



Neutral Citation: [2023] UKFTT 706 (TC)

Case Number: TC 08897

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

[Taylor House]

Appeal reference: TC/2022/02552

CONSTRUCTION INDUSTRY SCHEME – failure to include payments made to subcontractors for work undertaken within the scope of the CIS on monthly CIS returns as required by Section 61 of the Finance Act 2004 – failure to make CIS deductions from payments made to subcontractors and pay those amounts over to HMRC - determination issued pursuant to reg. 13(2) of the CIS Regulations - whether there is a right appeal against a refusal to make a direction under reg. 9(5) of the CIS Regulations if the requirements of reg. 9(4) (Condition B) of the CIS Regulations are not met

Heard on: 5 May 2023

Judgment date: 10 August 2023

Before

**JUDGE NATSAI MANYARARA
JULIAN SIMS**

Between

GALLAGHER’S WINDOWS, DOORS & CONSERVATORIES LTD.

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr M Novakovic, Accountant, Novakovic & Co.

For the Respondents: Ms M Serdari, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video). Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

2. The documents to which we were referred were contained in the Documents Bundle, consisting of 375 pages.

3. The Appellant appeals against determinations issued by HMRC on 6 February 2019 (to the best of HMRC's judgment), pursuant to reg. 13(2) of the Income Tax (Construction Industry Scheme) Regulations 2005 SI 2005/2045 (hereinafter referred to as 'the CIS Regulations') on the basis that the Appellant was undertaking construction operations and should have deducted CIS tax under s 61 of the Finance Act 2004 ('Section 61'). The determinations were made as a result of the Appellant's (i) failure to include payments made to subcontractors for work undertaken within the scope of the CIS on monthly CIS returns; and (ii) failure to make CIS deductions from payments made to subcontractors and pay those amounts over to HMRC. The determinations are in the sum of £51,279.00 and related to the period 2013-14 to 2016-17 (inclusive) and 6 April 2017 to 5 May 2017.

4. The determinations arose as follows:

Period	Reason	Amount
2013-14	Failure to make deductions under Section 61	£9,001
2014-15	Failure to make deductions under Section 61	£12,401
2015-16	Failure to make deductions under Section 61	£13,471
2016-17	Failure to make deductions under Section 61	£15,619
6 April 2017 to 5 May 2017	Failure to make deductions under Section 61	£787
Total		£51,279

5. HMRC had issued penalties, in the sum of £8,163.00, under Schedule 24 of the Finance Act 2007, but these were cancelled following suspension.

BACKGROUND FACTS

6. The Appellant was incorporated on 8 October 2012 and its trade is construction operations in the form of the installation of windows, doors and conservatories. The director is Mr Kevin Gallagher. On 24 April 2013, the Appellant registered as a contractor for the purposes of the CIS.

7. On 17 March 2017, HMRC issued a letter to the Appellant advising that they would be conducting a check of the employer and CIS records. This was followed by a further letter on 5 April 2017, in which HMRC advised that there would be a visit to the business at its premises on 16 May 2017. HMRC then carried out checks relating to the Appellant's CIS compliance. It was discovered that the Appellant had failed to operate the CIS properly as appropriate CIS deductions had not been made do all subcontractors.

8. During the visit, Mr Gallagher confirmed that he does not fully understand all of "*the ins and outs*" of the CIS scheme, but that he has people around him who deal with this. He added that the Appellant has a "*pool of subbies*" who provide invoices, and that no materials are provided by the subcontractors. He further added that there were some electricians and plumbers who paid for some jobs, and that there would be expenses/materials involved there. He explained that the payments had not been put through the CIS scheme as it was thought that these were not within the CIS. He also gave an example of two subcontractors who had been paid for wok on conservatories.

9. On 19 May 2017, the Appellant's agent sent an email to HMRC providing the Unique Taxpayer Reference ('UTR') number and details for a subcontractor by the name of Andy Johnson, as requested by HMRC. HMRC wrote to the Appellant on 22 May 2017, requesting additional information and providing the Appellant with notes of the meeting.

10. On 12 July 2017, the Appellant's agent provided the information requested. Further information was requested by HMRC on 17 July 2017. The Appellant's agent acknowledged the request and confirmed that they would endeavour to provide the information requested by 7 August 2017.

11. On 7 August 2017, the Appellant's agent provided some of the information requested, and requested an extension of time to provide additional information. HMRC agreed to an extension until 31 August 2017.

12. On 30 August 2017, HMRC requested clarification of the information that had already been provided by the Appellant's agent by 30 September 2017.

13. Following further exchanges of correspondence, on 25 September 2017 HMRC wrote to the Appellant with computations of the duties that should have been deducted through the CIS. Following a claim under reg. 9(4) (Condition B) of the CIS Regulations, HMRC issued two decision notices on 14 November 2017. The decision was that the Appellant should be relieved, under reg. 9(5) and would not have to pay over amounts under-deducted in the sum of £23,654. It was further decided that the Appellant should not be relieved under reg. 9(5) and would have to pay over amounts under-deducted in the sum of £127,177. There was no right of appeal against that decision.

14. Following exchanges of correspondence, and additional information from the Appellant, HMRC issued a second letter to the Appellant on 18 January 2018, advising the Appellant that HMRC intended to make determinations under reg. 13(2) of the CIS Regulations. On 15 August 2018, HMRC advised the Appellant that once a determination had been made under reg. 13, it would not be possible to consider a direction under reg. 9(5).

15. On 14 December 2018, a further meeting took place at HMRC's premises. It was agreed that the Appellant would forward copies of invoices detailing the costs of materials claimed, within two to three working days of the meeting. HMRC would then consider a further claim under reg. 9(4) (Condition B). The Appellant's agent provided invoices from several subcontractors, all of which did not provide a breakdown of labour and materials. Other subcontractors were said to now be providing a labour/materials split; the fitters did not provide materials; and the roofers, electricians, bricklayers, plumbers and tilers provided materials. The Appellant's agent agreed to send invoices from subcontractors showing the cost of materials claimed. Mr Gallagher explained that the company now has a process in place which requires the subcontractors to provide a breakdown of materials on their invoices.

16. On 21 December 2018, the Appellant's agent provided invoices for the subcontractor, Mr Andrew Johnson, a sole trader. HMRC requested more recent invoices from Mr Johnson and invoices that the Appellant had received from a further five subcontractors.

17. On 3 January 2019, the Appellant's agent advised that four of the subcontractors in relation to whom additional information had been provided had not carried out any work for the Appellant since November 2017. A further subcontractor had not carried out any work since June 2018, however three further invoices were provided for that subcontractor. Another subcontractor had not carried out any work for the Appellant since September 2018, but three invoices were also provided, as well as invoices from another subcontractor who had undertaken what was described as a small amount of work.

18. On 14 January 2019, HMRC issued two further decision notices in response to claims for relief under reg. 9(4) (Condition B). The decision was that the Appellant would need to pay over the amounts under-deducted in the sum of £51,279 (*supra*). The amount of £215.00 would not need to be paid over. There was no right of appeal against that decision. A reg. 13(1) warning letter was attached to the decision notices stating that determinations would be made.

19. On 6 February 2019, HMRC issued a notice of determination under reg. 13 of the CIS Regulations for each tax year under appeal. The final decision notices, and resulting determinations, were also reduced to reflect agreed allocations between labour and material costs on the relevant invoices. These allocations are not disputed by the Appellant.

20. On 22 February 2019, the Appellant's agent emailed HMRC to appeal on the basis of "unjust enrichment" and the determinations being "incorrect". Whilst an offer of review was accepted by the Appellant, HMRC later concluded that the appeal was not valid.

21. On 6 April 2022, the Appellant's agent lodged an appeal with the Tribunal.

THE WRITTEN ARGUMENTS

22. HMRC's case (as set out in the Statement of Case dated 10 August 2022) can be summarised as follows:

(1) There is no right appeal against a refusal to make a direction under reg. 9(5) of the CIS Regulations if the requirements of reg. 9(4) (Condition B) are not met.

(2) The onus is on the Appellant to show that it has been overcharged by the determinations issued under reg. 13(2), or that the calculation is flawed in some way, or unreasonable. Otherwise, the reg. 13 determinations issued shall stand. This is in accordance with reg. 13(5) of the CIS Regulations and s 50(6) of the Taxes Management Act 1970 ('TMA').

(3) Section 61 requires a contractor to make deductions on account of tax from certain contract payments. The Appellant has not disputed that it is a contractor engaging the services of subcontractors, or that it trades in the construction industry and carries out relevant construction operations.

(4) The Appellant does not dispute that the relevant payments fell within the scope of the CIS, or that deductions should have been made. The Appellant further does not dispute that the deductions should have been paid to HMRC.

(5) The Appellant failed to submit correct CIS returns and to make appropriate deductions from payments to subcontractors, as required by Section 61. The Appellant also failed to pay over those deductions to HMRC in accordance with reg. 7(1) of the CIS Regulations, resulting in the determinations. The determinations were correctly issued to the Appellant within the time-limits specified in s 36 TMA.

(6) HMRC were not satisfied that the criteria under reg 9(4) (Condition B) of the CIS Regulations were met. HMRC have allowed relief for subcontractors, where appropriate, and issued notices. No further evidence has been provided by the Appellant to allow a more accurate breakdown of the labour/materials split in the invoices. HMRC have made the decision not to grant relief under reg 9(4) (Condition B) on all of the available evidence. HMRC have properly applied the legislation and considered reliefs under reg 9(4) (Condition B). Two decision notices were issued on 14 November 2017 and 15 January 2019. HMRC checked all of the available evidence and considered a claim for relief

(7) Once a determination has been issued under reg. 13 of the CIS Regulations, the option to make a direction under reg. 9(5) of the CIS Regulations is no longer open to HMRC, or the Tribunal.

Appellant's Grounds of Appeal

23. The Appellant's grounds for appealing can be summarised as follows (as set out in the Notice of Appeal dated 6 April 2022):

(1) The appeal relating to reg. 13 of the CIS Regulations was made on the basis that some of the suppliers (subcontractors) had provided labour and materials. The calculations by HMRC are incorrect as CIS tax should not be deducted on materials.

(2) The Appellant demonstrated to HMRC that some of the subcontractors had paid tax to HMRC on the gross receipts. Raising a demand on the Appellant would result in unjust enrichment for HMRC.

(3) The non-compliance did not benefit the Appellant and the payment required would leave the Appellant unable to recover the tax from the subcontractors. The Appellant would be unfairly prejudiced.

(4) The Appellant would like the determinations to be withdrawn.

APPEAL HEARING

24. At the commencement of the appeal hearing, Ms Serdari made submissions in further amplification of HMRC's position, and the lack of any right of appeal once determinations had been made. She added that HMRC had recently been provided with further invoices by Mr Novakovic. It transpired that these invoices have been seen by HMRC in the past and do not have any bearing on the jurisdictional point. Mr Novakovic reiterated that the Appellant's appeal was based on unjust enrichment as the subcontractors had paid the tax. He also explained that the Appellant was unable to recover the tax from the sub-contractors as they were out of time to reclaim this from HMRC. He did not wish to make any submissions in respect of the jurisdictional point, save to say that if the law shows that a direction cannot be made once a determination was issued, then there would not appear to be any grounds to appeal.

25. Although witness statements were prepared for Mr Kevin Gallagher (dated 6 January 2023) and Officer Linda Hale (of HMRC) (dated 18 August 2022), we did not hear any oral evidence in light of the jurisdictional point. In her witness statement, Officer Hale gives detail about the general law and principles in relation to the CIS. Officer Hale has worked for HMRC for 43 years and she has been a Technical Support Officer for the Construction Industry Functional Lead Team since November 2017.

26. Mr Gallagher was appointed a director of the Appellant company on 8 October 2012 and he is responsible for the day-to-day management of the business, but employs a bookkeeper to deal with accounting. In his witness statement, he states that subcontractors were registered

with HMRC and paid taxes on their gross income. He maintains that the Appellant should be granted relief under reg. 9(4) (Condition B) of the CIS Regulations.

DISCUSSION

27. The Appellant appeals against determinations issued by HMRC pursuant to reg. 13(2) of the CIS Regulations, and dated 6 February 2019. The statutory provisions relevant to the issues in this appeal are Section 61 and regs. 9 and 13 of the CIS Regulations.

28. The CIS is governed by Part 3, Chapter 3, of the Finance Act 2004 and the CIS Regulations made by HMRC. The CIS provides for payments by contractors to subcontractors in the construction industry to be subject to deduction of amounts on account of the subcontractor's tax. The CIS tax was introduced to address concerns about widespread tax evasion in the construction industry. It replicates the PAYE system and puts the initial burden to account for CIS tax on the contractor. By virtue of Section 61, the CIS places a statutory obligation on contractors to deduct tax at source (at the basic rate) from payments made to subcontractors, and to file monthly CIS returns (CIS 300) to pay over the income tax in relation to labour costs to HMRC. This excludes a reimbursement of the cost of materials. HMRC apply a concession to allow the cost of plant hire incurred by a subcontractor to be treated as materials for CIS deduction purposes.

29. Regulation 13 (assessments) of the CIS Regulations empowers HMRC to make a determination to recover any shortfall in the tax that should have been deducted and paid over by a contractor, if HMRC believe that the contractor has not returned the correct amount of tax deductible from payments made to subcontractors. Under reg. 13, HMRC must take steps to recover tax that has not been deducted, or has been under-deducted, by a contractor from a subcontractor once this has been discovered. A warning letter is issued to advise the contractor of the situation.

30. The circumstances under which HMRC may discharge the contractor's obligation are set out in reg. 9 of the CIS Regulations, which provides relief. Regulation 9(5) provides that the HMRC officer 'may' direct that a contractor be relieved of the liability on payments of CIS tax if two alternative conditions are met. Emphasis is on the word 'may'. Therefore, a discretion exists.

31. The first condition is set out in reg. 9(3). Condition A(a) is that the contractor satisfies the HMRC officer that s/he took reasonable care to comply with Section 61 and the CIS Regulations. Under condition A(b), the contractor must satisfy the HMRC officer that the failure to deduct was due to an error made in good faith, or that s/he held a genuine belief that deductions did not apply to the payment. Reasonable care varies depending on the circumstances of the contractor. The second condition is set out in reg. 9(4) (Condition B) and includes the situation where HMRC are satisfied that the subcontractor had taken account of the payments in his own self-assessment tax return, and had paid the tax. Regulation 9(4) is a double taxation rule and the Tribunal has no jurisdiction over such appeals.

32. The Appellant has accepted that it was undertaking construction operations, to which the obligation to deduct CIS tax pursuant to Section 61 applied. The Appellant does not rely on reg. 9(3) (Condition A) of the CIS regulations, which (as shown above) provides that a contractor can be relieved if reasonable care was taken to comply with the rules and that the failure to deduct was due to an error made in good faith, or that there as a genuine belief that Section 61 did not apply. HMRC made a direction in this appeal, on 14 November 2017. That direction excluded certain payments from the scope of the CIS on the basis that they fell within reg. 9(4). Those payments have been excluded from the determinations made by HMRC under reg. 13(2), as required by reg. 13(3).

33. On the jurisdictional issue, Ms Serdari submitted that under reg. 13(3), a determination under this regulation must not include amounts in respect of which a direction under reg. 9(5) has been made, and directions under that regulation do not apply to amounts determined under this regulation. This means that once a determination has been made under reg. 13(2), neither the Tribunal (on appeal under reg. 9(7)), nor HMRC (under reg. 9(5)) can direct that the Appellants are liable for the excess. This interpretation was supported in *Ormandi v HMRC* [2019] TC 07442 (*Ormandi*) (Judge Greenbank) and *North Point (Pall Mall) Ltd. & Anor* [2021] TC 08205 (*North Point*) (Judge Popplewell), both of which are not binding on this Tribunal, but are highly persuasive and grappled with the jurisdictional issue in this appeal.

34. Regulation 13(3) operates so as to prevent HMRC and the Tribunal from issuing a direction under reg. 9(5). In *Ormandi*, the tribunal considered the interaction of reg. 9(4) and reg. 13. At [48(4)] of the decision, the tribunal held that:

“The wording of regulation 13(3) also precludes the making of a direction under regulation 9 after the date on which a determination has been made. It seems to us that the intention is that regulation 9 and regulation 13 are mutually exclusive. If an amount is included in a direction made under regulation 9(5) it cannot be included in a subsequent determination under regulation 13, but if an amount is included in a determination under regulation 13, it cannot thereafter be the subject of a direction under regulation 9.”

35. The *North Point* decision was, similarly, concerned whether the Appellant was prevented from making an appeal under reg. 9(7) once a determination under reg. 13 had been made. Judge Popplewell considered the *Ormandi* decision and reached the same conclusion on the jurisdictional issue. The tribunal in *North Point* was, however, also considering the question of whether the appellant in that appeal met Condition A in reg. 9(3). If so, a further issue before the tribunal was whether the appellant had, therefore, been overcharged with the result that the determinations should be discharged under s. 50 TMA.

36. In *R (on the application of Beech Developments (Manchester) Ltd. & Ors) v HMRC* [2023] EWHC 977 (Admin) (Fordham J) (*Beech Developments*), which was a judicial review decision, the central legal issue was whether HMRC can lawfully issue a direction of non-liability to pay an amount. The court considered *Barrett v HMRC* [2015] UKFTT 0329, *Ormandi* and *North Point*. The conclusions reached were, *inter alia*, that:

“52. I turn to the question of double taxation and double recovery. I return to CISR §83050 (see §39iv above), inserting square brackets for referencing purposes:

[a] The purpose of directions under Regulation 9(5) is to avoid the situation where HMRC pursues a contractor for a deduction that should have been made where the subcontractor has no liability, or has already met any tax liability, on the sum paid gross. [b] It follows the principle that HMRC should not recover more tax from both contractor and subcontractor than is correctly payable by the subcontractor. That is why the relief is sometimes known as ‘double taxation’ relief. [c] A request for a direction under Regulation 9(5) may be made at any time except where a Determination under regulation 13(2) has already been issued (see CISR83040) ...

This involves a recognition (at [a]) that a Non-Liability Direction on the Chargeability- Basis or the Collection-Basis is a form of “relief” whose “purpose” is to “avoid the situation” where the Contractor is pursued for failure to make a Contract Payment deduction where the Sub-Contractor “has no liability, or has already met any tax liability, on the sum paid gross”. It involves a recognition (at [b]) that such a Non- Liability Direction “follows” a “principle” concerned with double recovery of payable tax. But it does not follow that such “relief” must, by reason of some legal rule or principle, be open-ended or unrestricted in its operation. It does not follow that there is excluded the limitation also recognised (at [c]), which straightforwardly reflects the wording and structure of Limb [ii]...

53. Finally, I return to the FTT cases (§§18-21 above). In my judgment: the FTT was correct in Hoskins (at §§21-22) to describe Non-Liability Directions and Liability Determinations as “mutually exclusive”; the FTT was correct in Barrett (at §§101, 105) that no Non-Liability Direction can be effective to reduce or eliminate the effect of a prior extant Liability Determination; the FTT was correct in Ormandi (at §§48(4)(6), 49) that a Liability Determination, unless withdrawn, precludes a subsequent Non- Liability Direction; and the FTT was correct in North Point (at §18) that public law principles enforced by judicial review are available to address questions of “abuse”. I record that I have wondered whether the North Point situation – where a Carefulness appeal (reg.9(7)) against a refusal (reg.9(6)) is ‘extinguished’ by a later Liability Determination – is answered by the FTT being able to give a ‘directed direction’ (reg.9(9)) taking effect from the date of the refusal. But nobody supported this analysis (see §13 above), it is not what is in issue in this case, and public law protection remains.

Conclusion

54. For the reasons which I have given, HMRC’s impugned decision involved no error of law, its interpretation of Limb [ii] being legally correct.”

37. It is logical that where relief has been granted under reg. 9(5), which effectively relieves a taxpayer from paying excesses, the amount of that excess cannot be included in a reg. 13 determination. As is evident from the wording of reg. 9, reg. 9 permits an appeal to be made against the refusal by HMRC to make a direction in certain circumstances in which the condition in reg. (3) is met. However, there is no equivalent right of appeal against a refusal of HMRC to make a direction under reg. 9(4). If the Appellant is to challenge the determinations made by HMRC on the grounds raised in this appeal, the Appellant can only do so by way of judicial review.

38. The First-tier Tribunal (‘FtT’) was created by s. 3(1) of the Tribunals, Courts and Enforcement Act 2007 (hereinafter referred to as ‘TCEA’), “for the purpose of exercising the

functions conferred on it under or by virtue of this Act or any other Act". It follows that its jurisdiction is derived wholly from statute. The FtT has no judicial review function. That the FtT has no judicial review function is the only conclusion which can be drawn from the structure of the legislation which brought the FtT into being. The TCEA conferred a judicial review function on the Upper Tribunal, a function it would not have had (since it, too, is a creature of statute without any inherent jurisdiction) had the Act not done so; and it hedged the jurisdiction it did confer with some restrictions. It is perfectly plain, from perusal of the TCEA itself that parliament did not intend to, and did not, confer a judicial review jurisdiction on the FtT, and there is nothing in the Transfer of Tribunal Functions Order which points to a contrary conclusion. Furthermore, the FtT has no supervisory jurisdiction over the respondent.

39. For all of the foregoing reasons, we hold that the amounts in the determinations are in accordance with the statutory scheme, unless the existing determinations are withdrawn and revised determinations are made. The power to withdraw a determination, or make a further determination, is within the discretion of HMRC. The Tribunal has no jurisdiction over such matters.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

40. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**NATSAI MANYARARA
TRIBUNAL JUDGE**

Release date: 10 August 2023

APPENDIX

CIS Regulations

Recovery from sub-contractor of amount not deducted by contractor

9.—(1) This regulation applies if—

(a) it appears to an officer of Revenue and Customs that the deductible amount exceeds the amount actually deducted, and

(b) condition A or B is met.

...

(4) Condition B is that—

(a) an officer of Revenue and Customs is satisfied that the person to whom the contractor made the contract payments to which section 61 of the Act applies either—

(i) was not chargeable to income tax or corporation tax in respect of those payments, or

(ii) has made a return of his income or profits in accordance with section 8 of TMA (personal return) or paragraph 3 of Schedule 18 to the Finance Act 1998 (company tax return), in which those payments were taken into account, and paid the income tax and Class 4 contributions due or corporation tax due in respect of such income or profits;

and

(b) the contractor requests that the Commissioners for Her Majesty's Revenue and Customs make a direction under paragraph (5).

...

(6) If condition A is not met an officer of Revenue and Customs may refuse to make a direction under paragraph (5) by giving notice to the contractor (“the refusal notice”) ...

Determination of amounts payable by contractor and appeal against determination

13.—(1) This regulation applies if—

(a) there is a dispute between a contractor and a sub-contractor as to—

(i) whether a payment is made under a construction contract, or

(ii) the amount, if any, deductible by the contractor under section 61 of the Act from a contract payment to a sub-contractor or his nominee, or

(b) an officer of Revenue and Customs has reason to believe, as a result of an inspection under regulation 51 or otherwise, that there may be an amount payable for a tax year under these Regulations by a contractor that has not been paid to them, or

- (c) an officer of Revenue and Customs considers it necessary in the circumstances.
- (2) An officer of Revenue and Customs may determine the amount which to the best of his judgment a contractor is liable to pay under these Regulations, and serve notice of his determination on the contractor.
- (3) A determination under this regulation must not include amounts in respect of which a direction under regulation 9(5) has been made and directions under that regulation do not apply to amounts determined under this regulation.
- (4) A determination under this regulation may—
- (a) cover the amount payable by the contractor under section 61 of the Act for any one or more tax periods in a tax year, and
 - (b) extend to the whole of that amount, or to such part of it as is payable in respect of—
 - (i) a class or classes of sub-contractors specified in the notice of determination (without naming the individual sub-contractors), or
 - (ii) one or more named sub-contractors specified in the notice.
- (5) A determination under this regulation is subject to Parts 4, 5 and 6 of TMA (assessment, appeals, collection and recovery) as if—
- (a) the determination were an assessment, and
 - (b) the amount determined were income tax charged on the contractor, and those Parts of that Act apply accordingly with any necessary modifications, except that the amount determined is due and payable 14 days after the determination is made.
- (6) If paragraph (1)(a) applies and an officer of Revenue and Customs does not make a determination under paragraph (2), either the contractor or the sub-contractor may on giving notice to an officer of Revenue and Customs, apply to the General Commissioners to determine the matter.
- (7) For the purposes of paragraph 3(1)(a) of Schedule 3 to TMA(1) (rules for assigning proceedings to General Commissioners), the relevant place for an appeal against a determination under this regulation is the place where the determination was made.
- (8) If paragraph (1)(a) applies—
- (a) the contractor must make the deduction required by section 61 of the Act from the contract payment or the part of the contract payment, to which the dispute relates, and the amount so deducted is treated as a sum which he is liable to pay to the Commissioners for Her Majesty's Revenue and Customs under these Regulations; and
 - (b) any amount which, on a final determination of the dispute, is shown not to have been so payable is, except where regulation 56 (application by the Commissioners for Her Majesty's

Revenue and Customs of sums deducted under section 61 of the Act) applies, treated as an overpayment of income tax or corporation tax by the sub-contractor.