

Clause 35: Security deposits: construction industry scheme and corporation tax

Summary

1. This clause provides HM Revenue and Customs (HMRC) with powers to make secondary legislation to require a person to provide a security for corporation tax liabilities and construction industry scheme deductions that are or may be due to HMRC. It also provides that failure to provide security when required will be a summary offence and a person who has committed that offence will be subject to a fine.

Details of the clause

2. Subsection (1) inserts a new section 70A into Finance Act (FA) 2004.
3. Subsection (2) inserts a new paragraph 88A into Schedule 18 to Finance Act (FA) 1998.

New section 70A

4. New section 70A(1) provides that HMRC may make regulations requiring specified persons to provide a security for amounts of construction industry scheme deductions that they are or may be liable to pay to HMRC.
5. New section 70A(2) provides that security may be required under the regulations only where an HMRC officer considers it to be necessary to protect the revenue.
6. New section 70A(3) requires that regulations made under this section must make provision for certain decisions concerning a security to be reviewed by HMRC and must include a right of appeal against those decisions.
7. New section 70A(4) provides a power for regulations made under this section to include provision for HMRC to obtain information relevant to decisions in respect of a requirement to pay a security.
8. New sections 70A (5) and (6) provide that a person who fails to comply with a requirement to give security commits an offence if the failure continues for a specified period. A person guilty of that offence is liable, on conviction, to a fine.
9. New section 70A(7) provides definitions of 'prescribed' and 'security' for the purposes of section 70A

New Paragraph 88A

10. New paragraph 88A(1) provides that HMRC may make regulations requiring specified persons to provide security in respect of amounts of corporation tax that a company is or may be liable to pay.
11. New paragraph 88A(2) provides that security may be required under the regulations only

where an HMRC officer considers it to be necessary to protect the revenue.

12. New paragraph 88A(3) requires that regulations made under this paragraph must make provisions for certain decisions concerning a security to be reviewed by HMRC and must include a right of appeal against those decisions.
13. New paragraph 88A(4) provides a power for regulations made under this paragraph to include provision for HMRC to obtain information relevant to decisions in respect of a requirement to pay a security.
14. New paragraph 88A(5) and (6) provide that a person who fails to comply with a requirement to give security commits an offence if the failure continues for a specified period. A person guilty of that offence is liable, on conviction, to a fine.
15. New paragraph 88A(7) provides definitions of 'prescribed' and 'security' for the purposes of paragraph 88A

Background note

16. HMRC can require some businesses to provide a security, in the form of cash or a performance bond, where this is considered necessary to protect the revenue. Securities may be required where a taxpayer has a poor compliance record and in "phoenix" type cases where a business accrues a tax debt, goes into liquidation or administration and the person responsible for the operation of the business sets up again, with the risk of running up further tax debts.
17. HMRC already has powers to require security in relation to some areas of business tax, including VAT and PAYE. However, there is no similar provision in respect of corporation tax liabilities or deductions made by contractors on account of their subcontractors' income tax under the construction industry scheme. The government intends to extend the existing securities regime to these areas to address these gaps in the coverage of the regime and strengthen HMRC's ability to deal effectively with potential defaulters. The clause is aimed and will be specifically targeted at the minority of businesses that seek financial gain from non-compliance with their tax obligations rather than those that are genuinely unable to pay. It will not affect those who are managing their debts with HMRC under agreed time to pay arrangements with which they are complying.
18. This power will only apply where an HMRC officer considers the provision of a security is necessary to protect the revenue. The persons who may be required to provide a security will be specified in regulations and where a business is a company will include the company's directors and officers. Regulations will also specify rights of review and appeal to provide appropriate safeguards for taxpayers.
19. The clause allowing HMRC to make regulations for and in connection with the requirement to pay a security will come into force on the date that Finance Bill 2018 to 2019 receives Royal Assent, but regulations must be made before any securities can be required. HMRC intends to make regulations in order for this clause to come into effect on 6th April 2019 and will publish the regulations in draft for comment.
20. The government published a consultation document on the implementation of this measure on 13 March 2018. A response to the consultation is published alongside this draft legislation.

21. If you have any questions about this change, or comments on the legislation, please contact Alison Gardiner on 03000 586054 (email: Alison.gardiner@hmrc.gsi.gov.uk).

