These notes refer to the Finance Act 2014 (c.26) which received Royal Assent on 17 July 2014

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Section 21: Oil and Gas Workers on the Continental Shelf: Operation of PAYE

Summary

1. This section amends the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 to add in a new section, section 689A. This section applies where oil and gas workers on the UK Continental Shelf are supplied by a non-UK based employer. It provides that a UK-based associate company of the overseas employer, or in the absence of an associate, the oil field licensee, will be responsible for operating PAYE. Where PAYE is paid and accounted for by the offshore employer, HMRC may issue a certificate to confirm this. Whilst the certificate is in force, it relieves the oil field licensee of their obligation to operate PAYE.

Details of the Section

2. Subsection 2 amends section 222 (payments by employer on account of tax where deductions not possible) so that the section also applies to section 698A. Section 222 regulates situations where the employee is paid by a means other than cash and it is not possible for the employer to deduct income tax and other relevant debts (such as overpayment of tax credits). It requires the employee to pay the amount of tax owed to the employer within 90 days for the employer to account to HMRC for it.

3. Subsection 3 inserts in to section 421L (persons to whom certain duties to provide information and returns apply) a new paragraph (3) (ba) which deals with employees who are continental shelf workers and the PAYE regulations do not apply to their employer, it then moves to any person who is a "relevant person". A further section is inserted at (5A) which provides a definition of "continental shelf worker" and "relevant person" used in (3) (ba).

4. Subsection 4 amends section 689 to clarify that 689 does not apply in cases where 689A applies or would apply but for a certificate issued under the regulations made under subsection (7) of 689A. Section 689 applies where an employee works for someone in the UK, but is employed and paid by an employer outside the UK. The person in the UK for whom the employee works is treated, for the purposes of the PAYE regulations, as making any payments of, or on account of, PAYE income.

5. Subsection 5 inserts the new section *689A Oil and gas workers on the continental shelf* after section 689. The details of new section 689A are:

   a. *Subsection 1* states the three conditions (subsections 4(1)(a) – (c)) necessary for section 689A to apply.

      i. *Subsection (1)(a)*: when a person (employer or intermediary) makes a payment of PAYE income (earnings on which tax is deductable), or what is deemed to be PAYE income, of a continental shelf worker for a certain period. This person can be an employer or an intermediary. An intermediary is someone acting on behalf of the employer or someone acting on behalf of the relevant person. A relevant person is defined in subsection 4(11) as the oilfield licensee or an associated company of the employer (as defined in the Company Tax Act 2010) with a UK base or registered office.

ii. Subsection (1)(b): when PAYE regulations do not apply to the person making the payment, or the employer, when the person making the payment is acting on behalf of the employer or the relevant person.

iii. Subsection (1)(c): when the person making the payment, or the employer, if that person is acting on behalf of the employer or relevant person, does not deduct or account for income tax or any relevant debts, in accordance with PAYE regulations.

b. *Subsection (3)* states that for the purposes of PAYE regulations, the associated onshore company of the offshore-employer or the oilfield licensee is to be treated as making a payment of PAYE income of the continental shelf worker equal to the amount defined in subsection (4) of section 689A.

c. *Subsection (4)* defines the amount of payment as:

   i. where the amount of payment made to the recipient has already had income tax and any relevant PAYE debts deducted, the amount referred to is the amount before any income and relevant PAYE debts were deducted,

   ii. where the amount of payment made to the recipient has not had income tax and any relevant PAYE debts deducted, that is the amount to which subsection (3) refers.

d. *Subsection (5)* states that if income from the employer is not paid by cash, but by vouchers and tokens, for example, it falls under sections 687A and 693-700. This means that for the purposes of PAYE regulations, the employer is treated as having made a payment of that amount in cash to a worker. Section 689A then applies as if the employer had made an actual payment of that amount to a continental shelf worker, and as if subsection (4)(a) were omitted.

e. *Subsection (6)* defines what is meant by the term “an intermediary of the employer or of the relevant person” which makes a payment of, or on account of, PAYE income of a continental shelf worker. An intermediary of the employer or of the relevant person can be a person acting on their behalf, or on behalf of a person connected with the employer or the relevant person. They can also be trustees holding property for the continental shelf worker.

f. *Subsection (7)* gives the power for PAYE regulations to make provision for, and in connection with, the issue of a certificate by HMRC to a relevant person in respect of one or more continental shelf workers. This certificate will confirm that income tax and any relevant debts for the PAYE income of specified continental shelf workers is being deducted and accounted for, as mentioned in subsection (1)(c). Whilst this certificate is in force section 689A does not apply to payments of, or on account of, PAYE income of the specified workers. The relevant person (as defined in regulations) is relieved of their obligation to operate PAYE during this time.

g. *Subsection (9)* provides that subsection (10) applies where there is more than one relevant person for a continental shelf worker.

h. *Subsection (10)* states that if one of the relevant persons complies with section 710 (which regulates earnings, called notional payments, which are not paid by cash) and accounts for the income tax and relevant debts of any PAYE income of the worker, the other relevant persons do not have to comply with that section with regards the payments they are treated as making.

i. *Subsection (11)* defines the terms "continental shelf worker", "employer" and "relevant person".

j. *Subsection (12)* gives the Treasury the power to modify these definitions by regulations.

k. *Subsection (13)* describes the ways in which regulations under subsection (12) can be used.

6. Subsection (6) edits section 690 (employee non-resident etc) of ITEPA 2003 to ensure that the section applies to those falling under section 689A. Section 690 ensures that where an employee, who is not resident or, if resident, not ordinarily resident in the UK, works or will work in the UK, and also works or is likely to work outside the UK, only part of their income may be taxable. Usually payments, which only partly consist of PAYE income, will not be subject to deductions under PAYE. Section 690 provides that payments, or at least a proportion of payments, are subject to PAYE.

7. Subsection (7) edits subsection (2) of section 710 (notional payments: accounting for tax) to ensure that the term notional payment includes the payments described in section 689A (4)(a) too, and that the term employer includes those making payments and specified in section 689A. Notional payments are payments not made in cash. This means that section 710 covers those falling under section 689A. Section 710 ITEPA 2003 says how the employer should operate PAYE in respect of a notional payment.

8. Subsection (8) inserts subsections (12) and (13) into section 689A. Subsection (12) provides the Treasury with the ability (power) to change the definitions of "continental shelf worker" and "relevant person" and subsection (13) sets out what type of changes to the regulations under subsection (12) can be made.

Background Note

9. This change has been introduced to prevent the avoidance of employment taxes by UK agency engaging UK workers via non-UK agencies. It supports the Government's anti-avoidance policy.