**EXPLANATORY MEMORANDUM TO**

# THE INCOME TAX (CONSTRUCTION INDUSTRY SCHEME) (AMENDMENT) AND THE CORPORATION TAX (SECURITY FOR PAYMENTS) REGULATIONS 2019

**2019 No. 384**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 These regulations give HMRC the power to require a person to provide security for payment of sums which are, or may become, due from a contractor under the Construction Industry Scheme and from a company in respect of corporation tax which it is, or may become, liable to pay.

2.2 These regulations set out the circumstances in which security may be required, who it may be required from, the procedural requirements to be satisfied where security is sought and appeal rights. They also specify the period of time that a person has to give the security sought before the offence of failure to provide security in section 70A(4) of the Finance Act 2004 (FA 2004) or paragraph 88A(4) of Schedule 18 to the Finance Act 1998 (FA 1998) is committed.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Select Committee on Statutory Instruments***

3.1 None.

***Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)***

3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

## 5. European Convention on Human Rights

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

## 6. Legislative Context

6.1 Legislation introduced in Finance Act 2019 (section 82) gives HMRC the ability to make provision, in regulations, to require a person to give security for payment of

Construction Industry Scheme deductions or corporation tax, where HMRC considers this is necessary for the protection of the revenue. This is the first use of these powers.

6.2 These regulations amend the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) to make provision allowing HMRC to require security for the payment of Construction Industry Scheme deductions. They set out from who security may be required, the procedural requirements that HMRC must satisfy when it seeks security and the appeal rights of those from whom security is required. The regulations also make equivalent provision for corporation tax liabilities.

6.3 The provisions inserted by Finance Act 2019 into FA 2004 and Schedule 18 to FA 1998, make it an offence for a person to not provide security within a specified period of time when required. A person guilty of that offence is liable on conviction to a fine. These regulations set out the time limits for giving security, after which the offence is committed.

## 7. Policy background

***What is being done and why?***

7.1 HMRC already has the ability to require businesses to provide an upfront security deposit, in respect of Value Added Tax, Pay As You Earn (PAYE), National Insurance Contributions, Insurance Premium Tax and certain environmental and gambling taxes. This is used in a highly-targeted way, in cases where a significant amount of revenue is deemed to be at risk.

7.2 The requirement of security is only considered in a small number of cases where there is clear evidence that a significant amount of revenue, relative to the size of the business, is at risk. In addition, there must be an established history of non-compliant behaviour, such as the business failing to comply with its obligations to file a return or make payments. Intervention may also be considered where there is evidence of 'phoenixism': for example, the personnel actively involved in the current business have been actively involved in another business that failed to pay the taxes that were due.

7.3 The behaviours that trigger security interventions are not usually limited to a specific tax or duty but are typically found across all aspects of a business's tax affairs. At Autumn Budget 2017, the government announced that it would extend HMRC's power to require security to Construction Industry Scheme (CIS) deductions and corporation tax with effect from April 2019, to strengthen HMRC's ability to address similar risks in these areas of the tax system.

7.4 These regulations set out the detailed provisions for the payment of security in respect of Construction Industry Scheme deductions and corporation tax and are for the most part modelled on the provisions that apply for PAYE in Part 4A of The Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682).

## 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

## 9. Consolidation

9.1 There are no plans to consolidate amendments to the Income Tax (Construction Industry Scheme) Regulations 2005.

## 10. Consultation outcome

10.1 The government published a consultation on the implementation of this change: "Extension of the existing security deposit legislation to include CT and CIS deductions". This consultation ran from 13 March – 8 June 2018. It invited comment on the proposed operation of the extended securities regime and how the offence for not complying with a security notice might be framed. It received 5 formal responses and HMRC held discussions with some of the interested parties.

10.2 The government's response was published on 6 July 2018, and is available at https://www.gov.uk/government/consultations/extension-of-security-deposit-legislation. The consultation response recognised that securities interventions under the extended regime should be targeted and proportionate, with appropriate safeguards and appeal rights. It also reiterated the intention for the securities provisions for CT and CIS deductions to follow the existing regime as far as possible. Draft Finance Bill legislation was published alongside the consultation response.

10.3 These regulations were published in draft form and the consultation ran from 14 January – 11 February 2019. HMRC did not receive any comments on the detail of the draft regulations and no changes have been made as a result of this consultation.

## 11. Guidance

11.1 New guidance on Corporation Tax and Construction Industry Scheme securities will be incorporated into the Securities guidance on Gov.UK by 1 April 2019. The existing guidance is available at https://www.gov.uk/government/publications/securities-in-respect-of-paye-and-national-insurance-contributions.

## 12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note (TIIN) was published on 6 July alongside draft legislation to extend HMRC's power to require security to Construction Industry Scheme deductions and corporation tax. This is available at https://www.gov.uk/government/publications/extension-of-security-deposit-legislation. It remains an accurate summary of the impacts that apply to this instrument.

## 13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses was that the legislation is targeted specifically at defaulters and businesses that seek financial gain from non-compliance with their tax obligations. The majority of businesses will not be affected by the legislation.

## 14. Monitoring & review

14.1 HMRC will monitor the impact of the changes introduced by this instrument on a continual basis, using information collected from its internal systems and processes as well as ongoing enforcement and compliance activity.

14.2 This instrument does not include a statutory review clause under the Small Business, Enterprise and Employment Act 2015 as it concerns a tax-related measure.

## 15. Contact

15.1 Andrew Willis at HMRC (email: andrew.willis@hmrc.gov.uk or telephone: 03000 524815) can be contacted with any queries regarding the instrument.

15.2 Barbara Conroy, Deputy Director for Tax Administration Policy & Strategy at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Mel Stride MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.