



Income Tax (Earnings and Pensions) Act 2003

2003 CHAPTER 1

PART 2

EMPLOYMENT INCOME: CHARGE TO TAX

[^{F1}CHAPTER 9

MANAGED SERVICE COMPANIES

[^{F1}The deemed employment payment

Textual Amendments

F1 Pt. 2 Ch. 9 inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), s. 25(2), [Sch. 3 para. 4](#)

61D Worker treated as receiving earnings from employment

- (1) This section applies if—
- (a) the services of an individual (“the worker”) are provided (directly or indirectly) by a managed service company (“the MSC”),
 - (b) the worker, or an associate of the worker, receives (from any person) a payment or benefit which can reasonably be taken to be in respect of the services, and
 - (c) the payment or benefit is not earnings (within Chapter 1 of Part 3) received by the worker directly from the MSC.
- (2) The MSC is treated as making to the worker, and the worker is treated as receiving, a payment which is to be treated as earnings from an employment (“the deemed employment payment”).

Changes to legislation: *There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: The deemed employment payment. (See end of Document for details)*

(3) The deemed employment payment is treated as made at the time the payment or benefit mentioned in subsection (1)(b) is received.

(4) In this Chapter—

“the worker” has the meaning given by subsection (1),

“the relevant services” means the services mentioned in that subsection, and

“the client” means the person to whom the relevant services are provided.

[^{F2}(4A) This section does not apply where the provision of the relevant services gives rise (directly or indirectly) to an engagement to which Chapter 10 applies and either—

(a) the client for the purposes of section 61M(1) is a public authority, or

(b) the client for the purposes of section 61M(1)—

(i) qualifies as medium or large for the tax year in which the payment or benefit mentioned in subsection (1)(b) is received, and

(ii) has a UK connection for the tax year in which the payment or benefit mentioned in subsection (1)(b) is received.

(4B) Sections 60I (when a person has a UK connection for a tax year), 61K(3) (when a person qualifies as medium or large for a tax year) and 61L (meaning of public authority) apply for the purposes of subsection (4A).

(4C) It does not matter for the purposes of subsection (4A) whether the client for the purposes of this Chapter is also “the client” for the purposes of section 61M(1).]

(5) Section 61F supplements this section.

Textual Amendments

F2 [S. 61D\(4A\)-\(4C\)](#) substituted for [s. 61D\(4A\)](#) (with effect in accordance with Sch. 1 para. 26 of the amending Act) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 para. 18](#) (with [Sch. 1 paras. 30-34](#))

61E Calculation of deemed employment payment

(1) The amount of the deemed employment payment is the amount resulting from the following steps—

Step 1

Find (applying section 61F) the amount of the payment or benefit mentioned in section 61D(1)(b).

Step 2

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

(a) the worker had been employed by the client to provide the relevant services, and

(b) the expenses had been met by the worker out of those earnings.

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

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: The deemed employment payment. (See end of Document for details)

Step 3

Assume that the result of step 2 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) In step 2 of subsection (1), the reference to expenses met by the worker includes, where the MSC is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.
- (3) In step 2 of subsection (1), the expenses deductible include the amount of any mileage allowance relief which the worker would have been entitled to in respect of the use of a vehicle falling within subsection (4) if—
 - (a) the worker had been employed by the client to provide the relevant services, and
 - (b) the vehicle had not been a company vehicle (within the meaning of Chapter 2 of Part 4).
- (4) A vehicle falls within this subsection if—
 - (a) it is provided by the MSC for the worker, or
 - (b) where the MSC 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.
- (5) For the purposes of subsection (1) any necessary apportionment of payments or benefits that are referable partly to the provision of the relevant services and partly to other matters is to be made on a just and reasonable basis.

61F Sections 61D and 61E: application of rules relating to earnings from employment

- (1) The following provisions apply for the purposes of sections 61D and 61E.
- (2) A “payment or benefit” means anything that, if received by an employee for performing the duties of an employment, would be general 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 general earnings if the benefit were general 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, 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

Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: The deemed employment payment. (See end of Document for details)

(ii) the benefit had been provided by reason of the employment.

61G 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 MSC to provide the relevant services, and
 - (b) the deemed employment payment were a payment by the MSC of earnings from that employment;
 but this is subject to subsection (3).
- (3) No deduction under Part 5 (deductions allowed from employment income) or section 232 (mileage allowance relief) may be made from the deemed employment payment.
- (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 worker were employed by the client to perform the relevant services, and
 - (b) 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 relevant services being provided outside the United Kingdom.
- (6) Where the MSC is a partnership and the worker is a member of the partnership, the deemed employment payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership.
- (7) Where—
 - (a) the worker is resident in the United Kingdom, and
 - (b) the relevant services are provided in the United Kingdom,
 the MSC is treated as having a place of business in the United Kingdom, whether or not it in fact does so.]

Textual Amendments

- F3** S. 61G(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. 31\(a\)](#)
- F4** Words in s. 61G(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. 31\(b\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, Cross Heading: The deemed employment payment.