

ANTIGUA AND BARBUDA



SOCIAL SECURITY (COLLECTION OF CONTRIBUTIONS) REGULATIONS, 2013

STATUTORY INSTRUMENT

2013, No. 15

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SOCIAL SECURITY (COLLECTION OF CONTRIBUTIONS) REGULATIONS, 2013

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ANTIGUA AND BARBUDA

SOCIAL SECURITY (COLLECTION OF CONTRIBUTIONS) REGULATIONS, 2013

2013, No. 15

SOCIAL SECURITY (COLLECTION OF CONTRIBUTIONS) REGULATIONS, 2013 made by the Minister in exercise of the powers conferred upon him under sections 19, 21, 26 and 47 of the Social Security Act, Cap. 408

1. Short title

These Regulations may be cited as the Social Security (Collection of Contributions) Regulations, 2013.

2. Interpretation

In these Regulations, unless the context otherwise requires-

“monthly remittance form” means the form issued by the Executive Director to be completed by the employer and submitted to him monthly with the payment contributions.

“pensionable age” means the age at which age benefit is payable

“termination of employment” means the day on which the employment actually comes to an end, whether such termination is in accordance with the terms of the contract or not, and whether or not the employment is to be resumed at a later date.

3. Notices and documents may be sent by post etc.

Any notice or document which is authorised or required to be given, presented, issued or delivered under these regulations may be sent by post, electronic mail or any other acceptable means of communication.

4. Payment of Contributions

(1) In respect of each weekly or monthly period beginning on or after the appointed day, for which an employed person is paid wages, the employer shall pay for such weekly or monthly period a total contribution of—

- (a) in the case of employees in the public service, 9% of the wages paid to the insured person during or immediately after the end of that period, 3% of which is payable by the employee and 6% by the employer;

- (b) in the case of employees other than employees in the public service, 10% of the wages paid to the insured person during or immediately after the end of that period, 4% of which is payable by the employee and 6% by the employer:

Provided that

- (i) if the wages of an insured person are not fixed on a time basis, the total amount of the wages paid to him or immediately after the specific period for which contributions are to be paid may be taken into account;
- (ii) if the wages of an insured person are paid on a timely basis other than weekly or monthly, they shall be converted to such basis by simple proportion, or in such other way as the Director may determine; and
- (iii) no contribution is payable in respect of any wages in excess of one thousand, three hundred and ninety five dollars a week or monthly wages in excess of six thousand five hundred dollars.

(2) For the purpose of determining the wages of an employed person under sub-regulation (1) there shall be included all gross earnings received in cash by or on behalf of the insured person, including-

- (a) overtime payments;
- (b) cost of living bonus;
- (c) additional payments in respect of dependants;
- (d) supplements for long service industry or efficiency;
- (e) commission or profits on sales;
- (f) housing allowances
- (g) payments for night or shift work;
- (h) production bonus;
- (i) danger or dirt money or similar payments
- (j) service charges
- (l) incentive pay;

- (m) holiday pay or other amounts set aside out of the employed person's remuneration throughout the year or part of the year to be paid to him periodically;
- (n) payment *in lieu* of alternative practice and or additional employment.

Provided that—

- (i) in the case of payments specified under sub-paragraphs (d) and (m) the amounts paid or set aside shall be included in the related wages for the appropriate period for which contribution would have been payable had the amounts not been so paid or set aside; and
- (ii) in the case of payments specified under sub-paragraphs (a) to (k) inclusive the amounts so received shall, if they are not paid together with the wages for the period for which they were due, be included in the wages for the period in, or immediately after which they are paid.

(3) With a view to securing that liability for the payment of contributions is not avoided or reduced by an employer using any pay practice which is abnormal for the employment, the Board, whether or not an application has been made in that regard, may, if it thinks fit, determine any question in relation to the payment of contributions where any such practice has been or is being followed in like manner as if the employer concerned had not followed such abnormal practice but had followed a practice normal for the employment in question.

(4) For the purpose of these Regulations "public service" includes statutory board.

5. Time of deduction of contributions

(1) An employer liable to pay contributions on behalf of an employed person shall, except as hereinafter provided, deduct those contributions before paying to the employed person the wages in respect of the period for which contribution is payable.

(2) Where wages are paid in advance for any period the employer shall deduct contributions in advance for that period before the payment of the wages.

(3) In addition to any other requirements, the employer shall, where the employment of an employed person is terminated, pay all contributions due from the employer but still outstanding in respect of any insured person within fourteen days after the end of the month in which the employment is terminated.

(4) The Board may, if it thinks fit and subject to such terms and conditions as it may impose, approve any arrangements whereby contributions are paid at times and in a manner other than those

prescribed by these regulations; and any such arrangement may include provision for the payment of such fees as may be determined by the Board to represent the estimated additional expense in administration to the Board.

(5) As a condition of authorising the payment of any contribution on a later date than that upon which the contribution would, apart from such authorisation, under sub regulation (4), be due to be paid, the Board may require the making of such deposit of money by way of security as the Board approve.

(6) Sub-regulations (4) and (5) shall, subject to the provisions of any such arrangements, apply to any person affected by such arrangements; and any contravention of or failure to comply with any requirement of any such arrangement shall be deemed to be a contravention of or failure to comply with these regulations.

6. Authority to deduct employee's contribution from emoluments

(1) Every employer on making any payment of emoluments to any employee may deduct contribution in accordance with these regulations.

(2) An employer shall not be entitled to recover any contributions paid by him on behalf of any employee otherwise than by deduction in accordance with these regulations.

7. Calculation of deductions

(1) On the occasion of any payment of emoluments to the employee, the employer may deduct the amount of the contributions based thereon which the employee is liable to pay under these regulations from the emoluments on making the payment in question.

Provided that when two or more payments of emoluments fall to be aggregated the employer may deduct the amount of the contributions based thereon which are payable by the employee either wholly from one said payment or partly from one and partly from the other or any one or more of the others.

(2) If by reason of any error made in good faith the employer on making any payment of emoluments to an employee fails to deduct therefrom the full amount of contributions which he may deduct, he may, after prior notification to the employee, recover the amount so under-deducted by deduction from any subsequent payment of emoluments to that employee during the same year.

Provided that—

- (a) the amount that may be deducted from any payment or from any payment which falls to be aggregated shall be in addition to but shall not exceed the amount deductible therefrom under other provisions of these regulations; and

- (b) for the purpose of regulation 9 an additional amount which may be deducted by virtue of this paragraph shall be treated as an amount deductible under these regulations only in so far as the amount of the corresponding under-deduction has been so treated.

8. Tax Free emoluments

Where the employer makes a payment to or for the benefit of the employee in respect of the employee's income tax the amount of the emoluments which the employer pays to the employee shall be deemed for the purpose of these regulations to be such a sum as will include the amount of the payment made by the employer in respect of the employee's income tax.

9. Payment of contribution by an employer

No later than fourteen days after the end of each month, the employer shall pay, by means acceptable to the Director, contributions deducted by the employer under these regulations from emoluments paid by him during such month (other than amounts deductible by virtue of Regulation 8(2), which he did not deduct) together with the appropriate amount by way of the employer's contributions, and shall submit to the Director the monthly remittance form in respect of such payment.

Provided that the employer shall for the purpose of this sub-regulation be deemed to have deducted from the last of any number of payments of emoluments which fall to be aggregated the amount of contributions deducted from these payments which he did not deduct from the earlier payment.

(2) The Director shall, give the employer receipt for the total amount paid.

(3) If the employer, by reason of an error made in good faith, has paid to the Director on account of contributions under this regulation an amount which he was not liable so to pay subsequently in respect of other payments of emoluments made by him during the same years shall be reduced by the amount so overpaid:

Provided that if there was a corresponding over-deduction from any payment of emoluments to an employee, this sub-regulation shall apply only in so far as the employer has accounted to him therefore.

(4) Upon receipt of the remittance form, the Director shall advise the employer of any short payment made and shall give the employer a time by which to pay the difference.

(5) If by the 14th of the month an employer fails to submit to the Director the remittance form that he is required to submit under sub regulation (1), the Director may determine by assessment the contribution payable by the employer and the Director's determination shall be good and sufficient evidence in any court that the contribution is payable until the contrary is proved.

10. Records

Each employer shall maintain a record additional to the remittance form showing in respect of each person employed by him—

- (a) the name;
- (b) the date of birth;
- (c) the Social Security Registration Number;
- (d) the date of which the employment starts and finishes;
- (e) the date and amount of each payment of emoluments;
- (f) the Social Security deductions; and
- (g) any other information as the Executive Director may require.

11. Return by employer

(1) No later than 31st day of January, the employer shall render to the Director in such form as the Director prescribes a return in respect of each employee and showing -

- (a) the total amount of contributions deductible from the emoluments paid by him to the employee during the year;
- (b) the total amount of contributions payable during the year by employer in respect of the employee in accordance with the Schedule hereto.

(2) The said return shall be accompanied by a declaration and statement in a form approved by the Board containing a list of all deduction cards issued by the Director or prepared by the employer in accordance with regulation 5 of the Social Security (Registration of Employed Persons and Employers) Regulations, in respect of that year together with a certificate showing-

- (a) the total amount of contributions deductible by him in the case of each employee during the year;
- (b) the total amount of contributions payable to him additional to the contribution in subparagraph (a) in the case of each employee during the year; and

- (c) the total amount of contributions which he was liable to pay to the Director under regulation 9 in respect of all his employees.

(3) Where the employer is a body corporate the declaration shall be signed by the Secretary or by the Director or such other authorised signatory of the body corporate.

12. Inspection of employer's records

(1) Every employer whenever called upon to do so by an Inspector designated under Section 12 of the Act or other authorised Officer for inspection at the employer's premises—

- (a) all wages sheet and other documents and records whatsoever of the emoluments of his employees in respect of the years or months specified by such Inspector or other Officer in relation to the deduction of contributions deductible from such emoluments or to the payment of the employer's contributions in respect of such emoluments; or
- (b) such of the wages sheet or other documents and records as may be specified by the inspector or other authorised Officer.

(2) The Director by reference to the information obtained from inspection of the documents and records produced under sub-regulation (1) may on the occasion of each inspection prepare a certificate setting out—

- (a) the amount of contributions which it appears from the documents so produced that the employer is liable to pay to the Director for the said years or months; and
- (b) any amount of contributions which have not been paid to him or, to the best of his knowledge and belief, to any person to whom it might lawfully be paid.

(3) The production of a certificate such as is mentioned in sub regulation (2) shall be sufficient evidence in any court that the employer is liable to pay to the Director in respect of the years or months mentioned on the certificate the amount shown therein pursuant to sub regulation (2) (b) and any document purporting to be such a certificate shall be deemed in any court to be such a certificate until the contrary is proved.

13. Death of employer

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

14. Succession to the business etc.

(1) This regulation applies where there has been a change in the employer from whom an employee receives emoluments in respect of his employment in any trade, business, concern or undertaking or in connection with any property, or from whom an employee receives any annuity other than a pension.

(2) Where this regulation applies in relation to any matter arising after a change of employer, the employer after the change shall be liable to do anything which the employer before the change would have been liable to do under these regulations if the change had not taken place.

Provided that the employer after the change shall not be liable for the payment of any contributions which were deductible from emoluments paid to the employee before unless they were also deductible from emoluments paid to the employer after the change took place or of any corresponding employer's contributions.

15. Penalties

(1) If an employer fails to pay any monies due under regulation 9 within the time prescribed those monies shall be subject to a sur-charge of ten per cent, and this sur-charge shall be without prejudice to any other penalties to which such employer may be liable under sub-regulation (2).

(2) If for any month an employer submits a remittance form without recording the Social Security Registration Number of all persons employed by him during the month such employer shall be liable to Social Security Fund for \$100 per page for incomplete and incorrect information on each remittance form.

(3) Any person who for the purpose of obtaining any benefit or other payments under these regulations, whether for himself or for some other person connected with these regulations-

- (a) knowingly makes any false representation; or
- (b) Produces or furnishes or cause or knowingly allows to be produced or furnished, any documents or information which he knows to be false in any material particular, commits an offence and on summary conviction shall be liable on summary conviction to a fine of twelve thousand dollars or imprisonment for a term non-exceeding three years or to both such fine and imprisonment.

16. Revocation

The following Regulations are hereby revoked:

- (a) The Social Security (Collection of Contributions) Regulations, Cap. 408 as amended are hereby revoked.
- (b) The Social Security (Collection of Contributions) (Amendment) Regulations 2002 No. 4 of 2002.
- (c) The Social Security (Collection of Contributions) (Amendment) Regulations, 2005 No. 5 of 2005.

17 - Commencement

These Regulations shall come into force on the 1st day of May, 2013.