STATUTORY INSTRUMENTS

1971 No. 1779

INCOME TAX

The Income Tax (Payments to Sub-Contractors in the Construction Industry) Regulations 1971

Made - - - - - - -	*2nd November* 1971
Laid before the House of Commons	*9th November* 1971
Coming into Operation - - -	*6th April* 1972

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 29 of the Finance Act 1971(a), hereby make the following Regulations:—

1. These Regulations may be cited as the Income Tax (Payments to Sub-Contractors in the Construction Industry) Regulations 1971 and shall come into operation on 6th April 1972.

2.—(1) In these Regulations, unless the context otherwise requires—

"the principal section" means section 29 of the Finance Act 1971;

"nominee" means any person, other than the sub-contractor, to whom is made a payment due to a sub-contractor under a contract relating to construction operations;

the following expressions have the same meaning as in the principal section—

"contractor"

"sub-contractor"

"construction operations";

the following expressions have the same meaning as in the Income Tax (Employments) Regulations 1965(b) as amended (c)—

"employee"

"graduated contributions"

"income tax month"

"year";

other expressions have the same meaning as in the Income Tax Acts.

(2) The Interpretation Act 1889(d) shall apply to these Regulations as it applies for the interpretation of an Act of Parliament.

(a) 1971 c. 68. (b) S.I. 1965/516 (1965 I, p. 1321).
(c) The amending Regulations are not relevant to the subject matter of these Regulations.
(d) 1889 c. 63.

3. Any notice which is authorised or required to be given, served, or issued under these Regulations may be sent by post.

4.—(1) On the making of any payment to which the principal section applies (that is to say, a payment such as is mentioned in the principal section which is made to a person who is not excepted from that section) the contractor shall record in a form prescribed or authorised by the Commissioners of Inland Revenue the following particulars regarding that payment, namely—

(*a*) the name and address of the sub-contractor to whom, or to whose nominee, the payment is made;

(*b*) if the payment is made to a nominee, the name and address of the nominee;

(*c*) the date of the payment;

(*d*) the amount of the payment before any deduction under the principal section;

(*e*) the amount, if any, included in the payment which the contractor is reasonably satisfied represents the direct cost to any person of materials used or to be used in carrying out the construction operations to which the contract under which the payment is made relates;

(*f*) the amount from which the principal section requires a sum equal to 30 per cent to be deducted, and

(*g*) the amount so deducted.

(2) On the making of any payment such as is mentioned in the principal section to a person who is excepted from that section, the contractor shall make such records as will enable him to comply with the following requirement, that is to say: at the end of each period for which accounts of the contractor's trade are made up, he shall make a complete list of all persons to whom (or to whose nominee) any such payment as aforesaid was made in that period, the total amount paid to each of those persons in that period, and full particulars of the evidence by reference to which the contractor decided that each of those persons was excepted from the principal section.

5.—(1) On the making of any payment to which the principal section applies, the contractor shall give to the sub-contractor a certificate, in a form prescribed by the Commissioners of Inland Revenue, stating the amount, if any, deducted from the payment under the principal section and giving such other particulars as the prescribed form may require:

Provided that where, under any one contract, the contractor makes more than one payment to the same sub-contractor, the contractor shall, instead of giving one certificate under this Regulation in respect of each such payment, give one certificate in respect of all the payments made under that contract to that sub-contractor within one year or within such shorter period as the sub-contractor may request, being either a period beginning at the beginning of a year and ending, if the last payment to be made under the contract has not then been made, on the date in that year to which the accounts of the sub-contractor's business are made up or a period beginning on the last-mentioned date and ending, if the last payment to be made under the contract has not then been made, at the end of the year in which that date falls.

(2) On the giving of such a certificate as is referred to in paragraph (1) of this Regulation, the contractor shall record the amount entered on the certificate on the form referred to in Regulation 4(1).

6.—(1) Within 14 days of the end of every income tax month the contractor shall pay to the Collector all amounts which he was liable under the principal section to deduct from payments made by him during that income tax month.

(2) The Collector shall, if so requested, give the contractor a receipt for the total amount so paid provided that no separate receipt need be given for such amount if a receipt is given for a total sum paid at the same time which includes that amount and also tax deducted under the Income Tax (Employment) Regulations 1965, or graduated contributions or both.

(3) If the amount which the contractor is liable to pay to the Collector under paragraph (1) of this Regulation exceeds the amount actually deducted by him from payments made during the relevant month but he satisfies the Collector that he took reasonable care to comply with the provisions of the principal section and of these Regulations and that either—

(*a*) the under-deduction was due to an error made in good faith, or

(*b*) in spite of such reasonable care as aforesaid, he had been led to the genuine belief that a payment made by him, which was one to which the principal section applies, was not or was not wholly such a payment,

then the Collector may direct that the contractor shall not be liable to pay the said excess to the Collector.

7.—(1) If within 14 days of the end of any income tax month the contractor has paid no amount of tax to the Collector under Regulation 6 for that income tax month and the Collector is unaware of the amount, if any, which the contractor is liable so to pay, the Collector may give notice to the contractor requiring him to render, within the time limited in the notice, a return showing the name and address of every sub-contractor to whom (or to whose nominee) he made any payment to which the principal section applies during that income tax month, the amount of every such payment, and any other matter affecting the calculation of the amount which the contractor was liable under the principal section to deduct during that income tax month.

(2) The Collector shall ascertain and certify the amount which the contractor is liable to pay to him in respect of the income tax month in question.

(3) The production of the return made by the contractor under paragraph (1) of this Regulation and of the certificate of the Collector under paragraph (2) shall be sufficient evidence that the amount shown in the said certificate is the amount which the contractor is liable to pay to the Collector in respect of the income tax month in question; and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

(4) Where a notice given by the Collector under paragraph (1) of this Regulation extends to two or more consecutive income tax months, the provisions of these Regulations shall have effect as if the said consecutive income tax months were one income tax month.

(5) A notice may be given by the Collector under paragraph (1) of this Regulation notwithstanding that an amount of tax has been paid to him by the contractor under Regulation 6 for any income tax month, if the Collector is not satisfied that the amount so paid is the full amount which the contractor is liable to pay to him for that month, and the provisions of this Regulation shall have effect accordingly.

8.—(1) The provisions of any enactment relating to the recovery of income tax charged by way of an assessment shall apply to the recovery of any amount which a contractor is liable under Regulation 6 to pay to the Collector for any income tax month and which is not the subject of an assessment under Regulation 11 as if the said amount had been an amount of income tax charged by way of an assessment on the contractor:

Provided that in England, Wales and Northern Ireland—

(*a*) the greatest such amount which shall be recoverable summarily as a civil debt shall be £100 instead of £50; and

(*b*) summary proceedings for the recovery of any such amount may be brought at any time before the expiry of 12 months after the date on which that amount became payable to the Collector, or, where a return has been required under Regulation 7, before the expiry of 12 months after the date of the delivery of that return to the Collector.

(2) Proceedings may be brought for the recovery of the total amount which the contractor is liable to pay as aforesaid for any income tax month, without distinguishing the amounts which he is liable to pay in respect of each sub-contractor and without specifying the sub-contractors in question, and for the purposes of proceedings under section 65, section 66, or section 67 of the Taxes Management Act 1970**(a)**, the said total amount shall be one cause of action or one matter of complaint, but nothing in this paragraph shall prevent the bringing of separate proceedings for the recovery of each of the several amounts which the contractor is liable to pay as aforesaid for any income tax month in respect of his several sub-contractors.

(3) A certificate of the Collector that any amount of tax such as is mentioned in paragraph (1) of this Regulation has not been paid to him, or, to the best of his knowledge and belief, to any other Collector, or to any person acting on his behalf or on behalf of another Collector, shall be sufficient evidence that the sum mentioned in the certificate is unpaid and is due to the Crown, and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

9.—(1) Not later than 14 days after the end of the year the contractor shall render to the Collector, in such form as the Commissioners of Inland Revenue may approve or prescribe, a return in respect of each sub-contractor showing the total amount of payments to which the principal section applies made by him to that sub-contractor (or to his nominee) during the year, the total amount, if any, included in those payments which the contractor is satisfied represents the direct cost to any other person of materials used in carrying out the construction operations to which the contracts under which the payments were made related, the total amount deducted from the first-mentioned payments under the principal section, and the amounts in respect of which certificates have been given to the sub-contractor under Regulation 5.

(2) The said returns shall be accompanied by a statement and declaration in the form approved or prescribed by the Commissioners of Inland Revenue containing a list of all sub-contractors to whom (or to whose nominee) the contractor made during the year any payments to which the principal section applies, together with a certificate showing the total amount deducted under the principal section in the case of each sub-contractor and the total of all such amounts.

(a) 1970 c. 9.

(3) Where the contractor is a body corporate, the declaration and the certificate referred to in paragraph (2) shall be signed either by the secretary or by a director of the body corporate.

(4) If within 14 days of the end of any year a contractor has failed to pay to the Collector the total amount which he is liable under these Regulations so to pay, the Collector may prepare a certificate showing the amount remaining unpaid for that year. To the amount shown in the said certificate the provisions of paragraphs (1) and (2) of Regulation 8 shall apply with the modification that summary proceedings for the recovery of that amount or such part of it as remains unpaid may be brought at any time before the expiry of 12 months after the date limited for delivery of the statement required by paragraph (2) of this Regulation or, if that statement is not delivered by that date, before the expiry of 12 months after its delivery; and to the said certificate the provisions of paragraph (3) of Regulation 8 shall with any necessary modifications apply.

10.—(1) Every contractor, whenever called upon to do so by any authorised officer of the Commissioners of Inland Revenue, shall produce to that officer for inspection, at the contractor's premises—

(*a*) all documents and records whatsoever (including receipts given to the contractor under Regulation 6 of the Income Tax (Certification of Sub-Contractors in the Construction Industry) Regulations 1971(**a**)) relating to the calculation or payment of all sums paid to sub-contractors (or their nominees) in the years or income tax months specified by such officer or to deductions from such sums where required under the principal section; or

(*b*) such of those documents, records, and receipts as may be specified by the authorised officer.

(2) Every person, other than a company, who is or has within the preceding three years been a sub-contractor and who is not the holder of a certificate issued under section 30 of the Finance Act 1971, whenever called upon to do so by any authorised officer of the Commissioners of Inland Revenue, shall produce to that officer for inspection at the sub-contractor's premises—

(*a*) all documents and records relating to the calculation or payment of sums paid to him pursuant to any contract or contracts under which he is or was a sub-contractor within the preceding three years; or

(*b*) such of those documents and records as may be specified by the authorised officer.

(3) For the purposes of paragraphs (1) and (2) of this Regulation, such of the documents and records therein mentioned as are not required by other provisions of these Regulations to be sent to the Inspector or the Collector shall be retained by the contractor or, as the case may be, the sub-contractor for not less than three years after the end of the year to which they relate.

(4) The Collector by reference to the information obtained from an inspection of the documents and records produced under paragraphs (1) and (2) of this Regulation may on the occasion of each inspection prepare a certificate showing—

(*a*) the amount which it appears from the documents and records so produced that the contractor is liable to pay to the Collector under these Regulations for the years or income tax months covered by the inspection; and

(**a**) S.I. 1971/1688(1971 III, p. 4612).

(*b*) any amount which has not been paid to him or, to the best of his knowledge and belief, to any other Collector, or to any person acting on his behalf or on behalf of another Collector.

(5) The production of a certificate such as is mentioned in paragraph (4) of this Regulation shall be sufficient evidence that the contractor is liable to pay to the Collector in respect of the years or income tax months mentioned in the certificate the amount shown therein pursuant to paragraph (4)(*b*); and any document purporting to be such a certificate as aforesaid shall be deemed to be such a certificate until the contrary is proved.

(6) The provisions of paragraphs (1) and (2) of Regulation 8 shall apply to the amount shown in such a certificate, with the modification that summary proceedings for the recovery of the said amount, or such part of it as remains unpaid, may be brought at any time before the expiry of 12 months after the date of the certificate.

11.—(1) Where—

(*a*) there is a dispute between a contractor and a sub-contractor as to the amount, if any, deductible by the contractor under the principal section from a payment to the sub-contractor or his nominee; or

(*b*) the Inspector has reason to believe, as a result of an inspection under Regulation 10 or otherwise, that the amount which a contractor is liable to pay to the Collector under these Regulations is greater than the amount, if any, which he has so paid, or

(*c*) the Inspector for any other reason sees fit to do so,

the Inspector may at his discretion make an assessment on the contractor in the amount which, according to the best of his judgement, the contractor is liable to pay under these Regulations, and all the provisions of the Income Tax Acts regarding appeals, collection and recovery shall apply as though it were an assessment to income tax, except that the amount charged by the assessment shall be due and payable fourteen days after the assessment is made.

(2) Where there is a dispute such as is mentioned in paragraph (1)(*a*) of this Regulation and the Inspector does not make an assessment on the contractor under that paragraph, either the contractor or the sub-contractor may, on giving notice to the Inspector, apply to the General Commissioners to determine the matter.

(3) Part V of the Taxes Management Act 1970 shall apply, with appropriate modifications, to an application under paragraph (2) of this Regulation as it applies to an appeal against an assessment.

(4) Where there is a dispute such as is mentioned in paragraph (1)(*a*), of this Regulation, the contractor shall nevertheless make the deduction required by the principal section from the payment, or the part of a payment, to which the dispute relates, and the amount he so deducts shall be treated as a sum which he is liable to pay to the Collector under these Regulations; any amount which, on a final determination of the dispute, is shown not to have been so payable shall be treated as an over-payment of income tax by the sub-contractor.

12. If a contractor dies, anything which he would have been liable to do under these Regulations shall be done by his personal representatives.

13.—(1) If the Inspector is satisfied, by the production to him of a certificate issued to a sub-contractor under Regulation 5(1) and by such further evidence as he may require, that the total of the sums deducted under the principal section from payments made in any year to that sub-contractor for his work exceeds the aggregate of—

(*a*) the income tax payable by that sub-contractor for that year on the profits or gains of the trade, profession or vocation to which the said payments relate, and

(*b*) any income tax remaining unpaid for any other year on the profits or gains of the said trade, profession or vocation,

the Inspector shall repay the excess to the sub-contractor.

(2) An appeal may be brought against the decision of the Inspector under paragraph (1) of this Regulation, and section 42 of the Taxes Management Act 1970 shall apply to such an appeal as it applies to an appeal against a decision on a claim.

By Order of the Commissioners of Inland Revenue.

G. Wolters,
Secretary.

2nd November 1971.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations specify the records contractors are required to make of payments they make to sub-contractors for construction operations, and the notifications they are to give to sub-contractors of amounts deducted on account of income tax from such payments. They specify how such amounts deducted are to be paid to Collectors of Taxes, and the procedure for the recovery by Collectors of amounts due but not paid. They also specify the returns contractors are required to make annually and the records they and sub-contractors must produce for inspection when so required. They provide machinery for the settlement of disputes and specify how a sub-contractor who has suffered deductions in excess of his income tax liability can claim repayment of that excess.