

Clause 1 and Schedule 1: Workers' services provided through intermediaries

Summary

1. This clause and Schedule amend Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) to align the tax treatment for payments made for workers' services provided through intermediaries where the client is a medium or large organisation outside the public sector with the tax treatment for payments made for workers' services provided through intermediaries where the client is a public sector organisation.

Details of the clause and schedule

2. Clause 1 introduces Schedule 1 which makes provision about workers' services provided through intermediaries.

Schedule 1

3. Part 1 amends Chapter 8 of Part 2 of ITEPA 2003. The amendments provide that Chapter 8 will continue to apply to payments made in connection with services provided through an intermediary, to clients that are outside the public sector and are small.
4. Part 2 amends Chapter 10 of Part 2 of ITEPA 2003. The amendments provide that Chapter 10 applies to payments made in connection with services provided through an intermediary, where the client is a public sector organisation, or medium or large-sized organisation outside of the public sector.
5. Part 3 makes consequential amendments to Chapter 9 of Part 2 of ITEPA 2003 (managed service companies), Chapter 3 of Part 11 of ITEPA 2003 (PAYE: special types of payer or payee) and Chapter 3 of Part 3 of the Finance Act 2004 (construction industry scheme).
6. Part 4 contains the commencement provisions.

Part 1: Amendments to Chapter 8 of Part 2 of ITEPA 2003

7. Paragraph 1 introduces the amendments to Chapter 8 of Part 2 of ITEPA 2003.
8. Paragraph 2 amends the heading of Chapter 8 of Part 2 of ITEPA 2003 so it reflects the new scope of the Chapter, which now only covers workers providing services through an intermediary to small clients.

9. Paragraph 3 amends section 48 of ITEPA 2003 to limit the scope of Chapter 8 of Part 2 of ITEPA 2003 to engagements with persons who are not public authorities and who qualify as “small” as determined in accordance with new sections 60A to 60G.
10. Paragraph 4 amends section 50 of ITEPA 2003 which treats the worker as having received earnings from employment if certain conditions are met. Sub-paragraph 4(2) inserts new paragraph 50(1)(za) which introduces a new condition, which requires the client to qualify as small in order to treat payments, arising from these engagements, as earnings from employment. Subparagraph (3) inserts new subsections 50(5) and 50(6) which removes the condition in new paragraph 50(1)(za) if the engagement is with a client who is an individual, and the services are not performed in connection with that individual’s business.
11. Paragraph 5 introduces new sections 60A to 60G, into ITEPA 2003. These sections set out the conditions under which a client will qualify as “small” for the purposes of Chapter 8.
12. New section 60A sets out the conditions under which a company could qualify as small. The company is always “small” for its first financial year and continues to qualify as “small” until such a time that it does not.
13. A company does not qualify as “small” for a given tax year if the accounts due before the start of the tax year in question relate to a financial year in which the small companies regime does not apply.
14. The qualification criteria for being “small” are set out in sections 382 and 383 of the Companies Act 2006.
15. Companies excluded from the small companies regime by virtue of provisions within section 384 of the Companies Act 2006 cannot qualify as “small” for the purposes of Chapter 8 of Part 2 of ITEPA 2003. Engagements with excluded companies are in scope of Chapter 10 of Part 2 of ITEPA 2003.
16. New section 60B sets out when a company qualifies as “small” in the case of joint ventures. A company engaging in a joint venture cannot qualify as small if any of the other parties in that joint venture do not qualify as small.
17. New section 60C sets out when a company qualifies as “small” in the case of subsidiaries.
18. New section 60D sets out when limited liability partnerships, unregistered companies, and overseas companies qualify as “small”.
19. New section 60E sets out when undertakings that are not companies, limited liability partnerships, unregistered companies, or overseas companies qualify as “small”. This includes entities such as partnerships. These organisations will only need to consider the turnover test in the Companies Act 2006. The entity will not qualify as “small” for a tax year if its turnover exceeds the turnover threshold in the financial year ending at least 9 months before the start of that tax year.
20. New section 60F sets out when persons who are not companies, limited liability partnerships, unregistered companies, overseas companies or other undertakings qualify as “small”.

21. New section 60G sets out when the turnover of a connected person is taken into account in determining whether a person qualifies as “small”.
22. Paragraph 6 makes consequential amendments to section 61(1) of ITEPA 2003.

Part 2: Amendments to Chapter 10 of Part 2 of ITEPA 2003

23. Paragraph 7 introduces the amendments to Chapter 10 of Part 2 of ITEPA.
24. Paragraph 8 amends the heading of Chapter 10 of Part 2 of ITEPA 2003 to “Workers’ services provided through intermediary to public authority or medium or large client”. The new heading reflects the new scope of this chapter.
25. Paragraph 9 amends section 61K of ITEPA 2003, to widen the scope of Chapter 10 of Part 2 of ITEPA 2003 to bring into scope all public authorities and any client that does not qualify as “small” as provided for in new sections 60A to 60G.
26. Paragraph 10 amends section 61L of ITEPA 2003 to expand the meaning of public authority to include those bodies, or any companies connected with them, that would otherwise be exempt from the Freedom of Information Act 2000.
27. Paragraph 11 amends section 61M of ITEPA 2003 to expand the types of engagements within scope of Chapter 10 of Part 2 of ITEPA 2003, to include engagements with clients that qualify as medium or large. Subparagraph 11(1) introduces the amendments to section 61M(1). Subparagraph 11(2) expands the definition of a client to include public authorities and medium or large clients. Subparagraph 11(3) inserts new subsection 61M(1A) which specifically excludes engagements with a client who is an individual and the services are not performed in connection with that individual’s trade or business.
28. Paragraph 12 amends section 61N of ITEPA 2003 so that it works to give the client fee-payer responsibilities, until such a time that they pass on a status determination statement to the worker and the party they contract with. Paragraph 12 also introduces new section 61NA.
29. Sub-paragraph 12(3) substitutes new subsections 61N(5) and 61N(5A) for existing subsection 61N(5), which means the client will have fee-payer responsibilities, until such a time that they pass on a status determination to the worker and the party they contract with.
30. Sub-paragraph 12(4) inserts new paragraph 61N(8)(za) which works to make the last person in the supply chain to receive a status determination statement the fee-payer for the purposes of subsections 61N(3) and (4). If the client does not pass the status determination statement down to the next person in the chain, there can be no qualifying persons below the client in the chain and therefore subsection 61N(6) works to make the client the fee-payer.
31. Sub-paragraph 12(5) inserts new subsection 61N(8A) which works to prevent a payment made to a worker being treated as a deemed direct payment, in a chain

where the client qualifies as small.

32. Sub-paragraph 12(6) inserts new section 61NA into ITEPA 2003, which introduces the concept of a “status determination statement”. In order to be a valid “status determination statement” it must include the client’s status determination with respect to that engagement, as well as the reasons for reaching that determination. New section 61NA also requires the client to take reasonable care when making that determination.
33. Paragraph 13 introduces two new sections, new sections 61T and 61TA into ITEPA 2003.
34. New section 61T applies if a worker or deemed employer makes representations to the client claiming that the conclusions reached in the status determination statement provided is incorrect. New subsection 61T(2) requires the client to respond to the representations within 45 days of receipt.
35. In order to fulfil its obligations under new section 61T, the client must inform the worker (or deemed employer as the case may be) of the outcome of its consideration of the representations. If the client is of the view that its original conclusion was correct, it must provide the worker (or deemed employer as the case may be) with the reasons for deciding its conclusion was correct.
36. If the client finds that its initial conclusion was incorrect, it must issue a new status determination statement to both the worker and the deemed employer.
37. New subsection 61T(5) provides that the client will be treated as the fee-payer if it fails to fulfil its obligations under section 61T, but this is subject to section 61V of ITEPA 2003 which applies where the worker or someone associated with them or an officer of a corporate intermediary provides a fraudulent document to show that Chapter 10 does not apply to their engagement. It provides for the transfer of liability to account for income tax and National Insurance contributions where this occurs.
38. New section 61TA applies to clients that have issued a status determination statement and then begin to qualify as small in a subsequent tax year. The client must issue a statement to the worker and the deemed employer setting out that it will qualify as small from the start of the next tax year and that the earlier status determination statement is withdrawn from the start of the next tax year.
39. Failure to comply with these obligations will result in the client being treated as medium or large for that specific engagement for which it has issued an earlier status determination statement and to be treated as the deemed employer for that engagement.

Part 3: Consequential and miscellaneous amendments

40. Paragraph 14 amends section 61D of ITEPA 2003 (managed service companies: workers treated as receiving earnings from employment) to take engagements in scope of Chapter 10 of Part 2 of ITEPA 2003 out of the scope of Chapter 9 of Part 2 of ITEPA 2003.
41. Paragraph 14 introduces new subsections (4A) to (4C) into section 61D of ITEPA 2003

to provide that section 61D does not apply where the provision of the relevant services mentioned in subsection 61D(1) gives rise to an "engagement to which Chapter 10 applies" and "either (a) the client is a public authority or (b) the client qualifies as medium or large for the tax year in which the payment or benefit mentioned in subsection 61D(1)(b) is received". Section 61D will apply where the relevant services give rise to an engagement to which Chapter 10 applies and the client happens to qualify as small for the tax year in which the payment or benefit mentioned in subsection 61D(1)(b) is received.

42. New subsection (4C), of section 61D of ITEPA 2003 makes clear that the disapplication of section 61D operates notwithstanding the fact that the person who is "the client" for the purposes of section 61D is a different person to the person who is "the client" for the purposes of Chapter 10.
43. Paragraph 15 introduces new section 688AA into ITEPA 2003 which provides a new power to amend the PAYE Regulations to allow for the collection of PAYE liabilities in respect of payments which a person has been deemed to have made under section 61N(3) as part of engagements in the scope of Chapter 10 of Part 2 of ITEPA 2003. The Regulations may provide that the PAYE liabilities may be collected from a person who was party to the arrangements under which the deemed direct payment was treated as made where an HMRC officer considers that another person should have paid the liabilities under the PAYE Regulations.
44. Paragraph 16 makes consequential amendments in respect of the construction industry scheme by inserting new subsections (3A) and (3B) into section 60 of the Finance Act 2004.

Part 4: Commencement

45. Part 4 contains the commencement provisions.

Background note

46. These amendments are being made to move certain responsibilities under the intermediaries rules in Part 2 of ITEPA 2003 from an individual worker's intermediary to a client outside the public sector where that client does not qualify as "small".
47. Other than the criteria for a client to qualify as "small" all other amendments apply to engagements where the client is a public authority.
48. These changes are being introduced to improve fairness in the tax system by ensuring that individuals are not able to sidestep income tax or NICs liabilities by working through an intermediary.
49. If you have any questions about this change or comments on the draft legislation please submit them to:
offpayrollworking.inthepriatesectorconsultation@hmrc.gsi.gov.uk