



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 2

#### EMPLOYMENT INCOME: CHARGE TO TAX

### CHAPTER 8

#### APPLICATION OF PROVISIONS TO WORKERS UNDER ARRANGEMENTS MADE BY INTERMEDIARIES

#### *Application of this Chapter*

#### **48**     **Scope of this Chapter**

- (1) This Chapter has effect with respect to the provision of services through an intermediary.
- (2) Nothing in this Chapter—
  - (a) affects the operation of Chapter 7 of this Part, or
  - (b) applies to payments subject to deduction of tax under section 555 of ICTA (payments to non-resident entertainers and sportsmen).

#### **49**     **Engagements to which this Chapter applies**

- (1) This Chapter applies where—
  - (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services [<sup>F1</sup>for 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

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- (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.

<sup>F2</sup>(2) .....

- (3) The reference in subsection (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 subsection (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) In this Chapter “engagement to which this Chapter applies” means any such provision of services as is mentioned in subsection (1).

#### Textual Amendments

**F1** Words in s. 49(1)(a) substituted (with effect in accordance with s. 136(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 136\(2\)](#)

**F2** S. 49(2) repealed (with effect in accordance with s. 136(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 136\(3\)\(a\), Sch. 43 Pt. 3\(1\)](#)

## 50 Worker treated as receiving earnings from employment

- (1) If, in the case of an engagement to which this Chapter applies, in any tax year—
- (a) the conditions specified in section 51, 52 or 53 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 benefit that is not employment income, or
    - (ii) has rights which entitle, or which in any circumstances would entitle, the worker or associate to receive from the intermediary, directly or indirectly, any such payment or benefit,
 the intermediary is treated as making to the worker, and the worker is treated as receiving, in that year a payment which is to be treated as earnings from an employment (“the deemed employment payment”).
- (2) 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.
- (3) The deemed employment payment is treated as made at the end of the tax year, unless section 57 applies (earlier date of deemed payment in certain cases).
- (4) In this Chapter “the relevant engagements”, in relation to a deemed employment payment, means the engagements mentioned in subsection (2).

## 51 Conditions of liability where intermediary is a company

- (1) Where the intermediary is a company the conditions are that the intermediary is not an associated company of the client that falls within subsection (2) and either—
- (a) the worker has a material interest in the intermediary, or
  - (b) the payment or benefit mentioned in section 50(1)(b)—

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- (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 subsection if it is such a company by reason of the intermediary and the client being under the control—
- (a) of the worker, or
  - (b) of the worker and other persons.
- (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 the worker, 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 subsection (4)(c) “participator” has the meaning given by section 417(1) of ICTA.

## **52 Conditions of liability where intermediary is a partnership**

- (1) Where the intermediary is a partnership the conditions are as follows.
- (2) In relation to any payment or benefit 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 Chapter 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 Chapter applies.
- In paragraph (a) “relative” means husband or wife, parent or child or remoter relation in the direct line, or brother or sister.
- (3) In relation to any payment or benefit 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.

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### 53 Conditions of liability where intermediary is an individual

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.

#### *The deemed employment payment*

### 54 Calculation of deemed employment payment

- (1) The amount of the deemed employment payment for a tax year (“the year”) is the amount resulting from the following steps—

#### *Step 1*

Find (applying section 55) the total amount of all payments and benefits received by the intermediary in the year in respect of the relevant engagements, and reduce that amount by 5%.

#### *Step 2*

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

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

#### *Step 3*

Deduct (applying Chapters 1 to 5 of Part 5) the amount of any expenses met in the year by the intermediary that would have been deductible from the taxable earnings from the employment if—

- (a) the worker had been employed by the client, and
- (b) the expenses had been met by the worker out of those earnings.

If the result at this or any later point is nil or a negative amount, there is no deemed employment payment.

#### *Step 4*

Deduct the amount of any capital allowances in respect of expenditure incurred by the intermediary that could have been deducted from employment income under section 262 of CAA 2001 (employments and offices) if the worker had been employed by the client and had incurred the expenditure.

#### *Step 5*

Deduct any contributions made in the year for the benefit of the worker by the intermediary to a scheme approved under Chapter 1 or 4 of Part 14 of ICTA 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.

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### *Step 6*

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

### *Step 7*

Deduct the amount of any payments and benefits received in the year by the worker from the intermediary—

- (a) in respect of which the worker is chargeable to income tax as employment income, and
- (b) which do not represent items in respect of which a deduction was made under step 3.

### *Step 8*

Assume that the result of step 7 represents an amount together with employer's national insurance contributions on it, and deduct what (on that assumption) would be the amount of those contributions.

The result is the deemed employment payment.

- (2) If [<sup>F3</sup>section 61 of the Finance Act 2004] applies (sub-contractors in the construction industry: payments to be made under deduction), the intermediary is treated for the purposes of step 1 of subsection (1) as receiving the amount that would have been received had no deduction been made under that section.
- (3) In step 3 of subsection (1), the reference to expenses met by the intermediary includes—
  - (a) expenses met by the worker and reimbursed by the intermediary, and
  - (b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.
- (4) In step 3 of subsection (1), the expenses deductible include the amount of any mileage allowance relief for the year which the worker would have been entitled to in respect of the use of a vehicle falling within subsection (5) if—
  - (a) the worker had been employed by the client, and
  - (b) the vehicle had not been a company vehicle (within the meaning of Chapter 2 of Part 4).
- (5) A vehicle falls within this subsection if—
  - (a) it is provided by the intermediary for the worker, or
  - (b) where the intermediary is a partnership and the worker is a member of the partnership, it is provided by the worker for the purposes of the business of the partnership.
- (6) Where, on the assumptions mentioned in paragraphs (a) and (b) of step 3 of subsection (1), the deductibility of the expenses is determined under sections 337 to 342 (travel expenses), the duties performed under the relevant engagements are treated as duties of a continuous employment with the intermediary.
- (7) In step 7 of subsection (1), the amounts deductible include any payments received in the year from the intermediary that—
  - (a) are exempt from income tax by virtue of section 229 or 233 (mileage allowance payments and passenger payments), and

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- (b) do not represent items in respect of which a deduction was made under step 3.
- (8) For the purposes of subsection (1) any necessary apportionment is to 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.

#### Textual Amendments

- F3** Words in s. 54(2) substituted (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 12 para. 17\(2\)](#)

### 55 Application of rules relating to earnings from employment

- (1) The following provisions apply in relation to the calculation of the deemed employment payment.
- (2) A “payment or benefit” means anything that, if received by an employee for performing the duties of an employment, would be earnings from the employment.
- (3) The amount of a payment or 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—
  - (a) the amount that would be earnings if the benefit were earnings from an employment, or
  - (b) in the case of living accommodation, whichever is the greater of that amount and the cash equivalent determined in accordance with section 398(2).
- (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 that is calculated by reference to a period within the tax year, at the end of that period;
  - (c) in the case of a non-cash benefit that is not so calculated, when it would have been treated as received for the purposes of Chapter 4 or 5 of this Part (see section 19 or 32) if—
    - (i) the worker had been an employee, and
    - (ii) the benefit had been provided by reason of the employment.

### 56 Application of Income Tax Acts in relation to deemed employment

- (1) The Income Tax Acts (in particular, the PAYE provisions) apply in relation to the deemed employment 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 deemed employment payment is treated in particular—

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- (a) as taxable earnings from the employment for the purpose of securing that any deductions under Chapters 2 to 6 of Part 5 do not exceed the deemed employment payment; and
  - (b) as taxable earnings from the employment for the purposes of section 232.
- (4) The worker is not chargeable to tax in respect of the deemed employment payment if, or to the extent that, by reason of any combination of the factors mentioned in subsection (5), the worker would not be chargeable to tax if—
- (a) the client employed the worker,
  - (b) the worker performed the services in the course of that employment, and
  - (c) the deemed employment payment were a payment by the client of earnings from that employment.
- (5) The factors are—
- (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, and
  - (c) the services in question being provided outside the United Kingdom.
- (6) Where the intermediary is a partnership or unincorporated association, the deemed employment payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership or association.
- (7) Where—
- (a) the worker is resident in the United Kingdom, <sup>F4</sup> and]
  - (b) the services in question are provided in the United Kingdom, <sup>F5</sup>...
  - <sup>F5</sup>(c) .....
- the intermediary is treated as having a place of business in the United Kingdom, whether or not it in fact does so.
- (8) The deemed employment payment is treated as relevant earnings of the worker for the purposes of section 644 of ICTA (relevant earnings for purposes of permissible pension contributions).

#### Textual Amendments

**F4** Words in s. 56(7)(a) inserted (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), s. 136(3)(b)(i)

**F5** S. 56(7)(c) and word repealed (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), s. 136(3)(b)(ii), Sch. 43 Pt. 3(1)

#### Supplementary provisions

### 57 Earlier date of deemed employment payment in certain cases

- (1) If in any tax year—
- (a) a deemed employment payment is treated as made, and
  - (b) before the date on which the payment would be treated as made under section 50(2) any relevant event (as defined below) occurs in relation to the intermediary,

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the deemed employment 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) the company ceasing to trade;
  - (b) where the worker is a member of the company, the worker ceasing to be such a member;
  - (c) where the worker holds an office with the company, the worker ceasing to hold such an office;
  - (d) where the worker is employed by the company, the worker 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;
  - (b) where the worker is employed by the partnership, the worker ceasing to be so employed.
- (4) Where the intermediary is an individual and the worker is employed by the intermediary, it is a relevant event if the worker ceases to be so employed.
- (5) The fact that the deemed employment 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.

## **58 Relief in case of distributions by intermediary**

- (1) A claim for relief may be made under this section where the intermediary—
  - (a) is a company,
  - (b) is treated as making a deemed employment 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 (a “relevant distribution”).
- (2) A claim for relief under this section must be made—
  - (a) by the intermediary by notice to [<sup>F6</sup>an officer of Revenue and Customs] , and
  - (b) within 5 years after the 31st January following the tax year in which the distribution is made.
- (3) If on a claim being made [<sup>F6</sup>an officer of Revenue and Customs][<sup>F7</sup>is] satisfied that relief should be given in order to avoid a double charge to tax, [<sup>F8</sup>the officer] must direct the giving of such relief by way of amending any assessment, by discharge or repayment of tax, or otherwise, as appears to [<sup>F8</sup>the officer] appropriate.
- (4) Relief under this section is given by setting the amount of the deemed employment payment against the relevant distribution so as to reduce the distribution.
- (5) In the case of more than one relevant distribution, [<sup>F6</sup>an officer of Revenue and Customs] must exercise the power conferred by this section so as to secure that so far as practicable relief is given by setting the amount of a deemed employment 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



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- (c) against relevant distributions of earlier years before those of later years.
- (6) Where the amount of a relevant distribution is reduced under this section, the amount of any associated tax credit is reduced accordingly.

#### Textual Amendments

- F6** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F7** Word in s. 58(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 105](#); S.I. 2005/1126, art. 2(2)(h)
- F8** Words in s. 58(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(1\)\(a\)](#); S.I. 2005/1126, art. 2(2)(h)

## 59 Provisions applicable to multiple intermediaries

- (1) The provisions of this section apply where in the case of an engagement to which this Chapter applies the arrangements involve more than one relevant intermediary.
- (2) All relevant intermediaries in relation to the engagement are jointly and severally liable, subject to subsection (3), to account for any amount required under the PAYE provisions to be deducted from a deemed employment payment treated as made by any of them—
- in respect of that engagement, or
  - in respect of that engagement together with other engagements.
- (3) 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 subsection (2)(b).
- (4) Subsection (5) applies where a payment or benefit has been made or provided, directly or indirectly, from one relevant intermediary to another in respect of the engagement.
- (5) In that case, the amount taken into account in relation to any intermediary in step 1 or step 2 of section 54(1) is 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.
- (6) Except as provided by subsections (2) to (5), the provisions of this Chapter apply separately in relation to each relevant intermediary.
- (7) In this section “relevant intermediary” means an intermediary in relation to which the conditions specified in section 51, 52 or 53 are met.

## 60 Meaning of “associate”

- (1) In this Chapter “associate”—
- in relation to an individual, has the meaning given by section 417(3) and (4) of ICTA, subject to the following provisions of this section;
  - in relation to a company, means a person connected with the company; and
  - in relation to a partnership, means any associate of a member of the partnership.

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- (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 the individual by reason only of that interest except in the following circumstances.
- (3) The exception is where—
  - (a) the individual, either alone or with any one or more associates of the individual, or
  - (b) any associate of the individual, 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 subsection (3) “associate” does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (5) Sections 549 to 554 (attribution of interests in companies to beneficiaries of employee benefit trusts) apply for the purposes of subsection (3) as they apply for the purposes of the provisions listed in section 549(2).
- (6) In this section “employee benefit trust” has the meaning given by sections 550 and 551.

## 61 Interpretation

- (1) In this Chapter—
  - “associate” has the meaning given by section 60;
  - “associated company” has the meaning given by section 416 of ICTA;
  - “business” means any trade, profession or vocation and includes a [<sup>F9</sup>UK property business or] Schedule A business;
  - “company” means a body corporate or unincorporated association, and does not include a partnership;
  - “employer’s national insurance contributions” means secondary Class 1 or Class 1A national insurance contributions;
  - “engagement to which this Chapter applies” has the meaning given by section 49(5);
  - “national insurance contributions” means contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992;
  - “PAYE provisions” means the provisions of Part 11 or PAYE regulations;
  - “the relevant engagements” has the meaning given by section 50(4).
- (2) References in this Chapter 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 the person’s capacity as a member of the partnership or association.
- (3) For the purposes of this Chapter—
  - (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.

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

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**Textual Amendments**

- F9** Words in s. 61(1) inserted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 586](#) (with [Sch. 2](#))

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