) A claimant who has been given a prohibition notice under regulation 24J(2) that they have been prohibited under regulation 24J(1) (prohibiting further set-off claims made by a sub-contractor) from making any further set-off claims for the remainder of a tax year may appeal to a tribunal against that prohibition, but only on the ground set out in paragraph (6).

(6) The ground on which an appeal may be brought under paragraph (5) is that the claimant had a reasonable excuse for failing to correct or remove the set-off claim which led to the prohibition within the specified compliance period or, if applicable, the later compliance period.

(7) Any appeal under this regulation must be brought—

- (a) by notice to an officer of Revenue and Customs, and
- (b) within the period of 30 days, beginning with the day after the date that the notice of removal or correction of the set-off claim or prohibition of any further set-off claims (“the relevant decision”) is given.

(8) Any notice of an appeal given under this regulation—

- (a) must state the ground or grounds of appeal, and
- (b) must, in the case of an appeal brought under paragraph (1), give details of the relevant evidence—
 - (i) which was given to the Commissioners for Her Majesty's Revenue and Customs in consequence of an information notice; and
 - (ii) which the claimant believes that the officer of Revenue and Customs did not take account of in making the relevant decision.

(9) Where—

- (a) an appeal is brought under paragraph (1) against the removal or correction of a set-off claim;
- (b) a prohibition under regulation 24J(1) (prohibiting further set-off claims made by a sub-contractor) has been imposed as a result of that removal or correction; and
- (c) no appeal has been brought under paragraph (5) against that prohibition,

then paragraph (10) will apply.

^(a) Regulation 2 of the 2005 Regulations provides that, in those Regulations, “tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal. The definition of “tribunal” was inserted into regulation 2 of the 2005 Regulations by S.I. 2009/56.

(10) Where this paragraph applies, the prohibition referred to at paragraph (9)(b) will stand unless—

- (a) a review of the removal or correction of a set-off claim which is under appeal is determined in the claimant's favour, in which case Her Majesty's Revenue and Customs must also cancel **(a)** the prohibition; or
- (b) the tribunal has set aside, under paragraph (11)(b), the removal or correction of the set-off claim, in which case the tribunal must also set aside the prohibition.

(11) On an appeal under paragraph (1) or paragraph (3) that is notified to the tribunal, the tribunal may—

- (a) confirm the removal or correction of the set-off claim;
- (b) set aside the removal or correction of the set-off claim; or
- (c) where the relevant decision relates to the correction of a set-off claim by an officer of Revenue and Customs, and the tribunal determines that the claim figure is too high, vary the correction by substituting for the verifiable figure or the revised verifiable figure, as applicable, the figure which the tribunal considers is supported by evidence of CIS deductions made during the tax period specified on the set-off claim.

(12) Subject to paragraph (13), on an appeal under paragraph (5) that is notified to the tribunal, the tribunal may—

- (a) confirm the prohibition on making any further set-off claims; or
- (b) set aside the prohibition on making any further set-off claims.

(13) Where—

- (a) an appeal under paragraph (5) against a prohibition on further set-off claims is notified to the tribunal, and
- (b) an appeal under paragraph (1) against the removal of the set-off claim under regulation 24F(11), or the correction of the set-off claim under regulation 24F(12), which led to the prohibition has been—
 - (i) brought by the same claimant, and
 - (ii) notified to the tribunal at an earlier date,

the tribunal may only determine the appeal brought under paragraph (5) after it has determined the appeal brought under paragraph (1).

(14) Any appeal under this regulation is subject to the provisions of Part 5 of TMA **(b)** (appeals and other proceedings) apart from—

- (a) section 46D **(c)** (questions to be determined by the relevant tribunal),
- (b) section 47B **(d)** (special jurisdiction relating to business expansion scheme),
- (c) section 50(6) to (9) **(e)** (procedure), and

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- (a) Section 49E(5) of the Taxes Management Act 1970 (c. 9), which applies to appeals brought under new regulation 24L inserted by these Regulations, provides that, where HMRC is required by section 49B or 49C of the TMA to review the matter in question, the review may conclude that HMRC's original view of the matter – in this case the imposition of a prohibition - is to be upheld, varied, or cancelled.
 - (b) Regulation 2 of the 2005 Regulations provides that, in those Regulations, "TMA" means the Taxes Management Act 1970.
 - (c) Section 46D of TMA was substituted for the former section 47 by section 136 of, and Paragraph 7 of Schedule 22 to, the Finance Act 1996 (c. 8). Section 46D(2) was amended by section 88 of, and paragraph 29 of Schedule 29 to, the Finance Act 2001 (c. 9), and section 11912(a) of the Finance Act 2008 (c. 9). Section 46D(1) and (3) was amended by S.I. 2009/1307.
 - (d) Section 47B of TMA was inserted by section 40 of, and paragraph 22 of Schedule 9 to, the Finance Act 1986 (c. 41). It was amended by the table at paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988 (c. 1), and by S.I. 2009/1307.
 - (e) Section 50 of TMA has been relevantly amended by: section 67(2) of the Finance (No. 2) Act 1975 (c. 45); section 196 of, and paragraph 17 of Schedule 19 to, the Finance Act 1994 (c. 9); section 133 of, and paragraph 7 of Schedule 19 to, the Finance Act 1996; section 117(3) of, and paragraph 27 of Schedule 19 to, the Finance Act 1998 (c. 36); section 88 of, and paragraph 30 of Schedule 29 to, the Finance Act 2001; and S.I. 2009/56.

(d) sections 54A to 57(a).

Late payment interest

24M. For the purposes of section 101(4) of the Finance Act 2009 (late payment interest), where a claimant becomes liable to pay an additional amount of tax due under the PAYE Regulations or an additional amount of earnings-related contributions due under the SSC Regulations as a result of the removal or correction of a set-off claim on an employer return under this Part by an officer of Revenue and Customs, that amount becomes due and payable**(b)** on the date on which that employer return was submitted .”.

*Jim Harra
Justin Holliday*

15th March 2021

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) (“the 2005 Regulations”), which contain the principal requirements for contractors and sub-contractors who operate within the Construction Industry Scheme (“the CIS”). These Regulations make provision for Her Majesty’s Revenue and Customs (“HMRC”) to: correct or remove a set-off claim which a person (“the claimant”) has made on an employer return given to Revenue and Customs under the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“the PAYE Regulations”); to prohibit further set-off claims being made by a claimant for the remainder of a tax year in certain circumstances; and, in appropriate cases, to revoke decisions made by officers of Revenue and Customs to remove or prohibit set-off claims. These Regulations come into force on 6th April 2021.

These Regulations are made, in part, in exercise of a power contained in Budget resolution number 27, passed by the House of Commons on 9th March 2021 following the Budget held on 3rd March 2021. The resolution has temporary statutory effect by virtue of section 1 of the Provisional Collection of Taxes Act 1968 (c. 2) (“the 1968 Act”) and contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under the 1968 Act. The resolution provides for an amendment to section 62 of the Finance Act 2004 (c. 12) (“the 2004 Act”), inserting new subsections (3A), (3B) and (3C). New subsection (3A) provides that the Commissioners for HMRC may make regulations under subsection (3) of that section including provision authorising an officer of Revenue and Customs to: correct an error or omission relating to a set-off claim; remove a set-off claim; or prohibit a person from making a further set-off claim, for a specified period or indefinitely. New subsection (3B) makes further provision as to what may be specified in such regulations. New subsection (3C) provides that a “set-off claim” means a claim for treating a sum deducted under section 61 as paid on account of any relevant liabilities.

The provisions of Budget resolution number 27 correspond to provisions contained in clause 30 of, and paragraph 6 of Schedule 6 to, the Finance (No. 2) Bill, as published by the House of Commons on 11th March 2021. Assuming that the clause and Schedule are not rejected during the passage of the Bill through Parliament, those provisions will come into force when the Bill receives Royal Assent, and the Regulations made under the resolution will continue to have statutory effect by virtue of those provisions of the Act arising from the Bill. The resolution will in any case cease to have effect after 9th October 2021, by virtue of section 1(3) of the 1968 Act.

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- (a) Sections 54A, 54B and 54C of TMA were inserted by section 371 of, and paragraphs 30 and 32 of Schedule 7 to, the Taxation (International and Other Provisions) Act 2010 (c. 8). Section 55 was substituted by section 45(1) of the Finance (No. 2) Act 1975 (c. 45). Section 56 was substituted by S.I. 2009/56.
- (b) Section 104(2) of the Finance Act 2009 provides that a reference in sections 101 to 103 of that Act to the date on which an amount becomes due and payable is a reference to the date (however described) on or before which the amount must be paid.

These Regulations also make consequential amendments to the 2005 Regulations to take account of amendments which will be made to section 61(1) of the 2004 Act by clause 30 of, and paragraph 4 of Schedule 6 to, the Finance (No. 2) Bill, and which have also been brought into temporary statutory effect by Budget resolution number 27 as read with the provisions of the 1968 Act.

Part 1 of the Regulations (Introduction) provides for citation, commencement and effect. It also provides for definitions of various key terms and phrases applying to these Regulations.

Part 2 of the Regulations (Consequential Amendments to the 2005 Regulations) will have effect in relation to direct costs of materials incurred by sub-contractors on or after 6th April 2021. Regulation 4 in Part 2 makes a consequential amendment to regulation 2 of the 2005 Regulations to amend the definition of “approved method of electronic communications”. Regulations 5 to 8 in Part 2 make consequential amendments to the 2005 Regulations by amending references to “the direct cost to any other person of materials” to read “the direct cost to the sub-contractor of materials”. This gives effect to the changes made by the Finance (No. 2) Bill to section 61(1) of the 2004 Act. These amendments clarify that, when determining which proportion of a contract payment they should make deductions from under section 61 of the 2004 Act before making payment to a sub-contractor, a contractor may only take account of so much of the payment as is not shown to represent the direct cost of materials to that sub-contractor under that construction contract. Regulation 9 inserts new paragraphs (v) and (vi) into regulation 56(8)(a) of the 2005 Regulations, to require that a return submitted under that regulation must state the employer’s Company Registration Number and Unique Taxpayer Reference.

Part 3 of the Regulations (Restrictions on set-off claims) has effect in relation to set-off claims contained in an employer return (defined in new regulation 24A) and submitted to HMRC in respect of the tax year 2021-22 or any subsequent tax year. Regulation 10 inserts a new Part 4A (new regulations 24A – 24M) into the 2005 Regulations, to make provision for an officer of Revenue and Customs to correct or remove set-off claims in various circumstances, to prohibit a claimant from making further set-off claims for the remaining part of a tax year, or to revoke those decisions in limited circumstances.

New regulation 24A contains definitions which are applicable to the new Part 4A of the 2005 Regulations.

New regulation 24B sets out that any notice etc to be given under Part 4A must be delivered using a method of electronic communications approved by the Directions made by the Commissioners for HMRC on 13th March 2012 under regulations 189 and 205(2) of the PAYE Regulations, except where the claimant is one to whom regulation 67D of the PAYE Regulations applies. Where that is the case, paragraph (2) of new regulation 24B sets out that any notice etc to be given under Part 4A must be made in a document or format provided or approved by the Commissioners for HMRC.

Where a set-off claim is made by a claimant who is a sub-contractor and a company, HMRC will be able to check the claim figure (defined in new regulation 24A) given by the claimant in that set-off claim against information that it holds. Where the amount of the claim figure does not match the figure of CIS deductions made according to HMRC’s records (defined in these Regulations as “the verifiable figure”) during the tax period to which the set off claim relates and, as a consequence, an officer of Revenue and Customs reasonably believes that there may be an error relating to that set-off claim, new regulation 24C provides that that officer can require the production of information to the Commissioners of HMRC by an information notice, in order to ascertain whether the claimant was entitled to make that set-off claim or to make a set-off claim in that figure. Paragraph (3) sets out what types of information may be requested. Paragraphs (4) and (5) set out the period of time within which the information must be given. Paragraph (6) sets out when an information notice may be given. Paragraphs (7) and (8) set out procedural requirements for an information notice. Paragraphs (9) to (12) set out the rules for applying for an extension of time to comply with an information notice, and when this may be given.

New regulation 24D sets out that where the claimant complies with an information notice within the required time period, and an officer of Revenue and Customs is satisfied that the claimant was

entitled to make the set-off claim in question in the figure specified on that claim, the officer must allow that set-off claim.

New regulation 24E sets out that, if a claimant complies with an information notice within the required time period and, based on the information provided, an officer of Revenue and Customs reasonably believes that the set-off claim contains an error because the claimant did have CIS deductions made during the tax period specified on the set-off claim, in a lesser sum than the figure specified on the set-off claim but in a greater sum than the verifiable figure, the officer must re-determine the CIS deductions made during that tax period (defined in these Regulations as “the revised verifiable figure”).

New regulation 24F sets out the two situations in which a set-off claim made by a sub-contractor can be corrected or removed. A set-off claim made by a sub-contractor cannot be corrected or removed unless an officer of Revenue and Customs has given an information notice under new regulation 24C requesting additional information, and only within the time period set out in paragraph (14) of regulation 24F. The first situation is where the claimant has not complied with the information notice (paragraph (2)). The second situation is where the claimant has complied with the information notice and, on the basis of the information supplied, the officer is satisfied that the set-off claim contains an error or was made on the basis of an error (paragraph (3)). Where one of these situations occurs, paragraph (4) provides that the officer of Revenue and Customs must, by notice, require the claimant either to remove the set-off claim (where the officer’s view is that the claimant was not entitled to make the set-off claim) or to correct the set-off claim (where the officer’s view is that the claimant was not entitled to make the set-off claim in the figure in which the claim is made). Paragraphs (6) and (7) set out the information which needs to be included on the notice. Paragraph (5) states that the claimant must comply with this notice within the period of 14 days beginning with the date on which the notice was issued, and paragraph (8) sets out that the claimant can apply for an extension of time. Paragraph (9) allows an officer of Revenue and Customs to give an extension of time so that the claimant must comply with the notice within the period of 42 days beginning with the date on which the notice was issued; and paragraph (10) allows the officer to refuse an extension of time in certain circumstances. Where the claimant has not complied with a notice to remove a set-off claim, paragraph (11) states that an officer can remove the set-off claim. Where the claimant has not complied with a notice to correct a set-off claim by the date specified in that notice, paragraphs (12) and (13) state that the officer can correct the set-off claim by replacing the claim figure with either the verifiable figure or the revised verifiable figure (in a case falling within regulation 24E).

New regulation 24G provides that an officer of Revenue and Customs may remove any set-off claim made by a claimant who is:

- not a sub-contractor under the CIS;
- not a company; or
- a sub-contractor registered for gross payment under section 70 of the 2004 Act, and who has not had any CIS deductions made from contract payments made to them throughout the tax period in respect of which the set-off claim is made.

New regulation 24G(5) provides that an officer of Revenue and Customs may only exercise the power of removal under that regulation in relation to a set-off claim made in respect of a tax period falling within, in the case of a claimant who is a sub-contractor, the current tax year or any of the preceding tax years. In a case involving any other claimant, the power may be exercised in relation to a set-off claim made in respect of a tax period falling within any tax year.

New regulation 24H provides that an officer of Revenue and Customs may revoke any earlier decision to remove a set-off claim under regulation 24G, provided that they are satisfied that the set-off claim was removed as a result of an error made by an officer of Revenue and Customs. New regulation 24H(2) sets out when such an error is deemed to have been made.

New regulation 24I provides that an officer of Revenue and Customs must give notice to a claimant within 7 days of making any decision to: remove or correct a set-off claim under

regulation 24F; remove a set-off claim under regulation 24G; or revoke the removal of a set-off claim under regulation 24H. New regulation 24I(2) to (7) sets out the information which must be specified in the notice, and other procedural requirements.

New regulation 24J provides that, where an officer of Revenue and Customs has removed or corrected a set-off claim under new regulation 24F made by a sub-contractor during the tax year in respect of which the set-off claim was made, an officer of Revenue and Customs may also prohibit that claimant from making any further set-off claims for the remainder of that tax year. Where a claimant is prohibited from making any further set-off claims for the remainder of a tax year, the officer of Revenue and Customs must serve a notice. New regulation 24(3) provides that the start date of any prohibition must be 14 days from the date that the prohibition notice is issued. New regulation 24J(2) to (4) sets out the information which must be specified in the notice, and other procedural requirements.

New regulation 24K provides that where a claimant has been prohibited from making further set-off claims for the remainder of a tax year under new regulation 24J, following a correction or removal of a set-off claim by an officer of Revenue and Customs, that prohibition can be revoked with immediate effect where an officer is subsequently satisfied that the claimant was entitled to make the set-off claim. Where an officer of Revenue and Customs revokes a prohibition under new regulation 24K(1), that officer must give a notice to the claimant. New regulation 24K(2) and (3) sets out the information which must be specified in the notice, and other procedural requirements.

New regulation 24L makes provision about appeals to a tribunal against a correction or removal of a set-off claim and against a prohibition on making any further set-off claims for the remainder of tax year. Paragraph (2) sets out the sole ground of appeal against the removal of a set-off claim under regulation 24F(11) or the correction of a set-off claim under regulation 24F(12). Paragraph (4) sets out the sole ground of appeal against the removal of a set-off claim under regulation 24G(1) on the basis that the claimant fell within 24G(2) because they were not a sub-contractor. Paragraph (6) sets out the sole ground of appeal against a prohibition under regulation 24J(1). Paragraphs (7) and (8) set out procedural requirements for appeals. Paragraphs (9) and (10) provide that, where an appeal is brought by a subcontractor under paragraph (1) against the correction or removal of a set-off claim by an officer of Revenue and Customs, and an officer of Revenue of Customs has prohibited that sub-contractor from making further set-off claims as a result of the set-off claim which was corrected or removed, that prohibition will stand unless: a review of the correction or removal of the set-off claim which is under appeal is upheld by HMRC in the claimant's favour, in which case HMRC must also cancel the prohibition; or the tribunal sets aside the correction or removal of the relevant set-off claim, in which case the tribunal must also set aside the prohibition. Paragraph (11) sets out the tribunal's powers when notified of an appeal under paragraph (1) or paragraph (3), and paragraph (12) provides for the equivalent powers where the tribunal is notified of an appeal under paragraph (5). Paragraph (13) provides that, where an appeal under paragraph (5) is notified to the tribunal, and an appeal brought by the same claimant under paragraph (1) against the correction or removal of the set-off claim which led to the prohibition was notified to the tribunal at an earlier date, the tribunal may only determine the appeal brought under paragraph (5) after it has determined the appeal brought under paragraph (1).

New regulation 24M provides that, for the purposes of section 101(4) of the Finance Act 2009 (c. 10) relating to late payment interest, where a claimant becomes liable to pay an additional amount (either of tax under the PAYE Regulations or of earnings-related contributions under the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004)) as a result of the correction or removal of a set-off claim on an employer return, that amount becomes due and payable on the date on which the employer return which contained the set-off claim that has been corrected or removed was submitted to HMRC.

A Tax Information and Impact Note covering this instrument was published on 12th November 2020 and is available at <https://www.gov.uk/government/publications/changes-to-tackle-construction-industry-scheme-abuse/changes-to-tackle-construction-industry-scheme-abuse>.

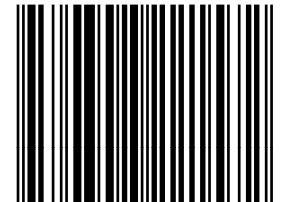
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