National Insurance Contributions Act 2015

2015 CHAPTER 5

Anti-avoidance

6 Categorisation of earners etc: anti-avoidance

(1) In the Social Security (Categorisation of Earners) Regulations 1978 (S.I. 1978/1689) ("the 1978 GB regulations"), after regulation 5 insert—

"5A **Anti-avoidance**

(1) Paragraph (2) applies if—

(a) an earner has an employment in which the earner personally provides services to a person who is resident or present or has a place of business in Great Britain,

(b) a third person enters into relevant avoidance arrangements, and

(c) but for paragraph (2), the earner would not be, and would not be treated as falling within the category of, an employed earner in relation to the employment.

(2) The earner is to be treated as falling within the category of an employed earner in relation to the employment.

(3) In paragraph (1)(b) "relevant avoidance arrangements" means arrangements the main purpose, or one of the main purposes, of which is to secure—

(a) that the earner is not treated under paragraph 2 of Schedule 1 as falling within the category of employed earner in relation to the employment, or

(b) that a person is not treated under paragraph 2 or 9(b) or (d) of Schedule 3 as the secondary Class 1 contributor in respect of payments of earnings to or for the benefit of the earner in respect of the employment.

(4) Paragraph (5) applies if—

(a) a person ("P") enters into arrangements the main purpose, or one of the main purposes, of which is to secure that P is not treated under a relevant provision as the secondary Class 1 contributor in respect of payments of earnings to or for the benefit of an employed earner in respect of an employment, and

(b) but for paragraph (5), no person who is resident or present or has a place of business in Great Britain would—

(i) be the secondary Class 1 contributor in respect of such payments, or

(ii) be treated, under a provision other than paragraph 2(a) or (b) or 9(g) or (h) in column (B) of Schedule 3, as the secondary Class 1 contributor in respect of such payments.

(5) If P is resident or present or has a place of business in Great Britain, P is to be treated as the secondary Class 1 contributor in respect of such payments.

(6) In paragraph (4)(a) a "relevant provision" means any provision of—

(a) paragraph 2 of Schedule 3, other than sub-paragraphs (a) and (b) of that paragraph in column (B), or

(b) paragraph 9(a) to (d) of that Schedule.

(7) In this regulation "arrangements" include any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations."

(2) In the Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978 (S.R. (NI) 1978 No. 401) ("the 1978 NI regulations"), after regulation 5 insert—

"5A **Anti-avoidance**

(1) Paragraph (2) applies if—

(a) an earner has an employment in which the earner personally provides services to a person who is resident or present or has a place of business in Northern Ireland,

(b) a third person enters into relevant avoidance arrangements, and

(c) but for paragraph (2), the earner would not be, and would not be treated as falling within the category of, an employed earner in relation to the employment.

(2) The earner is to be treated as falling within the category of an employed earner in relation to the employment.

(3) In paragraph (1)(b) "relevant avoidance arrangements" means arrangements the main purpose, or one of the main purposes, of which is to secure—

(a) that the earner is not treated under paragraph 2 of Schedule 1 as falling within the category of employed earner in relation to the employment, or

(b) that a person is not treated under paragraph 2 or 7(b) or (d) of Schedule 3 as the secondary Class 1 contributor in respect of payments of earnings to or for the benefit of the earner in respect of the employment.

(4) Paragraph (5) applies if—

(a) a person ("P") enters into arrangements the main purpose, or one of the main purposes, of which is to secure that P is not treated under a relevant provision as the secondary Class 1 contributor in respect of payments of earnings to or for the benefit of an employed earner in respect of an employment, and

(b) but for paragraph (5), no person who is resident or present or has a place of business in Northern Ireland would—

(i) be the secondary Class 1 contributor in respect of such payments, or

(ii) be treated, under a provision other than paragraph 2(a) or (b) or 7(g) or (h) in column (B) of Schedule 3, as the secondary Class 1 contributor in respect of such payments.

(5) If P is resident or present or has a place of business in Northern Ireland, P is to be treated as the secondary Class 1 contributor in respect of such payments.

(6) In paragraph (4)(a) a "relevant provision" means any provision of—

(a) paragraph 2 of Schedule 3, other than sub-paragraphs (a) and (b) of that paragraph in column (B), or

(b) paragraph 7(a) to (d) of that Schedule.

(7) In this regulation "arrangements" include any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations."

(3) In section 2 of SSCBA 1992 (categories of earner), after subsection (2) insert—

"(2ZA) Regulations under subsection (2)(b) may make provision treating a person ("P") as falling within one or other of the categories of earner in relation to an employment where arrangements have been entered into the main purpose, or one of the main purposes, of which is to secure—

(a) that P is not treated by other provision in regulations under subsection (2)(b) as falling within that category of earner in relation to the employment, or

(b) that a person is not treated as the secondary contributor in respect of earnings paid to or for the benefit of P in respect of the employment.

(2ZB) In subsection (2ZA) "arrangements" include any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations."

(4) In section 7 of SSCBA 1992 ("secondary contributor"), after subsection (2) insert—

"(2A) Regulations under subsection (2) may make provision treating a person as the secondary contributor in respect of earnings paid to or for the benefit of an earner if arrangements have been entered into the main purpose, or one of the main purposes, of which is to secure that the person is not so treated by other provision in regulations under subsection (2).

(2B) In subsection (2A) "arrangements" include any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations."

(5) In section 2 of SSCB(NI)A 1992 (categories of earner), after subsection (2) insert—

"(2ZA) Regulations under subsection (2)(b) may make provision treating a person ("P") as falling within one or other of the categories of earner in relation to an employment where arrangements have been entered into the main purpose, or one of the main purposes, of which is to secure—

(a) that P is not treated by other provision in regulations under subsection (2)(b) as falling within that category of earner in relation to the employment, or

(b) that a person is not treated as the secondary contributor in respect of earnings paid to or for the benefit of P in respect of the employment.

(2ZB) In subsection (2ZA) "arrangements" include any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations."

(6) In section 7 of SSCB(NI)A 1992 ("secondary contributor"), after subsection (2) insert—

"(2A) Regulations under subsection (2) may make provision treating a person as the secondary contributor in respect of earnings paid to or for the benefit of an earner if arrangements have been entered into the main purpose, or one of the main purposes, of which is to secure that the person is not so treated by other provision in regulations under subsection (2).

(2B) In subsection (2A) "arrangements" include any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations."

(7) Subsections (1) and (2)—

(a) are to be treated as having come into force on 6 April 2014 for the purposes of inserting regulation 5A(1) to (5), (6)(a) and (7), and

(b) come into force for the purposes of inserting regulation 5A(6)(b) on the day on which this Act is passed.

(8) Paragraphs (4) and (5) of regulation 5A have effect in relation to arrangements entered into on or after 6 April 2014 the main purpose, or one of the main purposes of which, is to secure that a person is not treated, under a provision mentioned in paragraph (6)(b) of that regulation, as the secondary Class 1 contributor in respect of payments of earnings to or for the benefit of an employed earner in respect of an employment.

(9) But regulation 5A(5) only applies as a result of arrangements mentioned in subsection (8) in relation to payments of earnings that are made on or after the day on which this Act is passed.

(10) In subsections (7) to (9) references to regulation 5A are to regulation 5A—

(a) inserted by subsection (1) into the 1978 GB regulations;

(b) inserted by subsection (2) into the 1978 NI regulations.

(11) The amendments made by subsections (1) and (2) are without prejudice to any power to make regulations amending or revoking the provision inserted.

Changes to legislation:
There are currently no known outstanding effects for the National Insurance Contributions Act 2015, Section 6.