

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Section 16: Treatment of Agency Workers

Summary

1. This section amends existing agency legislation (treatment of workers supplied by agencies) in the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

Details of the Section

2. Subsection 1 provides that Chapter 7 of Part 2 of ITEPA is amended.
3. Subsection 2 substitutes a new section 44 ITEPA 2003.
4. New section 44 (1) if the conditions in 44(1) (a), (b), and (c) apply then this section applies. Those conditions are where:
 - a. A worker personally provides their services.
 - b.
 - i. There is a contract between an end client (the person who the worker is providing their services to) or a person connected to an end client, and
 - ii. a third party (known as the agency in this legislation but could be any third party).
 - c. As a result of which either (i) services of the worker are provided, or (ii) the client pays, or otherwise provides consideration, for services to be provided.
5. New section 44 (2) provides that the section will not apply where:
 - a. The manner in which the service is provided by the worker is not subject to (or the right of) control, direction or supervision by any person, or
 - b. payments receivable by the worker under or in consequence of the contract are treated as employment income under another chapter before considering this chapter.
6. New section 44 (3) (a) & (b) state that where the worker is providing services personally they must be treated as an employee of the agency for income tax purposes (deemed employee), and all income receivable by the worker in consequence of providing the services must be treated for income tax purposes as earnings to have come from that employment.
7. New section 44 (4) states that subsection (5) (explained below) will apply either before or after the worker begins to provide their services when either:
 - a. the end client provides a fraudulent document to the agency which is intended to mislead as to the manner in which the service is provided by the worker, that being not subject to (or the right of) control, direction or supervision by any person.

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- b. a relevant person provides the agency with a fraudulent document with the intention to infer that remuneration/payment received by the worker in consequence of providing the services is already being treated as employment income elsewhere.
8. New section 44 (5) sets out that the services provided to an end client by the worker after a fraudulent document is provided:
- a. The liability that sits with the agency deemed to be the employer will no longer apply (sub-section 3),
 - b. the worker is instead to be treated as having an employment with the end client or as the case may be with the relevant person were the duties consist of services, and
 - c. all of the remuneration received by the worker as a result of providing the services is to be treated as earnings from employment for income tax purposes by either the end client or again the relevant person were appropriate.
9. New section 44 (6) defines what is meant by a relevant person, that being a person other than the client, worker or a person connected with the client or the agency who:
- a. is resident or has a place of business in the United Kingdom, and
 - b. is party to a contract with the agency or a person connected with the agency, under or in consequence of which:
 - i. the services are provided, or
 - ii. the agency, or the person connected with the agency makes a payment in response to the provision of services.
10. Subsection 3 amends section 45 ITEPA 2003: New 45 (a) & (b) omits references to the agency.
11. Subsection 4 amends section 46 ITEPA 2003:
- a. in (1) (a) the obligation to personally provide is removed.
 - b. in (2) removes the reference to an agency contract and instead inserts a reference to the remuneration being received by the worker as a consequence of providing, or the services.
12. Subsection 5 insert 46A Anti-avoidance.
13. New section 46A (1) section shall apply if:
- a. an individual (the worker) personally provides services to another person (to be treated as the client) which are not excluded services,
 - b. a third person (the agency) enters into arrangements with the main or one of the main purposes being to secure that the services being provided by the worker are not treated for income tax purposes under section 44 as duties of an employment held by a worker with an agency, and
 - c. if this section did not exist, section 44 would not apply in relation to the services provided by the worker.
14. New section 46A (2) sets out what is to be covered by the term “arrangements” in subsection (1)(b).
15. New section 46A(3) states that in the scenarios where the Targeted Anti Avoidance Rule (TAAR) comes in to force section 44 will apply.

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16. New section 46A (4) defines who is the worker, client and agency in section 46A and states that section 44 has effect as if subsections (4) to (6) were omitted.
17. Subsection 6 amends section 47 ITEPA 2003: 47 (1) has now been omitted, removing the definition of an agency contract and the obligation for personal service.
18. Subsection 7 amends Chapter 3 Part 11 of ITEPA. It substitutes sub-section (1) of section 688 for new sub-section (1). New subsections 1A and 1B apply if the income receivable by the worker would be treated as employment income under the new section 44 and are explained below.
19. New subsection 1A treats the worker as being an employee of the agency (third party).
20. New sub-section 1B states that for the purposes of sections 687, 689 and 689A if:
 - a. Someone other than the third party (agency) or their intermediary makes a payment on account of PAYE income of the worker, and
 - b. the payment is not within the agency legislation – a payment of, or on account of PAYE income of the worker is to be treated as being made by the client (the person whom the worker is providing their services to) or at the expense of the client on behalf of the agency or their intermediary.
21. In subsection (2) –
 - a. “the client is not the deemed employer, and” have been added, and
 - b. “agency” has been replaced by “deemed employer”.
22. In subsection (3), the words “the agency” and “the client” have been substituted with definitions for the “the client” and “the deemed employer”.

“the client” is now defined as the person who is the client for the purposes of section 44; and

“the deemed employer” means the person with whom the individual is treated under section 44 as having an employment, and the duties of which consist of the services,”.

Background Note

23. This change has been introduced to prevent the avoidance of employment taxes by UK agency engaging UK workers via non-UK agencies and intermediaries facilitating false self-employment. It supports the Government’s anti-avoidance policy.