

WORKERS' SERVICES PROVIDED TO PUBLIC SECTOR THROUGH INTERMEDIARIES

61K Scope of this Chapter

(1) This Chapter has effect with respect to the provision of services to a public authority through an intermediary.

(2) Nothing in this Chapter—

(a) affects the operation of Chapter 7 of this Part (agency workers), or

(b) applies to payments or transfers to which section 966(3) or (4) of ITA 2007 applies (visiting performers: duty to deduct and account for sums representing income tax).

61L Meaning of “public authority”

(1) In this Chapter “public authority” means—

(a) a public authority as defined by the Freedom of Information Act 2000,

(b) a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002 (asp 13),

(c) the Corporate Officer of the House of Commons,

(d) the Corporate Officer of the House of Lords,

(e) the National Assembly for Wales Commission, or

(f) the Northern Ireland Assembly Commission.

(2) An authority within paragraph (a) or (b) of subsection (1) is a public authority for the purposes of this Chapter in relation to all its activities even if provisions of the Act mentioned in that paragraph do not apply to all information held by the authority.

(3) Subsection (1) is subject to subsection (4).

(4) A primary-healthcare provider is a public authority for the purposes of this Chapter only if the primary-healthcare provider—

(a) has a registered patient list for the purposes of relevant medical-services regulations,

(b) is within paragraph 43A in Part 3 of Schedule 1 to the Freedom of Information Act 2000 (providers of primary healthcare services in England and Wales) by reason of being a person providing primary dental services,

(c) is within paragraph 51 in that Part of that Schedule (providers of healthcare services in Northern Ireland) by reason of being a person providing general dental services, or

(d) is within paragraph 33 in Part 4 of Schedule 1 to the Freedom of Information (Scotland) Act 2002 (providers of healthcare services in Scotland) by reason of being a person providing general dental services.

(5) In this section—

- “primary-healthcare provider” means an authority that is within subsection (1)(a) or (b) only because it is within a relevant paragraph,
- “relevant paragraph” means—
 - (a) any of paragraphs 43A to 45A and 51 in Part 3 of Schedule 1 to the Freedom of Information Act 2000, or
 - (b) any of paragraphs 33 to 35 in Part 4 of Schedule 1 to the Freedom of Information (Scotland) Act 2002, and
- “relevant medical-services regulations” means any of the following—
 - (a) the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004 (S.I. 2004/906),
 - (b) the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) (Wales) Regulations 2004 (S.I. 2004/1017),
 - (c) the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) (Scotland) Regulations 2004 (S.S.I. 2004/162), and
 - (d) the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations (Northern Ireland) 2004 (S.R. (N.I.) 2004 No. 477).

(6) The Commissioners for Her Majesty's Revenue and Customs may by regulations amend this section in consequence of—

- (a) any amendment or revocation of any regulations for the time being referred to in this section,
- (b) any amendment in Part 3 of Schedule 1 to the Freedom of Information Act 2000, or
- (c) any amendment in Part 4 of Schedule 1 to the Freedom of Information (Scotland) Act 2002.

61M Engagements to which Chapter applies

(1) Sections 61N to 61R apply where—

- (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services for another person (“the client”),
- (b) the client is a public authority,

(c) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and

(d) the circumstances are such that—

(i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the holder of an office under the client, or

(ii) the worker is an office-holder who holds that office under the client and the services relate to the office.

(2) The reference in subsection (1)(c) to a “third party” includes a partnership or unincorporated association of which the worker is a member.

(3) The circumstances referred to in subsection (1)(d) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.

(4) Holding office as statutory auditor of the client does not count as holding office under the client for the purposes of subsection (1)(d), and here “statutory auditor” means a statutory auditor within the meaning of Part 42 of the Companies Act 2006 (see section 1210 of that Act).

(5) In this Chapter “engagement to which this Chapter applies” means any such provision of services as is mentioned in subsection (1).

61N Worker treated as receiving earnings from employment

(1) If one of Conditions A to C is met, identify the chain of two or more persons where—

(a) the highest person in the chain is the client,

(b) the lowest person in the chain is the intermediary, and

(c) each person in the chain above the lowest makes a chain payment to the person immediately below them in the chain.

(See section 61U for cases where one of Conditions A to C is treated as being met.)

(2) In this section and sections 61O to 61S—

- “chain payment” means a payment, or money's worth or any other benefit, that can reasonably be taken to be for the worker's services to the client,
- “make”—
 - (a) in relation to a chain payment that is money's worth, means transfer, and
 - (b) in relation to a chain payment that is a benefit other than a payment or money's worth, means provide, and
- “the fee-payer” means the person in the chain immediately above the lowest.

(3)The fee-payer 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 direct payment”), but this is subject to subsections (5) to (7) and sections 61T and 61V.

(4)The deemed direct payment is treated as made at the same time as the chain payment made by the fee-payer.

(5)Subsections (6) and (7) apply, subject to sections 61T and 61V, if the fee-payer—

(a)is not the client, and

(b)is not a qualifying person.

(6)If there is no person in the chain below the highest and above the lowest who is a qualifying person, subsections (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the client.

(7)Otherwise, subsections (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the person in the chain who—

(a)is above the lowest,

(b)is a qualifying person, and

(c)is lower in the chain than any other person in the chain who—

(i)is above the lowest, and

(ii)is a qualifying person.

(8)In subsections (5) to (7) a “qualifying person” is a person who—

(a)is resident in the United Kingdom or has a place of business in the United Kingdom,

(b)is not a person who is controlled by—

(i)the worker, alone or with one or more associates of the worker, or

(ii)an associate of the worker, with or without other associates of the worker, and

(c)if a company, is not one in which—

(i)the worker, alone or with one or more associates of the worker, or

(ii)an associate of the worker, with or without other associates of the worker,

has a material interest (within the meaning given by section 51(4) and (5)).

(9)Condition A is that—

(a)the intermediary is a company, and

(b)the conditions in section 61O are met in relation to the intermediary.

(10) Condition B is that—

- (a) the intermediary is a partnership,
- (b) the worker is a member of the partnership,
- (c) the provision of the services is by the worker as a member of the partnership, and
- (d) the condition in section 61P is met in relation to the intermediary.

(11) Condition C is that the intermediary is an individual.

(12) Where a payment, money's worth or any other benefit can reasonably be taken to be for both—

- (a) the worker's services to the client, and
- (b) anything else,

then, for the purposes of this Chapter, so much of it as can, on a just and reasonable apportionment, be taken to be for the worker's services is to be treated as (and the rest is to be treated as not being) a payment, or money's worth or another benefit, that can reasonably be taken to be for the worker's services.

61O Conditions where intermediary is a company

(1) The conditions mentioned in section 61N(9)(b) are that—

- (a) the intermediary is not an associated company of the client that falls within subsection (2), and
- (b) the worker has a material interest in the intermediary.

(2) An associated company of the client falls within this subsection if it is such a company by reason of the intermediary and the client being under the control—

- (a) of the worker, or
- (b) of the worker and other persons.

(3) The worker is treated as having a material interest in the intermediary if—

- (a) the worker, alone or with one or more associates of the worker, or
 - (b) an associate of the worker, with or without other associates of the worker,
- has a material interest in the intermediary.

(4) For this purpose “material interest” has the meaning given by section 51(4) and (5).

(5) In this section “associated company” has the meaning given by section 449 of CTA 2010.

61P Conditions where intermediary is a partnership

(1) The condition mentioned in section 61N(10)(d) is—

- (a) that the worker, alone or with one or more relatives, is entitled to 60% or more of the profits of the partnership, or

(b) that most of the profits of the partnership derive from the provision of services under engagements to which one or other of this Chapter and Chapter 8 applies—

(i) to a single client, or

(ii) to a single client together with associates of that client, or

(c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which one or other of this Chapter and Chapter 8 applies.

(2) In subsection (1)(a) “relative” means spouse or civil partner, parent or child or remoter relation in the direct line, or brother or sister.

(3) Section 61(4) and (5) apply for the purposes of this section as they apply for the purposes of Chapter 8.

61Q Calculation of deemed direct payment

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

- *Step 1* Identify the amount or value of the chain payment made by the person who is treated as making the deemed direct payment, and deduct from that amount so much of it (if any) as is in respect of value added tax.
- *Step 2* Deduct, from the amount resulting from Step 1, so much of that amount as represents the direct cost to the intermediary of materials used, or to be used, in the performance of the services.
- *Step 3* Deduct, at the option of the person treated as making the deemed direct payment, from the amount resulting from Step 2, so much of that amount as represents expenses met by the intermediary that would have been deductible from the taxable earnings from the employment if—
 - (a) the worker had been employed by the client, and
 - (b) the expenses had been met by the worker out of those earnings.
- *Step 4* If the amount resulting from the preceding Steps is nil or negative, there is no deemed direct payment. Otherwise, that amount is the amount of the deemed direct payment.

(2) For the purposes of Step 1 of subsection (1), any part of the amount or value of the chain payment which is employment income of the worker by virtue of section 863G(4) of ITTOIA 2005 (salaried members of limited liability partnerships: anti-avoidance) is to be ignored.

(3) In subsection (1), the reference to the amount or value of the chain payment means the amount or value of that payment before the deduction (if any) permitted under section 61S.

(4) If the actual amount or value of the chain payment mentioned in Step 1 of subsection (1) is such that its recipient bears the cost of amounts due under PAYE regulations or contributions regulations in respect of the deemed direct payment, that Step applies as if the amount or value of that chain payment were what it would be if the burden of that cost were not being passed on through the setting of the level of the payment.

(5) In Step 3 of subsection (1), the reference to expenses met by the intermediary includes—

(a) expenses met by the worker and reimbursed by the intermediary, and

(b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.

(6) In subsection (4) “contributions regulations” means regulations under the Contributions and Benefits Act providing for primary Class 1 contributions to be paid in a similar manner to income tax in relation to which PAYE regulations have effect (see, in particular, paragraph 6(1) of Schedule 1 to the Act); and here “primary Class 1 contribution” means a primary Class 1 contribution within the meaning of Part 1 of the Contributions and Benefits Act.

61R Application of Income Tax Acts in relation to deemed employment

(1) The Income Tax Acts (in particular, Part 11 and PAYE regulations) apply in relation to the deemed direct payment as follows.

(2) They apply as if—

(a) the worker were employed by the person treated as making the deemed direct payment, and

(b) the services were performed, or to be performed, by the worker in the course of performing the duties of that employment.

(3) The deemed direct payment is treated in particular—

(a) as taxable earnings from the employment for the purpose of securing that any deductions under Chapters 2 to 6 of Part 5 do not exceed the deemed direct payment, and

(b) as taxable earnings from the employment for the purposes of section 232.

(4) The worker is not chargeable to tax in respect of the deemed direct 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 client employed the worker,

(b) the worker performed the services in the course of that employment, and

(c) the deemed direct payment were a payment by the client of earnings from that employment.

(5) The factors are—

(a) the worker being resident or domiciled outside the United Kingdom or meeting the requirement of section 26A,

(b) the client being resident outside, or not resident in, the United Kingdom, and

(c) the services being provided outside the United Kingdom.

(6) Where the intermediary is a partnership or unincorporated association, the deemed direct payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership or association.

(7) Where—

(a) the client is the person treated as making the deemed direct payment,

(b) the worker is resident in the United Kingdom,

(c) the services are provided in the United Kingdom,

(d) the client is not resident in the United Kingdom, and

(e) the client does not have a place of business in the United Kingdom,

the client is treated as resident in the United Kingdom.

61S Deductions from chain payments

(1) This section applies if, as a result of section 61R, a person who is treated as making a deemed direct payment is required under PAYE Regulations to pay an amount to the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") in respect of the payment.

(But see subsection (4)).

(2) The person may deduct from the underlying chain payment an amount which is equal to the amount payable to the Commissioners, but where the amount or value of the underlying chain payment is treated by section 61Q(4) as increased by the cost of any amount due under PAYE Regulations, the amount that may be deducted is limited to the difference (if any) between the amount payable to the Commissioners and the amount of that increase.

(3) Where a person in the chain other than the intermediary receives a chain payment from which an amount has been deducted in reliance on subsection (2) or this subsection, that person may deduct the same amount from the chain payment made by them.

(4) This section does not apply in a case to which 61V(2) applies (services-provider treated as making deemed direct payment).

(5) In subsection (2) "the underlying chain payment" means the chain payment whose amount is used at Step 1 of section 61Q(1) as the starting point for calculating the amount of the deemed direct payment.

61T Information to be provided by clients and consequences of failure

(1) If the conditions in section 61M(1)(a) to (c) are met in any case, and a person as part of the arrangements mentioned in section 61M(1)(c) enters into a contract with the client, the client must inform that person (in the contract or otherwise) of which one of the following is applicable—

(a) the client has concluded that the condition in section 61M(1)(d) is met in the case;

(b) the client has concluded that the condition in section 61M(1)(d) is not met in the case.

(2) If the contract is entered into on or after 6 April 2017, the duty under subsection (1) must be complied with—

(a) on or before the time of entry into the contract, or

(b) if the services begin to be performed at a later time, before that later time.

(3) If the contract is entered into before 6 April 2017, the duty under subsection (1) must be complied with on or before the date of the first payment made under the contract on or after 6 April 2017.

(4) If the information which subsection (1) requires the client to give to a person has been given (whether in the contract, as required by subsection (2) or (3) or otherwise), the client must, on a written request by the person, provide the person with a written response to any questions raised by the person about the client's reasons for reaching the conclusion identified in the information.

(5) A response required by subsection (4) must be provided before the end of 31 days beginning with the day the request for it is received by the client.

(6) If—

(a) the client fails to comply with the duty under subsection (1) within the time allowed by subsection (2) or (3),

(b) the client fails to provide a response required by subsection (4) within the time allowed by subsection (5), or

(c) the client complies with the duty under subsection (1) but fails to take reasonable care in coming to its conclusion as to whether the condition in section 61M(1)(d) is met in the case,

section 61N(3) and (4) have effect in the case as if for any reference to the fee-payer there were substituted a reference to the client, but this is subject to section 61V.

61U Information to be provided by worker and consequences of failure

(1) In the case of an engagement to which this Chapter applies, the worker must inform the potential deemed employer of which one of the following is applicable—

(a) that one of conditions A to C in section 61N is met in the case;

(b) that none of conditions A to C in section 61N is met in the case.

(2) If the worker has not complied with subsection (1) then, for the purposes of section 61N(1), one of conditions A to C in section 61N is to be treated as met.

(3) In this section “the potential deemed employer” is the person who, if one of conditions A to C in section 61N were met, would be treated as making a deemed direct payment to the worker under section 61N(3).

61V Consequences of providing fraudulent information

(1) Subsection (2) applies if in any case—

(a) a person (“the deemed employer”) would, but for this section, be treated by section 61N(3) as making a payment to another person (“the services-provider”), and

(b) the fraudulent documentation condition is met.

(2) Section 61N(3) has effect in the case as if the reference to the fee-payer were a reference to the services-provider, but—

(a) section 61N(4) continues to have effect as if the reference to the fee-payer were a reference to the deemed employer, and

(b) Step 1 of section 61Q(1) continues to have effect as referring to the chain payment made by the deemed employer.

(3) Subsection (2) has effect even though that involves the services-provider being treated as both employer and employee in relation to the deemed employment under section 61N(3).

(4) “The fraudulent documentation condition” is that a relevant person provided any person with a fraudulent document intended to constitute evidence—

(a) that the case is not an engagement to which this Chapter applies, or

(b) that none of conditions A to C in section 61N is met in the case.

(5) A “relevant person” is—

(a) the services-provider;

(b) a person connected with the services-provider;

(c) if the intermediary in the case is a company, an office-holder in that company.

61W Prevention of double charge to tax and allowance of certain deductions

(1) Subsection (2) applies where—

(a) a person (“the payee”) receives a payment or benefit (“the end-of-line remuneration”) from another person (“the paying intermediary”),

(b) the end-of-line remuneration can reasonably be taken to represent remuneration for services of the payee to a public authority,

(c) a payment (“the deemed payment”) has been treated by section 61N(3) as made to the payee,

(d)the underlying chain payment can reasonably be taken to be for the same services of the payee to that public authority, and

(e)the recipient of the underlying chain payment has (whether by deduction from that payment or otherwise) borne the cost of any amounts due, under PAYE regulations and contributions regulations in respect of the deemed payment, from the person treated by section 61N(3) as making the deemed payment.

(2)For income tax purposes, the paying intermediary and the payee may treat the amount of the end-of-line remuneration as reduced (but not below nil) by any one or more of the following—

(a)the amount (see section 61Q) of the deemed payment;

(b)the amount of any capital allowances in respect of expenditure incurred by the paying intermediary that could have been deducted from employment income under section 262 of CAA 2001 if the payee had been employed by the public authority and had incurred the expenditure;

(c)the amount of any contributions made, in the same tax year as the end-of-line remuneration, for the benefit of the payee by the paying intermediary to a registered pension scheme that if made by an employer for the benefit of an employee would not be chargeable to income tax as income of the employee.

(3)Subsection (2)(c)does not apply to—

(a)excess contributions paid and later repaid,

(b)contributions set under subsection (2) against another payment by the paying intermediary, or

(c)contributions deductible at Step 5 of section 54(1) in calculating the amount of the payment (if any) treated by section 50 as made in the tax year concerned by the paying intermediary to the payee.

(4)For the purposes of subsection (3)(c), the contributions to which Step 5 of section 54(1) applies in the case of the particular calculation are “deductible” at that Step so far as their amount does not exceed the result after Step 4 in that calculation.

(5)In subsection (1)(d) “the underlying chain payment” means the chain payment whose amount is used at Step 1 of section 61Q(1) as the starting point for calculating the amount of the deemed payment.

(6)Subsection (2) applies whether the end-of-line remuneration—

(a)is earnings of the payee,

(b)is a distribution of the paying intermediary, or

(c)takes some other form.

61X Interpretation

In this Chapter—

- “associate” has the meaning given by section 60;
- “company” means a body corporate or unincorporated association, and does not include a partnership;
- “engagement to which Chapter 8 applies” has the meaning given by section 49(5).”