



# 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 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 subsection (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 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).

## **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)—

- (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.

**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.