

GUYANA

No. 3 of 1991

REGULATIONS

Made Under

THE INCOME TAX ACT

(Cap. 81:01)

IN EXERCISE OF THE POWERS CONFERRED UPON ME BY SECTION 117 OF THE INCOME TAX ACT, I HEREBY MAKE THE FOLLOWING REGULATIONS:—

Citation and commencement 1. These Regulations may be cited as the Income Tax (Deduction of Tax from Emoluments) Regulations 1991 and shall come into operation with respect to and from the year of assessment commencing on 1st January, 1992.

Interpretation 2. In these Regulations —

“determined rate” means such rate of deduction of tax as the Commission may determine in relation to a person with more than one source of income, for the purpose of securing the collection in any year by means of deductions from emoluments of the person arising from one source of his income, of the total tax payable by him in that year in respect of all sources of his income;

“emoluments” means emoluments to which the Act applies and reference to payment of emoluments includes reference to payment on account of emoluments;

“employer” includes any person making a payment of emoluments;

“free emoluments” in relation to any individual means the appropriate amount of his emoluments which qualifies for relief from income tax;

“income tax month” means every calendar month throughout the year;

“reliefs from income tax” means the deduction referred to in section 20 of the Act;

“taxable emoluments” means emoluments reduced by free emoluments;

“tax tables” means tax tables prepared by the Commissioner.

3. (1) Subject as hereinafter provided every person who carries on or is about to carry on any trade, business, profession or vocation in respect of which he is or will be an employer shall within 30 days of commencement of such trade, business, profession or vocation register with the Commissioner —

Employer
to register
name, address
etc. with the
Commissioner

- (a) his name and address;
- (b) the names and addresses of his partners and associates, if any;
- (c) the trade or business name where the trade, business, profession or vocation is carried on under a name or style other than his own name;
- (d) the place and address, if any, where he carries on or intends to carry on his trade, business, profession or vocation;
- (e) the number of employees employed or to be employed:

Provided that this regulation shall be deemed to have been complied with if, in the case of a partnership, the precedent partner as defined in Section 66(b) of the Act and in the case of a body of persons the manager or other principal officer, carry out the provisions of this regulation.

(2) Paragraph (1) shall not apply in respect of any person who has filed a return of the income of his trade, business profession or vocation for the year of assessment and such person shall be exempt from the provisions of this regulation.

4. (1) Where an employee works under the general control and management of a person who is not his immediate employer that person (referred to hereafter in this regulation as the “principal employer”) shall be deemed to be the employer for the purposes of these Regulations, and the immediate employer shall furnish the principal employer with such particulars of the employee’s emoluments as may be necessary to enable the principal employer to comply with these Regulations.

2. If the employee's emoluments are actually paid to him by the immediate employer —

- (a) the immediate employer shall be notified by the principal employer of the amount of tax to be deducted when the emoluments are paid to the employee, and shall deduct the amount so notified to him accordingly; and
- (b) the principal employer shall make a corresponding deduction on making to the immediate employer the payment out of which the said emoluments will be paid.

Delegated
authority.

5. Anything which is authorised or required by these Regulations to be done by the Commissioner may be done by the Commissioner or members of his staff as he may assign them.

Notices.

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

Disregard of
expenses by
Commissioner.

7. The Commissioner may disregard part or all of any expenses in respect of which an individual is entitled where it is impracticable to take account of all those expenses in determining that individual's emoluments for any year and where he does so he may direct the employer to disregard an equivalent amount of that individual's emoluments in calculating the tax to be deducted when any payment of emoluments is made to that individual.

Commissioner
may determine
that tax be
deducted at a
determined rate.

8. (1) The Commissioner may determine that tax shall be deducted at a determined rate from any emoluments.

(2). The Commissioner may determine that no tax shall be deducted from any emoluments if —

- (a) the emoluments will be included in the profits of a trade profession or business; or
- (b) the Commissioner is not satisfied that the emoluments will be chargeable to tax.

Employer to
record particulars
in authorised
form.

9. (1) The employer shall record in such form as may be authorised by the Commissioner, the following particulars regarding every payment of emoluments which he makes to any person, namely —

- (a) the date of payment;
- (b) the gross amount of the emoluments;
- (c) the amount of tax, if any, deducted on making payment.

(2) Where the Commissioner determines that tax shall be deducted at a determined rate from any emoluments or that no tax shall be deducted therefrom, the employer shall deduct tax at the determined rate or shall deduct no tax, as the case may require.

10. Where the employer makes a payment to or for the benefit of the employee in respect of his income tax, the amount of the emoluments which the employer pays to the employee shall be deemed, for the purposes of deduction of tax under these Regulations to be such a sum as will include the amount assessable on the employee in respect of the payment made by the employer in respect of the payment made by the employer in respect of the employee's income tax.

Where employer makes payment for benefit of employee payment deemed to include amount assessable as income tax.

11. After the end of the year but on or before the prescribed date for the delivery of returns to be delivered to the Commissioner under section 61(2), (3) and (4) of the Act, the employer shall give every person from whose emoluments he was liable to deduct or withhold tax a certificate in such form as the Commissioner may authorise showing the total amount of the emoluments paid by the employer to such person during the year and the total tax deducted from the emoluments.

After end of year employer to give every employee authorised certificate showing total emoluments and tax deducted.

12.(1) Within fourteen days of the end of every income tax month the employer shall pay to the Commissioner all amounts of tax which he was liable under these Regulations to deduct from the emoluments paid by him during that income tax month.

Within 14 days of the end of income tax month employer to pay amounts of tax deducted to Commissioner.

(2) The Commissioner shall give the employer a receipt on the official form for the total amount so paid.

(3) If the amount which the employer is liable to pay to the Commissioner under paragraph (1) exceeds the amount actually deducted by him from the emoluments paid during the relevant income tax month, the commissioner, on being satisfied by the employer that he took reasonable care to comply with these Regulations and that the underdeduction was due to an error made in good faith, may direct that the amount of the excess shall be recovered from the person to whom he made payment of the emolu-

ments, and where he so directs, and the employer is unable to recover from such person, the employer shall not be liable to pay the amount of the said excess to the Commissioner, and the Commissioner may authorise repayment of the said excess to the employer.

Commissioner
may give notice
to employer to
render a return,
where amounts of
tax not paid.

13.(1) If within fourteen days of the end of any income tax month the employer has paid no tax to the Commissioner under regulation 12 for that income tax month and the Commissioner is unaware of the amount, if any, which the employer is liable so to pay, the commissioner may give notice to the employer requiring him to render within the time limited in the notice a return showing the name of every person to whom he made any payment of emoluments in the period limited by the notice together with such particulars with regard to each such person as the notice requires being particulars of —

- (a) the payments of emoluments made to him during that period; and
- (b) any other matter affecting the calculation of the tax which the employer was liable under these Regulations to deduct during that period.

(2) The commissioner by reference to the tax tables shall ascertain and certify the amount of tax which the employer is liable to pay to him in respect of the income tax month in question.

(3) The production of the return made by the employer under paragraph (1) and of the certificate of the Commissioner under paragraph (2) shall be sufficient evidence that the amount shown in the said certificate is the amount of tax which the employer is liable to pay to the Commissioner 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 certificate until the contrary is proved.

(4) Where a notice given by the Commissioner under paragraph (1) extends to two or more consecutive income tax months, 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 Commissioner under paragraph (1) notwithstanding that an amount of tax has been paid to him by the employer under regulation 12 for any income tax month, if the Commissioner is not satisfied that the amount so paid is the

full amount which the employer is liable to pay to him for that month and this regulation shall have effect accordingly.

14.(1) The provisions relating to the recovery of income tax shall apply to the recovery of any amount of tax which an employer is liable under regulation 12 to pay to the Commissioner for any income tax month as if the said amount had been charged on the employer.

Provisions relating to recovery of income tax to apply to any amount of tax which employer liable to pay under regulation 12

(2) Proceedings may be brought for the recovery of the total amount which the employer 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 person and without specifying the person in question, but nothing in this paragraph shall prevent the bringing of separate proceedings for the recovery of each of the several amounts which the employer is liable to pay as aforesaid for any income tax month in respect of the several persons to whom he made payments of emoluments.

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

15.(1) In the return to be delivered to the Commissioner under section 61(2), (3) and (4) of the Act the employer shall furnish in respect of each person to whom he made payments of emoluments the total amount of the emoluments paid by him to each such person during the year and the total tax deducted from the emoluments.

In the return under section 61(2), (3) and (4) employer to furnish total amount of emoluments.

(2) In the case of a person who has ceased to be employed the said return shall also show the period during which he was employed.

(3) In the case of an employee taken into employment after the beginning of the year, the said return shall also show the period during which he was employed and the name of his previous employer.

(4) A return shall be made under this regulation in respect of every person to whom the employer has at any time during the year paid emoluments.

Employer to produce wagesheets for inspection.

16.(1) Every employer, when called upon to do so by the Commissioner or any officer authorised by him, shall produce to the Commissioner or that officer for inspection at the employer's premises, or the office of the Commissioner as the employer may be required to do, all wages sheets and other documents and records whatsoever relating to the calculation or payment of the emoluments of his employees or the deduction of tax therefrom.

Employer's personal representative to do anything which employer would have done.

17. If an employer dies, anything which he would have been liable to do under these Regulations shall be done by his personal representative, or, in the case of an employer who paid emoluments on behalf of another person, by the persons succeeding him, or if no person succeeds him, the person on whose behalf he paid emoluments.

Regulation applies where change of employer.

18. This regulation applies where there has been a change in the employer from whom a person received emoluments in respect of employment in any trade, profession or business, or in connection with any property.

Provided that the employer after the change shall not be liable for the payment of any tax which was deductible from emoluments paid to the employee before the change took place.

ASSESSMENT AND DIRECT COLLECTION

Income tax may be assessed by Commissioner.

19.(1) Income tax in respect of employments may be assessed and charged by the Commissioner, who for that purpose may exercise all the powers under the Act.

(2) All the emoluments and other income of a person may be included in one assessment.

Commissioner may give notice requiring employer to render return of emoluments.

20. The Commissioner may give notice to the employer requiring him to render a return of any emoluments paid by him to any person for any year being emoluments which were not paid to the person until after the end of that year and any such return shall be rendered to the Commissioner within the time limited by the notice.

Excess payable where tax payable under assessment exceeds total tax deducted

21.(1) If the tax payable under the assessment exceeds the total tax deducted from any person's emoluments during the year, being the basic period of the year of assessment, the excess shall be payable by such person to the Commissioner within thirty days after service of a notice of assessment under Section 78 of the Act.

(2) Any tax which is payable to the Commissioner by any such person may be recovered in accordance with the Act.

22. If the tax payable under the assessment is less than the tax deducted from any person's emoluments during the year being the basic period of the year of assessment the Commissioner shall repay the difference to such person in accordance with section 107 of the Act.

Commissioner to repay differences where tax payable under assessment is less than tax deducted.

23. For the purpose of determining the amount of any excess or difference as aforesaid, any necessary adjustment shall be made to the aforesaid total tax in respect of —

Adjustment to be made for purpose of determining amount of any excess.

(a) any tax which the employer was liable to deduct from the person's emoluments but failed so to deduct having regard to whether the Commissioner has or has not directed that the tax shall be recovered from such person; and

(b) any tax overpaid or remaining unpaid for any year.

Revocation.

24. The Income Tax (Deduction of Tax from Emoluments) Regulations* are hereby revoked.

Made this 21st day of February, 1991

Carl B. Greenidge
Minister of Finance.

*Cap. 81:01 Subsidiary Legislation.