

SCHEDULES

SCHEDULE 12

Section 60.

PROVISION OF SERVICES THROUGH AN INTERMEDIARY

PART I

APPLICATION OF THIS SCHEDULE

Engagements to which this Schedule applies

- 1 (1) This Schedule applies where—
- (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services for the purposes of a business carried on by another person (“the client”),
 - (b) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and
 - (c) the circumstances are such that, if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client.
- (2) In sub-paragraph (1)(a) “business” includes any activity carried on—
- (a) by a government or public or local authority (in the United Kingdom or elsewhere), or
 - (b) by a body corporate, unincorporated body or partnership.
- (3) The reference in sub-paragraph (1)(b) to a “third party” includes a partnership or unincorporated body of which the worker is a member.
- (4) The circumstances referred to in sub-paragraph (1)(c) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.
- (5) The fact that the worker holds an office with the client does not affect the application of this Schedule.

Worker treated as receiving Schedule E income

- 2 (1) If, in the case of an engagement to which this Schedule applies, in any tax year—
- (a) the conditions specified in paragraph 3, 4 or 5 are met in relation to the intermediary, and
 - (b) the worker, or an associate of the worker—
 - (i) receives from the intermediary, directly or indirectly, a payment or other benefit that is not chargeable to tax under Schedule E, or

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(ii) has rights entitling him, or which in any circumstances would entitle him, to receive from the intermediary, directly or indirectly, any such payment or other benefit,

the intermediary is treated as making to the worker in that year, and the worker is treated as receiving in that year, a payment chargeable to income tax under Schedule E (“the deemed Schedule E payment”).

- (2) The deemed Schedule E payment is treated as made at the end of the tax year, unless paragraph 12 applies (earlier date of deemed payment in certain cases).
- (3) A single payment is treated as made in respect of all engagements in relation to which the intermediary is treated as making a payment to the worker in the tax year.

These are referred to in this Schedule as “the relevant engagements” in relation to a deemed Schedule E payment.

Conditions of liability where intermediary is a company

- 3 (1) Where the intermediary is a company the conditions are that the intermediary is not an associated company of the client that falls within sub-paragraph (2) and either—
- (a) the worker has a material interest in the intermediary, or
 - (b) the payment or benefit mentioned in paragraph 2(1)(b)—
 - (i) is received or receivable by the worker directly from the intermediary, and
 - (ii) can reasonably be taken to represent remuneration for services provided by the worker to the client.
- (2) An associated company of the client falls within this sub-paragraph if it is such a company by reason of the intermediary and the client both being under the control—
- (a) of the worker, or
 - (b) of the worker and another person.
- (3) A worker is treated as having a material interest in a company if—
- (a) the worker, alone or with one or more associates of his, or
 - (b) an associate of the worker, with or without other such associates,
- has a material interest in the company.
- (4) For this purpose a material interest means—
- (a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 5% of the ordinary share capital of the company; or
 - (b) possession of, or entitlement to acquire, rights entitling the holder to receive more than 5% of any distributions that may be made by the company; or
 - (c) where the company is a close company, possession of, or entitlement to acquire, rights that would in the event of the winding up of the company, or in any other circumstances, entitle the holder to receive more than 5% of the assets that would then be available for distribution among the participators.
- (5) In sub-paragraph (4)(c) “participator” has the meaning given by section 417(1) of the Taxes Act 1988.

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Conditions of liability where intermediary is a partnership

- 4 (1) Where the intermediary is a partnership the conditions are as follows.
- (2) In relation to payments or benefits received or receivable by the worker as a member of the partnership the conditions are—
- (a) that the worker, alone or with one or more relatives, is entitled to 60% or more of the profits of the partnership; or
 - (b) that most of the profits of the partnership concerned derive from the provision of services under engagements to which this Schedule applies—
 - (i) to a single client, or
 - (ii) to a single client together with associates of that client; or
 - (c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which this Schedule applies.
- In paragraph (a) “relative” means husband or wife, parent or remoter forebear, child or remoter issue, or brother or sister.
- (3) In relation to payments or benefits received or receivable by the worker otherwise than as a member of the partnership, the conditions are that the payment or benefit—
- (a) is received or receivable by the worker directly from the intermediary, and
 - (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

Conditions of liability where intermediary is an individual

- 5 Where the intermediary is an individual the conditions are that the payment or benefit—
- (a) is received or receivable by the worker directly from the intermediary, and
 - (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

Exception of certain payments subject to deduction of tax

- 6 This Schedule does not apply to payments subject to deduction of tax under section 555 of the Taxes Act 1988 (payments to non-resident entertainers and sportsmen).

PART II

THE DEEMED SCHEDULE E PAYMENT

Calculation of deemed Schedule E payment

- 7 The amount of the deemed Schedule E payment for a tax year is calculated as follows:

Step One

Find the total amount of all payments and other benefits received by the intermediary in that year in respect of the relevant engagements, and reduce that amount by 5%.

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Step Two

Add the amount of any payments and other benefits received by the worker in that year in respect of the relevant engagements, otherwise than from the intermediary, that—

- (a) are not chargeable to income tax under Schedule E, and
- (b) would be so chargeable if the worker were employed by the client.

Step Three

Deduct the amount of any expenses met in that year by the intermediary that would have been deductible from the emoluments of the employment if the worker had been employed by the client and the expenses had been met by the worker out of those emoluments.

Step Four

Deduct the amount of any capital allowances in respect of expenditure incurred by the intermediary that could have been claimed by the worker under section 27 of the Capital Allowances Act 1990 (plant and machinery: extension of allowances to employments etc.) if the worker had been employed by the client and had incurred the expenditure.

Step Five

Deduct any contributions made in that year for the benefit of the worker by the intermediary to a scheme approved under Chapter I or Chapter IV of Part XIV of the Taxes Act 1988 that if made by an employer for the benefit of an employee would not be chargeable to income tax as income of the employee.

This does not apply to excess contributions made and later repaid.

Step Six

Deduct the amount of any employer's national insurance contributions paid by the intermediary for that year in respect of the worker.

Step Seven

Deduct the amount of any payments or other benefits received in that year by the worker from the intermediary—

- (a) in respect of which the worker is chargeable to income tax under Schedule E, and
- (b) which do not represent items in respect of which a deduction was made under Step Three.

If the result at this point is nil or a negative amount, there is no deemed Schedule E payment.

Step Eight

Find the amount that together with employer's national insurance contributions on it is equal to the amount resulting from Step Seven.

Step Nine

The result is the amount of the deemed Schedule E payment.

Treatment of payments made under construction industry scheme

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Where section 559 of the Taxes Act 1988 applies (sub-contractors in the construction industry: payments to be made under deduction), the intermediary is treated for the purposes of Step One of the calculation in paragraph 7 as receiving the amount that would have been received had no deduction been made under that section.

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Apportionments

- 9 For the purposes of calculating the deemed Schedule E payment any necessary apportionment shall be made on a just and reasonable basis of amounts received by the intermediary that are referable—
- (a) to the services of more than one worker, or
 - (b) partly to the services of the worker and partly to other matters.

Application of Schedule E rules

- 10 (1) The following provisions apply in relation to the calculation of the deemed Schedule E payment.
- (2) A “payment or other benefit” includes anything that, if received by an employee for performing the duties of an employment within Schedule E—
- (a) would be an emolument of the employment, or
 - (b) would be chargeable to tax as an emolument of the employment.
- (3) The amount of a payment or other benefit is taken to be—
- (a) in the case of a payment or cash benefit, the amount received, and
 - (b) in the case of a non-cash benefit, the cash equivalent of the benefit.
- (4) The cash equivalent of a non-cash benefit is taken to be whichever is the greater of—
- (a) the amount that would be chargeable to tax under section 19(1) of the Taxes Act 1988 if the benefit were an emolument chargeable to tax under Case I of Schedule E, and
 - (b) the cash equivalent determined in accordance with the rules in section 596B of that Act.
- (5) A payment or benefit is treated as received—
- (a) in the case of a payment or cash benefit, when payment is made of or on account of the payment or benefit;
 - (b) in the case of a non-cash benefit, when it is used or enjoyed.

Application of Income Tax Acts in relation to deemed Schedule E payment

- 11 (1) The Income Tax Acts (in particular, the PAYE provisions) apply in relation to the deemed Schedule E payment as follows.
- (2) They apply as if—
- (a) the worker were employed by the intermediary, and
 - (b) the relevant engagements were undertaken by the worker in the course of performing the duties of that employment.
- (3) The worker is not chargeable to tax in respect of the deemed Schedule E payment if, or to the extent that, by reason of any combination of the following factors—
- (a) the worker being resident, ordinarily resident or domiciled outside the United Kingdom,
 - (b) the client being resident or ordinarily resident outside the United Kingdom, or
 - (c) the services in question being provided outside the United Kingdom,
- he would not be chargeable to tax under Schedule E if the client employed the worker, the worker performed the services in the course of that employment and the

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deemed Schedule E payment were a payment by the client of emoluments from that employment.

- (4) The deemed Schedule E payment is treated as an emolument of that employment—
- (a) for the purpose of determining whether it is employment to which Chapter II of Part V of the Taxes Act 1988 applies (benefits in kind: provisions applicable to higher-paid employment); and
 - (b) for the purposes of section 198 of that Act (deductions for necessary expenses defrayed out of emoluments).
- (5) Where the intermediary is a partnership or unincorporated association, the deemed Schedule E payment is treated as received by the worker in his personal capacity and not as income of the partnership or association.
- (6) Where—
- (a) the worker is resident in the United Kingdom,
 - (b) the services in question are provided in the United Kingdom, and
 - (c) the client or employer carries on business in the United Kingdom,
- the intermediary is treated as having a place of business in the United Kingdom, whether or not it in fact does so.
- (7) The deemed Schedule E payment is treated as relevant earnings of the worker for the purposes of section 644 of the Taxes Act 1988 (relevant earnings for purposes of permissible pension contributions).

PART III

SUPPLEMENTARY PROVISIONS

Earlier date of deemed Schedule E payment in certain cases

- 12 (1) If in any tax year—
- (a) a deemed Schedule E payment is treated as made, and
 - (b) before the date on which the payment would be treated as made under paragraph 2(2) any relevant event (as defined below) occurs in relation to the intermediary,
- the deemed Schedule E payment for that year is treated as having been made immediately before that event or, if there is more than one, immediately before the first of them.
- (2) Where the intermediary is a company the following are relevant events—
- (a) where the worker is a member of the company, his ceasing to be such a member;
 - (b) where the worker holds an office with the company, his ceasing to hold such an office;
 - (c) where the worker is employed by the company, his ceasing to be so employed.
- (3) Where the intermediary is a partnership the following are relevant events—
- (a) the dissolution of the partnership or the partnership ceasing to trade or a partner ceasing to act as such;

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- (b) where the worker is employed by the partnership, his ceasing to be so employed.
- (4) Where the intermediary is an individual and the worker is employed by him, it is a relevant event if the worker ceases to be so employed.
- (5) The fact that the deemed Schedule E payment is treated as made before the end of the tax year does not affect what receipts and other matters are taken into account in calculating its amount.

Relief in case of distributions by intermediary

- 13 (1) A claim for relief may be made under this paragraph where the intermediary—
 - (a) is a company,
 - (b) is treated as making a deemed Schedule E payment in any tax year, and
 - (c) either in that tax year (whether before or after that payment is treated as made), or in a subsequent tax year, makes a distribution.
- (2) A claim for relief under this paragraph must be made by the intermediary by notice in writing given to the Inland Revenue.
- (3) If on a claim being made the Inland Revenue are satisfied that relief should be given in order to avoid a double charge to tax, they shall give such relief by way of amending any assessment, by discharge or repayment of tax, or otherwise, as appears to them appropriate.
- (4) Relief under this paragraph shall be given by treating the amount of the distribution as reduced, not the amount of the deemed Schedule E payment.
- (5) The Inland Revenue shall exercise the power conferred by this paragraph so as to secure that so far as practicable relief is given by setting the amount of a deemed Schedule E payment—
 - (a) against relevant distributions of the same tax year before those of other years,
 - (b) against relevant distributions received by the worker before those received by another person, and
 - (c) against relevant distributions of earlier years before those of later years.
- (6) Where the amount of a distribution is reduced under this paragraph, the amount of any associated tax credit is reduced accordingly.

Provisions applicable to multiple intermediaries

- 14 (1) The following provisions apply where in the case of an engagement to which this Schedule applies the arrangements involve more than one relevant intermediary—
 - paragraph 15 (avoidance of double-counting);
 - paragraph 16 (joint and several liability for PAYE deductions)
- (2) In this paragraph and paragraphs 15 and 16 “relevant intermediary” means an intermediary in relation to which the conditions specified in paragraph 3, 4 or 5 are met.
- (3) Except as provided by paragraphs 15 and 16, the provisions of this Schedule apply separately in relation to each relevant intermediary.

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Multiple intermediaries: avoidance of double-counting

- 15 (1) This paragraph applies where a payment or other benefit has been made or provided, directly or indirectly, from one relevant intermediary to another in respect of the engagement.
- (2) In that case, the amount taken into account in relation to any intermediary in Step One or Step Two of the calculation in paragraph 7 shall be reduced to such extent as is necessary to avoid double-counting having regard to the amount so taken into account in relation to any other intermediary.

Multiple intermediaries: joint and several liability for PAYE deductions

- 16 (1) All relevant intermediaries in relation to an engagement to which this Schedule applies are jointly and severally liable, subject to sub-paragraph (2), to account for any amount required under the PAYE provisions to be deducted from a deemed Schedule E payment treated as made by any of them—
- (a) in respect of that engagement, or
- (b) in respect of that engagement together with other engagements.
- (2) An intermediary is not so liable if it has not received any payment or benefit in respect of that engagement or any such other engagement as is mentioned in sub-paragraph (1)(b).

Calculation of profits of intermediary: deduction for deemed Schedule E payment

- 17 (1) In calculating for tax purposes the profits of a business carried on by an intermediary that is treated as making in connection with that business a deemed Schedule E payment, a deduction is allowed for—
- (a) the amount of the payment, and
- (b) the amount of any employer's national insurance contributions paid by the intermediary in respect of it.
- (2) The deduction allowed by this paragraph must be taken into account for the period of account in which the deemed Schedule E payment is treated as made.
- (3) No deduction in respect of the matters mentioned in sub-paragraph (1) may be made except in accordance with this paragraph.

Calculation of profits of intermediary: special rules for partnerships

- 18 (1) The following provisions apply in calculating for tax purposes the profits of a business carried on by a partnership that is treated as making in connection with that business a deemed Schedule E payment.
- (2) The amount of the deduction allowed under paragraph 17 is limited to the amount that reduces the profits of the partnership for the tax year to nil.
- (3) To the extent that in any tax year the expenses of the partnership in connection with the relevant engagements exceed the sum of—
- (a) the amounts that would be deductible for the purposes of Schedule E if the worker had been employed by the client and the expenses had been incurred by the worker, and

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- (b) 5% of the amount taken into account in Step One of the calculation in paragraph 7 as the intermediary's receipts in respect of the relevant engagements,
they shall be left out of account in calculating the profits of the business.

Meaning of "associate"

- 19 (1) In this Schedule "associate"—
- (a) in relation to an individual, has the meaning given by section 417(3) and (4) of the Taxes Act 1988, subject to the following provisions of this paragraph;
 - (b) in relation to a company, means a person connected with the company within the meaning of section 839 of the Taxes Act 1988; and
 - (c) in relation to a partnership, means any associate of a member of the partnership.
- (2) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees are not regarded as associates of his by reason only of that interest except in the following circumstances.
- (3) The exception is where—
- (a) the individual, either on his own or with any one or more of his associates, or
 - (b) any associate of his, with or without other such associates,
- has at any time on or after 14th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control more than 5% of the ordinary share capital of the company.
- (4) In this paragraph "employee benefit trust" has the meaning given by paragraph 7 of Schedule 8 to the Taxes Act 1988.
- (5) Sub-paragraphs (9) to (12) of that paragraph apply for the purposes of this paragraph in relation to an individual as they apply for the purposes of that paragraph in relation to an employee.
- (6) In sub-paragraph (3) "associate" does not include the trustees of an employee benefit trust by reason only that the individual has an interest in shares or obligations of the trust.

Meaning of "the Inland Revenue"

- 20 References in this Schedule to "the Inland Revenue" are to any officer of the Board.

Interpretation

- 21 (1) In this Schedule—
- "associate" has the meaning given by paragraph 19;
 - "associated company" has the meaning given by section 416 of the Taxes Act 1988;
 - "business" means any trade, profession or vocation and includes a Schedule A business;
 - "company" means a body corporate or unincorporated association, and does not include a partnership;

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“employer’s national insurance contributions” means secondary Class 1 or Class 1A national insurance contributions;

“engagement to which this Schedule applies” means any such engagement as is mentioned in paragraph 1(1);

“national insurance contributions” means contributions under Part I of the Social Security Contributions and Benefits Act 1992 or Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“PAYE provisions” means provisions of—

- (a) section 203 of the Taxes Act 1988 or regulations under that section, or
- (b) sections 203A to 203L of that Act;

“tax year” means a year of assessment.

- (2) References in this Schedule to payments or benefits received or receivable from a partnership or unincorporated association include payments or benefits to which a person is or may be entitled in his capacity as a member of the partnership or association.
- (3) For the purposes of this Schedule—
 - (a) anything done by or in relation to an associate of an intermediary is treated as done by or in relation to the intermediary, and
 - (b) a payment or other benefit provided to a member of an individual’s family or household is treated as provided to the individual.

The reference in paragraph (b) to an individual’s family or household has the same meaning as in Chapter II of Part V of the Taxes Act 1988 (provisions relating to the Schedule E charge): see section 168(4) of that Act.

- (4) For the purposes of this Schedule a man and a woman living together as husband and wife are treated as if they were married to each other.

Transitional provisions: general

- 22 (1) This Schedule has effect for the tax year 2000-01 and subsequent years and applies in relation to services performed, or to be performed, on or after 6th April 2000.
- (2) Payments or other benefits in respect of such services received before that date shall be treated as if received in the tax year 2000-01.

Transitional provisions: deemed discontinuance of business

- 23 (1) This paragraph applies where an individual or partnership—
 - (a) is carrying on a business at the beginning of the year 2000-01, and
 - (b) is treated as making one or more deemed Schedule E payments for that year in connection with that business.
- (2) Where this paragraph applies the individual or partnership may elect that—
 - (a) the business shall be deemed to have been permanently discontinued at the end of the year 1999-00, and
 - (b) a new business shall be deemed to have been set up and commenced on 6th April 2000.

- (3) Notwithstanding the deemed discontinuance, the old business and the new business shall be treated as the same for the purposes of section 385 of the Taxes Act 1988 (carry-forward of losses against subsequent profits).
- (4) Any such election as is mentioned in sub-paragraph (2) must be made by being included in a return made and delivered on or before the due date.
- (5) In the case of an election by an individual—
- (a) the reference in sub-paragraph (4) to a return is to a return under section 8 of the Taxes Management Act 1970 (personal returns), and
 - (b) the “due date” means the day specified in relation to the return under subsection (1A) of that section.
- (6) In the case of an election by a partnership—
- (a) the reference in sub-paragraph (4) to a return is to a return under section 12AA(2) or (3) of that Act (partnership returns), and
 - (b) the “due date” means the day specified in relation to the return under subsection (2) or, as the case may be, subsection (3) of that section.

Saving for provisions relating to agency workers

- 24 Nothing in this Schedule affects the operation of section 134 of the Taxes Act 1988 (workers supplied by agencies).