
9 Travel expenses of workers providing services through intermediaries

- (1) In Chapter 2 of Part 5 of ITEPA 2003 (deductions for employee's expenses), after section 339 insert –

“339A Sections 338 and 339: employment intermediaries

- (1) This section applies where an individual (“the worker”) –
- (a) personally provides services (which are not excluded services) to another person (“the client”), and
 - (b) the services are provided not under a contract directly between the client and the worker but under arrangements involving an employment intermediary.
- (2) But this section does not apply if 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.
- (3) In the case of an engagement consisting of such provision of services as is mentioned in section 49(1) (services provided under arrangements made by intermediaries), this section applies –
- (a) only if the conditions specified in section 51, 52 or 53 are met in relation to the intermediary (but disregarding the words “that is not employment income” in section 50(1)(b)), and
 - (b) in such a case, as if subsection (2) of this section were omitted.
- (4) Where this section applies, each engagement is for the purposes of sections 338 and 339 to be regarded as a separate employment.
- (5) In determining whether this section applies, no regard is to be had to any arrangements the main purpose, or one of the main purposes, of which is to secure that this section does not to any extent apply.
- (6) Subsection (7) applies if –
- (a) the client or a relevant person provides the employment intermediary (whether before or after the worker begins to provide the services) with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (2), this section does not or will not apply in relation to the services,
 - (b) this section is taken not to apply in relation to the services, and
 - (c) in consequence, the employment intermediary does not under PAYE regulations deduct and account for an amount that would have been deducted and accounted for under those regulations if this section been taken to apply in relation to the services.
- (7) For the purpose of recovering the amount referred to in subsection (6)(c) (“the unpaid tax”) –
- (a) the worker is to be treated as having an employment with the client or relevant person who provided the document, the duties of which consist of the services, and
 - (b) the client or relevant person is under PAYE regulations to account for the unpaid tax as if it arose in respect of earnings from that employment.

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- (8) In subsections (6) and (7) “relevant person” means a person, other than the client, the worker or a person connected with the client or with the employment intermediary, who –
- (a) is resident, or has a place of business, in the United Kingdom, and
 - (b) is party to a contract with the employment intermediary or a person connected with the employment intermediary under or in consequence of which –
 - (i) the services are provided, or
 - (ii) the employment intermediary, or a person connected with the employment intermediary, makes payments in respect of the services.

- (9) In this section –
- “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding, whether or not enforceable, and any associated operations;
 - “employment intermediary” means a person, other than the worker or the client, who carries on a business (whether or not with a view to profit and whether or not in conjunction with any other business) of supplying labour;
 - “engagement” means any such provision of service as is mentioned in subsection (1)(a);
 - “excluded services” means services provided wholly in the client’s home.”

- (2) After section 688A of ITEPA 2003 insert –

“688B Travel expenses of workers providing services through intermediaries: recovery of unpaid tax

- (1) PAYE regulations may make provision for, or in connection with, the recovery from a director or officer of a company, in such circumstances as may be specified in the regulations, of amounts within any of subsections (2) to (5).
- (2) An amount within this subsection is an amount that the company is to account for in accordance with PAYE regulations by virtue of section 339A(6) to (8) (persons providing fraudulent documents).
- (3) An amount within this subsection is an amount which the company is to deduct and pay in accordance with PAYE regulations by virtue of section 339A in circumstances where –
 - (a) the company is an employment intermediary,
 - (b) on the basis that section 339A does not apply by virtue of subsection (2) of that section, the company has not deducted and paid the amount, but
 - (c) the company has not been provided with evidence from any other person to show the matters referred to in that subsection.
- (4) An amount within this subsection is an amount that the company is to deduct and pay in accordance with PAYE regulations by virtue of section 339A in circumstances where subsection (3) of that section applies (services provided under arrangements made by intermediaries).

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- (5) An amount within this subsection is any interest or penalty in respect of an amount within any of subsections (2) to (4) for which the company is liable.
 - (6) In this section –
 - “company” includes a limited liability partnership;
 - “director” has the meaning given by section 67;
 - “employment intermediary” has the same meaning as in section 339A;
 - “officer”, in relation to a company, means any manager, secretary or other similar officer of the company, or any person acting or purporting to act as such.”
 - (3) In Part 4 of the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (payments, returns and information), after Chapter 3A insert –

“CHAPTER 3B

CERTAIN DEBTS OF COMPANIES UNDER SECTION 339A OF ITEPA (TRAVEL EXPENSES OF WORKERS PROVIDING SERVICES THROUGH EMPLOYMENT INTERMEDIARIES)

97ZG Interpretation of Chapter 3B: “relevant PAYE debt” and “relevant date”

- (1) In this Chapter “relevant PAYE debt”, in relation to a company means an amount within any of paragraphs (2) to (5).
- (2) An amount within this paragraph is an amount that the company is to account for in accordance with these Regulations by virtue of section 339A(6) to (8) of ITEPA (persons providing fraudulent documents).
- (3) An amount within this paragraph is an amount which a company is to deduct and pay in accordance with these Regulations by virtue of section 339A of ITEPA in circumstances where –
 - (a) the company is an employment intermediary,
 - (b) on the basis that section 339A of ITEPA does not apply by virtue of subsection (2) of that section the company has not deducted and paid the amount, but
 - (c) the company has not been provided with evidence from any other person to show the matters referred to in that subsection.
- (4) An amount within this paragraph is an amount that the company is to deduct and pay in accordance with these Regulations by virtue of section 339A of ITEPA in circumstances where subsection (3) of that section applies (services provided under arrangements made by intermediaries).
- (5) An amount within this paragraph is any interest or penalty in respect of an amount within any of paragraphs (2) to (4) for which the company is liable.
- (6) In this Chapter “the relevant date” in relation to a relevant PAYE debt means the date on which the first payment is due on which PAYE is not accounted for.

97ZH Interpretation of Chapter 3B: general

In this Chapter –

- “company” includes a limited liability partnership;
- “director” has the meaning given by section 67 of ITEPA;
- “personal liability notice” has the meaning given by regulation 97ZI(2);
- “the specified amount” has the meaning given by regulation 97ZI(2)(a).

97ZI Liability of directors for relevant PAYE debts

- (1) This regulation applies in relation to an amount of relevant PAYE debt of a company if the company does not deduct that amount by the time by which the company is required to do so.
- (2) HMRC may serve a notice (a “personal liability notice”) on any person who was, on the relevant date, a director of the company –
 - (a) specifying the amount of relevant PAYE debt in relation to which this regulation applies (“the specified amount”), and
 - (b) requiring the director to pay to HMRC –
 - (i) the specified amount, and
 - (ii) specified interest on that amount.
- (3) The interest specified in the personal liability notice –
 - (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 86 of TMA, and
 - (b) is to run from the date the notice is served.
- (4) A director who is served with a personal liability notice is liable to pay to HMRC the specified amount and the interest specified in the notice within 30 days beginning with the day the notice is served.
- (5) If HMRC serve personal liability notices on more than one director of the company in respect of the same amount of relevant PAYE debt, the directors are jointly and severally liable to pay to HMRC the specified amount and the interest specified in the notices.

97ZJ Appeals in relation to personal liability notices

- (1) A person who is served with a personal liability notice in relation to an amount of relevant PAYE debt of a company may appeal against the notice.
- (2) A notice of appeal must –
 - (a) be given to HMRC within 30 days beginning with the day the personal liability notice is served, and
 - (b) specify the grounds of the appeal.
- (3) The grounds of appeal are –
 - (a) that all or part of the specified amount does not represent an amount of relevant PAYE debt, of the company, to which regulation 97ZI applies, or
 - (b) that the person was not a director of the company on the relevant date.

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- (4) But a person may not appeal on the ground mentioned in paragraph (3)(a) if it has already been determined, on an appeal by the company, that—
 - (a) the specified amount is a relevant PAYE debt of the company, and
 - (b) the company did not deduct, account for, or (as the case may be) pay the debt by the time by which the company was required to do so.
 - (5) Subject to paragraph (6), on an appeal that is notified to the tribunal, the tribunal is to uphold or quash the personal liability notice.
 - (6) In a case in which the ground of appeal mentioned in paragraph (3)(a) is raised, the tribunal may also reduce or increase the specified amount so that it does represent an amount of relevant PAYE debt, of the company, to which regulation 97ZI applies.

97ZK Withdrawal of personal liability notices

- (1) A personal liability notice is withdrawn if the tribunal quashes it.
- (2) An officer of Revenue and Customs may withdraw a personal liability notice if the officer considers it appropriate to do so.
- (3) If a personal liability notice is withdrawn, HMRC must give notice of that fact to the person upon whom the notice was served.

97ZL Recovery of sums due under personal liability notice: application of Part 6 of TMA

- (1) For the purposes of this Chapter, Part 6 of TMA (collection and recovery) applies as if—
 - (a) the personal liability notice were an assessment, and
 - (b) the specified amount, and any interest on that amount under regulation 97ZI(2)(b)(ii), were income tax charged on the director upon whom the notice is served,and that Part of that Act applies with the modification in paragraph (2) and any other necessary modifications.
- (2) Summary proceedings for the recovery of the specified amount, and any interest on that amount under regulation 97ZI(2)(b)(ii), may be brought in England and Wales or Northern Ireland at any time before the end of the period of 12 months beginning with the day after the day on which personal liability notice is served.

97ZM Repayment of surplus amounts

- (1) This regulation applies if—
 - (a) one or more personal liability notices are served in respect of an amount of relevant PAYE debt of a company, and
 - (b) the amounts paid to HMRC (whether by directors upon whom notices are served or the company) exceed the aggregate of the specified amount and any interest on it under regulation 97ZI(2)(b)(ii).
- (2) HMRC is to repay the difference on a just and equitable basis and without unreasonable delay.

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- (3) HMRC is to pay interest on any sum repaid.
 - (4) The interest—
 - (a) is to be at the rate applicable under section 178 of the Finance Act 1989 for the purposes of section 824 of ICTA, and
 - (b) is to run from the date the amounts paid to HMRC come to exceed the aggregate mentioned in subsection (1)(b).”
 - (4) The amendment made by subsection (3) is to be treated as having been made by the Commissioners for Her Majesty’s Revenue and Customs in exercise of the power conferred by section 688B of ITEPA 2003 (inserted by subsection (2)).
 - (5) The amendment made by subsection (1) has effect in relation to the tax year 2016-17 and subsequent tax years.
 - (6) The amendment made by subsection (3) has effect in relation to relevant PAYE debts that are to be deducted, accounted for or paid on or after 6 April 2016.