



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 11

#### PAY AS YOU EARN

### CHAPTER 3

#### PAYE: SPECIAL TYPES OF PAYER OR PAYEE

#### **687** Payments by intermediary

- (1) If any payment of, or on account of, PAYE income of an employee is made by an intermediary of the employer, the employer is to be treated, for the purposes of PAYE regulations, as making a payment of the income of an amount equal to the amount given by subsection (3).
- (2) Subsection (1) does not apply if the intermediary (whether or not a person to whom PAYE regulations apply) deducts income tax from the payment the intermediary makes, and accounts for it, in accordance with PAYE regulations.
- (3) The amount referred to is—
  - (a) if the amount of the payment made by the intermediary is an amount to which the recipient is entitled after deduction of income tax, the aggregate of the amount of the payment and the amount of any income tax due, and
  - (b) in any other case, the amount of the payment.
- (4) For the purposes of this section a payment of, or on account of, PAYE income of an employee is made by an intermediary of the employer if it is made—
  - (a) by a person acting on behalf of the employer and at the expense of the employer or a person connected with the employer, or

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- (b) by trustees holding property for any persons who include or class of persons which includes the employee.

### **688 Agency workers**

- (1) If the remuneration receivable by an individual under or in consequence of any contract falls to be treated under section 44 (agency workers) as earnings from an employment, the relevant provisions have effect as if the individual held the employment with or under the agency.

- (2) If—

- (a) the remuneration receivable by an individual under or in consequence of any contract falls to be so treated under section 44, and
- (b) a payment of, or on account of, PAYE income of the individual is made by a person acting on behalf of the client, and at the expense of the client or a person connected with the client,

section 687 and, in relation to any payment treated as made by the client under section 687, section 710 have effect in relation to the payment as if the client and not the agency were the employer for the purposes of the relevant provisions.

- (3) In subsections (1) and (2)—

“the agency” and “the client” have the same meanings as in section 44;

“the relevant provisions” means this Chapter except section 691, Chapter 4 of this Part and section 710.

### **689 Employee of non-UK employer**

- (1) This section applies if—

- (a) an employee during any period works for a person (“the relevant person”) who is not the employer of the employee,
- (b) any payment of, or on account of, PAYE income of the employee in respect of that period is made by a person who is the employer or an intermediary of the employer or of the relevant person,
- (c) PAYE regulations do not apply to the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, the employer, and
- (d) income tax is not deducted, or not accounted for, in accordance with the regulations by the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, the employer.

- (2) The relevant person is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the employee of an amount equal to the amount given by subsection (3).

- (3) The amount referred to is—

- (a) if the amount of the payment actually made is an amount to which the recipient is entitled after deduction of income tax, the aggregate of the amount of the payment and the amount of any income tax due, and
- (b) in any other case, the amount of the payment.

- (4) If, by virtue of any of sections 693 to 700, an employer would be treated for the purposes of PAYE regulations (if they applied to the employer) as making a payment of any amount to an employee, this section has effect as if—
- (a) the employer were also to be treated for the purposes of this section as making an actual payment of that amount, and
  - (b) paragraph (a) of subsection (3) were omitted.
- (5) For the purposes of this section a payment of, or on account of, PAYE income of an employee is made by an intermediary of the employer or of the relevant person if it is made—
- (a) by a person acting on behalf of the employer or the relevant person and at the expense of the employer or the relevant person or a person connected with the employer or the relevant person, or
  - (b) by trustees holding property for any persons who include or class of persons which includes the employee.
- (6) In this section and sections 690 and 691 “work”, in relation to an employee, means the performance of any duties of the employment of the employee and any reference to the employee’s working is to be read accordingly.

#### **690 Employee non-resident etc.**

- (1) This section applies in relation to an employee in a tax year only if the employee—
- (a) is not resident or, if resident, not ordinarily resident in the United Kingdom, and
  - (b) works or will work in the United Kingdom and also works or is likely to work outside the United Kingdom.
- (2) If in relation to an employee to whom this section applies and any tax year it appears to the Inland Revenue that—
- (a) some of the income paid to the employee by the employer is PAYE income, but
  - (b) some of that income may not be PAYE income,
- the Inland Revenue may, on an application made by the appropriate person, give a direction for determining a proportion of any payment made in that year of, or on account of, income of the employee which is to be treated as PAYE income.
- (3) In this section—
- (a) “the appropriate person” means the person designated by the employer for the purposes of this section and, if no person is so designated, the employer, and
  - (b) any reference to a payment made by the employer includes a reference to a payment made by a person acting on behalf of the employer and at the expense of the employer or a person connected with the employer.
- (4) An application under subsection (2) must provide such information as is available and is relevant to the application.
- (5) A direction under subsection (2)—
- (a) must specify the employee to whom and the tax year to which it relates,
  - (b) must be given by notice to the appropriate person, and
  - (c) may be withdrawn by notice to the appropriate person from a date specified in the notice.

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- (6) The date so specified may not be earlier than 30 days from the date on which the notice of withdrawal is given.
- (7) If—
- (a) a direction under subsection (2) has effect in relation to an employee to whom this section applies, and
  - (b) a payment of, or on account of, the income of the employee is made by the employer in the tax year to which the direction relates,
- the proportion of the payment determined in accordance with the direction is to be treated for the purposes of PAYE regulations as a payment of PAYE income of the employee.
- (8) If in any tax year—
- (a) no direction under subsection (2) has effect in relation to an employee to whom this section applies, and
  - (b) any payment of, or on account of, the income of the employee is made by the employer,
- the entire payment is to be treated for the purposes of PAYE regulations as a payment of PAYE income of the employee.
- (9) Subsections (7) and (8) are without prejudice to—
- (a) any assessment in respect of the income of the employee in question, and
  - (b) any right to repayment of income tax overpaid and any obligation to pay income tax underpaid.
- (10) In a case where section 689 applies—
- (a) the references to the employer in subsection (3)(a) are to be read as references to the relevant person, and
  - (b) any reference to a payment made by the employer is to be read as a reference to a payment treated, for the purposes of PAYE regulations, as made by the relevant person.
- In this subsection “the relevant person” has the same meaning as in section 689.

## **691 Mobile UK workforce**

- (1) This section applies if it appears to the Board of Inland Revenue that—
- (a) a person (“the relevant person”) has entered into or is likely to enter into an agreement that employees of another person (“the contractor”) are in any period to work for, but not as employees of, the relevant person,
  - (b) payments of, or on account of, PAYE income of the employees in respect of work done in that period are likely to be made by or on behalf of the contractor, and
  - (c) PAYE regulations would apply on the making of such payments but it is likely that income tax will not be deducted, or will not be accounted for, in accordance with the regulations.
- (2) The Board may give a direction that, if—
- (a) any of the employees of the contractor work in any period for, but not as employees of, the relevant person, and

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- (b) any payment is made by the relevant person in respect of work done by the employees in that period,  
income tax is to be deducted in accordance with the provisions of this section by the relevant person on making the payment.
- (3) A direction under subsection (2)—
  - (a) must specify the relevant person and the contractor to whom it relates;
  - (b) must be given by notice to the relevant person; and
  - (c) may at any time be withdrawn by notice to the relevant person.
- (4) The Board must take such steps as are reasonably practicable to ensure that a contractor is supplied with a copy of any notice under subsection (3) which relates to him.
- (5) If—
  - (a) a direction under subsection (2) has effect, and
  - (b) any employees of the contractor specified in the direction work for, but not as employees of, the relevant person so specified,  
income tax is, subject to and in accordance with PAYE regulations, to be deducted by the relevant person on making any payment in respect of that work as if so much of the payment as is attributable to work done by each employee were a payment of PAYE income of that employee.

## **692 Organised arrangements for sharing tips**

- (1) PAYE regulations may make provision with respect to organised arrangements for tips to be shared among employees by a person (“P”) who is not the principal employer.
- (2) PAYE regulations may include provisions which, for the purposes of PAYE regulations—
  - (a) treat every payment made by P to an employee by way of the employee’s share of any tips (including the retention by P of P’s own share if P is an employee) as a payment of PAYE income by P, and
  - (b) treat P as the employer in relation to every such payment.
- (3) PAYE regulations may also include provisions which—
  - (a) apply if P has failed to comply with any of the requirements of PAYE regulations, and
  - (b) treat the principal employer, for the purposes of PAYE regulations, as making payments to the employees of any tips paid over to P by the principal employer.
- (4) In this section—
  - “the principal employer” means the person under whose general control and management the employees work;
  - “tips” means gratuities and service charges.