

## SCHEDULES

### SCHEDULE 12

#### PROVISION OF SERVICES THROUGH AN INTERMEDIARY

##### 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%.

*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.

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*Status: This is the original version (as it was originally enacted).*

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*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*

- 8 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.

*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 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).