

1 PAYE: offshore employers

(1) Part 11 of ITEPA 2003 (Pay as You Earn) is amended as follows.

(2) In Chapter 2 (PAYE: general) after section 686 insert –

“686A PAYE regulations to apply to offshore employers in certain circumstances

- (1) This section applies if –
 - (a) a person (“A”) is the employer of another person (“B”), and
 - (b) apart from this section, PAYE regulations would not apply to A in respect of the employment.
- (2) If the following condition is met, PAYE regulations apply to A in respect of the employment (notwithstanding that A may have little or no connection with the United Kingdom).
- (3) The condition is that –
 - (a) B works for another person (“C”) in the course of the employment, and
 - (b) C is resident or present or has a place of business in the United Kingdom.
- (4) For the purposes of subsection (3)(a), B “works for” C if B provides, or is involved in the provision of, services to C (whether or not B gives, or is under an obligation to give, personal service to C).
- (5) Subsection (2) does not apply in relation to any payment of, or on account of, PAYE income of B if a person other than A (whether or not a person to whom PAYE regulations apply) accounts, in relation to the payment, for income tax and any relevant debts in accordance with PAYE regulations.
- (6) The Treasury may by regulations provide that this section does not apply if prescribed conditions are met.

686B Default by offshore employer

- (1) This section applies if –
 - (a) a person (“the offshore employer”) does not have a registered office or place of business in any member State,
 - (b) as a result of section 686A, PAYE regulations apply to the offshore employer in respect of an employment (“the relevant employment”) of an employee, and
 - (c) sums due from the offshore employer under PAYE regulations, or national insurance contributions that the employer is liable to pay, in respect of the relevant employment are unpaid at the end of the period of 30 days beginning with the day on which the sums or contributions were due to be paid.
- (2) HMRC may give notice in writing under this section to –
 - (a) any relevant intermediary;
 - (b) where the condition in subsection (3) is met, an end client business.
- (3) The condition is that the employee does, or has done, work for the end client business that was not arranged by a relevant intermediary who is

resident or present or has a place of business in the United Kingdom at the time notice is to be given.

- (4) A notice under this section may require the recipient to pay an appropriate amount in respect of any sums that—
 - (a) are due from the offshore employer under PAYE regulations, in respect of the relevant employment, before the date the notice is given, but
 - (b) have not been paid before that date.
- (5) For the purposes of subsection (4), an “appropriate amount” means such amount as HMRC consider to be just and reasonable, taking into account—
 - (a) work the employee did for, or which was arranged by, the recipient,
 - (b) such payments made by or to a relevant intermediary or end client as HMRC consider appropriate, and
 - (c) any other matters that HMRC consider to be relevant.
- (6) If, when notice is given, the employee does work for, or arranged by, the recipient in the course of the relevant employment, the notice may provide that subsection (7) is to apply from when notice is given.
- (7) If the offshore employer makes a payment of, or on account of, PAYE income of the employee, the recipient is to be treated for the purposes of PAYE regulations as making a payment of PAYE income of the employee of an amount equal to the offshore employer’s payment.
- (8) Subsection (7) ceases to apply if the employee ceases to do work for, or arranged by, the recipient in the course of the relevant employment.
- (9) In this section—
 - “end client” means a person for whom the employee works or has worked, as mentioned in section 686A(3)(a), in the course of the relevant employment (and references to the employee working for an end client are to be construed accordingly),
 - “end client business” means an end client—
 - (a) that is not an individual, or
 - (b) who is an individual who carries on a trade or profession for the purposes of which the employee works, or has worked, for the individual in the course of the relevant employment,
 - “HMRC” means Her Majesty’s Revenue and Customs,
 - “national insurance contributions” means contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992,
 - “recipient” means a person to whom notice is given under this section, and
 - “relevant intermediary” means a person who—
 - (a) does not employ the employee, and
 - (b) makes, or has made, arrangements with an end client for the employee to do work for the end client in the course of the relevant employment.

- (10) In this section references to payments made by the offshore employer include (in particular) payments treated as made by the offshore employer for the purposes of PAYE regulations.

686C Offshore employers: provision supplementary to section 686B

- (1) Where the actual amount of any payments of, or on account of, PAYE income of the employee made by the offshore employer in any period cannot be proved to HMRC's satisfaction, HMRC may estimate the amount, taking into account –
- (a) such payments made by or to a relevant intermediary or end client as HMRC consider appropriate, and
 - (b) any other matters that HMRC consider to be relevant.
- (2) Notice under section 686B and notice under section 7A of SSCBA 1992 or SSCB(NI)A 1992 may be given in the same notice.
- (3) Subsections (5) to (8) apply where a recipient who is a relevant intermediary becomes insolvent (“the insolvent intermediary”).
- (4) For the purposes of subsection (3), a recipient becomes insolvent –
- (a) if a bankruptcy order is made in respect of the recipient under Part 9 of the Insolvency Act 1986 or Part 9 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
 - (b) if the recipient's estate is sequestrated,
 - (c) on the commencement of a creditor's voluntary winding up (within the meaning of Part 4 of the Insolvency Act 1986), or a winding up by the court under Chapter 6 of that Part, of the recipient,
 - (d) on the commencement of a creditor's voluntary winding up (within the meaning of Part 5 of the Insolvency (Northern Ireland) Order 1989), or a winding up by the High Court under Chapter 6 of that Part, of the recipient,
 - (e) if the recipient enters administration under Schedule B1 to the Insolvency Act 1986 or Schedule B1 to the Insolvency (Northern Ireland) Order 1989, or
 - (f) on the occurrence of any event corresponding to an event falling within paragraphs (a) to (e), which has effect under or as a result of the law of a country or territory outside the United Kingdom.
- (5) If notice was given to the insolvent intermediary under subsection (6) of section 686B, subsection (7) of that section ceases to apply.
- (6) Section 686B applies and the condition in subsection (3) of that section is to be treated as met in relation to any end client business for whom the insolvent intermediary arranged for the employee to work in the course of the relevant employment.
- (7) Any notice given under section 686B to an end client business mentioned in subsection (6) may also require the end client business to pay an appropriate amount in respect of any sums the insolvent intermediary owes, by virtue of a notice under section 686B, in respect of the relevant employment.
- (8) For the purposes of subsection (7), an “appropriate amount” means such amount as HMRC consider to be just and reasonable, taking into account –

- (a) work the insolvent intermediary arranged for the employee to do for the end client business,
 - (b) such payments made by or to the end client business or insolvent intermediary as HMRC consider appropriate, and
 - (c) any other matters that HMRC consider to be relevant.
- (9) The Treasury may by regulations make provision –
 - (a) about the information that must be included in a notice under section 686B,
 - (b) about how notice under section 686B is to be given,
 - (c) about when notice under section 686B is to be treated as having been given,
 - (d) about when sums must be paid by a person to whom notice under section 686B is given, and
 - (e) for such persons as may be specified or described in the regulations to be treated as, or treated as not being, relevant intermediaries, end clients or end client businesses for the purposes of this section and section 686B.
- (10) In this section –
 - (a) terms defined in section 686B have the same meaning as in that section, and
 - (b) references to the employee are to the employee mentioned in that section.”
- (3) Omit section 689 (employee of non-UK employer).
- (4) In section 690 (employee non-resident etc) –
 - (a) after subsection (9) insert –
 - “(9A) In this section and section 691 “work”, in relation to an employee, means the performance of any of the duties of the employment of the employee and any reference to the employee’s working is to be read accordingly.”, and
 - (b) omit subsection (10).
- (5) In section 710 (notional payments: accounting for tax) in subsection (2) –
 - (a) in paragraph (a) –
 - (i) after “sections” insert “686B(7),”, and
 - (ii) for “687A, 689” substitute “687A”, and
 - (b) in paragraph (b) for “689(2)” substitute “686B(7)”.
- (6) The amendments made by this section come into force on 6 April 2014.