

1 Umbrella companies

- (1) ITEPA 2003 is amended as follows.
- (2) In Part 2 (employment income: charge to tax), after Chapter 10 insert—

“CHAPTER 11

UMBRELLA COMPANIES

61Y Umbrella companies: joint and several liability

- (1) Subsection (2) applies if—
 - (a) an individual (“the worker”) personally provides services, or enters into arrangements with a view to personally providing services, to another person (“the client”),
 - (b) the worker is employed by a third person (“the umbrella company”)—
 - (i) 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, and
 - (ii) that is not a company in which the worker has a material interest, and
 - (c) the umbrella company arrangements conditions are met.
- (2) Each relevant party (see section 61Z) is, along with the umbrella company, jointly and severally liable to pay any amount payable, in accordance with the PAYE provisions, by the umbrella company in relation to a qualifying umbrella company payment.
- (3) A “qualifying umbrella company payment” means a payment made in respect of the employment of the worker to the extent that it is not in respect of the provision of services to a person other than the client.
- (4) The umbrella company arrangements conditions are that—
 - (a) there is a contract between the umbrella company and—
 - (i) the client, or
 - (ii) another person,
 - (b) under or in consequence of the contract—
 - (i) the services are provided, or
 - (ii) the umbrella company is paid, or otherwise provided with consideration, for the services, and
 - (c) if the contract is not between the umbrella company and the client—
 - (i) there is a contract between the client and another person,
 - (ii) the provision of the services or of payment or other consideration for the services is also a consequence of that other contract (whether directly or as a result of a series of contracts involving other persons).

- (5) For the purposes of subsection (1)(b)(ii) –
- (a) “material interest”, in relation to a company, means –
 - (i) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, more than 5% of the ordinary share capital of the company,
 - (ii) possession of, or entitlement to acquire, rights entitling the holder to receive more than 5% of any distributions that may be made by the company, or
 - (iii) where the company is a close company, possession of, or entitlement to acquire, rights that would in the event of the winding up of the company, or in any other circumstances, entitle the holder to receive more than 5% of the assets that would then be available for distribution among the participators, but
 - (b) the worker is to be regarded as not having a material interest in a company if that interest is a result, to any extent, of any arrangements the main purpose, or one of the main purposes, of which is to secure that subsection (2) does not apply.
- (6) And for the purposes of subsection (5)(a) “participator” has the meaning given by section 454 of CTA 2010.
- (7) In this Chapter –
- “arrangements” include any agreement, understanding, scheme transaction or series of transactions (whether or not legally enforceable);
 - “the client”, “the umbrella company” and “the worker” are to be construed in accordance with subsection (1);
 - “employed”, in relation to an individual, does not include the individual being treated as employed as a result of any of –
 - (a) Chapters 7 to 10 of this Part (deemed employment by intermediaries), or
 - (b) section 863A of ITTOIA 2005 (deemed employment of partners in limited liability partnerships),
 and “employer” is to be construed accordingly;
 - “PAYE provisions” means the provisions of Part 11 or PAYE regulations;
 - “the umbrella company arrangements conditions” means the conditions set out in subsection (4).

61Z Relevant parties

- (1) If the contract referred to in subsection (4)(a) of section 61Y is between the umbrella company and a person other than the client, the person referred to in subsection (4)(c)(i) of that section is a relevant party.
- (2) The client is a relevant party if –

- (a) the contract referred to in subsection (4)(a) of that section is between the umbrella company and the client, or
 - (b) the person referred to in subsection (4)(c)(i) of that section—
 - (i) is connected with the umbrella company, or
 - (ii) is non-UK resident.
- (3) In a case where—
 - (a) both the client and the person referred to in subsection (4)(c)(i) of section 61Y are non-UK resident,
 - (b) the provision of the services or payment or other consideration for the services is a consequence of a series of contracts involving other persons (other than the worker), and
 - (c) at least one of those persons is UK resident,the person who is UK resident and is closest, by reference to that series of contracts, to the client is a relevant party.

61Z1 Purported umbrella companies

- (1) This section applies if—
 - (a) a person (“the purported umbrella company”) participates in arrangements that would, if an individual were employed by the purported umbrella company, result in the umbrella company arrangements conditions being met,
 - (b) it is reasonable to suppose that one or more participants in the arrangements, other than the purported umbrella company or the individual, would assume that the purported umbrella company is the employer of that individual,
 - (c) the individual is not employed by the purported umbrella company, and
 - (d) if the individual were employed by the purported umbrella company subsection (2) of section 61Y would apply.
- (2) This section also applies if—
 - (a) a company (“the purported umbrella company”) in which an individual has a material interest, within the meaning given by subsection (5)(a) of section 61Y, participates in arrangements that would, if the company were the umbrella company, result in the umbrella company arrangements conditions being met in relation to services the individual provides to the client,
 - (b) it is reasonable to suppose that one or more participants in the arrangements, other than the purported umbrella company or the individual, would assume that a substantial proportion of amounts provided to the purported umbrella company in respect of the services will be paid to the individual as earnings,
 - (c) it is not the case that a substantial proportion of amounts provided to the purported umbrella company in respect of the services is paid to the individual as earnings, and
 - (d) subsection (2) of section 61Y would apply if subsection (1)(b)(ii) of that section (requirement that the umbrella company is not

a company in which the worker has a material interest) were omitted.

- (3) If this section applies –
 - (a) the individual is to be treated for income tax purposes as holding an employment with the purported umbrella company, the duties of which consist of the services the individual provides to the client,
 - (b) all relevant remuneration is to be treated for income tax purposes as earnings from that employment,
 - (c) Chapters 7 to 10 of this Part (deemed employment by intermediaries) do not apply in relation to the provision of those services,
 - (d) section 863A (deemed employment of partners in limited liability partnerships) of ITTOIA 2005 does not apply so far as it otherwise would apply in relation to the provision of those services, and
 - (e) accordingly, section 61Y(2) will apply in relation to the purported umbrella company.
- (4) Where –
 - (a) this section applies, and
 - (b) there is more than one person that is either a purported umbrella company or an employer of the individual in relation to the services the individual provides to the clients,

each is (to the extent this would not otherwise be the case) jointly and severally liable for any amount payable, in accordance with the PAYE provisions, in relation to the relevant remuneration.
- (5) For the purposes of this section “relevant remuneration” means –
 - (a) all remuneration receivable by the individual (from any person) in consequence of providing the services, and
 - (b) any other amount that it is just and reasonable to attribute to provision of the services by the individual (for example, any amounts that would form part of any deemed direct employment payment or deemed direct payment if any of Chapters 8, 9 or 10 of this Part applied).”
- (3) In section 44 (treatment of workers supplied by agencies) –
 - (a) in subsection (4), omit paragraph (b) (and the “or” before it),
 - (b) in subsection (5)(b), omit “or (as the case may be) with the relevant person”, and
 - (c) omit subsection (6).
- (4) In section 61V (consequences of providing fraudulent information), after subsection (4) insert –

“(4A) But where the fraudulent documentation condition would (ignoring this subsection) be met as a result of the provision of a fraudulent document intended to constitute evidence that section 61Y (umbrella

companies) applies in relation to the services provided by the worker, that condition is to be treated as not met.”

- (5) In section 684(2) (PAYE regulations), in the list of provisions, after item 7 insert –

“7ZA. Provision in connection with the recovery of amounts to which a person is jointly and severally liable as a result of Chapter 11 of Part 2 (umbrella companies).”

- (6) In section 716B (employment intermediaries to keep, preserve and provide information etc) –

- (a) in subsection (1) –

- (i) omit “of Part 2”, and
- (ii) after “agencies)” insert “or 11 (umbrella companies) of Part 2”, and

- (b) in subsection (2), in the words before paragraph (a) –

- (i) after “person” insert “(other than an individual mentioned in paragraph (a) or (b))”, and
- (ii) after “makes” insert “or participates in”.

- (7) In regulation 80 of the Income Tax (Pay As You Earn) Regulations 2003 (determination of unpaid tax and appeal against determination), after paragraph (5) insert –

“(5A) Where a person is a “relevant party” for the purposes of Chapter 11 of Part 2 of ITEPA (joint and several liability of relevant parties to umbrella company arrangements) –

- (a) this regulation applies to any amount the person is liable to pay as a result of that Chapter as it applies to an amount of tax payable by an employer (and the references to “the employer” in paragraphs (2) and (5)(b) are to be read accordingly),
- (b) in cases that operate by reference to a determination made, or that may be made, under this regulation in relation to the person, the references to “the employer” in the following provisions are to be treated as references to the person –
 - (i) regulation 81(4) (employee liability if tax unpaid after regulation 80 determination), and
 - (ii) regulation 97P(1) (persons from whom security for PAYE can be required), and
- (c) the references to “the employer” in regulation 72E(6) and regulation 72F (recovery from employee of tax that has been self-assessed etc.) are to be treated as references to the person for the purposes of making a direction under section 72F in relation to the person.”