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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

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.

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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 [^{F1}registered pension scheme] 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 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 [^{F2}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

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- (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
- (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

- F1** Words in s. 54(1) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 56](#) (with [Sch. 36](#))
- F2** 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\(2\)](#)

Modifications etc. (not altering text)

- C1** S. 54(1) applied in part (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pension Protection Fund \(Tax\) \(2005-06\) Regulations 2005 \(S.I. 2005/1907\)](#), regs. 1(1), [13](#)
- C2** S. 54(1) applied in part (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, [39](#)

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.

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- (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—
 - (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—
 - [^{F3}(a) the worker being resident or domiciled outside the United Kingdom or meeting the requirement of section 26A,]
 - (b) the client being resident ^{F4}... outside the United Kingdom, and
 - (c) the services in question being provided outside the United Kingdom.

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(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, [^{F5} and]

(b) the services in question are provided in the United Kingdom, ^{F6}...

^{F6}(c)

the intermediary is treated as having a place of business in the United Kingdom, whether or not it in fact does so.

^{F7}(8)

Textual Amendments

F3 S. 56(5)(a) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 30(a)**

F4 Words in s. 56(5)(b) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 30(b)**

F5 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)**

F6 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)**

F7 S. 56(8) repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3** (with Sch. 35 para. 57, Sch. 36)

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