



# Finance Act 2014

## 2014 CHAPTER 26

### PART 1

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER 2

#### INCOME TAX: GENERAL

#### *Other provisions*

#### **16 Treatment of agency workers**

- (1) Chapter 7 of Part 2 of ITEPA 2003 (income tax treatment of agency workers) is amended as follows.
- (2) For section 44 (treatment of workers supplied by agencies) substitute—

#### **“44 Treatment of workers supplied by agencies**

- (1) This section applies if—
  - (a) an individual (“the worker”) personally provides services (which are not excluded services) to another person (“the client”),
  - (b) there is a contract between—
    - (i) the client or a person connected with the client, and
    - (ii) a person other than the worker, the client or a person connected with the client (“the agency”), and
  - (c) under or in consequence of that contract—
    - (i) the services are provided, or
    - (ii) the client or any person connected with the client pays, or otherwise provides consideration, for the services.

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*Status: This is the original version (as it was originally enacted).*

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- (2) But this section does not apply if—
- (a) it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person, or
  - (b) remuneration receivable by the worker in consequence of providing the services constitutes employment income of the worker apart from this Chapter.
- (3) If this section applies—
- (a) the worker is to be treated for income tax purposes as holding an employment with the agency, the duties of which consist of the services the worker provides to the client, and
  - (b) all remuneration receivable by the worker (from any person) in consequence of providing the services is to be treated for income tax purposes as earnings from that employment,
- but this is subject to subsections (4) to (6).
- (4) Subsection (5) applies if (whether before or after the worker begins to provide the services)—
- (a) the client provides the agency with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (2)(a), this section does not or will not apply, or
  - (b) a relevant person provides the agency with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (2)(b), this section does not or will not apply.
- (5) In relation to services the worker provides to the client after the fraudulent document is provided—
- (a) subsection (3) does not apply,
  - (b) the worker is to be treated for income tax purposes as holding an employment with the client or (as the case may be) with the relevant person, the duties of which consist of the services, and
  - (c) all remuneration receivable by the worker (from any person) in consequence of providing the services is to be treated for income tax purposes as earnings from that employment.
- (6) In subsections (4) and (5) “relevant person” means a person, other than the client, the worker or a person connected with the client or with 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 a person connected with the agency, makes payments in respect of the services.”
- (3) In section 45 (arrangements with agencies)—
- (a) in paragraph (a), omit “(“the agency”)", and
  - (b) in paragraph (b), omit “with the agency”.
- (4) In section 46 (cases involving unincorporated bodies etc)—

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- (a) in subsection (1)(a), omit “, or is under an obligation to personally provide,”, and
  - (b) in subsection (2), for the words from “under” to “contract” substitute “in consequence of the worker providing the services”.
- (5) After section 46 insert—

*“Anti-avoidance*

**46A Anti-avoidance**

- (1) This section applies if—
- (a) an individual (“W”) personally provides services (which are not excluded services) to another person (“C”),
  - (b) a third person (“A”) enters into arrangements the main purpose, or one of the main purposes, of which is to secure that the services are not treated for income tax purposes under section 44 as duties of an employment held by W with A, and
  - (c) but for this section, section 44 would not apply in relation to the services.
- (2) In subsection (1)(b) “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations.
- (3) Subject to subsection (2) of section 44, that section applies in relation to the services.
- (4) For the purposes of subsection (3)—
- (a) W is to be treated as being the worker,
  - (b) C is to be treated as being the client,
  - (c) A is to be treated as being the agency, and
  - (d) section 44 has effect as if subsections (4) to (6) of that section were omitted.”
- (6) In section 47 (interpretation of Chapter 7), omit subsection (1).
- (7) In Chapter 3 of Part 11 of that Act (PAYE: special types of payer or payee), section 688 (agency workers) is amended as follows.
- (8) For subsection (1) substitute—
- “(1) This section applies if the remuneration receivable by an individual in consequence of providing services falls to be treated under section 44 (agency workers) as earnings from an employment.
- (1A) The relevant provisions have effect as if the individual held the employment with or under the deemed employer, subject to subsection (2).
- (1B) For the purposes of sections 687, 689 and 689A, if—
- (a) a person other than the deemed employer or an intermediary of the deemed employer makes a payment of, or on account of, PAYE income of the individual, and
  - (b) the payment is not within subsection (2),

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the person is to be treated as making the payment as an intermediary of the deemed employer.”

(9) In subsection (2)—

(a) for paragraph (a) (and the “and” at the end of that paragraph) substitute—

“(a) the client is not the deemed employer, and”, and

(b) for “agency” substitute “deemed employer”.

(10) In subsection (3), for the words from “subsections” to “44;” substitute “this section— the client” means the person who is the client for the purposes of section 44; “the deemed employer” means the person with whom the individual is treated under section 44 as having an employment, the duties of which consist of the services;”.

(11) The amendments made by this section are treated as having come into force on 6 April 2014.