

Explanatory Note

Clause 9: travel expenses of workers providing services through intermediaries

Summary

1. This clause amends the rules in the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) on deductions from earnings made for travel and subsistence expenses, where a worker is engaged through an employment intermediary. The amended rules come into effect from 6 April 2016.

Details of the clause

Clause 9

2. This clause introduces two new sections (339A and 688B) into ITEPA and a new chapter (Chapter 3B) into Part 4 of the Income Tax (Pay As You Earn) Regulations 2003:

Section 339A

3. Clause 9(1) inserts new section 339A
4. Subsection (1) sets out that the section will apply to workers who are personally providing services through an employment intermediary.
5. The effect of subsection (2) is that the section will not apply when the worker (identified in subsection (1)) does not carry out their work in a manner that is under the supervision, direction or control of another person.
6. The effect of subsection (3) is that where a contract is within the scope of the intermediaries legislation (commonly known as IR35) this section will only apply to those contracts which fall within IR35, or would do so if all the individual's remuneration was not being taken as employment income. Where this subsection applies to such a contract, subsection 2 of this clause does not apply. This means this section will apply even if the manner in which the person carries out the work is not to subject to supervision, direction or control.
7. Subsection (4) sets out that where this section applies each engagement a worker undertakes will be considered a separate employment for the purposes of the travel and subsistence rules in sections 338-339.
8. Subsection (5) provides that in determining whether the section applies where the parties have entered into arrangements in order to ensure this section does not apply those arrangements are to be disregarded for the purposes of this section.

9. Subsection (6) makes provision for cases where a client or another relevant person provides a fraudulent document intended to mislead the employment intermediary into thinking that subsection (2) does not apply, and as a result tax relief for travel and subsistence is deducted incorrectly. In such a case subsection (7) applies.
10. Subsection (7) provides that where the conditions set out in subsection (6) are met, it is the party who provides the fraudulent document which will be liable for the tax which was not deducted as a consequence of the actions of that person.
11. Subsection (8) defines "relevant person" for the purposes of subsections (6) and (7).
12. Subsection (9) provides a definition of "arrangements" "employment intermediary", "engagement" and "excluded services".

Section 688B

13. Clause 9(2) inserts new section 688B.
14. This section gives the Commissioners for HMRC powers to make provision in the Income Tax (Pay As You Earn) Regulations 2003 (the PAYE Regulations) for, or in connection with, the recovery from a director or officer of a company of debt owed as a result of section 339A.

Chapter 3B of the PAYE Regulations

15. Clause 9(3) inserts new regulations 97ZG to 97ZM into the PAYE Regulations.
16. 97ZG and 97ZH contain definitions of relevant terms for the purposes of Chapter 3B, including a definition of "PAYE debt" and "relevant date".
17. Regulation 97ZI provides that where a company has not paid the relevant PAYE debt, by the relevant date, then HMRC may serve a personal liability notice on those who were directors of the company on the relevant date in respect of the relevant PAYE debt.
18. Regulation 97ZJ sets out the conditions and grounds for appealing a personal liability notice served by HMRC under 97ZI.
19. Regulation 97ZK sets out the circumstances in which a personal liability notice can be withdrawn.
20. Regulation 97ZL provides that Part 6 of the Taxes Management Act 1970, which makes provision as to collection and recovery of sums due to HMRC, applies to personal liability notices. Regulation 97ZM makes provision for the case where the amounts paid to HMRC under a personal liability notice exceed the aggregate of the relevant PAYE debt and the specified interest, including payment of interest.

Background note

21. The amendments to ITEPA 2003 have been introduced to ensure the tax system provides a focused relief for travel and subsistence expenses by preventing workers engaged through an employment intermediary, and their employers, from benefiting from relief for home-to-work travel expenses. It is an established principle in the UK tax system that people should not be able to claim relief on their regular commute from home-to-work, therefore this relief is not generally available to other workers.

22. If you have any questions about this change, or comments on the legislation, please contact Philip Horswill on 03000 518361 (email: philip.horswill@hmrc.gsi.gov.uk).