WQ.317/2025

WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY THE CONNÉTABLE OF ST. MARTIN
QUESTION SUBMITTED ON MONDAY 8th SEPTEMBER 2025
ANSWER TO BE TABLED ON MONDAY 15th SEPTEMBER 2025

Question

"Will H.M. Attorney General advise what liability or recourse, if any, an employee has when a company in liquidation (their employer) has not paid the statutory contributions for ITIS and Social Security despite the relevant deductions having been made from the employee's pay as itemised on their payslip; and, in this instance, has the company committed an offence by withholding the monies?"

Answer

It is the legal responsibility of the employer to pay to the Comptroller of Revenue the amount of ITIS and social security contributions deducted from an employee's wages.

These legal obligations are set out in Article 41BA of the Income Tax (Jersey) Law 1961 (the "**1961 Law**") in relation to ITIS and Article 5 of the Social Security (Collection of Class 1 and Class 2 Contributions) (Jersey) Order 2013 (the "**2013 Order**") with respect to social security contributions.

Employee's record

If an employer deducts an amount of ITIS from an employee's earnings but fails to pay the amount to the Comptroller, the employee is entitled to have the deduction treated as a payment of tax by the employee, unless the employee is unable to prove, to the satisfaction of the Comptroller, that the deduction was made. (Article 41BD(2) of the 1961 Law).

An equivalent protection is in place with regard to an employee's social security contributions. In accordance with Article 21(1) of the Social Security (Contributions) (Jersey) Order 1975 (the "**1975 Order**") where an employer has failed to pay social security contributions, the contribution shall be treated as paid on the due date. In order for this protection to apply the Minister must be satisfied that the failure in making payment was not with the consent or connivance of, or attributable to any negligence on the part of the employee.

In practice when circumstances arise where an employer has failed to pay the amount of ITIS and social security contributions deducted from an employee's wages, the employee will receive credits based on the Combined Employer Returns (the "**CER**") received. CER includes details of an employer's ITIS and social security. In cases where the employer has not filed a CER, the employee can provide the Comptroller with evidence, such as payslips, to demonstrate that wages have been paid and the deductions have been made, and the employee's records will be credited with an amount equivalent to the income tax and social security contributions deducted.

This ensures the employee's tax liability and contribution record is safeguarded, even in circumstances where the employer is in liquidation.

Offence and debt owed

An employer who fails to pay the Comptroller the amount of ITIS and social security contributions deducted from an employee's wages commits an offence and may face prosecution (Article 41BA(2) of the 1961 Law (ITIS) and Article 15 of the 2013 Order (social security contributions)).

Civil proceedings can be brought against an employer for the outstanding ITIS and contributions. The failure of an employer to pay the Comptroller creates a debt owed to the government. Administration and compliance are conducted by Revenue Jersey and its debt management team can pursue the outstanding monies. If the debt cannot be recovered directly from the employer, a claim may be filed in the Petty Debts Court for the outstanding amount, or in the Royal Court where the sums owed are in excess of the Petty Debts Court's jurisdiction (currently £30,000). Where an employer has gone into liquidation and there are insufficient funds to meet the full liabilities, as set out above, the employee is entitled to receive credits to ensure their tax liability and contribution record is safeguarded.