

S58 and S139 Relief

Why have the reliefs?

- Before IR35 is operated, amounts paid suffer Corporation Tax and Dividend Tax
- Following IR35 liability, PAYE also charged on this amount
- Reliefs in place to reach the position as if PAYE operated from the beginning
- S139 CTA09 deals with CT, S58 ITEPA deals with Dividend Tax

S139 – CT Relief

- S139 allows the deemed payment (and ERs NIC on it) to be a deduction for CT purposes
- Previous years claimable via amendment/overpayment relief
- Standard overpayment relief time-limits apply – typically 4 years, but extended when there has been an assessment/settlement (S43C TMA1970)
- Entire deemed payment + NICs hits on 5 April – do not apportion

S58 – Dividend Relief

- Treats dividends as not being made
- Relief claimed by intermediary, but crystallises on individual's SA
- Strict time-limit given by S58 – 5 years from 31 Jan of tax year
- Make provisional claims to avoid losing years!

Interest

- PAYE liability accrues late payment interest (currently 3%)
- Reliefs receive repayment supplement (currently 0.5%)
- This is a statutory effect which we are not able to alter

Mechanics - Background

Scenario – PSC facilitates £100k of payments to worker – assume 1 year liability, 1 year of interest

PSC pays £20K CT. Worker pays £10K of dividend tax. 70k after tax.

HMRC enquire and believe the PSC is caught by IR35 – assess a 45k PAYE liability in addition to the above.

3% interest of £1350 charged on PAYE liability. Total owed by customer is £46,350.

Reliefs are claimed...

Mechanics - Reliefs

Reliefs remove £20k CT and £10K dividend tax, attracting 0.5% repayment interest of £150.

Final tax position - £45k PAYE, no CT/dividend tax – as if PAYE operated from the beginning. Net liability of 15k after reliefs.

Final interest position – net charge of £1200 (effective 8% interest rate on net liability).

Note that net liability is smaller than the assessed amount, but effective interest rate is high.

Why can't HMRC give precise bottom-line figures?

- As shown, interest can be significant, and continues to accrue until payment
- Reliefs are dependent on wider tax position, especially S58
- Reliefs are not given, they **must** be claimed within relevant time-limits