

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME) (AMENDMENT)
REGULATIONS 2007

2007 No. 672

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Description

These Regulations make certain amendments to the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) ("the principal Regulations").

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

4.1 Chapter 3 of Part 3 of the Finance Act 2004 establishes a new construction industry scheme, which takes effect from 6 April 2007 (see SI 2006/3240). Under powers contained within that Chapter, the principal Regulations were made and laid on 25 July 2005. These Regulations, made under powers contained in sections 60(7), 70 and 71 of the Finance Act 2004, amend regulations 10, 19, 20 and 22 of the principal Regulations.

4.2 Regulation 10 of the principal Regulations provides for HM Revenue and Customs to issue a notice to a contractor requiring a return to be made and, on receipt of that return, to issue a certificate showing the amount which the contractor is liable to pay for that period and how much remains unpaid. These Regulations amend Regulation 10 to provide that HM Revenue and Customs, where the contractor has already submitted a return for the period, may prepare a certificate showing the amount included on that return which remains unpaid.

4.3 Regulation 19 of the principal Regulations inadvertently omitted the word "applies". These Regulations correct that omission.

4.4 Regulation 20 of the principal Regulations provides that a reverse premium, as defined in Schedule 6 to the Finance Act 1999, is not a contract payment (and therefore not within the scheme). The definition in Schedule 6 applies only to companies. These Regulations amend Regulation 20 to include reverse premiums as defined in section 99 of the Income Tax (Trading and Other Income) Act 2005. This applies the exception in Regulation 20 to individuals.

4.5 Regulation 22 of the principal Regulations provides that, in certain circumstances, a payment made by a person to whom section 59(1)(l) of the Finance Act 2004 applies is not a contract payment (and therefore not within the scheme). Regulation 22(2)(a) disapplies the exception where property, amongst other things, is for sale or to let. These

Regulations amend regulation 22(2)(a) so that the exception does apply where the sale or letting is purely incidental to the business of that person.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 It is important that deductions made by contractors under the scheme are paid over to HM Revenue and Customs in accordance with the legislation. The principal Regulations fail to provide for the straightforward recovery of amounts remaining unpaid where the contractor had declared on a return that certain amounts have been deducted and are due to be paid over. The amendment allows HM Revenue and Customs to prepare a certificate and proceed to recovery on the basis of the amounts due admitted by the contractor in a submitted return rather than issuing a notice requiring a return to be made, as would be the case if the principal Regulations remained unamended.

7.2 The amendment to Regulation 19 inserts a word inadvertently omitted from the principal Regulations.

7.3 The removal of reverse premiums from the scope of the scheme, by regulation 20 of the principal Regulations, was always intended to apply to individuals (and therefore partnerships) as well as companies. Amendments which were made, in 2005, to Schedule 6 to the Finance Act 1999 meant that the exception was restricted to companies. These Regulations restore the originally intended effect.

7.4 The amendment to Regulation 22 of the principal Regulations responds to industry concerns that the disapplication of the exception in cases where property was for sale or to let would catch cases of short letting or preparation of unwanted property for disposal. The amendment restores the exception, where the sale or letting of the property is purely incidental to the business. That is intended to bring back within the exception expenditure on property for sale or letting, where such sale or letting is in the normal commercial management of the business's estate.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

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