

Subsidiary Legislation made under s.67.

Income Tax (Construction Sub-Contractors) Regulations, 1994

LN.1994/078

		<i>Commencement</i>	1.8.1994
Amending enactments	Relevant current provisions		Commencement date
LN. 1994/086	–		1.8.1994
1999/086	r.4(1)		1.7.1999

2010-21

Income Tax

1994/078 **Income Tax (Construction Sub-Contractors) Regulations,
1994**

ARRANGEMENT OF REGULATIONS

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Title and commencement.

1. These Regulations may be cited as the Income Tax (Construction Sub-Contractors) Regulations, 1994 and shall come into effect on the 1st day of August, 1994.

Interpretation.

2. In these Regulations, unless the context shall otherwise require—

“construction operations” means—

- (a) any operations that in any way relate to the construction, alteration, extension, repair, renovation, decoration, demolition or dismantling of any buildings, structures, erections or works forming part of any land, and
- (b) any operations preparatory, incidental, ancillary or supplementary to any operations specified in paragraph (a) but do not include the professional work of any architect, engineering consultant or surveyor engaged in such operations or any services to which section 66 of the Act applies;

“contract of employment” means a contract between an employer and an employee and to which the Income Tax (Pay As You Earn) Regulations, 1989 apply;

“sub-contractor” means a party to a contract relating to construction operations if, under the contract,—

- (a) he has a duty to the contractor to carry out the operations, whether under a contract or under other arrangements made or to be made by him,
- (b) he is answerable to the constructor for the carrying out of the operations, whether under a contract or under other arrangements made or to be made by him.

Application.

3. Where a contract relating to construction operations is not a contract of employment and—

- (a) one party to the contract is a sub-contractor; and
- (b) another party to the contract (in these Regulations referred to as “the contractor”) is either a sub-contractor under another such contract relating to all or any of the construction operations or is a person carrying on a business that includes construction operations,

regulation 4 shall apply to all payments that are made under the contract by the contractor to the sub-contractor or to a person nominated by him, unless the sub-contractor and, if the payments are made to a person nominated by him, that person as well as the contractor are exempted from the requirements of that regulation by regulation 5.

Obligation to deduct and account for tax.

4.(1) On making a payment to which this regulation applies, the contractor shall deduct tax, at the rate of 25%, from so much of the payment as is not shown to represent the direct cost to any other person of materials used or to be used in carrying out construction operations to which the contract under which the payment is made relates.

(2) On deducting any tax under subrule (1), the contractor—

- (a) shall forthwith prepare a statement in such form as, for the time being, may be required by the Commissioner, showing the total amount of the payment made to the sub-contractor, the amount of the tax deducted, and the name and address of the sub-contractor; and
- (b) shall forthwith furnish a copy of the statement to the sub-contractor; and
- (c) shall, within 30 days after having made the deduction, pay to the Commissioner, by way of a set off towards the liability of the sub-contractor for tax, the tax so deducted by the contractor and at the same time deliver to the Commissioner the statement required by this regulation.

(3) Tax required to be deducted under the provisions of subregulation (1) shall be due from the person liable to make such deductions (without prejudice to the liability of the contractor) and may be recovered from him in accordance with the provisions of this Act.

Exemption certificates.

5.(1) Where the Commissioner is satisfied on the application of any person (in this regulation referred to as “the applicant”) that—

- (a) he is carrying on a business that consists of or includes the carrying on of construction operations; and
- (b) he has a permanent place of business in Gibraltar; and

- (c) he has, within the period of three years preceding the application, complied with his obligations under the Act; and
- (d) there is no reason to believe that he will not comply with his future obligations under the Act; and
- (e) he has, within the period of three years preceding the application, complied with the requirements of all other legislation relevant to the business and the operation or operations carried on by the business (and the commencement of the business) including any part of the business consisting of or including the carrying on of construction activities and continues to comply with such requirements,

and subject to the provisions of subregulations (2), (3), (4) and (5), the Commissioner may issue him a certificate exempting him from the requirements of regulation 4.

(2) Where the applicant is a company (other than a public company), a partnership or other entity, whether or not incorporated, the provisions of paragraphs (c), (d) and (e) of subregulation (1) shall apply to the directors (or persons controlling the company or entity), shareholders, partners or other participants (howsoever described) in the entity, as the case may be, and to any other person beneficially interested in the applicant as they apply to the applicant and the Commissioner shall not issue a certificate exempting the applicant from the requirements of regulation 4 unless he is satisfied of the matters specified in those paragraphs in respect of those persons.

(3) Where the applicant has not been subject to the provisions of the Act prior to the date of the application or has been subject to the provisions of the Act for a period less than three years; the Commissioner may require from him such information in respect of a period of three years preceding the application as the Commissioner may reasonably require to enable him to determine whether, had such a person been so subject, the requirements of paragraphs (c), (d) and (e) of subregulation (1) would have been satisfied.

(4) For the purposes of this regulation, the Commissioner may require the applicant or a person falling within subregulation (2) to provide such information as, in the opinion of the Commissioner, is necessary to determine whether the application satisfies the requirements of the Act and these Regulations, and in the absence of such information, the Commissioner shall not be required to consider the application.

(5) Without prejudice to the generality of subregulation (4), the Commissioner may require such evidence as, in his view, is necessary in order that he may be satisfied that the applicant and any person falling within subregulation (2) satisfies the requirements of subregulation (1), including, but not limited to certificates issued by or confirmation in writing, from a person who, under any legislation falling within paragraph (e) of subregulation (1) is in a position to

be satisfied or to confirm that the requirements of the legislation has been or, as the case may be, are being complied with.

(6) A person who knowingly or recklessly supplies information in support of an application which is false in any material particular, is guilty of an offence.

Duration, renewal and cancellation of a certificate of exemption.

6.(1) A certificate issued under regulation 5 shall remain the property of the Commissioner and shall be valid for the period specified on that certificate unless such certificate shall have been earlier cancelled under the provisions of this regulation.

(2) Where a certificate has ceased to be valid either by reason of the expiry of the period specified on it or because it has been cancelled, regulation 5 shall apply to any application for a new certificate.

(3) The Commissioner may, at any time, by notice served on a person to whom a certificate is issued under regulation 5, cancel the certificate where it appears to the Commissioner that—

- (a) the certificate was issued on information which was false; or
- (b) by reason of a change of circumstances, he would not have been satisfied such as to have issued a certificate on an application by that person under regulation 5; or
- (c) the person has misused the certificate or has permitted it to be misused; or
- (d) for some other reason, he is not satisfied in respect of the matters set out in regulation 5.

(4) Where a certificate ceases to be valid either by reason of the expiry of the period specified on it or by reason of its cancellation, the person to whom the certificate has been issued shall return or cause the certificate to be returned to the Commissioner.

(5) A failure to return or cause a certificate to be returned in compliance with subregulation (4), is an offence under the Act.

(6) Where the Commissioner has cancelled a certificate, he shall cause notice of that cancellation to be published in the Gazette and in a newspaper circulating at least weekly in Gibraltar.

Offences.

7.(1) A failure to deduct tax or to pay tax deducted to the Commissioner as required by regulation 4, is an offence punishable on summary conviction by a fine at level 4 on the standard scale or by imprisonment for a period not exceeding 6 months or both.

(2) Where a person is convicted of an offence under subregulation (1), the court by which he is so convicted shall order that person to pay to the Commissioner of Income Tax an amount which is three times the amount of any tax which should have been deducted or which should have been paid to the Commissioner.