

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

Summary

1. This new clause and new 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-sized organisation with a UK connection 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 new clause

2. New clause 1 introduces new Schedule 1 which makes provision about workers' services provided through intermediaries.

Details of the new Schedule

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, or to clients that are outside the public sector and without a UK connection.
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 and with a UK connection.
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), Chapter 3 of Part 3 of the Finance Act 2004 (construction industry scheme), Part 3 of the Corporation Tax Act 2009 (Worker's services provided to public sector through intermediary) and Part 13 of the Corporation Tax Act 2009 (additional relief for expenditure on research and development).
6. Part 4 contains the commencement and transitional 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 and includes clients without a UK connection outside the public sector.
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, or who have no UK connection.
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 section 50(1)(za) which introduces a new condition, which requires the client to qualify as “small” or have no UK connection in order to treat payments, arising from these engagements, as earnings from employment. Subparagraph (3) inserts new subsections 50(5) and 50(6) which disapply the condition in new section 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 or if the client is not to be treated as small because of a failure to comply with new section 61TA(3)(a).
11. Paragraph 5 introduces new sections 60A to 60L, into ITEPA 2003. These sections set out the conditions under which a client will qualify as “small” for the purposes of Chapter 8, as well as the duty on a client to confirm whether they qualify as “small”. The sections also set out when a person is treated as having a UK connection.
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 that are excluded from the small companies regime 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. Companies excluded from the small companies’ regime are set out in section 384 of the Companies Act 2006.
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. A company cannot qualify as “small” if it is a member of a group where the parent undertaking does not qualify as “small”.

18. New section 60D sets out when limited liability partnerships, unregistered companies, and overseas companies qualify as “small”, applying the same conditions as set out in new sections 60A to 60C, with any necessary adjustments.
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. The turnover threshold can be found in sections 382 and 383 of the Companies Act 2006.
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”. The entity will not qualify as “small” for a tax year if its turnover for the last calendar year before the start of the tax year in question exceeds the turnover threshold. As is the case for new section 60E, the turnover threshold can be found in sections 382 and 383 of the Companies Act 2006.
21. New section 60G sets out when the turnover of a connected person is considered in determining whether a person qualifies as “small”.
22. New section 60H imposes a requirement on a client to confirm whether it qualifies as “small” for a tax year where the agency the client contracts with directly or the worker requests this information. The client will have 45 days in which to provide this confirmation. If the client fails to respond within the 45 days, the party requesting the information can apply to the courts to enforce the duty.
23. New section 60I outlines when a person has a UK connection for the purposes of Chapter 8 of Part 2 of ITEPA 2003.
24. Paragraph 6 makes consequential amendments to section 61(1) of ITEPA 2003.

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

25. Paragraph 7 introduces the amendments to Chapter 10 of Part 2 of ITEPA 2003.
26. Paragraph 8 amends the heading of Chapter 10 of Part 2 of ITEPA 2003 to “Workers’ services provided through intermediaries to public authorities or medium or large clients”. The new heading reflects the new scope of this chapter.
27. 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 has a UK connection in accordance with new section 60I and does not qualify as “small” as provided for in new sections 60A to 60G.
28. Paragraph 10 amends section 61L of ITEPA 2003 to expand the meaning of public

authority to include some bodies that are exempt from the Freedom of Information Act 2000 as well as companies connected to public authorities within the scope of section 61L.

29. 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. 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 with a UK connection. Subparagraph 11(3) inserts new subsection 61M(1A) which excludes engagements from the scope of Chapter 10 where the client is an individual and the services are not performed in connection with that individual's trade or business.
30. Paragraph 12 amends section 61N of ITEPA 2003 to set out the circumstances in which the client will be given deemed employer responsibilities. The deemed employer is the person treated as making a payment of earnings to the worker.
31. Sub-paragraph 12(3) substitutes new subsections 61N(5) and 61N(5A) for existing subsection 61N(5), to impose deemed employer responsibilities on the client until such a time that the client passes on a status determination statement to the worker and the party it contracts with.
32. Sub-paragraph 12(4) inserts new paragraph 61N(8)(za) which makes the last person in the labour supply chain above the worker's intermediary in receipt of a status determination statement the deemed employer 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) has the effect of designating the client as the deemed employer.
33. Sub-paragraph 12(5) inserts new subsection 61N(8A) which prevents a payment made to a worker being treated as a deemed direct payment, in a chain where the client is not a public authority and qualifies as small or does not have a UK connection.
34. Paragraph 13 inserts new section 61NA into ITEPA 2003, which introduces the concept of a "status determination statement". In order to be a "status determination statement" for the purposes of Chapter 10 of Part 2 of ITEPA 2003, the statement must include the client's conclusion with respect to the status of the engagement, as well as the reasons for reaching that conclusion. New section 61NA also requires the client to take reasonable care when reaching its conclusion.
35. Paragraph 14 substitutes new paragraph (b) in section 61O to expand the conditions that can apply where the intermediary is a company. The new conditions relate to where a worker has received a chain payment from the intermediary, or where the worker is entitled to receive a chain payment from the intermediary.
36. Paragraph 15 removes subsection (7) of section 61R, which sets out the circumstances in which a client not resident in the UK would be treated as being resident in the UK for the purposes of Chapter 10 of Part 2 of ITEPA 2003.
37. Paragraph 16 substitutes section 61T with new section 61T and new section 61TA.

38. 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) sets out how a client in receipt of representations must respond to the representations. New subsection 61T(3) requires the client to respond to the representations within 45 days of receipt.
39. 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.
40. 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.
41. New subsection 61T(3) provides that the client will be treated as the deemed employer if it fails to fulfil its obligations under new 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.
42. New section 61TA applies to clients that have issued a status determination statement and then qualify as small for 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.
43. 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.
44. Paragraph 17 makes consequential amendments to section 61W so that it applies to any type of organisation which is a client under the legislation rather than only applying to a public authority.

Part 3: Consequential and miscellaneous amendments

45. Paragraph 18 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.
46. Paragraph 18 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 (i) qualifies as medium or large for the tax year in which the payment or benefit

mentioned in subsection 61D(1)(b) is received, and (ii) has a UK connection 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 or is medium or large but does not have a UK connection for the tax year in which the payment or benefit mentioned in subsection 61D(1)(b) is received.

47. 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.
48. Paragraph 19 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) for engagements within the scope of Chapter 10 of Part 2 of ITEPA 2003. The Regulations may make provision for and in connection with the recovery of PAYE liabilities unpaid by a deemed employer, from the client or the first agency in a labour supply chain where that agency is also resident in the UK.
49. Paragraph 20 makes consequential amendments in respect of the construction industry scheme by inserting new subsections (3A), (3B) and (3C) into section 60 of the Finance Act 2004.
50. Paragraphs 21 and 22 make consequential amendments to the cross heading before section 141A of CTA 2009 and the heading of section 141A to take into account the changes made to the new scope of Chapter 10, of Part 2 of ITEPA 2003.
51. Paragraph 23 makes consequential amendments to Part 13 of CTA 2009 to ensure that claimant companies can continue to claim the same amount of relief for expenditure on research and development in light of the new rules for intermediaries.
52. Sub-paragraph 23(2) inserts a new subsection (4A) into section 1129 and sub-paragraph 23(3) inserts a new subsection (3) into section 1131 of Part 13 of CTA 2009, which cover the situation where the company claiming the research and development tax relief makes payments to HMRC under section 61S of ITEPA 2003 and primary Class 1 National Insurance contributions under regulation 19 of Social Security Contributions (Intermediaries) Regulations 2000 or regulation 19 of Social Security Contributions (Intermediaries) (Northern Ireland) Regulations 2000.
53. Sub-paragraph 23(4) inserts a new section 1131A of Part 13 of CTA 2009, which covers the situation where the company claiming the research and development tax relief makes payments to HMRC in respect of secondary Class 1 National Insurance contributions as a result of making use of externally provided workers.

Part 4: Commencement and Transitional Provisions

54. Part 4 contains the commencement and transitional provisions.
55. Paragraph 24 sets out that the amendments made by Part 1 of Schedule [Y] (Workers' services provided through intermediaries) ("Schedule [Y]") will have effect for the tax year 2021-22 and subsequent tax years.
56. Paragraph 25 sets out that the amendments made by Part 2 of Schedule [Y] will have effect only in relation to deemed direct payments treated as made on or after 6 April 2021.
57. Paragraph 26 sets out that the amendment made by paragraph 18 of Schedule [Y] will have effect where the payment or benefit received in respect of services is received on or after 6 April 2021.
58. Paragraph 27 sets out that the amendments made by paragraph 20 of Schedule [Y] will have effect in relation to payments made under a construction contract on or after 6 April 2021.
59. Paragraph 28 sets out that the amendments made by paragraph 23 of Schedule [Y] will have effect in relation to expenditure incurred on or after 6 April 2021.
60. Paragraph 29 sets out that interest under sections 101 to 103 of Finance Act 2009 come into force on 6 April 2021 in relation to amounts payable or paid to HMRC in respect of a PAYE debt.
61. Paragraph 30 sets out the transitional provision whereby the rules in Chapter 10 of Part 2 of ITEPA 2003 will not apply to chain payments made on or after 6 April 2021 in respect of services performed by the worker before 6 April 2021. This transitional provision does not apply to public authorities within the scope of Chapter 10 prior to the amendments made by paragraph 10 of Schedule 1.
62. Paragraph 31 states that where a qualifying chain payment was made to the worker's intermediary on or after 6 April 2021 in respect of services performed by the worker before 6 April 2021, Chapter 8 of Part 2 of ITEPA 2003 will apply to that chain payment.
63. Paragraph 32 sets out that where a chain payment is made in respect of services provided over a period that begins before and ends on or after 6 April 2021, the payment shall be treated as two separate chain payments apportioned on a just and reasonable basis.

64. Paragraph 33 sets out that sections 61N(5), (5A)(a) and (8)(za) of ITEPA 2003 will apply from 6 April 2021 even if a status determination statement is given before that date.
65. Paragraph 34 sets out that it does not matter for the purposes of new section 61T of ITEPA 2003 if the client receives representations before 6 April 2021 as the 45 days for responding will start from 6 April 2021.

Background note

66. This new clause and Schedule are being introduced to move certain responsibilities under the intermediaries (off-payroll working) rules in Part 2 of ITEPA 2003 from an individual worker's intermediary to a client outside the public sector where that client has a UK connection and does not qualify as "small".
67. Other than the criteria for a client to qualify as "small" and the requirement for amended Chapter 10, Part 2 ITEPA 2003 to apply to payments made in relation to work carried out before the 6 April 2021, all other amendments apply to engagements where the client is a public authority as defined prior to the amendments made by paragraph 10 of Schedule 1.
68. Transitional provisions have been introduced to support the implementation of these amendments.
69. These changes are being introduced to improve fairness in the tax system by ensuring that individuals working like employees, but through the individual worker's intermediary, pay broadly the same income tax as individuals who are employed directly.
70. The government announced on 17 March that it would delay the implementation of the off-payroll working rules outside the public sector until 6 April 2021 in response to the ongoing impacts of the COVID-19 pandemic to help businesses and individuals. The government confirmed that it would reintroduce the changes to the off-payroll working rules outside the public sector during the Parliamentary passage of the Finance Bill 2020 by way of a government new clause.