

2007 No. 2068

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment No. 5)
Regulations 2007**

<i>Made</i> - - - -	<i>20th July 2007</i>
<i>Laid before Parliament</i>	<i>23rd July 2007</i>
<i>Coming into force</i> - -	<i>6th August 2007</i>

The Commissioners for Her Majesty's Revenue and Customs make these Regulations in exercise of the powers conferred by paragraph 6 of Schedule 1 to the Social Security Contributions and Benefits Act 1992(a) and paragraph 6 of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b) and now exercisable by them(c).

Citation commencement and extent

1. These Regulations may be cited as the Social Security (Contributions) (Amendment No. 5) Regulations 2007 and shall come into force on 6th August 2007.

Amendment of Schedule 4 to the Social Security (Contributions) Regulations 2001

2. In Schedule 4 to the Social Security (Contributions) Regulations 2001(d) (provisions derived from the Income Tax Acts and the Income Tax (Pay as You Earn) Regulations 2003(e)) after Part 3 there shall be inserted the following Part—

“PART 3A

DEBTS OF MANAGED SERVICE COMPANIES

Interpretation of this Part

29A.—(1) In this Part of this Schedule—

“HM Revenue and Customs” means Her Majesty's Revenue and Customs;

“lower amount” means the amount mentioned in paragraph 29C(5);

(a) 1992 c. 4.

(b) 1992 c. 7.

(c) The functions of the Commissioners of Inland Revenue (“the former Commissioners”) were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that, insofar as is appropriate in consequence of section 5, a reference to the former Commissioners (in whatever terms) in other enactments is to be read as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(d) S.I. 2001/1004: there are amendments, but none is relevant for present purposes.

(e) S.I. 2003/2862.

“managed service company” has the meaning given by section 61B of ITEPA(a);

“paragraph (b) associate” means a person who—

- (a) is within section 688A(2)(d)(b), and
- (b) is within that provision by virtue of a connection with a person who is within section 688A(2)(b);

“paragraph (c) associate” means a person who—

- (a) is within section 688A(2)(d), and
- (b) is within that provision by virtue of a connection with a person who is within section 688A(2)(c);

“qualifying period” means a tax period beginning on or after 6th August 2007;

“relevant contributions debt” means a debt specified in paragraph 29B;

“specified amount” means the amount mentioned in paragraph 29C(1)(b);

“transfer notice” means the notice mentioned in paragraph 29C(4);

“transferee” means the person mentioned in paragraph 29C(4).

(2) In this Part of this Schedule references to section 688A, however expressed, are references to section 688A of ITEPA.

Relevant contributions debts of managed service companies

29B.—(1) A managed service company has a relevant contributions debt if—

- (a) a managed service company must pay an amount of contributions for a qualifying period, and
- (b) one of conditions A to E is met.

(2) Condition A is met if—

- (a) a decision has been made in accordance with section 8 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999(c) that an amount of Class 1 National Insurance contributions is due in respect of a qualifying period, and
- (b) any part of the amount has not been paid within 14 days from the date on which the decision became final and conclusive.

(3) Condition B is met if—

- (a) an employer delivers a return under paragraph 22(1) (return by employer at end of year) for the tax year 2007-08, or any later tax year, showing an amount of total contributions deducted by the employer for that tax year,
- (b) HM Revenue and Customs prepare a certificate under paragraph 22(5) (certificate that contributions specified in return under paragraph 22(1) remain unpaid) showing how much of that amount remains unpaid, and
- (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.

(4) Condition C is met if—

- (a) HM Revenue and Customs prepare a certificate under paragraph 14(1) (employer failing to pay earnings-related contributions) showing an amount of contributions which the employer is liable to pay for a qualifying period, and
- (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the certificate is prepared.

(a) Section 61B was inserted by paragraph 4 of Schedule 3 to the Finance Act 2007 (c. 11).

(b) Section 688A was inserted by paragraph 6 of Schedule 3 to the Finance Act 2007.

(c) Regulation 156(3) of S.I. 2001/1004 provides a rule of construction for the application in Northern Ireland of references to enactments not applying there.

- (5) Condition D is met if—
- (a) HM Revenue and Customs serve notice on an employer under paragraph 15(1) (specified amount of earnings-related contributions payable by the employer) requiring payment of the amount of Class 1 contributions which they consider the employer is liable to pay, and
 - (b) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the notice is prepared.
- (6) Condition E is met if—
- (a) HM Revenue and Customs prepare a certificate under paragraph 26 (inspection of employer's records) showing an amount of contributions which it appears that the employer is liable to pay for a qualifying period,
 - (b) HM Revenue and Customs make a written demand for payment of that amount of contributions, and
 - (c) any part of that amount remains unpaid at the end of a period of 14 days beginning with the date on which the written demand for payment is made.

Transfer of debt of managed service company

29C.—(1) This paragraph applies if—

- (a) a managed service company has a relevant contributions debt, and
- (b) an officer of Revenue and Customs is of the opinion that the relevant contributions debt or a part of the relevant contributions debt (the “specified amount”) is irrecoverable from the managed service company within a reasonable period.

(2) HM Revenue and Customs may make a direction authorising the recovery of the specified amount from the persons specified in section 688A(2) (managed service companies: recovery from other persons).

(3) Upon the making of a direction under sub-paragraph (2), the persons specified in section 688A(2) become jointly and severally liable for the relevant contributions debt, but subject to what follows.

(4) HM Revenue and Customs may not recover the specified amount from any person in accordance with a direction made under sub-paragraph (2) until they have served a notice (a “transfer notice”) on the person in question (the “transferee”).

(5) If an officer of Revenue and Customs is of the opinion that it is appropriate to do so, HM Revenue and Customs may accept an amount less than the specified amount (the “lower amount”) from a transferee; but this acceptance shall not prejudice the recovery of the specified amount from any other transferee.

(6) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c), or on a paragraph (c) associate, if the relevant contributions debt is incurred before 6th January 2008.

(7) HM Revenue and Customs may not serve a transfer notice on a person mentioned in section 688A(2)(c), or on a paragraph (c) associate, unless an officer of Revenue and Customs certifies that, in his opinion, it is impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) and from paragraph (b) associates.

(8) In determining, for the purposes of sub-paragraph (7), whether it is impracticable to recover the specified amount from the persons mentioned in paragraphs (a) and (b) of section 688A(2) and from paragraph (b) associates the officer of Revenue and Customs may have regard to all managed service companies in relation to which a person is a person mentioned in paragraph (a) or (b) of section 688A(2) or a paragraph (b) associate.

(9) In determining which of the persons mentioned in section 688A(2)(c) and which of the paragraph (c) associates are to be served with transfer notices and the amount of those notices, HM Revenue and Customs must have regard to the degree and extent to which

those persons are persons who (directly or indirectly) have encouraged or been actively involved in the provision by the managed service company of the services of the individual mentioned in that provision.

Time limits for issue of transfer notices

29D.—(1) A transfer notice must be served before the end of the period specified in this paragraph.

(2) Sub-paragraphs (3) to (7) apply if the transfer notice is served on a person mentioned in paragraph (a) or (b) of section 688A(2) or on a paragraph (b) associate.

(3) In a case in which condition A in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which the decision became final and conclusive.

(4) In a case in which condition B in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs received the return delivered under paragraph 22.

(5) In a case in which condition C in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs prepare the certificate under paragraph 14(1).

(6) In a case in which condition D in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs serve notice to the employer under paragraph 15(1).

(7) In a case in which condition E in paragraph 29B is met, the transfer notice must be served before the end of a period of 12 months beginning with the date on which HM Revenue and Customs carry out the inspection of the employer's contribution records under paragraph 26.

(8) If the transfer notice is served on a person mentioned in paragraph (c) of section 688A(2), or on a paragraph (c) associate, the transfer notice must be served before the end of a period of three months beginning with the date on which the officer of Revenue and Customs certifies the matters specified in paragraph 29C(7).

Contents of transfer notice

29E.—(1) A transfer notice must contain the following information—

- (a) the name of the managed service company to which the relevant contributions debt relates;
- (b) the address of the managed service company to which the relevant contributions debt relates;
- (c) the amount of the relevant contributions debt;
- (d) the tax periods to which the relevant contributions debt relates;
- (e) if the tax periods to which the relevant contributions debt relates are comprised in more than one tax year, the apportionment of the relevant contributions debt among those tax years;
- (f) which of the conditions A to E specified in paragraph 29B is met;
- (g) the transferee's name;
- (h) the transferee's address;
- (j) whether the transferee is a person mentioned in paragraph (a), (b) or (c) of section 688A, a paragraph (b) associate or a paragraph (c) associate;
- (k) if the transferee is a person mentioned in paragraph (c) of section 688A or a paragraph (c) associate—

- (i) the date on which the officer of Revenue and Customs certified the matters specified in paragraph 29C(7), and
 - (ii) the names of the persons from whom it has been impracticable to recover the specified amount;
- (l) the specified amount;
 - (m) the tax periods to which the specified amount relates;
 - (n) if the tax periods to which the specified amount relates are comprised in more than one tax year, the apportionment of the specified amount among those tax years;
 - (o) the address to which payment must be sent;
 - (p) the address to which an appeal must be sent.
- (2) The transfer notice may specify the lower amount if HM Revenue and Customs are prepared to accept the lower amount from the transferee.
- (3) The transfer notice must also contain a statement, made by the officer of Revenue and Customs serving the notice, that in his opinion the specified amount is irrecoverable from the managed service company within a reasonable period.

Payment of the specified amount

- 29F.**—(1) If a transfer notice is served, the transferee must pay the specified amount to HM Revenue and Customs at the address specified in the transfer notice.
- (2) The transferee must pay the specified amount within 30 days beginning with the date on which the transfer notice is served (the “specified period”).
- (3) If a transfer notice is served on a person mentioned in paragraph (a) or (b) of section 688A(2), or on a paragraph (b) associate, the specified amount carries interest from the reckonable date until the date on which payment is made.
- (4) If a transfer notice is served on a person mentioned in paragraph (c) of section 688A(2), or on a paragraph (c) associate, the specified amount carries interest from the day following the expiry of the specified period until the date on which payment is made.

Appeals

- 29G.**—(1) A transferee may appeal against the transfer notice.
- (2) A notice of appeal must—
- (a) be given to HM Revenue and Customs at the address specified in the transfer notice within 30 days beginning with the date on which the transfer notice was served, and
 - (b) specify the grounds of the appeal.
- (3) The grounds of appeal are any of the following—
- (a) that the relevant contributions debt (or part of the relevant contributions debt) is not due from the managed service company to HM Revenue and Customs;
 - (b) that the specified amount does not relate to a company which is a managed service company;
 - (c) that the specified amount is not irrecoverable from the managed service company within a reasonable period;
 - (d) that the transferee is not a person mentioned in section 688A(2);
 - (e) that the transferee was not a person mentioned in section 688A(2) during the tax periods to which the specified amount relates;
 - (f) that the transferee was not a person mentioned in section 688A(2) during some part of the tax periods to which the specified amount relates;

- (g) that the transfer notice was not served before the end of the period specified in paragraph 29D;
 - (h) that the transfer notice does not satisfy the requirements specified in paragraph 29E;
 - (j) in the case of a transferee mentioned in section 688A(2)(c) or of a paragraph (c) associate, that it is not impracticable to recover the specified amount from persons mentioned in paragraphs (a) and (b) of section 688A(2) or from paragraph (b) associates;
 - (k) in the case of a transferee mentioned in section 688A(2)(c) or of a paragraph (c) associate, that the amount specified in the transfer notice does not have regard to the degree and extent to which the transferee is a person who (directly or indirectly) has encouraged or been actively involved in the provision by the managed service company of the services of the individual mentioned in that provision.
- (4) Sub-paragraph (3)(a) is subject to paragraph 29H(4).
- (5) The appeal is to the Special Commissioners.

Procedure on appeals

29H.—(1) On an appeal the Special Commissioners shall uphold or quash the transfer notice.

(2) The general rule in sub-paragraph (1) is subject to the following qualifications.

(3) In the case of the ground of appeal specified in paragraph 29G(3)(a), the Special Commissioners shall investigate the matter and shall—

- (a) uphold the amount of the relevant contributions debt specified in the transfer notice, or
- (b) reduce or increase the amount of the relevant contributions debt specified in the transfer notice to such amount as in their opinion is just and reasonable.

(4) If the Special Commissioners determine the amount of the relevant contributions debt of a managed service company under sub-paragraph (3), that amount is conclusive as to the amount of that relevant contributions debt in any later appeal relating to that debt.

(5) In the case of the ground of appeal specified in paragraph 29G(3)(f), the Special Commissioners may reduce the amount specified in the transfer notice to an amount determined in accordance with the equation—

$$RA = \frac{P}{TP} \times AS$$

(6) In paragraph (5)—

RA means the reduced amount;

P means the number of days in the tax periods specified in the transfer notice during which the transferee was a person mentioned in section 688A(2);

TP means the number of days in the tax periods specified in the transfer notice;

AS means the amount specified in the transfer notice.

(7) In the case of the ground of appeal specified in paragraph 29G(3)(k), the Special Commissioners may reduce the amount specified in the transfer notice to such amount as in their opinion is just and reasonable.

Withdrawal of transfer notices

29J.—(1) A transfer notice shall be withdrawn if the Special Commissioners quash it.

(2) A transfer notice may be withdrawn if, in the opinion of an officer of Revenue and Customs, it is appropriate to do so.

(3) If a transfer notice is withdrawn, HM Revenue and Customs must give written notice of that fact to the transferee.

Application of Part 6 of the Taxes Management Act 1970

29K.—(1) For the purposes of this Chapter, Part 6 of the Taxes Management Act 1970 (collection and recovery)(a) applies as if—

- (a) the transfer notice were an assessment of tax on employment income, and
- (b) the amount of earnings-related contributions specified in the transfer notice, and any interest payable on that amount under sub-paragraph (3) or (4) of paragraph 29F were income tax charged on the transferee;

and that Part of that Act applies with the modification specified in sub-paragraph (2) and any other necessary modifications.

(2) Summary proceedings for the recovery of the specified amount may be brought in England and Wales or Northern Ireland at any time before the end of a period of 12 months beginning immediately after the expiry of the period mentioned in paragraph 29F(2).

(3) The specified amount is one cause of action or one matter of complaint for the purposes of proceedings under sections 65, 66 and 67 of the Taxes Management Act 1970 (magistrates' courts, county courts and inferior courts in Scotland).

(4) But sub-paragraph (3) does not prevent the bringing of separate proceedings for the recovery of each of the amounts which the transferee is liable to pay for any tax period.

Repayment of surplus amounts

29L.—(1) This paragraph applies if the amounts paid to HM Revenue and Customs in respect of a relevant contributions debt exceed the specified amount.

(2) HM Revenue and Customs shall repay the difference on a just and equitable basis and without unreasonable delay.

(3) Interest on any sum repaid shall be paid in accordance with paragraph 18 (payment of interest on repaid earnings-related contributions).”.

*Mike Eland
Dave Hartnett*

20th July 2007

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 Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

Regulation 1 deals with citation and commencement.

Regulation 2 inserts a new Part 3A into Schedule 4 to the 2001 Regulations. That Schedule contains adaptations of the Income Tax (Pay as You Earn) Regulations 2003 (S.I. 2003/2682: “the PAYE Regulations”) for the purpose of enabling earnings-related contributions to be collected, accounted for and recovered in the same way as employment income on which tax is recovered by PAYE. Part 3A reflects changes made to the PAYE Regulations by the Income Tax (Pay as You Earn) (Amendment No. 2) Regulations 2007 (S.I. 2007/2069 “the PAYE Amendment Regulations”) in consequence of the insertion of Chapter 9 (managed service companies) into Part

(a) 1970 c. 9.

2 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) by paragraph 4 of Schedule 3 to the Finance Act 2007 (c. 11).

A full Regulatory Impact Assessment was published by HM Revenue and Customs and is available on their website at www.hmrc.gov.uk/ria/full-ria-man-serv-coys.pdf or from the Ministerial Correspondence Unit, HM Revenue and Customs, Yorke House, Castle Meadow, Nottingham. It is also annexed to the Explanatory Memorandum to the PAYE Amendment Regulations which is available alongside those Regulations on the OPSI website.