



# Income Tax (Earnings and Pensions) Act 2003

## 2003 CHAPTER 1

### PART 2

#### EMPLOYMENT INCOME: CHARGE TO TAX

##### Modifications etc. (not altering text)

- C1** Pt. 2 applied (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009](#) (c. 4), [ss. 969\(4\)\(a\), 1329\(1\)](#) (with [Sch. 2 Pts. 1, 2](#))
- C2** Pt. 2 applied (E.W.S.) (31.3.2017) by [The Equality Act 2010 \(Specific Duties and Public Authorities\) Regulations 2017](#) (S.I. 2017/353), [reg. 1\(1\)](#), [Sch. 1 para. 4\(3\)](#) (with [reg. 2\(4\)\(5\)](#))

### CHAPTER 1

#### INTRODUCTION

### 3 Structure of employment income Parts

- (1) The structure of the employment income Parts is as follows—
- this Part imposes the charge to tax on employment income, and sets out—
    - (a) how the amount charged to tax for a tax year is to be calculated, and
    - (b) who is liable for the tax charged;
  - Part 3 sets out what are earnings and provides for amounts to be treated as earnings;
  - Part 4 deals with exemptions from the charge to tax under this Part (and, in some cases, from other charges to tax);
  - Part 5 deals with deductions from taxable earnings;

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Part 6 deals with employment income other than earnings or share-related income; and

Part 7 deals with [F<sup>1</sup>income and exemptions relating to securities and securities options acquired in connection with an employment].

[F<sup>2</sup>Part 7A deals with employment income provided through third parties.]

(2) In this Act “the employment income Parts” means this Part and Parts 3 to [F<sup>3</sup>7A] .

#### **Textual Amendments**

- F1** Words in s. 3(1) substituted (16.4.2003 with effect in accordance with Sch. 22 para. 16(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), [Sch. 22 para. 16\(1\)](#)
- F2** Words in s. 3(1) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 4\(2\)](#)
- F3** Word in s. 3(2) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 4\(3\)](#)

#### **4 “Employment” for the purposes of the employment income Parts**

- (1) In the employment income Parts “employment” includes in particular—
  - (a) any employment under a contract of service,
  - (b) any employment under a contract of apprenticeship, and
  - (c) any employment in the service of the Crown.
- (2) In those Parts “employed”, “employee” and “employer” have corresponding meanings.

#### **5 Application to offices and office-holders**

- (1) The provisions of the employment income Parts that are expressed to apply to employments apply equally to offices, unless otherwise indicated.
- (2) In those provisions as they apply to an office—
  - (a) references to being employed are to being the holder of the office;
  - (b) “employee” means the office-holder;
  - (c) “employer” means the person under whom the office-holder holds office.
- (3) In the employment income Parts “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.

## **CHAPTER 2**

### TAX ON EMPLOYMENT INCOME

#### **6 Nature of charge to tax on employment income**

- (1) The charge to tax on employment income under this Part is a charge to tax on—
  - (a) general earnings, and
  - (b) specific employment income.

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The meaning of “employment income”, “general earnings” and “specific employment income” is given in section 7.

- (2) The amount of general earnings or specific employment income which is charged to tax in a particular tax year is set out in section 9.
- (3) The rules in Chapters 4 and 5 of this Part, which are concerned with—
  - (a) the residence and domicile of an employee in a tax year, <sup>F4</sup>...
  - <sup>F5</sup>(aa) whether section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to an employee for a tax year, and]
  - (b) the tax year in which amounts are received or remitted to the United Kingdom, apply for the purposes of the charge to tax on general earnings but not that on specific employment income.
- <sup>F6</sup>(3A) The rules in [<sup>F7</sup>Chapter 5B], which are concerned with the matters mentioned in subsection (3)(a) to (b), apply for the purposes of the charge to tax on certain specific employment income arising under Part 7 (securities etc).]
- (4) The person who is liable for any tax charged on employment income is set out in section 13.
- (5) Employment income is not charged to tax under this Part if it is within the charge to tax under
  - <sup>F8</sup>(a) Part 2 of ITTOIA 2005 (trading income) by virtue of section 15 (divers and diving supervisors), 16A (voluntary office-holders: compensation for lost profits), 16B (payments to company directors) or 16C (professionals in practice: incidental income from an office or employment) of that Act, or
  - (b) Part 3 of CTA 2009 (trading income) by virtue of section 40A (payments to company directors) or 40B (professionals in practice: incidental income from an office or employment) of that Act.]

#### Textual Amendments

- F4** Word in s. 6(3)(a) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 3\(2\)](#)
- F5** S. 6(3)(aa) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 3\(2\)](#)
- F6** S. 6(3A) inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 3\(3\)](#)
- F7** Words in s. 6(3A) substituted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 3, 47](#)
- F8** Words in s. 6(5) substituted (6.4.2018) by [The Enactment of Extra-Statutory Concessions Order 2018 \(S.I. 2018/282\)](#), arts. 1, [4\(2\)](#)

## 7 Meaning of “employment income”, “general earnings” and “specific employment income”

- (1) This section gives the meaning for the purposes of the Tax Acts of “employment income”, “general earnings” and “specific employment income”.
- (2) “Employment income” means—
  - (a) earnings within Chapter 1 of Part 3,

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- (b) any amount treated as earnings (see subsection (5)), or
  - (c) any amount which counts as employment income (see subsection (6)).
- (3) “General earnings” means—
- (a) earnings within Chapter 1 of Part 3, or
  - (b) any amount treated as earnings (see subsection (5)),
- excluding in each case any exempt income.
- (4) “Specific employment income” means any amount which counts as employment income (see subsection (6)), excluding any exempt income.
- (5) Subsection (2)(b) or (3)(b) refers to any amount treated as earnings under—
- [<sup>F9</sup>(a) Chapters 7 to [<sup>F10</sup>10] of this Part (agency workers, workers under arrangements made by intermediaries, and workers providing services through managed service companies),]
  - (b) Chapters 2 to [<sup>F11</sup>10] of Part 3 (the benefits code),
  - (c) Chapter 12 of Part 3 (payments treated as earnings),
  - [<sup>F12</sup>(ca) section 402B (termination payments, and other benefits, that cannot benefit from section 403 threshold),] or
  - (d) section 262 of CAA 2001 (balancing charges to be given effect by treating them as earnings).
- (6) Subsection (2)(c) or (4) refers to any amount which counts as employment income by virtue of—
- (a) Part 6 (income which is not earnings or share-related),
  - (b) Part 7 [<sup>F13</sup>(income and exemptions relating to securities and securities options)]
  - [<sup>F14</sup>(ba) Part 7A (employment income provided through third parties), or]
  - (c) any other enactment.

#### Textual Amendments

- F9** S. 7(5)(a) substituted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), s. 25(2), **Sch. 3 para. 2**
- F10** Word in s. 7(5)(a) substituted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), **Sch. 1 para. 10**
- F11** Word in s. 7(5)(b) substituted (with effect in accordance with s. 13(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), **Sch. 1 para. 2**
- F12** S. 7(5)(ca) inserted (with effect in accordance with s. 5(10) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), s. 5(2)
- F13** Words in s. 7(6)(b) substituted (16.4.2003 with effect in accordance with Sch. 22 para. 17(2) of the amending Act) by [Finance Act 2003 \(c. 14\)](#), **Sch. 22 para. 17(1)**
- F14** S. 7(6)(ba) substituted for word (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), **Sch. 2 para. 5**

## 8 Meaning of “exempt income”

For the purposes of the employment income Parts, an amount of employment income within paragraph (a), (b) or (c) of section 7(2) is “exempt income” if, as a result of any exemption in Part 4 or elsewhere, no liability to income tax arises in respect of it as such an amount.

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## CHAPTER 3

### OPERATION OF TAX CHARGE

#### 9 Amount of employment income charged to tax

- (1) The amount of employment income which is charged to tax under this Part for a particular tax year is as follows.
- (2) In the case of general earnings, the amount charged is the net taxable earnings from an employment in the year.
- (3) That amount is calculated under section 11 by reference to any taxable earnings from the employment in the year (see section 10(2)).
- (4) In the case of specific employment income, the amount charged is the net taxable specific income from an employment for the year.
- (5) That amount is calculated under section 12 by reference to any taxable specific income from the employment for the year (see section 10(3)).
- (6) Accordingly, no amount of employment income is charged to tax under this Part for a particular tax year unless—
  - (a) in the case of general earnings, they are taxable earnings from an employment in that year, or
  - (b) in the case of specific employment income, it is taxable specific income from an employment for that year.

#### 10 Meaning of “taxable earnings” and “taxable specific income”

- (1) This section explains what is meant by “taxable earnings” and “taxable specific income” in the employment income Parts.
- (2) “Taxable earnings from an employment in a tax year are to be determined in accordance with <sup>[F15]</sup>Chapters 4 and 5 of this Part[.]
- (3) “Taxable specific income from an employment for a tax year means the full amount of any specific employment income which, by virtue of Part 6 <sup>[F16]</sup>, 7 or 7A] or any other enactment, counts as employment income for that year in respect of the employment.
- <sup>[F17]</sup>(4) Subsection (3) is subject to <sup>[F18]</sup>Chapter 5B (taxable specific income from employment-related securities etc: internationally mobile employees)].]
- <sup>[F19]</sup>(5) Subsection (3) is also subject to sections 554Z9 to 554Z11 (employment income under Part 7A: remittance basis).]

#### Textual Amendments

- F15** Words in s. 10(2) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 4\(2\)](#)
- F16** Words in s. 10(3) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 6\(2\)](#)
- F17** S. 10(4) inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 4\(3\)](#)

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- F18** Words in s. 10(4) substituted (with effect in accordance with Sch. 9 para. 48 of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 9 para. 4](#), 47
- F19** S. 10(5) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 6\(3\)](#)

## 11 Calculation of “net taxable earnings”

- (1) For the purposes of this Part the “net taxable earnings” from an employment in a tax year are given by the formula—

$$TE - DE$$

where—

TE means the total amount of any taxable earnings from the employment in the tax year, and

DE means the total amount of any deductions allowed from those earnings under provisions listed in section 327(3) to (5) (deductions from earnings: general).

- (2) If the amount calculated under subsection (1) is negative, the net taxable earnings from the employment in the year are to be taken to be nil instead.
- (3) Relief may be available under [<sup>F20</sup>section 128 of ITA 2007] (set-off against general income)—
- (a) where TE is negative, or
  - (b) in certain exceptional cases where the amount calculated under subsection (1) is negative.
- (4) If a person has more than one employment in a tax year, the calculation under subsection (1) must be carried out in relation to each of the employments.

### Textual Amendments

- F20** Words in s. 11(3) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 427](#) (with [Sch. 2](#))

## 12 Calculation of “net taxable specific income”

- (1) For the purposes of this Part the “net taxable specific income” from an employment for a tax year is given by the formula—

$$TSI - DSI$$

where—

TSI means the amount of any taxable specific income from the employment for the tax year, and

DSI means the total amount of any deductions allowed from that income under provisions of the Tax Acts not included in the lists in section 327 (3) and (4) (deductions from earnings: general).

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- (2) If the amount calculated under subsection (1) is negative, the net taxable specific income from the employment for the year is to be taken to be nil instead.
- (3) If a person has more than one kind of specific employment income from an employment for a tax year, the calculation under subsection (1) must be carried out in relation to each of those kinds of specific employment income; and in such a case the “net taxable specific income” from the employment for that year is the total of all the amounts so calculated.

### 13 Person liable for tax

- (1) The person liable for any tax on employment income under this Part is the taxable person mentioned in subsection (2) or (3).

This is subject to subsection (4).

- (2) If the tax is on general earnings, “the taxable person” is the person to whose employment the earnings relate.
- (3) If the tax is on specific employment income, “the taxable person” is the person in relation to whom the income is, by virtue of Part 6 [<sup>F21</sup>, 7 or 7A] or any other enactment, to count as employment income.
- (4) If the tax is on general earnings received, or remitted to the United Kingdom, after the death of the person to whose employment the earnings relate, the person’s personal representatives are liable for the tax.

[<sup>F22</sup>(4A) If the tax is on specific employment income received, or remitted to the United Kingdom, after the death of the person in relation to whom the income is, by virtue of Part 7, to count as employment income, the person's personal representatives are liable for the tax.]

[<sup>F23</sup>(4B) Subject to section 554Z12, if—

- (a) the tax is on specific employment income under Chapter 2 of Part 7A, and
- (b) the relevant step is taken, or (if relevant) the income is remitted to the United Kingdom, after the death of A,

A's personal representatives are liable for the tax.

(4C) Terms used in subsection (4B) have the same meaning as in Part 7A.]

- (5) [<sup>F24</sup>If subsection (4) [<sup>F25</sup>, (4A) or (4B) or section 554Z12(3)] applies,] the tax is accordingly to be assessed on the personal representatives and is a debt due from and payable out of the estate.

#### Textual Amendments

- F21** Words in s. 13(3) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 7\(2\)](#)
- F22** S. 13(4A) inserted (with effect in accordance with Sch. 7 para. 80 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 5\(2\)](#)
- F23** S. 13(4B)(4C) inserted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 7\(3\)](#)
- F24** Words in s. 13(5) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 5\(3\)](#)



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**F25** Words in s. 13(5) substituted (with effect in accordance with Sch. 2 paras. 52-59 of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 2 para. 7\(4\)](#)

## CHAPTER 4

### [<sup>F26</sup>TAXABLE EARNINGS: UK RESIDENT EMPLOYEES]

#### Textual Amendments

**F26** Pt. 2 Ch. 4 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 6](#)

### *Taxable earnings*

#### 14 Taxable earnings under this Chapter: introduction

- (1) This Chapter sets out for the purposes of this Part what are taxable earnings from an employment in a tax year in cases where section 15 (earnings for year when employee [<sup>F27</sup>UK resident]) applies to general earnings for a tax year.
- (2) In this Chapter—
  - (a) sections 16 and 17 deal with the year for which general earnings are earned, and
  - (b) sections 18 and 19 deal with the time when general earnings are received.
- (3) In the employment income Parts any reference to the charging provisions of this Chapter is a reference to section 15.

#### Textual Amendments

**F27** Words in s. 14(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 7](#)

### [<sup>F28</sup>UK resident employees ]

#### Textual Amendments

**F28** S. 15 cross-heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 8](#)

#### 15 Earnings for year when employee [<sup>F29</sup>UK resident]

[<sup>F30</sup>(1) This section applies to general earnings for a tax year for which the employee is UK resident except that, in the case of a split year, it does not apply to any part of those earnings that is excluded.

- (1A) General earnings are “excluded” if they—
  - (a) are attributable to the overseas part of the split year, and



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- (b) are neither—
- (i) general earnings in respect of duties performed in the United Kingdom, nor
  - (ii) general earnings from overseas Crown employment subject to United Kingdom tax.]
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- [<sup>F31</sup>(3) Subsection (2) applies whether or not the employment is held when the earnings are received.]
- [<sup>F32</sup>(4) Any attribution required for the purposes of subsection (1A)(a) is to be done on a just and reasonable basis.
- (5) The following provisions of Chapter 5 of this Part apply for the purposes of subsection (1A)(b) as for the purposes of section 27(2)—
- (a) section 28 (which defines “general earnings from overseas Crown employment subject to United Kingdom tax”), <sup>F33</sup>...
  - (b) sections 38 to 41 (which contain rules for determining the place of performance of duties of employment) [<sup>F34</sup>, and
  - (c) section 41ZA (which is about determining the extent to which general earnings are in respect of United Kingdom duties).]
- (6) Subject to any provision made in an order under section 28(5) for the purposes of subsection (1A)(b), provisions made in an order under that section for the purposes of section 27(2) apply for the purposes of subsection (1A)(b) too.]

#### Textual Amendments

- F29** Words in s. 15 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 9\(4\)](#)
- F30** S. 15(1)(1A) substituted for s. 15(1) (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 58\(1\)](#)
- F31** S. 15(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 9\(3\)](#)
- F32** S. 15(4)-(6) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 58\(2\)](#)
- F33** Word in s. 15(5) omitted (with effect in accordance with Sch. 6 para. 7 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 6 para. 2\(a\)](#)
- F34** S. 15(5)(c) and word inserted (with effect in accordance with Sch. 6 para. 7 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 6 para. 2\(b\)](#)

*Year for which general earnings are earned*

## 16 Meaning of earnings “for” a tax year

- (1) This section applies for determining whether general earnings are general earnings “for” a particular tax year for the purposes of this Chapter.
- (2) General earnings that are earned in, or otherwise in respect of, a particular period are to be regarded as general earnings for that period.

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- (3) If that period consists of the whole or part of a single tax year, the earnings are to be regarded as general earnings “for” that tax year.
- (4) If that period consists of the whole or parts of two or more tax years, the part of the earnings that is to be regarded as general earnings “for” each of those tax years is to be determined on a just and reasonable apportionment.
- (5) This section does not apply to any amount which is required by a provision of Part 3 to be treated as earnings for a particular tax year.

## 17 Treatment of earnings for year in which employment not held

- (1) This section applies for the purposes of this Chapter in a case where general earnings from an employment would otherwise fall to be regarded as general earnings for a tax year in which the employee does not hold the employment.
- (2) If that year falls before the first tax year in which the employment is held, the earnings are to be treated as general earnings for that first tax year.
- (3) If that year falls after the last tax year in which the employment was held, the earnings are to be treated as general earnings for that last tax year.
- (4) This section does not apply in connection with determining the year for which amounts are to be treated as earnings under Chapters 2 to [F35 10] of Part 3 (the benefits code).

### Textual Amendments

- F35** Word in s. 17(4) substituted (with effect in accordance with s. 13(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 1 para. 3](#)

*When general earnings are received*

## 18 Receipt of money earnings

- (1) General earnings consisting of money are to be treated for the purposes of this Chapter as received at the earliest of the following times—

### *Rule 1*

The time when payment is made of or on account of the earnings.

### *Rule 2*

The time when a person becomes entitled to payment of or on account of the earnings.

### *Rule 3*

If the employee is a director of a company and the earnings are from employment with the company (whether or not as director), whichever is the earliest of—

- (a) the time when sums on account of the earnings are credited in the company’s accounts or records (whether or not there is any restriction on the right to draw the sums);
- (b) if the amount of the earnings for a period is determined by the end of the period, the time when the period ends;

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- (c) if the amount of the earnings for a period is not determined until after the period has ended, the time when the amount is determined.
- (2) Rule 3 applies if the employee is a director of the company at any time in the tax year in which the time mentioned falls.
- (3) In this section “director” means—
  - (a) in relation to a company whose affairs are managed by a board of directors or similar body, a member of that body,
  - (b) in relation to a company whose affairs are managed by a single director or similar person, that director or person, and
  - (c) in relation to a company whose affairs are managed by the members themselves, a member of the company,and includes any person in accordance with whose directions or instructions the directors of the company (as defined above) are accustomed to act.
- (4) For the purposes of subsection (3) a person is not to be regarded as a person in accordance with whose directions or instructions the directors of the company are accustomed to act merely because the directors act on advice given by that person in a professional capacity.
- (5) Where this section applies—
  - (a) to a payment on account of general earnings, or
  - (b) to sums on account of general earnings,it so applies for the purpose of determining the time when an amount of general earnings corresponding to the amount of that payment or those sums is to be treated as received for the purposes of this Chapter.

## 19 Receipt of non-money earnings

- (1) General earnings not consisting of money are to be treated for the purposes of this Chapter as received at the following times.
- (2) If an amount is treated as earnings for a particular tax year under any of the following provisions, the earnings are to be treated as received in that year—
  - section 81 (taxable benefits: cash vouchers),
  - section 94 [<sup>F36</sup>or 94A] (taxable benefits: credit-tokens),
  - Chapter 5 of Part 3 (taxable benefits: living accommodation),
  - Chapter 6 of Part 3 (taxable benefits: cars, vans and related benefits),
  - Chapter 7 of Part 3 (taxable benefits: loans),
  - <sup>F37</sup>...
  - <sup>F37</sup>...
  - Chapter 10 of Part 3 (taxable benefits: residual liability to charge),
  - section 222 (payments treated as earnings: payments on account of tax where deduction not possible),
  - section 223 (payments treated as earnings: payments on account of director’s tax).
  - [<sup>F38</sup>section 226A (amount treated as earnings: employee shareholder shares). ] ,
- (3) If an amount is treated as earnings under section 87 [<sup>F39</sup>or 87A] (taxable benefits: non-cash vouchers), the earnings are to be treated as received in the tax year mentioned in section 88.

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- (4) If subsection (2) or (3) does not apply, the earnings are to be treated as received at the time when the benefit is provided.

#### Textual Amendments

- F36** Words in s. 19(2) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 50(2)**
- F37** S. 19(2) entries repealed (with effect in accordance with Sch. 22 para. 18(2) of the amending Act) by Finance Act 2003 (c. 14), Sch. 22 para. 18(1), **Sch. 43 Pt. 3(4)**
- F38** Words in s. 19(2) inserted (1.9.2013) by Finance Act 2013 (c. 29), **Sch. 23 paras. 2, 38**; S.I. 2013/1755, art. 2
- F39** Words in s. 19(3) inserted (with effect in accordance with Sch. 2 para. 62 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 2 para. 50(3)**

## CHAPTER 5

### [<sup>F40</sup>TAXABLE EARNINGS: REMITTANCE BASIS RULES AND RULES FOR NON-UK RESIDENT EMPLOYEES]

#### Textual Amendments

- F40** Pt. 2 Ch. 5 title substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by Finance Act 2008 (c. 9), **Sch. 7 para. 10**

### *Taxable earnings*

## 20 Taxable earnings under this Chapter: introduction

[<sup>F41</sup>(1) This Chapter—

- (a) contains provision for calculating what are taxable earnings from certain kinds of employment in a tax year for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee, and
- (b) sets out what are taxable earnings from an employment in a tax year in which the employee is non-UK resident.]

(2) In this Chapter—

- (a) sections 29 and 30 deal with the year for which general earnings are earned,
- <sup>F42</sup>(b) .....
- <sup>F43</sup>(c) .....
- (d) sections 38 to 41 deal with the place where the duties of an employment are performed.

(3) In the employment income Parts any reference to the charging provisions of this Chapter is a reference to any of [<sup>F44</sup>sections 22, 26 and 27].

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### Textual Amendments

- F41** S. 20(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 11\(2\)](#)
- F42** S. 20(2)(b) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 11\(3\)](#)
- F43** S. 20(2)(c) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 11\(3\)](#)
- F44** Words in s. 20(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 11\(4\)](#)

*[<sup>F45</sup>Remittance basis rules for [<sup>F46</sup>employees outside section 26]]*

### Textual Amendments

- F45** S. 21 cross-heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 12](#)
- F46** Words in cross-heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 7\(2\)\(b\)](#) (with [Sch. 46 para. 26](#))

## 21 Earnings for year when employee resident and ordinarily resident, but not domiciled, in UK, except chargeable overseas earnings

- (1) This section applies to general earnings for a tax year in which the employee is resident and ordinarily resident, but not domiciled, in the United Kingdom except to the extent that they are chargeable overseas earnings for that year.
- (2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- (3) Subsection (2) applies—
  - (a) whether the earnings are for that year or for some other tax year, and
  - (b) whether or not the employment is held at the time when the earnings are received.
- (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year, and are therefore within section 22(1) rather than subsection (1) above.

## 22 Chargeable overseas earnings for year when [<sup>F47</sup>remittance basis applies and employee [<sup>F48</sup>outside section 26]]

- (1) This section applies to general earnings for a tax year [<sup>F49</sup>, to the extent that they are chargeable overseas earnings for that year, if—
  - (a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year, and
  - [<sup>F50</sup>(b) the employee does not meet the requirement of section 26A for that year.]]
- (2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of “taxable earnings” from the employment in that year.

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- [<sup>F51</sup>(3) Subsection (2) applies whether or not the employment is held when the earnings are remitted.]
- (4) Section 23 applies for calculating how much of an employee’s general earnings are “chargeable overseas earnings” for a tax year <sup>F52</sup>....
- (5) Where any chargeable overseas earnings are taxable earnings under subsection (2), any deduction taken into account under section 23(3) in calculating the amount of the chargeable overseas earnings—
- (a) cannot then be deducted under section 11 from those taxable earnings, but
  - (b) may be deducted under that section from any taxable earnings under [<sup>F53</sup>section 15].
- [<sup>F54</sup>(6) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.]
- [<sup>F55</sup>(7) Section 15(1) does not apply to general earnings within subsection (1).]]

#### Textual Amendments

- F47** Words in s. 22 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(7\)](#) (with [Sch. 7 para. 82](#))
- F48** Words in s. 22 heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 7\(2\)\(a\)](#) (with [Sch. 46 para. 26](#))
- F49** Words in s. 22(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(2\)](#) (with [Sch. 7 para. 82](#))
- F50** S. 22(1)(b) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 7\(1\)](#) (with [Sch. 46 para. 26](#))
- F51** S. 22(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(3\)](#) (with [Sch. 7 para. 82](#))
- F52** Words in s. 22(4) omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(4\)](#) (with [Sch. 7 para. 82](#))
- F53** Words in s. 22(5)(b) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(5\)](#) (with [Sch. 7 para. 82](#))
- F54** S. 22(6)(7) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 14\(6\)](#) (with [Sch. 7 para. 82](#))
- F55** S. 22(7) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 59](#)

#### Modifications etc. (not altering text)

- C3** S. 22 applied by 2007 c. 3, s. 809F(2) (as inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 1](#) (with s. 809F(6)))

## 23 Calculation of “chargeable overseas earnings”

- (1) This section applies for calculating how much of an employee’s general earnings for a tax year are “chargeable overseas earnings” for the purposes of [<sup>F56</sup>section] 22.
- [<sup>F57</sup>(1A) But none of an employee's general earnings from an employment for a tax year are to be “chargeable overseas earnings” if section 24A applies in relation to the employment for the tax year.]
- (2) General earnings for a tax year are “overseas earnings” for that year if—

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- [<sup>F58</sup>(a) section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year,
- [<sup>F59</sup>(aa) the employee does not meet the requirement of section 26A for that year,]]
- (b) the employment is with a foreign employer, and
- (c) the duties of the employment are performed wholly outside the United Kingdom.
- (3) To calculate the amount of “chargeable overseas earnings” for a tax year—

*[<sup>F60</sup>Step 1*

Identify—

- (a) in the case of a tax year that is not a split year, the full amount of the overseas earnings for that year, and
- (b) in the case of a split year, so much of the full amount of the overseas earnings for that year as is attributable to the UK part of the year.]

*Step 2*

Subtract any amounts that would (assuming they were taxable earnings) be allowed to be deducted from [<sup>F61</sup>the earnings identified under step 1] under—

- (a) section 232 or Part 5 (deductions allowed from earnings),
- [<sup>F62</sup>(b) sections 188 to 194 of FA 2004 (contributions to registered pension schemes), or]
- (d) section 262 of CAA 2001 (capital allowances to be given effect by treating them as deductions from earnings).

*Step 3*

Apply any limit imposed by section 24 (limit where duties of associated employment performed in UK).

The result is the chargeable overseas earnings for the tax year.

- [<sup>F63</sup>(4) Any attribution required for the purposes of step 1 or step 2 in subsection (3) is to be done on a just and reasonable basis.]

#### Textual Amendments

- F56** Word in s. 23(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 15\(2\)](#)
- F57** S. 23(1A) inserted (with effect in accordance with Sch. 3 para. 7(1) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 3 para. 2](#)
- F58** S. 23(2)(a)(aa) substituted for s. 23(2)(a) (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 15\(3\)](#)
- F59** S. 23(2)(aa) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 8](#) (with [Sch. 46 para. 26](#))
- F60** Words in s. 23(3) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 60\(2\)](#)
- F61** Words in s. 23(3) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 60\(3\)](#)
- F62** Words in s. 23(3) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 55](#) (with [Sch. 36](#))



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**F63** S. 23(4) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 60\(4\)](#)

## 24 Limit on chargeable overseas earnings where duties of associated employment performed in UK

- (1) This section imposes a limit on how much of an employee's general earnings are chargeable overseas earnings for a tax year under section 23 if—
- (a) in that year the employee holds associated employments as well as the employment to which subsection (2) of that section applies (“the relevant employment”), and
  - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (2) The limit is the proportion of the aggregate earnings for that year from all the employments concerned that is reasonable having regard to—
- (a) the nature of and time devoted to each of the following—
    - (i) the duties performed outside the United Kingdom, and
    - (ii) those performed in the United Kingdom, and
  - (b) all other relevant circumstances.
- [<sup>F64</sup>(2A) If the tax year is a split year as respects the employee, subsection (2) has effect as if for “the aggregate earnings for that year from all the employments concerned” there were substituted “so much of the aggregate earnings for that year from all the employments concerned as is attributable to the UK part of that year”.]
- (3) For the purposes of subsection (2) “the aggregate earnings for a year from all the employments concerned” means the amount produced by aggregating the full amount of earnings from each of those employments for the year mentioned in subsection (1) so far as remaining after subtracting any amounts of the kind mentioned in step 2 in section 23(3).
- [<sup>F65</sup>(3A) Any attribution required for the purposes of subsection (2A) is to be done on a just and reasonable basis.]
- (4) In this section—
- (a) “the employments concerned” means the relevant employment and the associated employments;
  - (b) “associated employments” means employments with the same employer or with associated employers.
- (5) The following rules apply to determine whether employers are associated—

### *Rule A*

An individual is associated with a partnership or company if that individual has control of the partnership or company.

### *Rule B*

A partnership is associated with another partnership or with a company if one has control of the other or both are under the control of the same person or persons.

### *Rule C*

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A company is associated with another company if one has control of the other or both are under the control of the same person or persons.

- (6) In subsection (5)—
- (a) in rules A and B “control” has the meaning given by [<sup>F66</sup>section 995 of ITA 2007] (in accordance with section 719 of this Act), and
  - (b) in rule C “control” means control within the meaning [<sup>F67</sup>given by sections 450 and 451 of CTA 2010] (meaning of expressions relating to close companies).
- (7) If an amount of chargeable overseas earnings is reduced under step 3 in section 23(3) as a result of applying any limit imposed by this section, the amount of general earnings corresponding to the reduction remains an amount of general earnings within [<sup>F68</sup>section 15(1)].

#### Textual Amendments

- F64** S. 24(2A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 61\(2\)](#)
- F65** S. 24(3A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 61\(3\)](#)
- F66** Words in s. 24(6)(a) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 428](#) (with [Sch. 2](#))
- F67** Words in s. 24(6)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 379](#) (with [Sch. 2](#))
- F68** Words in s. 24(7) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 16](#)

#### [<sup>F69</sup>24A Restrictions on remittance basis

- (1) This section applies in relation to an employment (“the relevant employment”) for a tax year (“the relevant tax year”) if—
- (a) one or more of the paragraphs in subsection (5) applies,
  - (b) conditions 1 to 4 are met, and
  - (c) condition 5 is not met.
- (2) The consequences of this section applying are set out in sections 23(1A), 41C(4A), 41H(5) and 554Z9(1A).
- (3) But, for the purpose of determining if, and the extent to which, any provision of Part 11 (PAYE), or of PAYE regulations, applies in relation to any income, the application of any provision mentioned in subsection (2) in relation to the income is to be ignored.
- (4) In this section—
- (a) “the relevant employee” means the employee in respect of the relevant employment,
  - (b) “the relevant employer” means the employer in respect of the relevant employment, and
  - (c) “UK employment” means an employment the duties of which are not performed wholly outside the United Kingdom and “UK employer” is to be read accordingly,

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and the rules in section 24(5) (“associated” persons) apply for the purposes of this section.

- (5) The paragraphs referred to in subsection (1)(a) are—
- (a) general earnings from the relevant employment which are for the relevant tax year would, apart from section 23(1A) and step 3 in section 23(3), be “chargeable overseas earnings” under section 23(3);
  - (b) employment income in respect of the relevant employment which is treated as accruing in the relevant tax year under section 41C(2) would, apart from sections 41C(4A), 41D and 41E, be “foreign” under section 41C(3);
  - (c) employment income in respect of the relevant employment which is treated as accruing in the relevant tax year under section 41H(2) would, apart from sections 41H(5), 41I and 41L, be “chargeable foreign securities income” under section 41H(3);
  - (d) section 554Z9(2) would, apart from section 554Z9(1A) and (4) and (5), apply to employment income in respect of the relevant employment which corresponds to the value of a relevant step, or a part of the value of a relevant step, which is “for” the relevant tax year as determined under section 554Z4.
- (6) Condition 1 is that the relevant employee holds a UK employment—
- (a) at a time in the relevant tax year when the relevant employee also holds the relevant employment, or
  - (b) if the relevant tax year is a split year as respects the relevant employee, at a time in the UK part of the relevant tax year when the relevant employee also holds the relevant employment.
- (7) Condition 2 is that the UK employer is the same as, or is associated with, the relevant employer.
- (8) Condition 3 is that the UK employment and the relevant employment are related to each other.
- (9) Without prejudice to the generality of subsection (8), the UK employment and the relevant employment are to be assumed to be related to each other if one or more of the following paragraphs applies—
- (a) it is reasonable to suppose that—
    - (i) the relevant employee would not hold one employment without holding the other employment, or
    - (ii) the employments will cease at the same time or one employment will cease in consequence of the other employment ceasing;
  - (b) the terms of one employment operate to any extent by reference to the other employment;
  - (c) the performance of duties of one employment is (wholly or partly) dependent upon, or otherwise linked (directly or indirectly) to, the performance of duties of the other employment;
  - (d) the duties of the employments are wholly or mainly of the same type (ignoring the fact that they may be performed (wholly or partly) in different locations);
  - (e) the duties of the employments involve (wholly or partly) the provision of goods or services to the same customers or clients;
  - (f) the relevant employee is—

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- (i) a director (as defined in section 67) of the UK employer or the relevant employer who has a material interest (as defined in section 68) in the UK employer or the relevant employer,
  - (ii) a senior employee of the UK employer or the relevant employer, or
  - (iii) one of the employees of the UK employer or the relevant employer who receives the higher or highest levels of remuneration.
- (10) In subsection (9)(f) references to the UK employer or the relevant employer include references to—
- (a) any person with which the UK employer or the relevant employer (as the case may be) is associated, and
  - (b) if the UK employer or the relevant employer (as the case may be) is a company, the following companies taken together as if they were one company—
    - (i) the UK employer or the relevant employer (as the case may be), and
    - (ii) all the companies with which the UK employer or the relevant employer (as the case may be) is associated.
- (11) The Treasury may by regulations amend this section so as to add to, reduce or modify the cases in which the UK employment and the relevant employment are to be assumed to be related to each other.
- (12) A statutory instrument containing regulations under subsection (11) may not be made unless a draft has been laid before, and approved by a resolution of, the House of Commons.
- (13) Condition 4 is that X% is less than Y%.
- (14) “X%” is given by the following formula—
- $$C I \times 100 \%$$
- See section 24B for the definitions of “C” and “I”.
- (15) “Y%” is 65% of the additional rate for the relevant tax year.
- (16) The Treasury may by regulations amend this section so as to amend the definition of “Y%”.
- (17) Condition 5 is that—
- (a) were the duties of the relevant employment to be duties of the UK employment instead, all or substantially all of them could not lawfully be performed in the relevant territory (whether on the meeting of any condition or otherwise) by virtue of any regulatory requirements imposed by or under the law of that territory, and
  - (b) were the UK duties of the UK employment to be duties of the relevant employment instead, all or substantially all of them could not lawfully be performed in the part of the United Kingdom in which they are performed (whether on the meeting of any condition or otherwise) by virtue of any regulatory requirements imposed by or under the law of that part of the United Kingdom.
- (18) In subsection (17)—
- “the relevant territory” means the territory in which the duties of the relevant employment are performed, and
  - “UK duties” means duties performed in the United Kingdom.

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#### Textual Amendments

**F69** Ss. 24A, 24B inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 3 para. 3](#)

### **24B Definitions of “C” and “I” for the purposes of section 24A(14)**

- (1) This section applies for the purposes of section 24A(14).
- (2) “C” is the total amount of credit which would be allowed under section 18(2) of TIOPA 2010 (double taxation relief by way of credit) against income tax in respect of all the employment income falling within section 24A(5)(a) to (d) were none of that income to be, as relevant—
  - (a) “chargeable overseas earnings”,
  - (b) “foreign”,
  - (c) “chargeable foreign securities income”, or
  - (d) income to which section 554Z9(2) applies.
- (3) For this purpose, assume—
  - (a) that all relief is claimed within the applicable time limit given by section 19 of TIOPA 2010, and
  - (b) that all reasonable steps are taken to minimise any amounts of tax payable as mentioned in section 33 of that Act.
- (4) “I” is the total amount of all the employment income falling within section 24A(5)(a) to (d).]

#### Textual Amendments

**F69** Ss. 24A, 24B inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 3 para. 3](#)

*[<sup>F70</sup>Remittance basis rules: employees [<sup>F71</sup>who meet section 26A requirement]]*

#### Textual Amendments

**F70** S. 25 cross-heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 17](#)

**F71** Words in cross-heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 9\(2\)\(b\)](#) (with [Sch. 46 para. 26](#))

### **<sup>F72</sup>25 UK-based earnings for year when employee resident, but not ordinarily resident, in UK**

.....

#### Textual Amendments

**F72** S. 25 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 18](#)

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## 26 Foreign earnings for year when <sup>F73</sup>remittance basis applies and employee <sup>F74</sup>meets section 26A requirement]]

(1) This section applies to general earnings for a tax year <sup>F75</sup>where section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the employee for that year and the employee <sup>F76</sup>meets the requirement of section 26A for] that year, <sup>F77</sup>if the general earnings meet all of the following conditions—

- (a) they are neither—
  - (i) general earnings in respect of duties performed in the United Kingdom, nor
  - (ii) general earnings from overseas Crown employment subject to United Kingdom tax, and
- (b) if the tax year is a split year as respects the employee, they are attributable to the UK part of the year.]

(2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of “taxable earnings” from the employment in that year.

<sup>F78</sup>(3) Subsection (2) applies whether or not the employment is held when the earnings are remitted.]

(4) Section 28 explains what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.

<sup>F79</sup>(5) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.

[ Any attribution required for the purposes of subsection (1)(b) is to be done on a just <sup>F80</sup>(5A) and reasonable basis.]

<sup>F81</sup>(6) Section 15(1) does not apply to general earnings within subsection (1).]]

### Textual Amendments

- F73** Words in s. 26 heading substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 19\(5\)](#) (with [Sch. 7 para. 82](#))
- F74** Words in s. 26 heading substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 9\(2\)\(a\)](#) (with [Sch. 46 para. 26](#))
- F75** Words in s. 26(1) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 19\(2\)](#) (with [Sch. 7 para. 82](#))
- F76** Words in s. 26(1) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 9\(1\)](#) (with [Sch. 46 para. 26](#))
- F77** Words in s. 26(1) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 62\(2\)](#)
- F78** S. 26(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 19\(3\)](#) (with [Sch. 7 para. 82](#))
- F79** S. 26(5)(6) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 19\(4\)](#) (with [Sch. 7 para. 82](#))
- F80** S. 26(5A) inserted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 62\(3\)](#)
- F81** S. 26(6) substituted (with effect in accordance with Sch. 45 para. 153(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 62\(4\)](#)

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#### Modifications etc. (not altering text)

- C4** S. 26 applied by 2007 c. 3, s. 809F(2) (as inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 1](#) (with s. 809F(6)))

### [<sup>F82</sup>26A Section 26: requirement for 3-year period of non-residence

- (1) An employee meets the requirement of this section for a tax year if the employee was—
- non-UK resident for the previous 3 tax years, or
  - UK resident for the previous tax year but non-UK resident for the 3 tax years before that, or
  - UK resident for the previous 2 tax years but non-UK resident for the 3 tax years before that, or
  - non-UK resident for the previous tax year, UK resident for the tax year before that and non-UK resident for the 3 tax years before that.
- (2) The residence status of the employee before the 3 years of non-UK residence is not relevant for these purposes.]

#### Textual Amendments

- F82** S. 26A inserted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 10](#) (with [Sch. 46 para. 26](#))

### *Employees not resident in UK*

## 27 UK-based earnings for year when employee not resident in UK

- (1) This section applies to general earnings for a tax year [<sup>F83</sup>for which] the employee is not resident in the United Kingdom if they are—
- general earnings in respect of duties performed in the United Kingdom, <sup>F84</sup>...
  - general earnings from overseas Crown employment subject to United Kingdom tax [<sup>F85</sup>, or
  - general earnings to which section 402B (termination payments, and other benefits, that cannot benefit from the section 403 threshold, to be treated as earnings) applies.]
- (2) The full amount of any general earnings within subsection [<sup>F86</sup>(1)(a) or (b)] which are received in a tax year is an amount of “taxable earnings” from the employment in that year.
- [<sup>F87</sup>(2A) The percentage of the general earnings within subsection (1)(c) that are an amount of “taxable earnings” from the employment in the tax year in which they are received is given by—

$$A \div B \times 100$$

where—

B is the total amount of general earnings from the employment that it is reasonable to assume the employee would have received in respect of the post-employment notice



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period (within the meaning given by section 402E(5)) if the employee's employment had not been terminated until the end of that period, and

A is the total amount of those general earnings that it is reasonable to assume would have been taxable earnings by virtue of subsection (1)(a) or (b).]

[<sup>F88</sup>(3) [<sup>F89</sup>Subsections (2) and (2A) apply] whether or not the employment is held when the earnings are received.]

(4) Section 28 explains what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.

[<sup>F90</sup>(5) Sections 18 and 19 (time when earnings are received) apply for the purposes of this section.]

#### Textual Amendments

**F83** Words in s. 27(1) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 45 para. 149](#)

**F84** Word in s. 27(1)(a) omitted (with effect in accordance with s. 22(8) of the amending Act) by virtue of [Finance Act 2021 \(c. 26\)](#), [s. 22\(2\)\(a\)](#)

**F85** S. 27(1)(c) and word inserted (with effect in accordance with s. 22(8) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 22\(2\)\(b\)](#)

**F86** Words in s. 27(2) substituted (with effect in accordance with s. 22(8) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 22\(3\)](#)

**F87** S. 27(2A) inserted (with effect in accordance with s. 22(8) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 22\(4\)](#)

**F88** S. 27(3) substituted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 20\(2\)](#)

**F89** Words in s. 27(3) substituted (with effect in accordance with s. 22(8) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 22\(5\)](#)

**F90** S. 27(5) inserted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 20\(3\)](#)

#### *Special class of earnings for purposes of sections 25 to 27*

### **28 Meaning of “general earnings from overseas Crown employment subject to UK tax”**

(1) This section explains for the purposes of sections 25 to 27 what is meant by “general earnings from overseas Crown employment subject to United Kingdom tax”.

(2) “Crown employment” means employment under the Crown—

- (a) which is of a public nature, and
- (b) the earnings from which are payable out of the public revenue of the United Kingdom or of Northern Ireland.

(3) “General earnings from overseas Crown employment” means general earnings from such employment in respect of duties performed outside the United Kingdom.

(4) Such earnings are to be taken as being “subject to United Kingdom tax” unless they fall within any exception contained in an order under subsection (5).

(5) [<sup>F91</sup>the Commissioners for Her Majesty’s Revenue and Customs] may make an order exempting from the operation of sections 25(2) and 27(2)—

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- (a) general earnings of any description of employee specified in the order;
  - (b) general earnings from any description of employment so specified.
- (6) The [<sup>F92</sup>Commissioners] may make the order if they consider that such earnings should not be subject to those provisions having regard to the international obligations of Her Majesty's Government and such other matters as appear to them to be relevant.
- (7) An order may make provision by reference to all or any of the following—
- (a) the residence or nationality of the employee;
  - (b) whether the employee was engaged in or outside the United Kingdom;
  - (c) the nature of the post, the rate of remuneration and any other terms and conditions applying to it.
- (8) Subsection (7) does not affect the generality of the power to make provision by reference to such factors as the Board consider appropriate.

#### Textual Amendments

**F91** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(2\)](#); S.I. 2005/1126, art. 2(2)(h)

**F92** Words in s. 28(6) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(3\)\(a\)](#); S.I. 2005/1126, art. 2(2)(h)

#### *Year for which general earnings are earned*

### 29 Meaning of earnings “for” a tax year

- (1) This section applies for determining whether general earnings are general earnings “for” a particular tax year for the purposes of this Chapter.
- (2) General earnings that are earned in, or otherwise in respect of, a particular period are to be regarded as general earnings for that period.
- (3) If that period consists of the whole or part of a single tax year, the earnings are to be regarded as general earnings “for” that tax year.
- (4) If that period consists of the whole or parts of two or more tax years, the part of the earnings that is to be regarded as general earnings “for” each of those tax years is to be determined on a just and reasonable apportionment.
- (5) This section does not apply to any amount which is required by a provision of Part 3 to be treated as earnings for a particular tax year.

### 30 Treatment of earnings for year in which employment not held

- (1) This section applies for the purposes of this Chapter in a case where general earnings from an employment would otherwise fall to be regarded as general earnings for a tax year in which the employee does not hold the employment.
- (2) If that year falls before the first tax year in which the employment is held, the earnings are to be treated as general earnings for that first tax year.

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(3) If that year falls after the last tax year in which the employment was held, the earnings are to be treated as general earnings for that last tax year.

(4) This section does not apply in connection with determining the year for which amounts are to be treated as earnings under Chapters 2 to [F93 10] of Part 3 (the benefits code).

**Textual Amendments**

**F93** Word in s. 30(4) substituted (with effect in accordance with s. 13(4) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 1 para. 4](#)

F94 ...

**Textual Amendments**

**F94** S. 31 cross-heading omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 21](#)

**31 Receipt of money earnings**

.....

**32 Receipt of non-money earnings**

.....

**33 Earnings remitted to UK**

.....

**34 Earnings remitted to UK: further provisions about UK-linked debts**

.....

*Relief for delayed remittances*

**F95 35 Relief for delayed remittances**

.....

**Textual Amendments**

**F95** Ss. 31-37 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 21](#)

**F95 36 Election in respect of delayed remittances**

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#### Textual Amendments

**F95** Ss. 31-37 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 21**

### <sup>F95</sup>37 Claims for relief on delayed remittances

.....

#### Textual Amendments

**F95** Ss. 31-37 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of Finance Act 2008 (c. 9), **Sch. 7 para. 21**

#### *Place of performance of duties of employment*

### 38 Earnings for period of absence from employment

- (1) This section applies if a person ordinarily performs the whole or part of the duties of an employment in the United Kingdom.
- (2) General earnings for a period of absence from the employment are to be treated for the purposes of this Chapter as general earnings for duties performed in the United Kingdom except in so far as they would, but for that absence, have been general earnings for duties performed outside the United Kingdom.

### 39 Duties in UK merely incidental to duties outside UK

- (1) This section applies if in a tax year an employment is in substance one whose duties fall to be performed outside the United Kingdom.
- (2) Duties of the employment performed in the United Kingdom whose performance is merely incidental to the performance of duties outside the United Kingdom are to be treated for the purposes of this Chapter as performed outside the United Kingdom.
- (3) This section does not affect any question as to—
  - (a) where any duties are performed, or
  - (b) whether a person is absent from the United Kingdom,
 for the purposes of section 378 (deduction from seafarers' earnings: eligibility), and section 383 (place of performance of incidental duties) applies instead.

### 40 Duties on board vessel or aircraft

- (1) Duties which a person performs on a vessel engaged on a voyage not extending to a port outside the United Kingdom are to be treated for the purposes of this Chapter as performed in the United Kingdom.
- (2) Duties which a person resident in the United Kingdom performs on a vessel or aircraft engaged—
  - (a) on a voyage or journey beginning or ending in the United Kingdom, or

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- (b) on a part beginning or ending in the United Kingdom of any other voyage or journey,  
are to be treated as performed in the United Kingdom for the purposes of this Chapter.
- (3) Subsection (2) does not, however, apply for the purposes of section 24(1)(b) (limit on chargeable overseas earnings under section 23 where duties of associated employment performed in UK) in relation to any duties of a person’s employment if—
- (a) the employment is as a seafarer, and
  - (b) the duties are performed on a ship.
- (4) Instead, any duties of the employment which are performed on a ship engaged—
- (a) on a voyage beginning or ending outside the United Kingdom (but excluding any part of it beginning and ending there), or
  - (b) on a part beginning or ending outside the United Kingdom of any other voyage,
- are to be treated as performed outside the United Kingdom for the purposes of section 24(1)(b).
- (5) For the purposes of subsections (3) and (4)—
- (a) employment “as a seafarer” means an employment consisting of the performance of duties on a ship or of such duties and others incidental to them;
  - [<sup>F96</sup>(b) “ship” does not include an offshore installation;]
  - (c) the areas designated under section 1(7) of the Continental Shelf Act 1964 (c. 29) are treated as part of the United Kingdom.

#### Textual Amendments

- F96** S. 40(5)(b) substituted (with effect in accordance with Sch. 27 para. 16 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 27 para. 12](#)

## 41 Employment in UK sector of continental shelf

- (1) General earnings in respect of duties performed in the UK sector of the continental shelf in connection with exploration or exploitation activities are to be treated for the purposes of this Chapter as general earnings in respect of duties performed in the United Kingdom.
- (2) In this section—
- “the UK sector of the continental shelf” means the areas designated under section 1(7) of the Continental Shelf Act 1964, and
- “exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or the UK sector of the continental shelf.

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## [<sup>F97</sup>Apportionment of earnings

### Textual Amendments

**F97** S. 41ZA and cross-heading inserted (with effect in accordance with Sch. 6 para. 7 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 6 para. 3**

### 41ZA Basis of apportionment

The extent to which general earnings are in respect of duties performed in the United Kingdom is to be determined under this Chapter on a just and reasonable basis.]

## [<sup>F98</sup>CHAPTER 5A

### TAXABLE SPECIFIC INCOME: EFFECT OF REMITTANCE BASIS

### Textual Amendments

**F98** Pt. 2 Ch. 5B substituted (with effect in accordance with Sch. 3 para. 7(3), [Sch. 9 para. 48](#) of the amending Act) for Pt. 2 Ch. 5A by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 5, 47](#)

### 41A Taxable specific income from employment-related securities: effect of remittance basis

- (1) This section applies if—
  - (a) an amount within subsection (2) counts as employment income of an individual for a tax year in respect of an employment (“the securities income”), and
  - (b) any part of the relevant period (see section 41B) is within a tax year for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual.
- (2) An amount is within this subsection if it counts as employment income under any provision of any of Chapters 2, 3 and 3C to 5 of Part 7 (employment-related securities etc) except section 446UA.
- (3) The reference in subsection (2) to an amount that counts as employment income under any of the provisions mentioned there does not include an amount which counts as employment income by virtue of any provision of Chapter 3A or 3B of Part 7.
- (4) An amount equal to—
 

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 is an amount of “taxable specific income” from the employment for the tax year mentioned in subsection (1)(a).
- (5) In subsection (4)—
  - (a) SI is the amount of the securities income, and
  - (b) FSI is the amount of the securities income that is “foreign” (see sections 41C to 41E).

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- (6) The full amount of any of the foreign securities income which is remitted to the United Kingdom in a tax year is an amount of “taxable specific income” from the employment for that year.
- (7) Subsection (6) applies whether or not the employment is held when the foreign securities income is remitted.
- (8) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis), treat the relevant securities or securities option as deriving from the foreign securities income.
- (9) But where—
  - (a) the chargeable event is the disposal of the relevant securities or the assignment or release of the relevant securities option, and
  - (b) the individual receives consideration for the disposal, assignment or release of an amount equal to or exceeding the market value of the relevant securities or securities option,for the purposes of that Chapter treat the consideration (and not the relevant securities or securities option) as deriving from the foreign securities income.
- (10) In this section and section 41B—
  - “the chargeable event” means the event giving rise to the securities income, and
  - “the relevant securities” or “the relevant securities option” means the employment-related securities or employment-related securities option by virtue of which the amount mentioned in subsection (1)(a) counts as employment income.
- (11) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom” etc.

#### **41B Section 41A: the relevant period**

- (1) “The relevant period” is to be determined as follows.
- (2) In the case of an amount that counts as employment income by virtue of Chapter 2 (restricted securities) or Chapter 3 (convertible securities), the relevant period—
  - (a) begins with the day of the acquisition, and
  - (b) ends with the day of the chargeable event.
- (3) In the case of an amount that counts as employment income by virtue of section 446U (securities acquired for less than market value: discharge of notional loan)—
  - (a) if the relevant securities were acquired by virtue of the exercise of a securities option (“the option”), the relevant period—
    - (i) begins with the day of the acquisition of the option, and
    - (ii) ends with the day the option vests, and
  - (b) otherwise, the relevant period is—
    - (i) the tax year in which the notional loan (within the meaning of Chapter 3C) is treated as made, or
    - (ii) if the chargeable event occurs in that year, the period beginning at the beginning of that year and ending with the day of that event.
- (4) In the case of an amount that counts as employment income by virtue of—



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- (a) Chapter 3D (securities disposed of for more than market value), or
  - (b) Chapter 4 (post-acquisition benefits from securities),
- the relevant period is the tax year in which the chargeable event occurs.
- (5) In the case of an amount that counts as employment income by virtue of Chapter 5 (employment-related securities options), the relevant period—
- (a) begins with the day of the acquisition, and
  - (b) ends with the day of the chargeable event or, if earlier, the day the relevant securities option vests.
- (6) In this section “the acquisition” has the same meaning as in Chapters 2 to 4 or Chapter 5 (see section 421B or 471).
- (7) For the purposes of this section an option “vests” when it is first capable of being exercised.
- (8) References in this section to a Chapter are to a Chapter of Part 7.

#### **41C Section 41A: foreign securities income**

- (1) The extent to which the securities income is “foreign” is to be determined as follows.
- (2) Treat an equal amount of the securities income as accruing on each day of the relevant period.
- (3) If any part of the relevant period is within a tax year to which subsection (4) applies, the securities income treated as accruing in that part of the relevant period is “foreign”.
- This is subject to section 41D (limit where duties of associated employment performed in UK).
- (4) This subsection applies to a tax year if—
- (a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
  - [<sup>F99</sup>(b) the individual does not meet the requirement of section 26A for the year (reading references there to the employee as references to the individual),]
  - (c) the employment is with a foreign employer, and
  - (d) the duties of the employment are performed wholly outside the United Kingdom.
- [<sup>F100</sup>(4A) But subsection (4) does not apply to a tax year if section 24A applies in relation to the employment for the tax year.]
- (5) If any part of the relevant period is within a tax year to which subsection (6) applies—
- (a) if the duties of the employment are performed wholly outside the United Kingdom, the securities income treated as accruing in that part of the relevant period is “foreign”, and
  - (b) if some but not all of those duties are performed outside the United Kingdom—
    - (i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and
    - (ii) the income apportioned in respect of duties performed outside the United Kingdom is “foreign”.

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- (6) This subsection applies to a tax year if—
- (a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
  - [<sup>F101</sup>(b) the individual meets the requirement of section 26A for the year (reading references there to the employee as references to the individual), and]
  - (c) some or all of the duties of the employment are performed outside the United Kingdom.
- (7) If the individual is not resident in the United Kingdom in a tax year, for the purposes of this section treat section 809B of ITA 2007 as applying to the individual for that year.
- (8) This section is subject to section 41E (foreign securities income: just and reasonable apportionment).
- [<sup>F102</sup>(9) If subsection (4) does not apply to a tax year by virtue of subsection (4A), it is to be assumed for the purposes of section 41E that it is just and reasonable for none of the securities income treated as accruing in the tax year to be “foreign”.]

#### Textual Amendments

- F99** S. 41C(4)(b) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 11\(2\)](#) (with [Sch. 46 para. 26](#))
- F100** S. 41C(4A) inserted (with effect in accordance with Sch. 3 para. 7(2) of the amending Act) by [Finance Act 2014 \(c. 26\)](#), [Sch. 3 para. 4\(2\)](#)
- F101** S. 41C(6)(b) substituted (with effect in accordance with Sch. 46 para. 25 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 11\(3\)](#) (with [Sch. 46 para. 26](#))
- F102** S. 41C(9) inserted (17.7.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 3 para. 4\(3\)](#)

#### 41D Limit on foreign securities income where duties of associated employment performed in UK

- (1) This section imposes a limit on the extent to which section 41C(3) applies in relation to a period when—
- (a) the individual holds associated employments as well as the employment in relation to which section 41C(4) applies, and
  - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (2) The amount of the securities income for the period that is to be regarded as “foreign” is limited to such amount as is just and reasonable, having regard to—
- (a) the employment income for the period from all the employments mentioned in subsection (1)(a),
  - (b) the proportion of that income that is general earnings to which section 22 applies (chargeable overseas earnings),
  - (c) the nature of and time devoted to the duties performed outside the United Kingdom, and those performed in the United Kingdom, in the period, and
  - (d) all other relevant circumstances.
- (3) In this section “associated employments” means employments with the same employer or with associated employers.
- (4) Section 24(5) and (6) (meaning of “associated employer”) apply for the purposes of this section.

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#### 41E Foreign securities income: just and reasonable apportionment

- (1) This section applies if the proportion of the securities income that would otherwise be regarded as “foreign” is not, having regard to all the circumstances, one that is just and reasonable.
- (2) The amount of the securities income that is “foreign” is such amount as is just and reasonable (rather than the amount calculated in accordance with section 41C).]

### [<sup>F103</sup>CHAPTER 5B

#### TAXABLE SPECIFIC INCOME FROM EMPLOYMENT-RELATED SECURITIES ETC: INTERNATIONALLY MOBILE EMPLOYEES

##### Textual Amendments

**F103** Pt. 2 Ch. 5B substituted (with effect in accordance with Sch. 3 para. 7(3), Sch. 9 para. 48 of the amending Act) for Pt. 2 Ch. 5A by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 9 paras. 5, 47](#)

#### 41F Taxable specific income: internationally mobile employees etc

- (1) This section applies if—
  - (a) an amount counts under Chapters 2 to 5 of Part 7 (employment-related securities etc) as employment income of an individual for a tax year (“the securities income”) in respect of an employment (“the relevant employment”), and
  - (b) one or more of the international mobility conditions is met in relation to the individual (see subsection (2)).
- (2) The “international mobility conditions” are—
  - (a) that any part of the relevant period (see section 41G) is within a tax year for which section 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual;
  - (b) that any part of the relevant period is within a tax year for which the individual is not UK resident;
  - (c) that any part of the relevant period is within the overseas part of a tax year that is a split year with respect to the individual.
- (3) An amount equal to—
 

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is an amount of “taxable specific income” from the relevant employment for the tax year mentioned in subsection (1)(a).
- (4) In subsection (3)—
  - (a) SI is the amount of the securities income, and
  - (b) FSI is the amount of the securities income that is “foreign”.
- (5) The amount of the securities income that is “foreign” is the sum of any chargeable foreign securities income and any unchargeable foreign securities income (see sections 41H to 41L).

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- (6) The full amount of any chargeable foreign securities income which is remitted to the United Kingdom in a tax year is an amount of “taxable specific income” from the relevant employment for that year.
- (7) Subsection (6) applies whether or not the relevant employment is held when the chargeable foreign securities income is remitted.
- (8) For the purposes of Chapter A1 of Part 14 of ITA 2007 (remittance basis), treat the relevant securities or relevant securities option as deriving from the chargeable foreign securities income.
- (9) But where—
  - (a) the chargeable event is the disposal of the relevant securities or the assignment or release of the relevant securities option, and
  - (b) the individual receives consideration for the disposal, assignment or release of an amount equal to or exceeding the market value of the relevant securities or relevant securities option,for the purposes of that Chapter treat the consideration (and not the relevant securities or relevant securities option) as deriving from the chargeable foreign securities income.
- (10) See Chapter A1 of Part 14 of ITA 2007 for the meaning of “remitted to the United Kingdom”.
- (11) In this section and section 41G—

“the chargeable event” means the event giving rise to the securities income, and

“the relevant securities” or “the relevant securities option” means the employment-related securities or employment-related securities option by virtue of which the amount mentioned in subsection (1)(a) counts as employment income.

#### **41G Section 41F: the relevant period**

- (1) “The relevant period” is to be determined as follows.
- (2) In the case of an amount that counts as employment income by virtue of Chapter 2 of Part 7 (restricted securities) (other than where subsection (4) applies) or Chapter 3 of that Part (convertible securities), the relevant period—
  - (a) begins with the day of the acquisition, and
  - (b) ends with the day of the chargeable event.
- (3) In the case of an amount that counts as employment income by virtue of section 446B (securities with artificially depressed market value: charge on acquisition), the relevant period is the tax year in which the acquisition occurs.
- (4) In a case within subsection (1)(aa) or (b) of section 446E (securities with artificially depressed market value: charge on restricted securities) where an amount counts as employment income by virtue of that section, the relevant period—
  - (a) begins at the beginning of the tax year in which the chargeable event is treated as occurring, and
  - (b) ends with the day on which the chargeable event is treated as occurring.

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- (5) In the case of an amount that counts as employment income by virtue of section 446L (securities with artificially enhanced market value), the relevant period—
- (a) begins at the beginning of the tax year in which the valuation date (within the meaning of that section) falls, and
  - (b) ends with the valuation date.
- (6) In the case of an amount that counts as employment income by virtue of section 446U (securities acquired for less than market value: discharge of notional loan) or 446UA (avoidance cases in respect of such securities)—
- (a) if the relevant securities were acquired by virtue of the exercise of a securities option (“the option”), the relevant period—
    - (i) begins with the day of the acquisition of the option, and
    - (ii) ends with the day the option vests, and
  - (b) otherwise, the relevant period is—
    - (i) the tax year in which the notional loan (within the meaning of Chapter 3C of Part 7) is treated as made, or
    - (ii) if the chargeable event occurs in that year, the period beginning at the beginning of that year and ending with the day of that event.
- (7) In the case of an amount that counts as employment income by virtue of—
- (a) Chapter 3D of Part 7 (securities disposed of for more than market value), or
  - (b) Chapter 4 of that Part (post-acquisition benefits from securities),
- the relevant period is the tax year in which the chargeable event occurs.
- (8) In the case of an amount that counts as employment income by virtue of Chapter 5 of Part 7 (employment-related securities options), the relevant period—
- (a) begins with the day of the acquisition, and
  - (b) ends with the day of the chargeable event or, if earlier, the day the relevant securities option vests.
- (9) If the relevant period determined in accordance with subsections (2) to (8) would not, in all the circumstances, be just and reasonable, the relevant period is to be such period as is just and reasonable.
- (10) In this section “the acquisition” has the same meaning as in Chapters 2 to 4 or Chapter 5 of Part 7 (see section 421B or 471).
- (11) For the purposes of this section an option “vests”—
- (a) when it becomes exercisable, or
  - (b) if earlier, when it becomes exercisable subject only to a period of time expiring.
- (12) See section 41F(11) for the definitions of “the chargeable event”, “the relevant securities” and “the relevant securities option”.

#### **41H Section 41F: chargeable and unchargeable foreign securities income**

- (1) The extent to which the securities income is “chargeable foreign securities income” or “unchargeable foreign securities income” is to be determined as follows.
- (2) Treat an equal amount of the securities income as accruing on each day of the relevant period.

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- (3) If any part of the relevant period is within a tax year to which subsection (4) applies, the securities income treated as accruing in that part of the relevant period is “chargeable foreign securities income”.

This is subject to subsection (9) and section 41I (limit where duties of associated employment performed in UK).

- (4) This subsection applies to a tax year if—
- (a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
  - (b) the individual does not meet the requirement of section 26A for the year (reading references there to the employee as references to the individual),
  - (c) the relevant employment is with a foreign employer, and
  - (d) the duties of the relevant employment are performed wholly outside the United Kingdom in the year.
- (5) But subsection (4) does not apply to a tax year if section 24A applies in relation to the relevant employment for the tax year.
- (6) If any part of the relevant period is within a tax year to which subsection (7) applies—
- (a) if the duties of the relevant employment are performed wholly outside the United Kingdom, the securities income treated as accruing in that part of the relevant period is “chargeable foreign securities income”, and
  - (b) if some, but not all, of those duties are performed outside the United Kingdom—
    - (i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and
    - (ii) the income apportioned in respect of duties performed outside the United Kingdom is “chargeable foreign securities income”.

This is subject to subsection (9).

- (7) This subsection applies to a tax year if—
- (a) section 809B, 809D or 809E of ITA 2007 applies to the individual for the year,
  - (b) the individual meets the requirement of section 26A for the year (reading references there to the employee as references to the individual), and
  - (c) some or all of the duties of the relevant employment are performed outside the United Kingdom in the year.
- (8) If any part of the relevant period is within a tax year for which the individual is not UK resident—
- (a) if the duties of the relevant employment are performed wholly outside the United Kingdom in that year, the securities income treated as accruing in that part of the relevant period is “unchargeable foreign securities income”, or
  - (b) if some, but not all, of those duties are performed outside the United Kingdom in that year—
    - (i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and

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- (ii) the income apportioned in respect of duties performed outside the United Kingdom is “unchargeable foreign securities income”.
- (9) If any part of the relevant period is within the overseas part of a tax year that is a split year with respect to the individual—
  - (a) if the duties of the relevant employment are performed wholly outside the United Kingdom in that overseas part, the securities income treated as accruing in that part of the relevant period is “unchargeable foreign securities income”, or
  - (b) if some, but not all, of those duties are performed outside the United Kingdom in that overseas part—
    - (i) the securities income mentioned in paragraph (a) is to be apportioned (on a just and reasonable basis) between duties performed in the United Kingdom and duties performed outside the United Kingdom, and
    - (ii) the income apportioned in respect of duties performed outside the United Kingdom is “unchargeable foreign securities income”.
- (10) If subsection (4) does not apply to a tax year by virtue of subsection (5), it is to be assumed for the purposes of section 41L that it is just and reasonable for none of the securities income treated as accruing in the tax year to be “chargeable foreign securities income”.
- (11) See section 41J for further provision about the location of employment duties.
- (12) This section is subject to—
  - (a) section 41K (securities income from overseas Crown employment), and
  - (b) section 41L (chargeable and unchargeable foreign securities income: just and reasonable apportionment).

#### **41I Limit on “chargeable foreign securities income” where duties of associated employment performed in UK**

- (1) This section imposes a limit on the extent to which section 41H(3) applies in relation to a period when—
  - (a) the individual holds associated employments as well as the relevant employment, and
  - (b) the duties of the associated employments are not performed wholly outside the United Kingdom.
- (2) The amount of the securities income for the period that is to be regarded as “chargeable foreign securities income” is limited to such amount as is just and reasonable, having regard to—
  - (a) the employment income for the period from all the employments mentioned in subsection (1)(a),
  - (b) the proportion of that income that is general earnings to which section 22 applies (chargeable overseas earnings),
  - (c) the nature of, and time devoted to, the duties performed outside the United Kingdom, and those performed in the United Kingdom, in the period, and
  - (d) all other relevant circumstances.



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- (3) In this section “associated employments” means employments with the same employer or with associated employers.
- (4) Section 24(5) and (6) (meaning of “associated employer”) applies for the purposes of this section.

#### **41J Location of employment duties**

- (1) The following provisions apply for the purposes of this Chapter—
  - (a) section 39(1) and (2), and
  - (b) section 40 (but as if in subsections (3) and (4) of that section references to section 24(1)(b) were to section 41I(1)(b)).
- (2) Duties of an employment performed in the UK sector of the continental shelf in connection with exploration or exploitation activities are to be treated for the purposes of this Chapter as being performed in the United Kingdom.
- (3) In subsection (2) “the UK sector of the continental shelf” and “exploration or exploitation activities” have the same meaning as in section 41 (treatment of general earnings from employment in the UK sector of the continental shelf).

#### **41K Securities income from overseas Crown employment**

- (1) If securities income is from overseas Crown employment subject to United Kingdom tax, it is (notwithstanding any other provision of this Chapter) not “foreign”.
- (2) “Securities income from overseas Crown employment” means securities income from Crown employment (within the meaning given by section 28(2)) in respect of duties performed outside the United Kingdom.
- (3) Such securities income is to be taken as being “subject to United Kingdom tax” unless, by virtue of subsection (4), it falls within an exception contained in an order under section 28(5).
- (4) Subject to any provision made in an order under section 28(5) for the purposes of this section, provisions made in an order under that section for the purposes of excepting general earnings from overseas Crown employment from the operation of section 27(2) also have effect for the purposes of excepting securities income from such employment from the operation of subsection (1).
- (5) For the purposes of this section, if securities income is partly from overseas Crown employment subject to United Kingdom tax, a just and reasonable proportion of the securities income is to be taken to be from such employment.

#### **41L Chargeable and unchargeable foreign securities income: just and reasonable apportionment**

- (1) This section applies if the proportion of the securities income that would otherwise be regarded as “chargeable foreign securities income” or “unchargeable foreign securities income” is not, having regard to all the circumstances, just and reasonable.
- (2) The amounts of the securities income that are “chargeable foreign securities income” and “unchargeable foreign securities income” are such amounts as are just and reasonable (rather than the amounts calculated in accordance with section 41H).]

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## F104 CHAPTER 6

### DISPUTES AS TO DOMICILE OR ORDINARY RESIDENCE

#### Textual Amendments

**F104** Pt. 2 Ch. 6 omitted (with effect in accordance with Sch. 7 para. 81 of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 23](#)

#### 42 Commissioners to determine dispute as to domicile or ordinary residence

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#### F104 43 Appeal against Commissioners' decision on domicile or ordinary residence

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#### Modifications etc. (not altering text)

**C5** S. 43 modified (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 335](#)

## CHAPTER 7

### APPLICATION OF PROVISIONS TO AGENCY WORKERS

#### *Agency workers*

#### [F105] 44 Treatment of workers supplied by agencies

- (1) This section applies if—
- (a) an individual (“the worker”) personally provides services (which are not excluded services) to another person (“the client”),
  - (b) there is a contract between—
    - (i) the client or a person connected with the client, and
    - (ii) a person other than the worker, the client or a person connected with the client (“the agency”), and
  - (c) under or in consequence of that contract—
    - (i) the services are provided, or
    - (ii) the client or any person connected with the client pays, or otherwise provides consideration, for the services.
- (2) But this section does not apply if—
- (a) it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person, or
  - (b) remuneration receivable by the worker in consequence of providing the services constitutes employment income of the worker apart from this Chapter.

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- (3) If this section applies—
- (a) the worker is to be treated for income tax purposes as holding an employment with the agency, the duties of which consist of the services the worker provides to the client, and
  - (b) all remuneration receivable by the worker (from any person) in consequence of providing the services is to be treated for income tax purposes as earnings from that employment,
- but this is subject to subsections (4) to (6).
- (4) Subsection (5) applies if (whether before or after the worker begins to provide the services)—
- (a) the client provides the agency with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (2)(a), this section does not or will not apply, or
  - (b) a relevant person provides the agency with a fraudulent document which is intended to constitute evidence that, by virtue of subsection (2)(b), this section does not or will not apply.
- (5) In relation to services the worker provides to the client after the fraudulent document is provided—
- (a) subsection (3) does not apply,
  - (b) the worker is to be treated for income tax purposes as holding an employment with the client or (as the case may be) with the relevant person, the duties of which consist of the services, and
  - (c) all remuneration receivable by the worker (from any person) in consequence of providing the services is to be treated for income tax purposes as earnings from that employment.
- (6) In subsections (4) and (5) “relevant person” means a person, other than the client, the worker or a person connected with the client or with the agency, who—
- (a) is resident, or has a place of business, in the United Kingdom, and
  - (b) is party to a contract with the agency or a person connected with the agency, under or in consequence of which—
    - (i) the services are provided, or
    - (ii) the agency, or a person connected with the agency, makes payments in respect of the services.]

#### Textual Amendments

**F105** S. 44 substituted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\), s. 16\(2\)\(11\)](#)

## 45 Arrangements with agencies

If—

- (a) an individual (“the worker”), with a view to personally providing services (which are not excluded services) to another person (“the client”), enters into arrangements with a third person <sup>F106</sup> ..., and
- (b) the arrangements are such that the services (if and when they are provided) will be treated for income tax purposes under section 44 as duties of an employment held by the worker <sup>F107</sup> ...,

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any remuneration receivable under or in consequence of the arrangements is to be treated for income tax purposes as earnings from that employment.

#### Textual Amendments

**F106** Words in s. 45(a) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\), s. 16\(3\)\(a\)\(11\)](#)

**F107** Words in s. 45(b) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\), s. 16\(3\)\(b\)\(11\)](#)

### 46 Cases involving unincorporated bodies etc.

(1) Section 44 also applies—

- (a) if the worker personally provides<sup>F108</sup> ... the services in question as a partner in a firm or a member of an unincorporated body;
- (b) if the agency in question is an unincorporated body of which the worker is a member.

(2) In a case within subsection (1)(a), remuneration receivable [<sup>F109</sup>in consequence of the worker providing the services] is to be treated for income tax purposes as income of the worker and not as income of the firm or body.

#### Textual Amendments

**F108** Words in s. 46(1)(a) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\), s. 16\(4\)\(a\)\(11\)](#)

**F109** Words in s. 46(2) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\), s. 16\(4\)\(b\)\(11\)](#)

### <sup>F110</sup>Anti-avoidance

#### Textual Amendments

**F110** S. 46A and cross-heading inserted (6.4.2014) by [Finance Act 2014 \(c. 26\), s. 16\(5\)\(11\)](#)

### 46A Anti-avoidance

(1) This section applies if—

- (a) an individual (“W”) personally provides services (which are not excluded services) to another person (“C”),
- (b) a third person (“A”) enters into arrangements the main purpose, or one of the main purposes, of which is to secure that the services are not treated for income tax purposes under section 44 as duties of an employment held by W with A, and
- (c) but for this section, section 44 would not apply in relation to the services.

(2) In subsection (1)(b) “arrangements” includes any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable, and any associated operations.

(3) Subject to subsection (2) of section 44, that section applies in relation to the services.

(4) For the purposes of subsection (3)—

- (a) W is to be treated as being the worker,

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- (b) C is to be treated as being the client,
- (c) A is to be treated as being the agency, and
- (d) section 44 has effect as if subsections (4) to (6) of that section were omitted.]

### Supplementary

## 47 Interpretation of this Chapter

<sup>F111</sup>(1) . . . . .

- (2) In this Chapter “excluded services” means—
  - (a) services as an actor, singer, musician or other entertainer or as a fashion, photographic or artist’s model, or
  - (b) services provided wholly—
    - (i) in the worker’s own home, or
    - (ii) at other premises which are neither controlled or managed by the client nor prescribed by the nature of the services.
- (3) For the purposes of this Chapter “remuneration”—
  - (a) does not include anything that would not have constituted employment income of the worker if it had been receivable in connection with an employment apart from this Chapter, but
  - (b) subject to paragraph (a), includes every form of payment, gratuity, profit and benefit.

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#### Textual Amendments

**F111** S. 47(1) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [s. 16\(6\)\(11\)](#)

## CHAPTER 8

[<sup>F112</sup>WORKERS' SERVICES PROVIDED THROUGH INTERMEDIARIES TO SMALL CLIENTS]

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#### Textual Amendments

**F112** Pt. 2 Ch. 8 heading substituted (6.4.2021 for the tax year 2021-22 and subsequent tax years) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 paras. 2, 24](#) (with [Sch. 1 paras. 30-34](#))

### Application of this Chapter

## 48 Scope of this Chapter

- (1) This Chapter has effect with respect to the provision of services through an intermediary [<sup>F113</sup>in a case where the services are provided to a person who is not a public authority and who either—
  - (a) qualifies as small for a tax year, or
  - (b) does not have a UK connection for a tax year.]

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(2) Nothing in this Chapter—

(a) affects the operation of Chapter 7 of this Part,

[<sup>F114</sup>(aa) applies to services provided by a managed service company (within the meaning of Chapter 9 of this Part), or]

(b) applies to payments [<sup>F115</sup>or transfers to which section 966(3) or (4) of ITA 2007 applies (visiting performers: duty to deduct and account for sums representing income tax)] .

[<sup>F116</sup>(3) In this Chapter “public authority” has the same meaning as in Chapter 10 of this Part (see section 61L).]

[<sup>F117</sup>(4) For provisions determining when a person qualifies as small for a tax year, see sections 60A to 60G.

(5) For provision determining when a person has a UK connection for a tax year, see section 60I.]

#### Textual Amendments

**F113** Words in s. 48(1) substituted (6.4.2021 for the tax year 2021-22 and subsequent tax years) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 paras. 3\(2\), 24](#) (with [Sch. 1 paras. 30-34](#))

**F114** S. 48(2)(aa) substituted for word (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), s. 25(2), [Sch. 3 para. 3](#)

**F115** Words in s. 48(2) substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 429](#) (with [Sch. 2](#))

**F116** S. 48(3) inserted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 1 para. 2\(b\)](#)

**F117** S. 48(4)(5) inserted (6.4.2021 for the tax year 2021-22 and subsequent tax years) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 paras. 3\(3\), 24](#) (with [Sch. 1 paras. 30-34](#))

## 49 Engagements to which this Chapter applies

(1) This Chapter applies where—

(a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services [<sup>F118</sup>for another person] (“the client”),

[<sup>F119</sup>(aa) the client is not a public authority,]

(b) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), and

[<sup>F120</sup>(c) the circumstances are such that—

(i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the holder of an office under the client, or

(ii) the worker is an office-holder who holds that office under the client and the services relate to the office.]

[<sup>F121</sup>(2) .....

(3) The reference in subsection (1)(b) to a “third party” includes a partnership or unincorporated body of which the worker is a member.

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- (4) The circumstances referred to in subsection (1)(c) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.
- [<sup>F122</sup>(4A) Holding office as statutory auditor of the client does not count as holding office under the client for the purposes of subsection (1)(c), and here “statutory auditor” means a statutory auditor within the meaning of Part 42 of the Companies Act 2006 (see section 1210 of that Act).]
- (5) In this Chapter “engagement to which this Chapter applies” means any such provision of services as is mentioned in subsection (1).

#### Textual Amendments

- F118** Words in s. 49(1)(a) substituted (with effect in accordance with s. 136(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 136\(2\)](#)
- F119** S. 49(1)(aa) inserted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by [Finance Act 2017 \(c. 10\), Sch. 1 para. 3](#)
- F120** S. 49(1)(c) substituted (with effect in accordance with s. 22(2) of the amending Act) by [Finance Act 2013 \(c. 29\), s. 22\(1\)](#)
- F121** S. 49(2) repealed (with effect in accordance with s. 136(4) of the amending Act) by [Finance Act 2003 \(c. 14\), s. 136\(3\)\(a\), Sch. 43 Pt. 3\(1\)](#)
- F122** S. 49(4A) inserted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by [Finance Act 2017 \(c. 10\), Sch. 1 para. 11](#)

## 50 Worker treated as receiving earnings from employment

- (1) If, in the case of an engagement to which this Chapter applies, in any tax year—
- [<sup>F123</sup>(za) the client qualifies as small or does not have a UK connection,]
- (a) the conditions specified in section 51, 52 or 53 are met in relation to the intermediary, and
- (b) the worker, or an associate of the worker—
- (i) receives from the intermediary, directly or indirectly, a payment or benefit that is not employment income, or
- (ii) has rights which entitle, or which in any circumstances would entitle, the worker or associate to receive from the intermediary, directly or indirectly, any such payment or benefit,
- the intermediary is treated as making to the worker, and the worker is treated as receiving, in that year a payment which is to be treated as earnings from an employment (“the deemed employment payment”).
- (2) A single payment is treated as made in respect of all engagements in relation to which the intermediary is treated as making a payment to the worker in the tax year.
- (3) The deemed employment payment is treated as made at the end of the tax year, unless section 57 applies (earlier date of deemed payment in certain cases).
- (4) In this Chapter “the relevant engagements”, in relation to a deemed employment payment, means the engagements mentioned in subsection (2).
- [<sup>F124</sup>(5) The condition in paragraph (za) of subsection (1) is to be ignored if—
- (a) the client concerned is an individual, and

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- (b) the services concerned are performed otherwise than for the purposes of the client's business.
- (6) For the purposes of paragraph (za) of subsection (1) the client is to be treated as not qualifying as small for the tax year concerned if the client is treated as medium or large for that tax year by reason of section 61TA(3)(a).]

#### Textual Amendments

**F123** S. 50(1)(za) inserted (6.4.2021 for the tax year 2021-22 and subsequent tax years) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 paras. 4\(2\), 24](#) (with [Sch. 1 paras. 30-34](#))

**F124** S. 50(5)(6) inserted (6.4.2021 for the tax year 2021-22 and subsequent tax years) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 paras. 4\(3\), 24](#) (with [Sch. 1 paras. 30-34](#))

## 51 Conditions of liability where intermediary is a company

- (1) Where the intermediary is a company the conditions are that the intermediary is not an associated company of the client that falls within subsection (2) and either—
- (a) the worker has a material interest in the intermediary, or
  - (b) the payment or benefit mentioned in section 50(1)(b)—
    - (i) is received or receivable by the worker directly from the intermediary, and
    - (ii) can reasonably be taken to represent remuneration for services provided by the worker to the client.
- (2) An associated company of the client falls within this subsection if it is such a company by reason of the intermediary and the client being under the control—
- (a) of the worker, or
  - (b) of the worker and other persons.
- (3) A worker is treated as having a material interest in a company if—
- (a) the worker, alone or with one or more associates of the worker, or
  - (b) an associate of the worker, with or without other such associates, has a material interest in the company.
- (4) For this purpose a material interest means—
- (a) 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; or
  - (b) 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
  - (c) 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.
- (5) In subsection (4)(c) “participator” has the meaning given by [<sup>F125</sup>section 454 of CTA 2010].



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### Textual Amendments

**F125** Words in s. 51(5) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 380** (with **Sch. 2**)

## 52 Conditions of liability where intermediary is a partnership

- (1) Where the intermediary is a partnership the conditions are as follows.
- (2) In relation to any payment or benefit received or receivable by the worker as a member of the partnership the conditions are—
  - (a) that the worker, alone or with one or more relatives, is entitled to 60% or more of the profits of the partnership; or
  - (b) that most of the profits of the partnership concerned derive from the provision of services under engagements to which [<sup>F126</sup>one or other of this Chapter and Chapter 10] applies—
    - (i) to a single client, or
    - (ii) to a single client together with associates of that client; or
  - (c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which [<sup>F127</sup>one or other of this Chapter and Chapter 10] applies.

In paragraph (a) “relative” means [<sup>F128</sup>spouse or civil partner] , parent or child or remoter relation in the direct line, or brother or sister.
- (3) In relation to any payment or benefit received or receivable by the worker otherwise than as a member of the partnership, the conditions are that the payment or benefit—
  - (a) is received or receivable by the worker directly from the intermediary, and
  - (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

### Textual Amendments

**F126** Words in s. 52(2)(b) substituted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by **Finance Act 2017 (c. 10), Sch. 1 para. 4**

**F127** Words in s. 52(2)(c) substituted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by **Finance Act 2017 (c. 10), Sch. 1 para. 4**

**F128** Words in s. 52(2) substituted (5.12.2005) by **The Tax and Civil Partnership Regulations 2005 (S.I. 2005/3229), regs. 1(1), 138**

## 53 Conditions of liability where intermediary is an individual

Where the intermediary is an individual the conditions are that the payment or benefit—

- (a) is received or receivable by the worker directly from the intermediary, and
- (b) can reasonably be taken to represent remuneration for services provided by the worker to the client.

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### *The deemed employment payment*

#### **54 Calculation of deemed employment payment**

- (1) The amount of the deemed employment payment for a tax year (“the year”) is the amount resulting from the following steps—

##### *Step 1*

Find (applying section 55) the total amount of all payments and benefits received by the intermediary in the year in respect of the relevant engagements, and reduce that amount by 5%.

##### *Step 2*

Add (applying that section) the amount of any payments and benefits received by the worker in the year in respect of the relevant engagements, otherwise than from the intermediary, that—

- (a) are not chargeable to income tax as employment income, and
- (b) would be so chargeable if the worker were employed by the client.

##### *Step 3*

Deduct (applying Chapters 1 to 5 of Part 5) the amount of any expenses met in the year by the intermediary that would have been deductible from the taxable earnings from the employment if—

- (a) the worker had been employed by the client, and
- (b) the expenses had been met by the worker out of those earnings.

If the result at this or any later point is nil or a negative amount, there is no deemed employment payment.

##### *Step 4*

Deduct the amount of any capital allowances in respect of expenditure incurred by the intermediary that could have been deducted from employment income under section 262 of CAA 2001 (employments and offices) if the worker had been employed by the client and had incurred the expenditure.

##### *Step 5*

Deduct any contributions made in the year for the benefit of the worker by the intermediary to a [<sup>F129</sup>registered pension scheme] that if made by an employer for the benefit of an employee would not be chargeable to income tax as income of the employee.

This does not apply to excess contributions made and later repaid.

##### *Step 6*

Deduct the amount of any employer’s national insurance contributions paid by the intermediary for the year in respect of the worker.

##### *Step 7*

Deduct the amount of any payments and benefits received in the year by the worker from the intermediary—

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- (a) in respect of which the worker is chargeable to income tax as employment income, and
- (b) which do not represent items in respect of which a deduction was made under step 3.

#### Step 8

Assume that the result of step 7 represents an amount together with employer's national insurance contributions on it, and deduct what (on that assumption) would be the amount of those contributions.

The result is the deemed employment payment.

- [<sup>F130</sup>(1A) For the purposes of step 1 of subsection (1), any payment or benefit which is employment income of the worker by virtue of section 863G(4) of ITTOIA 2005 (salaried members of limited liability partnerships: anti-avoidance) is to be ignored.]
- (2) If [<sup>F131</sup>section 61 of the Finance Act 2004] applies (sub-contractors in the construction industry: payments to be made under deduction), the intermediary is treated for the purposes of step 1 of subsection (1) as receiving the amount that would have been received had no deduction been made under that section.
  - (3) In step 3 of subsection (1), the reference to expenses met by the intermediary includes—
    - (a) expenses met by the worker and reimbursed by the intermediary, and
    - (b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.
  - (4) In step 3 of subsection (1), the expenses deductible include the amount of any mileage allowance relief for the year which the worker would have been entitled to in respect of the use of a vehicle falling within subsection (5) if—
    - (a) the worker had been employed by the client, and
    - (b) the vehicle had not been a company vehicle (within the meaning of Chapter 2 of Part 4).
  - (5) A vehicle falls within this subsection if—
    - (a) it is provided by the intermediary for the worker, or
    - (b) where the intermediary is a partnership and the worker is a member of the partnership, it is provided by the worker for the purposes of the business of the partnership.
  - (6) Where, on the assumptions mentioned in paragraphs (a) and (b) of step 3 of subsection (1), the deductibility of the expenses is determined under sections 337 to 342 (travel expenses), the duties performed under the relevant engagements are treated as duties of a continuous employment with the intermediary.
  - (7) In step 7 of subsection (1), the amounts deductible include any payments received in the year from the intermediary that—
    - (a) are exempt from income tax by virtue of section 229 or 233 (mileage allowance payments and passenger payments), and
    - (b) do not represent items in respect of which a deduction was made under step 3.
  - (8) For the purposes of subsection (1) any necessary apportionment is to be made on a just and reasonable basis of amounts received by the intermediary that are referable—
    - (a) to the services of more than one worker, or

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- (b) partly to the services of the worker and partly to other matters.

#### **Textual Amendments**

- F129** Words in s. 54(1) substituted (6.4.2006) by [Finance Act 2004 \(c. 12\)](#), s. 284(1), [Sch. 35 para. 56](#) (with [Sch. 36](#))
- F130** S. 54(1A) inserted (retrospective to 6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 17 paras. 5, 6](#)
- F131** Words in s. 54(2) substituted (with effect in accordance with s. 77 of the amending Act) by [Finance Act 2004 \(c. 12\)](#), [Sch. 12 para. 17\(2\)](#)

#### **Modifications etc. (not altering text)**

- C6** S. 54(1) applied in part (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Pension Protection Fund \(Tax\) \(2005-06\) Regulations 2005 \(S.I. 2005/1907\)](#), regs. 1(1), [13](#)
- C7** S. 54(1) applied in part (6.4.2006) by [The Pension Protection Fund \(Tax\) Regulations 2006 \(S.I. 2006/575\)](#), regs. 1, [39](#)

### **55 Application of rules relating to earnings from employment**

- (1) The following provisions apply in relation to the calculation of the deemed employment payment.
- (2) A “payment or benefit” means anything that, if received by an employee for performing the duties of an employment, would be earnings from the employment.
- (3) The amount of a payment or benefit is taken to be—
  - (a) in the case of a payment or cash benefit, the amount received, and
  - (b) in the case of a non-cash benefit, the cash equivalent of the benefit.
- (4) The cash equivalent of a non-cash benefit is taken to be—
  - (a) the amount that would be earnings if the benefit were earnings from an employment, or
  - (b) in the case of living accommodation, whichever is the greater of that amount and the cash equivalent determined in accordance with section 398(2).
- (5) A payment or benefit is treated as received—
  - (a) in the case of a payment or cash benefit, when payment is made of or on account of the payment or benefit;
  - (b) in the case of a non-cash benefit that is calculated by reference to a period within the tax year, at the end of that period;
  - (c) in the case of a non-cash benefit that is not so calculated, when it would have been treated as received for the purposes of Chapter 4 or 5 of this Part (see section 19 or 32) if—
    - (i) the worker had been an employee, and
    - (ii) the benefit had been provided by reason of the employment.

### **56 Application of Income Tax Acts in relation to deemed employment**

- (1) The Income Tax Acts (in particular, the PAYE provisions) apply in relation to the deemed employment payment as follows.
- (2) They apply as if—

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- (a) the worker were employed by the intermediary, and
  - (b) the relevant engagements were undertaken by the worker in the course of performing the duties of that employment.
- (3) The deemed employment payment is treated in particular—
- (a) as taxable earnings from the employment for the purpose of securing that any deductions under Chapters 2 to 6 of Part 5 do not exceed the deemed employment payment; and
  - (b) as taxable earnings from the employment for the purposes of section 232.
- (4) The worker is not chargeable to tax in respect of the deemed employment payment if, or to the extent that, by reason of any combination of the factors mentioned in subsection (5), the worker would not be chargeable to tax if—
- (a) the client employed the worker,
  - (b) the worker performed the services in the course of that employment, and
  - (c) the deemed employment payment were a payment by the client of earnings from that employment.
- (5) The factors are—
- [<sup>F132</sup>(a) the worker being resident or domiciled outside the United Kingdom or meeting the requirement of section 26A,]
  - (b) the client being resident <sup>F133</sup>... outside the United Kingdom, and
  - (c) the services in question being provided outside the United Kingdom.
- (6) Where the intermediary is a partnership or unincorporated association, the deemed employment payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership or association.
- (7) Where—
- (a) the worker is resident in the United Kingdom, [<sup>F134</sup> and]
  - (b) the services in question are provided in the United Kingdom, <sup>F135</sup>...
  - <sup>F135</sup>(c) .....
- the intermediary is treated as having a place of business in the United Kingdom, whether or not it in fact does so.
- <sup>F136</sup>(8) .....

#### Textual Amendments

- F132** S. 56(5)(a) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by Finance Act 2013 (c. 29), **Sch. 46 para. 30(a)**
- F133** Words in s. 56(5)(b) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of Finance Act 2013 (c. 29), **Sch. 46 para. 30(b)**
- F134** Words in s. 56(7)(a) inserted (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), **s. 136(3)(b)(i)**
- F135** S. 56(7)(c) and word repealed (with effect in accordance with s. 136(4) of the amending Act) by Finance Act 2003 (c. 14), s. 136(3)(b)(ii), **Sch. 43 Pt. 3(1)**
- F136** S. 56(8) repealed (6.4.2006) by Finance Act 2004 (c. 12), **Sch. 42 Pt. 3** (with Sch. 35 para. 57, Sch. 36)

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### *Supplementary provisions*

#### **57 Earlier date of deemed employment payment in certain cases**

- (1) If in any tax year—
- (a) a deemed employment payment is treated as made, and
  - (b) before the date on which the payment would be treated as made under section 50(2) any relevant event (as defined below) occurs in relation to the intermediary,
- the deemed employment payment for that year is treated as having been made immediately before that event or, if there is more than one, immediately before the first of them.
- (2) Where the intermediary is a company the following are relevant events—
- (a) the company ceasing to trade;
  - (b) where the worker is a member of the company, the worker ceasing to be such a member;
  - (c) where the worker holds an office with the company, the worker ceasing to hold such an office;
  - (d) where the worker is employed by the company, the worker ceasing to be so employed.
- (3) Where the intermediary is a partnership the following are relevant events—
- (a) the dissolution of the partnership or the partnership ceasing to trade or a partner ceasing to act as such;
  - (b) where the worker is employed by the partnership, the worker ceasing to be so employed.
- (4) Where the intermediary is an individual and the worker is employed by the intermediary, it is a relevant event if the worker ceases to be so employed.
- (5) The fact that the deemed employment payment is treated as made before the end of the tax year does not affect what receipts and other matters are taken into account in calculating its amount.

#### **58 Relief in case of distributions by intermediary**

- (1) A claim for relief may be made under this section where the intermediary—
- (a) is a company,
  - (b) is treated as making a deemed employment payment in any tax year, and
  - (c) either in that tax year (whether before or after that payment is treated as made), or in a subsequent tax year, makes a distribution (a “relevant distribution”).
- (2) A claim for relief under this section must be made—
- (a) by the intermediary by notice to <sup>F137</sup>[an officer of Revenue and Customs], and
  - (b) within 5 years after the 31st January following the tax year in which the distribution is made.
- (3) If on a claim being made <sup>F137</sup>[an officer of Revenue and Customs] <sup>F138</sup>[is] satisfied that relief should be given in order to avoid a double charge to tax, <sup>F139</sup>[the officer] must direct the giving of such relief by way of amending any assessment, by discharge or repayment of tax, or otherwise, as appears to <sup>F139</sup>[the officer] appropriate.

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- (4) Relief under this section is given by setting the amount of the deemed employment payment against the relevant distribution so as to reduce the distribution.
- (5) In the case of more than one relevant distribution, [<sup>F137</sup>an officer of Revenue and Customs] must exercise the power conferred by this section so as to secure that so far as practicable relief is given by setting the amount of a deemed employment payment—
  - (a) against relevant distributions of the same tax year before those of other years,
  - (b) against relevant distributions received by the worker before those received by another person, and
  - (c) against relevant distributions of earlier years before those of later years.

<sup>F140</sup>(6) . . . . .

**Textual Amendments**

- F137** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F138** Word in s. 58(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 105](#); S.I. 2005/1126, art. 2(2)(h)
- F139** Words in s. 58(3) substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 103\(1\)\(a\)](#); S.I. 2005/1126, art. 2(2)(h)
- F140** S. 58(6) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 61\(2\)](#)

**59 Provisions applicable to multiple intermediaries**

- (1) The provisions of this section apply where in the case of an engagement to which this Chapter applies the arrangements involve more than one relevant intermediary.
- (2) All relevant intermediaries in relation to the engagement are jointly and severally liable, subject to subsection (3), to account for any amount required under the PAYE provisions to be deducted from a deemed employment payment treated as made by any of them—
  - (a) in respect of that engagement, or
  - (b) in respect of that engagement together with other engagements.
- (3) An intermediary is not so liable if it has not received any payment or benefit in respect of that engagement or any such other engagement as is mentioned in subsection (2)(b).
- (4) Subsection (5) applies where a payment or benefit has been made or provided, directly or indirectly, from one relevant intermediary to another in respect of the engagement.
- (5) In that case, the amount taken into account in relation to any intermediary in step 1 or step 2 of section 54(1) is reduced to such extent as is necessary to avoid double-counting having regard to the amount so taken into account in relation to any other intermediary.
- (6) Except as provided by subsections (2) to (5), the provisions of this Chapter apply separately in relation to each relevant intermediary.
- (7) In this section “relevant intermediary” means an intermediary in relation to which the conditions specified in section 51, 52 or 53 are met.

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## 60 Meaning of “associate”

- (1) In this Chapter “associate”—
- (a) in relation to an individual, has the meaning given by [F141 section 448 of CTA 2010], subject to the following provisions of this section;
  - (b) in relation to a company, means a person connected with the company; and
  - (c) in relation to a partnership, means any associate of a member of the partnership.
- (2) Where an individual has an interest in shares or obligations of the company as a beneficiary of an employee benefit trust, the trustees are not regarded as associates of the individual by reason only of that interest except in the following circumstances.
- (3) The exception is where—
- (a) the individual, either alone or with any one or more associates of the individual, or
  - (b) any associate of the individual, with or without other such associates,
- has at any time on or after 14th March 1989 been the beneficial owner of, or able (directly or through the medium of other companies or by any other indirect means) to control more than 5% of the ordinary share capital of the company.
- (4) In subsection (3) “associate” does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (5) Sections 549 to 554 (attribution of interests in companies to beneficiaries of employee benefit trusts) apply for the purposes of subsection (3) as they apply for the purposes of the provisions listed in section 549(2).
- (6) In this section “employee benefit trust” has the meaning given by sections 550 and 551.

### Textual Amendments

**F141** Words in s. 60(1)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 381** (with Sch. 2)

*[F142]When a person qualifies as small for a tax year*

### Textual Amendments

**F142** Ss. 60A-60I and cross-headings inserted (6.4.2021 for the tax year 2021-22 and subsequent tax years) by Finance Act 2020 (c. 14), **Sch. 1 paras. 5, 24** (with Sch. 1 paras. 30-34)

## 60A When a company qualifies as small for a tax year

- (1) For the purposes of this Chapter, a company qualifies as small for a tax year if one of the following conditions is met (but this is subject to section 60C).
- (2) The first condition is that the company's first financial year is not relevant to the tax year.



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- (3) The second condition is that the small companies regime applies to the company for its last financial year that is relevant to the tax year.
- (4) For the purposes of this section, a financial year of a company is “relevant to” a tax year if the period for filing the company's accounts and reports for the financial year ends before the beginning of the tax year.
- (5) Expressions used in this section and in the Companies Act 2006 have the same meaning in this section as in that Act.

#### **60B When a company qualifies as small for a tax year: joint ventures**

- (1) This section applies when determining for the purposes of section 60A(3) whether the small companies regime applies to a company for a financial year in a case where—
  - (a) at the end of the financial year the company is jointly controlled by two or more other persons, and
  - (b) one or more of those other persons are undertakings (“the joint venturer undertakings”).
- (2) If the company is a parent company, the joint venturer undertakings are to be treated as members of the group headed by the company.
- (3) If the company is not a parent company, the company and the joint venturer undertakings are to be treated as constituting a group of which the company is the parent company.
- (4) In this section the expression “jointly controlled” is to be read in accordance with those provisions of international accounting standards which relate to joint ventures.
- (5) Expressions used in this section and in the Companies Act 2006 have the same meaning in this section as in that Act.

#### **60C When a company qualifies as small for a tax year: subsidiaries**

- (1) A company does not qualify as small for a tax year by reason of the condition in section 60A(3) being met if—
  - (a) the company is a member of a group at the end of its last financial year that is relevant to the tax year,
  - (b) the company is not the parent undertaking of that group at the end of that financial year, and
  - (c) the undertaking that is the parent undertaking of that group at that time does not qualify as small in relation to its last financial year that is relevant to the tax year.
- (2) Where the parent undertaking mentioned in subsection (1)(c) is not a company, sections 382 and 383 of the Companies Act 2006 have effect for determining whether the parent undertaking qualifies as small in relation to its last financial year that is relevant to the tax year as if references in those sections to a company and a parent company included references to an undertaking and a parent undertaking.
- (3) For the purposes of subsections (1)(c) and (2) a financial year of an undertaking that is not a company is “relevant to” a tax year if it ends at least 9 months before the beginning of the tax year.

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- (4) For the purposes of this section, a financial year of a company is “relevant to” a tax year if the period for filing the company's accounts and reports for the financial year ends before the beginning of the tax year.
- (5) Expressions used in this section and in the Companies Act 2006 have the same meaning in this section as in that Act.

**60D When a relevant undertaking qualifies as small for a tax year**

- (1) Sections 60A to 60C apply in relation to a relevant undertaking as they apply in relation to a company, subject to any necessary modifications.
- (2) In this section “relevant undertaking” means an undertaking in respect of which regulations have effect under—
  - (a) section 15(a) of the Limited Liability Partnerships Act 2000,
  - (b) section 1043 of the Companies Act 2006 (unregistered companies), or
  - (c) section 1049 of the Companies Act 2006 (overseas companies).
- (3) Expressions used in this section and in the Companies Act 2006 have the same meaning in this section as in that Act.

**60E When other undertakings qualify as small for a tax year**

- (1) An undertaking that is not a company or a relevant undertaking qualifies as small for a tax year if one of the following conditions is met.
- (2) The first condition is that the undertaking's first financial year is not relevant to the tax year.
- (3) The second condition is that the undertaking's turnover for its last financial year that is relevant to the tax year is not more than the amount for the time being specified in the second column of item 1 of the Table in section 382(3) of the Companies Act 2006.
- (4) For the purposes of this section a financial year of an undertaking is “relevant to” a tax year if it ends at least 9 months before the beginning of the tax year.
- (5) In this section—
 

“relevant undertaking” has the meaning given by section 60D, and

“turnover”, in relation to an undertaking, means the amounts derived from the provision of goods or services after the deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.
- (6) Expressions used in this section and in the Companies Act 2006 have the same meaning in this section as in that Act.

**60F When other persons qualify as small for a tax year**

- (1) For the purposes of this Chapter, a person who is not a company, relevant undertaking or other undertaking qualifies as small for a tax year if the person's turnover for the last calendar year before the tax year is not more than the amount for the time being specified in the second column of item 1 of the Table in section 382(3) of the Companies Act 2006.
- (2) In this section—

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“company” and “undertaking” have the same meaning as in the Companies Act 2006,

“relevant undertaking” has the meaning given by section 60D, and

“turnover”, in relation to a person, means the amounts derived from the provision of goods or services after the deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.

## **60G Sections 60A to 60F: connected persons**

- (1) This section applies where—
  - (a) it is necessary for the purposes of determining whether a person qualifies as small for a tax year (“the tax year concerned”) to first determine the person's turnover for a financial year or calendar year (“the assessment year”), and
  - (b) at the end of the assessment year the person is connected with one or more other persons (“the connected persons”).
- (2) For the purposes of determining whether the person qualifies as small for the tax year concerned the person's turnover for the assessment year is to be taken to be the sum of—
  - (a) the person's turnover for the assessment year, and
  - (b) the relevant turnover of each of the connected persons.
- (3) In subsection (2)(b) “the relevant turnover” of a connected person means—
  - (a) in a case where the connected person is a company, relevant undertaking or other undertaking, its turnover for its last financial year that is relevant to the tax year concerned, and
  - (b) in a case where the connected person is not a company, relevant undertaking or other undertaking, the turnover of the connected person for the last calendar year ending before the tax year concerned.
- (4) For the purposes of subsection (3)(a)—
  - (a) a financial year of a company or relevant undertaking is relevant to the tax year concerned if the period for filing accounts and reports for the financial year ends before the beginning of the tax year concerned, and
  - (b) a financial year of any other undertaking is relevant to the tax year concerned if it ends more than 9 months before the beginning of the tax year concerned.
- (5) In a case where—
  - (a) the person mentioned in subsection (1)(a) is a company or relevant undertaking, and
  - (b) at the end of the assessment period the person is a member of a group,the person is to be treated for the purposes of this section as not being connected with any person that is a member of that group.
- (6) In this section—

“turnover”, in relation to a person, means the amounts derived from the provision of goods or services after the deduction of trade discounts, value added tax and any other taxes based on the amounts so derived, and

“relevant undertaking” has the meaning given by section 60D.
- (7) For provision determining whether one person is connected with another, see section 718 (connected persons).

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- (8) Expressions used in this section and in the Companies Act 2006 have the same meaning in this section as in that Act.

#### **60H Duty on client to state whether it qualifies as small for a tax year**

- (1) This section applies if, in the case of an engagement that meets conditions (a) to (b) in section 49(1), the client receives from the client's agent or the worker a request to state whether in the client's opinion the client qualifies as small for a tax year specified in the request.
- (2) The client must provide to the person who made the request a statement as to whether in the client's opinion the client qualifies as small for the tax year specified in the request.
- (3) If the client fails to provide the statement by the time mentioned in subsection (4) the duty to do so is enforceable by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.
- (4) The time is whichever is the later of—
  - (a) the end of the period of 45 days beginning with the date the client receives the request, and
  - (b) the beginning of the period of 45 days ending with the start of the tax year specified in the request.
- (5) In this section “the client's agent” means a person with whom the client entered into a contract as part of the arrangements mentioned in paragraph (b) of section 49(1).

*When a person has a UK connection*

#### **60I When a person has a UK connection for a tax year**

- (1) For the purposes of this Chapter, a person has a UK connection for a tax year if (and only if) immediately before the beginning of that tax year the person—
  - (a) is resident in the United Kingdom, or
  - (b) has a permanent establishment in the United Kingdom.
- (2) In this section “permanent establishment”—
  - (a) in relation to a company, is to be read (by virtue of section 1007A of ITA 2007) in accordance with Chapter 2 of Part 24 of CTA 2010, and
  - (b) in relation to any other person, is to be read in accordance with that Chapter but as if references in that Chapter to a company were references to that person.

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**Modifications etc. (not altering text)**

- C8** S. 60I applied (with effect in accordance with [Sch. 1 para. 27](#) of the amending Act) by [2004 c. 12, s. 60\(3C\)](#) (as inserted by [Finance Act 2020 \(c. 14\), Sch. 1 para. 20](#) (with [Sch. 1 paras. 30-34](#)))

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## Interpretation]

### 61 Interpretation

(1) In this Chapter—

“associate” has the meaning given by section 60;

“associated company” has the meaning given by [<sup>F143</sup>section 449 of CTA 2010];

“business” means any trade, profession or vocation and includes a [<sup>F144</sup>UK property business][<sup>F145</sup>within the meaning of Chapter 2 of Part 3 of ITTOIA 2005 or Chapter 2 of Part 4 of CTA 2009];

“company” [<sup>F146</sup>(except in sections 60A to 60G)] means a body corporate or unincorporated association, and does not include a partnership;

“employer’s national insurance contributions” means secondary Class 1 or Class 1A national insurance contributions;

[<sup>F147</sup>“engagement to which Chapter 10 applies” has the meaning given by section 61M(5);]

“engagement to which this Chapter applies” has the meaning given by section 49(5);

“national insurance contributions” means contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992;

“PAYE provisions” means the provisions of Part 11 or PAYE regulations;

“the relevant engagements” has the meaning given by section 50(4).

(2) References in this Chapter to payments or benefits received or receivable from a partnership or unincorporated association include payments or benefits to which a person is or may be entitled in the person’s capacity as a member of the partnership or association.

(3) For the purposes of this Chapter—

(a) anything done by or in relation to an associate of an intermediary is treated as done by or in relation to the intermediary, and

(b) a payment or other benefit provided to a member of an individual’s family or household is treated as provided to the individual.

[<sup>F148</sup>(4) For the purposes of this Chapter, two people living together as if they were a married couple or civil partners are treated as if they were married to, or civil partners of, each other.]

#### Textual Amendments

**F143** Words in s. 61(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 382** (with Sch. 2)

**F144** Words in s. 61(1) inserted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 586** (with Sch. 2)

**F145** Words in s. 61(1) substituted (with effect in accordance with s. 1329(1) of the amending Act) by Corporation Tax Act 2009 (c. 4), s. 1329(1), **Sch. 1 para. 549** (with Sch. 2 Pts. 1, 2)

**F146** Words in s. 61(1) inserted (6.4.2021 for the tax year 2021-22 and subsequent tax years) by Finance Act 2020 (c. 14), **Sch. 1 paras. 6, 24** (with Sch. 1 paras. 30-34)

**F147** Words in s. 61(1) inserted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 1 para. 5**

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**F148** S. 61(4) substituted for s. 61(4)(5) (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), reg. 1(2), [Sch. 3 para. 25\(2\)](#)

**Modifications etc. (not altering text)**

**C9** S. 61(4)(5) applied by S.I. 2000/727, reg 16 (as inserted (6.4.2017) by [The Social Security \(Miscellaneous Amendments No. 2\) Regulations 2017 \(S.I. 2017/373\)](#), regs. 1, [2\(13\)](#))

[<sup>F149</sup>CHAPTER 9

MANAGED SERVICE COMPANIES

**Textual Amendments**

**F149** Pt. 2 Ch. 9 inserted (retrospective to 6.4.2007) by [Finance Act 2007 \(c. 11\)](#), s. 25(2), [Sch. 3 para. 4](#)

*Application of this Chapter*

**61A Scope of this Chapter**

- (1) This Chapter has effect with respect to the provision of services by a managed service company.
- (2) Nothing in this Chapter—
  - (a) affects the operation of Chapter 7 of this Part (agency workers), or
  - (b) applies to payments or transfers to which section 966(3) or (4) of ITA 2007 applies (visiting performers: duty to deduct and account for sums representing income tax).

[ See also section 61D(4A) (disapplication of this Chapter if Chapter 10 applies).]  
<sup>F150</sup>(3)

**Textual Amendments**

**F150** S. 61A(3) inserted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by [Finance Act 2017 \(c. 10\)](#), [Sch. 1 para. 6](#)

**61B Meaning of “managed service company”**

- (1) A company is a “managed service company” if—
  - (a) its business consists wholly or mainly of providing (directly or indirectly) the services of an individual to other persons,
  - (b) payments are made (directly or indirectly) to the individual (or associates of the individual) of an amount equal to the greater part or all of the consideration for the provision of the services,
  - (c) the way in which those payments are made would result in the individual (or associates) receiving payments of an amount (net of tax and national insurance) exceeding that which would be received (net of tax and national

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- insurance) if every payment in respect of the services were employment income of the individual, and
- (d) a person who carries on a business of promoting or facilitating the use of companies to provide the services of individuals (“an MSC provider”) is involved with the company.
- (2) An MSC provider is “involved with the company” if the MSC provider or an associate of the MSC provider—
- (a) benefits financially on an ongoing basis from the provision of the services of the individual,
- (b) influences or controls the provision of those services,
- (c) influences or controls the way in which payments to the individual (or associates of the individual) are made,
- (d) influences or controls the company's finances or any of its activities, or
- (e) gives or promotes an undertaking to make good any tax loss.
- (3) A person does not fall within subsection (1)(d) merely by virtue of providing legal or accountancy services in a professional capacity.
- (4) A person does not fall within subsection (1)(d) merely by virtue of carrying on a business consisting only of placing individuals with persons who wish to obtain their services (including by contracting with companies which provide their services).
- (5) Subsection (4) does not apply if the person or an associate of the person—
- (a) does anything within subsection (2)(c) or (e), or
- (b) does anything within subsection (2)(d) other than influencing the company's finances or activities by doing anything within subsection (2)(b).

### **61C Section 61B: supplementary**

- (1) The Treasury may by order provide that persons of a prescribed description do not fall within section 61B(1)(d).
- (2) An order under subsection (1) may be made so as to have effect in relation to the whole of the tax year in which it is made.
- (3) In section 61B and this section, “company” means a body corporate or partnership.
- (4) References in section 61B to an associate of a person (“P”) include a person who, for the purpose of securing that the individual's services are provided by a company, acts in concert with P (or with P and other persons).
- (5) In section 61B(2)(e), “undertaking to make good any tax loss” means an undertaking (in any terms) to make good (in whole or in part, and by any means) any cost to the individual or an associate of the individual resulting from a relevant provision, or a particular kind of relevant provision, applying in relation to payments made to the individual or associate.
- (6) In subsection (5) “relevant provision” means—
- (a) a provision of the Tax Acts,
- (b) an enactment relating to national insurance, or
- (c) a provision of subordinate legislation made under any such provision or enactment.

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### *The deemed employment payment*

#### **61D Worker treated as receiving earnings from employment**

- (1) This section applies if—
- (a) the services of an individual (“the worker”) are provided (directly or indirectly) by a managed service company (“the MSC”),
  - (b) the worker, or an associate of the worker, receives (from any person) a payment or benefit which can reasonably be taken to be in respect of the services, and
  - (c) the payment or benefit is not earnings (within Chapter 1 of Part 3) received by the worker directly from the MSC.
- (2) The MSC is treated as making to the worker, and the worker is treated as receiving, a payment which is to be treated as earnings from an employment (“the deemed employment payment”).
- (3) The deemed employment payment is treated as made at the time the payment or benefit mentioned in subsection (1)(b) is received.
- (4) In this Chapter—
- “the worker” has the meaning given by subsection (1),
  - “the relevant services” means the services mentioned in that subsection, and
  - “the client” means the person to whom the relevant services are provided.
- [<sup>F151</sup>(4A) This section does not apply where the provision of the relevant services gives rise (directly or indirectly) to an engagement to which Chapter 10 applies and either—
- (a) the client for the purposes of section 61M(1) is a public authority, or
  - (b) the client for the purposes of section 61M(1)—
    - (i) qualifies as medium or large for the tax year in which the payment or benefit mentioned in subsection (1)(b) is received, and
    - (ii) has a UK connection for the tax year in which the payment or benefit mentioned in subsection (1)(b) is received.
- (4B) Sections 60I (when a person has a UK connection for a tax year), 61K(3) (when a person qualifies as medium or large for a tax year) and 61L (meaning of public authority) apply for the purposes of subsection (4A).
- (4C) It does not matter for the purposes of subsection (4A) whether the client for the purposes of this Chapter is also “the client” for the purposes of section 61M(1).]
- (5) Section 61F supplements this section.

#### **Textual Amendments**

**F151** S. 61D(4A)-(4C) substituted for s. 61D(4A) (with effect in accordance with Sch. 1 para. 26 of the amending Act) by Finance Act 2020 (c. 14), Sch. 1 para. 18 (with Sch. 1 paras. 30-34)



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## **61E Calculation of deemed employment payment**

- (1) The amount of the deemed employment payment is the amount resulting from the following steps—

### *Step 1*

Find (applying section 61F) the amount of the payment or benefit mentioned in section 61D(1)(b).

### *Step 2*

Deduct (applying Chapters 1 to 5 of Part 5) the amount of any expenses met by the worker that would have been deductible from the taxable earnings from the employment if—

- (a) the worker had been employed by the client to provide the relevant services, and
- (b) the expenses had been met by the worker out of those earnings.

If the result at this point is nil or a negative amount, there is no deemed employment payment.

### *Step 3*

Assume that the result of step 2 represents an amount together with employer's national insurance contributions on it, and deduct what (on that assumption) would be the amount of those contributions.

The result is the deemed employment payment.

- (2) In step 2 of subsection (1), the reference to expenses met by the worker includes, where the MSC is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.
- (3) In step 2 of subsection (1), the expenses deductible include the amount of any mileage allowance relief which the worker would have been entitled to in respect of the use of a vehicle falling within subsection (4) if—
- (a) the worker had been employed by the client to provide the relevant services, and
  - (b) the vehicle had not been a company vehicle (within the meaning of Chapter 2 of Part 4).
- (4) A vehicle falls within this subsection if—
- (a) it is provided by the MSC for the worker, or
  - (b) where the MSC is a partnership and the worker is a member of the partnership, it is provided by the worker for the purposes of the business of the partnership.
- (5) For the purposes of subsection (1) any necessary apportionment of payments or benefits that are referable partly to the provision of the relevant services and partly to other matters is to be made on a just and reasonable basis.

## **61F Sections 61D and 61E: application of rules relating to earnings from employment**

- (1) The following provisions apply for the purposes of sections 61D and 61E.

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- (2) A “payment or benefit” means anything that, if received by an employee for performing the duties of an employment, would be general earnings from the employment.
- (3) The amount of a payment or benefit is taken to be—
  - (a) in the case of a payment or cash benefit, the amount received, and
  - (b) in the case of a non-cash benefit, the cash equivalent of the benefit.
- (4) The cash equivalent of a non-cash benefit is taken to be—
  - (a) the amount that would be general earnings if the benefit were general earnings from an employment, or
  - (b) in the case of living accommodation, whichever is the greater of that amount and the cash equivalent determined in accordance with section 398(2).
- (5) A payment or benefit is treated as received—
  - (a) in the case of a payment or cash benefit, when payment is made of or on account of the payment or benefit;
  - (b) in the case of a non-cash benefit, when it would have been treated as received for the purposes of Chapter 4 or 5 of this Part (see section 19 or 32) if—
    - (i) the worker had been an employee, and
    - (ii) the benefit had been provided by reason of the employment.

#### **61G Application of Income Tax Acts in relation to deemed employment**

- (1) The Income Tax Acts (in particular, the PAYE provisions) apply in relation to the deemed employment payment as follows.
- (2) They apply as if—
  - (a) the worker were employed by the MSC to provide the relevant services, and
  - (b) the deemed employment payment were a payment by the MSC of earnings from that employment;
 but this is subject to subsection (3).
- (3) No deduction under Part 5 (deductions allowed from employment income) or section 232 (mileage allowance relief) may be made from the deemed employment payment.
- (4) The worker is not chargeable to tax in respect of the deemed employment payment if, or to the extent that, by reason of any combination of the factors mentioned in subsection (5), the worker would not be chargeable to tax if—
  - (a) the worker were employed by the client to perform the relevant services, and
  - (b) the deemed employment payment were a payment by the client of earnings from that employment.
- (5) The factors are—
  - [<sup>F152</sup>(a) the worker being resident or domiciled outside the United Kingdom or meeting the requirement of section 26A,]
  - (b) the client being resident <sup>F153</sup>... outside the United Kingdom, and
  - (c) the relevant services being provided outside the United Kingdom.

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- (6) Where the MSC is a partnership and the worker is a member of the partnership, the deemed employment payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership.
- (7) Where—
  - (a) the worker is resident in the United Kingdom, and
  - (b) the relevant services are provided in the United Kingdom,the MSC is treated as having a place of business in the United Kingdom, whether or not it in fact does so.

**Textual Amendments**

**F152** S. 61G(5)(a) substituted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 46 para. 31\(a\)](#)

**F153** Words in s. 61G(5)(b) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\), Sch. 46 para. 31\(b\)](#)

*Supplementary provisions*

**61H Relief in case of distributions by managed service company**

- (1) A claim for relief may be made under this section where the MSC—
  - (a) is a body corporate,
  - (b) is treated as making a deemed employment payment in any tax year, and
  - (c) either in that tax year (whether before or after that payment is treated as made), or in a subsequent tax year, makes a distribution (a “relevant distribution”).
- (2) A claim for relief under this section must be made—
  - (a) by the MSC by notice to an officer of Revenue and Customs, and
  - (b) within 5 years after 31st January following the tax year in which the distribution is made.
- (3) If on a claim being made an officer of Revenue and Customs is satisfied that relief should be given in order to avoid a double charge to tax, the officer must direct the giving of such relief by way of amending any assessment, by discharge or repayment of tax, or otherwise, as appears to the officer appropriate.
- (4) Relief under this section is given by setting the amount of the deemed employment payment against the relevant distribution so as to reduce the distribution.
- (5) In the case of more than one relevant distribution, an officer of Revenue and Customs must exercise the power conferred by this section so as to secure that so far as practicable relief is given by setting the amount of a deemed employment payment—
  - (a) against relevant distributions of the same tax year before those of other years,
  - (b) against relevant distributions received by the worker before those received by another person, and
  - (c) against relevant distributions of earlier years before those of later years.

<sup>F154</sup>(6) .....

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### Textual Amendments

**F154** S. 61H(6) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 1 para. 61\(2\)](#)

## 61I Meaning of “associate”

- (1) Subsections (2) to (4) apply for the purposes of this Chapter.
- (2) “Associate”, in relation to an individual, means—
  - (a) a member of the individual's family or household,
  - (b) a relative of the individual,
  - (c) a partner of the individual, or
  - (d) the trustee of any settlement in relation to which the individual, or a relative of the individual or member of the individual's family (living or dead), is or was a settlor.
- (3) “Associate”, in relation to a company, means a person connected with the company.
- (4) “Associate”, in relation to a partnership, means any associate of a member of the partnership.
- (5) If—
  - (a) a managed service company (“the MSC”) is a partnership, and
  - (b) a person is an associate of another person by virtue only of being a member of the partnership,
 the person is to be treated, for the purposes of this Chapter as it applies in relation to the MSC, as if the person were not an associate of that other person.
- (6) In subsection (2), “relative” means ancestor, lineal descendant, brother or sister.
- [<sup>F155</sup>(7) For the purposes of subsection (2), two people living together as if they were a married couple or civil partners are treated as if they were married to, or civil partners of, each other.]

### Textual Amendments

**F155** S. 61I(7) substituted (2.12.2019) by [The Civil Partnership \(Opposite-sex Couples\) Regulations 2019 \(S.I. 2019/1458\)](#), [reg. 1\(2\)](#), [Sch. 3 para. 25\(3\)](#)

## 61J Interpretation of Chapter

- (1) In this Chapter—
  - “associate” has the meaning given by section 61I,
  - “business” means any trade, profession or vocation,
  - “the client” has the meaning given by section 61D(4),
  - “employer's national insurance contributions” means secondary Class 1 or Class 1A national insurance contributions,
  - [<sup>F156</sup>“engagement to which Chapter 10 applies” has the meaning given by section 61M(5),]

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“managed service company” has the meaning given by section 61B,  
“national insurance contributions” means contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992,  
“PAYE provisions” means the provisions of Part 11 or PAYE regulations,  
“the relevant services” has the meaning given by section 61D(4), and  
“the worker” has the meaning given by section 61D(4).

(2) Nothing in section 995 of ITA 2007 (meaning of control) applies for the purposes of this Chapter.]

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#### Textual Amendments

**F156** Words in s. 61J(1) inserted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 1 para. 8**

## [<sup>F157</sup>CHAPTER 10

### [<sup>F158</sup>WORKERS' SERVICES PROVIDED THROUGH INTERMEDIARIES TO PUBLIC AUTHORITIES OR MEDIUM OR LARGE CLIENTS]

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#### Textual Amendments

**F157** Pt. 2 Ch. 10 inserted (with effect in accordance with Sch. 1 para. 16 of the amending Act) by Finance Act 2017 (c. 10), **Sch. 1 para. 9**

**F158** Pt. 2 Ch. 10 heading substituted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 1 para. 8** (with Sch. 1 paras. 30-34)

#### 61K Scope of this Chapter

- (1) This Chapter has effect with respect to the provision of services [<sup>F159</sup>through an intermediary in a case where the services are provided to a person who—
- (a) is a public authority, or
  - (b) qualifies as medium or large and has a UK connection for a tax year]
- (2) Nothing in this Chapter—
- (a) affects the operation of Chapter 7 of this Part (agency workers), or
  - (b) applies to payments or transfers to which section 966(3) or (4) of ITA 2007 applies (visiting performers: duty to deduct and account for sums representing income tax).

[ For the purposes of this Chapter a person qualifies as medium or large for a tax year <sup>F160</sup>(3) if the person does not qualify as small for the tax year for the purposes of Chapter 8 of this Part (see sections 60A to 60G).

- (4) Section 60I (when a person has a UK connection for a tax year) applies for the purposes of this Chapter.]

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### Textual Amendments

**F159** Words in s. 61K(1) substituted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 1 para. 9(2)** (with Sch. 1 paras. 30-34)

**F160** S. 61K(3)(4) inserted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 1 para. 9(3)** (with Sch. 1 paras. 30-34)

### Modifications etc. (not altering text)

**C10** S. 61K(3) applied (with effect in accordance with Sch. 1 para. 27 of the amending Act) by 2004 c. 12, **s. 60(3C)** (as inserted by Finance Act 2020 (c. 14), **Sch. 1 para. 20** (with Sch. 1 paras. 30-34))

## 61L Meaning of “public authority”

- (1) In this Chapter “public authority” means—
- (a) a public authority as defined by the Freedom of Information Act 2000,  
<sup>F161</sup>(aa) [ a body specified in section 23(3) of the Freedom of Information Act 2000,]
  - (b) a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002 (asp 13),  
<sup>F162</sup>(ba) [ the Advanced Research and Invention Agency,]
  - (c) the Corporate Officer of the House of Commons,
  - (d) the Corporate Officer of the House of Lords,
  - (e) the National Assembly for Wales Commission, <sup>F163</sup>...
  - (f) the Northern Ireland Assembly Commission [<sup>F164</sup>, or
  - (g) a company connected with any person mentioned in paragraphs (a) to (f).]
- (2) An authority within paragraph (a) or (b) of subsection (1) is a public authority for the purposes of this Chapter in relation to all its activities even if provisions of the Act mentioned in that paragraph do not apply to all information held by the authority.
- (3) Subsection (1) is subject to subsection (4).
- (4) A primary-healthcare provider is a public authority for the purposes of this Chapter only if the primary-healthcare provider—
- (a) has a registered patient list for the purposes of relevant medical-services regulations,
  - (b) is within paragraph 43A in Part 3 of Schedule 1 to the Freedom of Information Act 2000 (providers of primary healthcare services in England and Wales) by reason of being a person providing primary dental services,
  - (c) is within paragraph 51 in that Part of that Schedule (providers of healthcare services in Northern Ireland) by reason of being a person providing general dental services, or
  - (d) is within paragraph 33 in Part 4 of Schedule 1 to the Freedom of Information (Scotland) Act 2002 (providers of healthcare services in Scotland) by reason of being a person providing general dental services.
- (5) In this section—
- “primary-healthcare provider” means an authority that is within subsection (1)(a) or (b) only because it is within a relevant paragraph,

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“relevant paragraph” means—

- (a) any of paragraphs 43A to 45A and 51 in Part 3 of Schedule 1 to the Freedom of Information Act 2000, or
- (b) any of paragraphs 33 to 35 in Part 4 of Schedule 1 to the Freedom of Information (Scotland) Act 2002, and

“relevant medical-services regulations” means any of the following—

- (a) the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004 (S.I. 2004/906),
- (b) the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) (Wales) Regulations 2004 (S.I. 2004/1017),
- (c) the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) (Scotland) Regulations 2004 (S.S.I. 2004/162), and
- (d) the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations (Northern Ireland) 2004 (S.R. (N.I.) 2004 No. 477).

- (6) The Commissioners for Her Majesty's Revenue and Customs may by regulations amend this section in consequence of—
  - (a) any amendment or revocation of any regulations for the time being referred to in this section,
  - (b) any amendment in Part 3 of Schedule 1 to the Freedom of Information Act 2000, or
  - (c) any amendment in Part 4 of Schedule 1 to the Freedom of Information (Scotland) Act 2002.

#### Textual Amendments

**F161** S. 61L(1)(aa) inserted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 para. 10\(a\)](#) (with Sch. 1 paras. 30-34)

**F162** S. 61L(1)(ba) inserted (25.1.2023) by [Advanced Research and Invention Agency Act 2022 \(c. 4\)](#), s. 13(1), [Sch. 3 para. 5](#); S.I. 2023/58, reg. 2

**F163** Word in s. 61L(1)(e) omitted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by virtue of [Finance Act 2020 \(c. 14\)](#), [Sch. 1 para. 10\(b\)](#) (with Sch. 1 paras. 30-34)

**F164** S. 61L(1)(g) and word inserted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 para. 10\(c\)](#) (with Sch. 1 paras. 30-34)

#### Modifications etc. (not altering text)

**C11** S. 61L applied (with effect in accordance with Sch. 1 para. 27 of the amending Act) by [2004 c. 12](#), s. [60\(3C\)](#) (as inserted by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 para. 20](#) (with Sch. 1 paras. 30-34))

### 61M Engagements to which Chapter applies

- (1) Sections 61N to 61R apply where—
  - (a) an individual (“the worker”) personally performs, or is under an obligation personally to perform, services for another person (“the client”),
  - <sup>F165</sup>(b) .....
  - (c) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third party (“the intermediary”), <sup>F166</sup> ...
    - [ the client—

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- <sup>F167</sup>(ca) (i) is a public authority, or  
(ii) is a person who qualifies as medium or large and has a UK connection for one or more tax years during which the arrangements mentioned in paragraph (c) have effect, and]
- (d) the circumstances are such that—
- (i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the holder of an office under the client, or
- (ii) the worker is an office-holder who holds that office under the client and the services relate to the office.
- [ But sections 61N to 61R do not apply if—
- <sup>F168</sup>(1A) (a) the client is an individual, and  
(b) the services are provided otherwise than for the purposes of the client's trade or business.]
- (2) The reference in subsection (1)(c) to a “third party” includes a partnership or unincorporated association of which the worker is a member.
- (3) The circumstances referred to in subsection (1)(d) include the terms on which the services are provided, having regard to the terms of the contracts forming part of the arrangements under which the services are provided.
- (4) Holding office as statutory auditor of the client does not count as holding office under the client for the purposes of subsection (1)(d), and here “statutory auditor” means a statutory auditor within the meaning of Part 42 of the Companies Act 2006 (see section 1210 of that Act).
- (5) In this Chapter “engagement to which this Chapter applies” means any such provision of services as is mentioned in subsection (1).

#### Textual Amendments

**F165** S. 61M(1)(b) omitted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by virtue of Finance Act 2020 (c. 14), **Sch. 1 para. 11(2)(a)** (with Sch. 1 paras. 30-34)

**F166** Word in s. 61M(1)(c) omitted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by virtue of Finance Act 2020 (c. 14), **Sch. 1 para. 11(2)(b)** (with Sch. 1 paras. 30-34)

**F167** S. 61M(1)(ca) inserted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 1 para. 11(2)(c)** (with Sch. 1 paras. 30-34)

**F168** S. 61M(1A) inserted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 1 para. 11(3)** (with Sch. 1 paras. 30-34)

#### 61N Worker treated as receiving earnings from employment

- (1) If one of Conditions A to C is met, identify the chain of two or more persons where—
- (a) the highest person in the chain is the client,  
(b) the lowest person in the chain is the intermediary, and  
(c) each person in the chain above the lowest makes a chain payment to the person immediately below them in the chain.

(See section 61U for cases where one of Conditions A to C is treated as being met.)



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(2) In this section and sections 61O to 61S—

“chain payment” means a payment, or money's worth or any other benefit, that can reasonably be taken to be for the worker's services to the client,

“make”—

- (a) in relation to a chain payment that is money's worth, means transfer, and
- (b) in relation to a chain payment that is a benefit other than a payment or money's worth, means provide, and

“the fee-payer” means the person in the chain immediately above the lowest.

(3) The fee-payer is treated as making to the worker, and the worker is treated as receiving, a payment which is to be treated as earnings from an employment (“the deemed direct payment”), but this is subject to subsections (5) to (7) [<sup>F169</sup>and (8A)] and sections 61T [<sup>F170</sup>, 61TA][<sup>F171</sup>, 61V and 61WA].

(4) The deemed direct payment is treated as made at the same time as the chain payment made by the fee-payer.

[<sup>F172</sup>(5) Unless and until the client gives a status determination statement to the worker (see section 61NA), subsections (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the client; but this is subject to [<sup>F173</sup>sections 61V and 61WA].

(5A) Subsections (6) and (7) apply, subject to sections 61T, 61TA [<sup>F174</sup>, 61V and 61WA], if—

- (a) the client has given a status determination statement to the worker,
- (b) the client is not the fee-payer, and
- (c) the fee-payer is not a qualifying person.]

(6) If there is no person in the chain below the highest and above the lowest who is a qualifying person, subsections (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the client.

(7) Otherwise, subsections (3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the person in the chain who—

- (a) is above the lowest,
- (b) is a qualifying person, and
- (c) is lower in the chain than any other person in the chain who—
  - (i) is above the lowest, and
  - (ii) is a qualifying person.

(8) In subsections (5) to (7) a “qualifying person” is a person who—

[ has been given by the person immediately above them in the chain the status determination statement given by the client to the worker,]

- (a) is resident in the United Kingdom or has a place of business in the United Kingdom,
- (b) is not a person who is controlled by—
  - (i) the worker, alone or with one or more associates of the worker, or
  - (ii) an associate of the worker, with or without other associates of the worker, and
- (c) if a company, is not one in which—

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- (i) the worker, alone or with one or more associates of the worker, or
- (ii) an associate of the worker, with or without other associates of the worker,

has a material interest (within the meaning given by section 51(4) and (5)).

[ If the client is not a public authority, a person is to be treated by subsection (3) as <sup>F176</sup>(8A) making a deemed direct payment to the worker only if the chain payment made by the person is made in a tax year for which the client qualifies as medium or large and has a UK connection.]

(9) Condition A is that—

- (a) the intermediary is a company, and
- (b) the conditions in section 61O are met in relation to the intermediary.

(10) Condition B is that—

- (a) the intermediary is a partnership,
- (b) the worker is a member of the partnership,
- (c) the provision of the services is by the worker as a member of the partnership, and
- (d) the condition in section 61P is met in relation to the intermediary.

(11) Condition C is that the intermediary is an individual.

(12) Where a payment, money's worth or any other benefit can reasonably be taken to be for both—

- (a) the worker's services to the client, and
- (b) anything else,

then, for the purposes of this Chapter, so much of it as can, on a just and reasonable apportionment, be taken to be for the worker's services is to be treated as (and the rest is to be treated as not being) a payment, or money's worth or another benefit, that can reasonably be taken to be for the worker's services.

#### Textual Amendments

**F169** Words in s. 61N(3) inserted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 1 para. 12(2)(a)** (with Sch. 1 paras. 30-34)

**F170** Word in s. 61N(3) inserted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 1 para. 12(2)(b)** (with Sch. 1 paras. 30-34)

**F171** Words in s. 61N(3) substituted (with effect in accordance with s. 21(10) of the amending Act) by Finance Act 2021 (c. 26), **s. 21(2)(a)**

**F172** S. 61N(5)(5A) substituted for s. 61N(5) (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 1 para. 12(3)** (with Sch. 1 paras. 30-34)

**F173** Words in s. 61N(5) substituted (with effect in accordance with s. 21(10) of the amending Act) by Finance Act 2021 (c. 26), **s. 21(2)(b)**

**F174** Words in s. 61N(5A) substituted (with effect in accordance with s. 21(10) of the amending Act) by Finance Act 2021 (c. 26), **s. 21(2)(c)**

**F175** S. 61N(8)(za) inserted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 1 para. 12(4)** (with Sch. 1 paras. 30-34)

**F176** S. 61N(8A) inserted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), **Sch. 1 para. 12(5)** (with Sch. 1 paras. 30-34)

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## **Meaning of status determination statement**

- F177 61NA**
- (1) For the purposes of section 61N “status determination statement” means a statement by the client that—
- (a) states that the client has concluded that the condition in section 61M(1)(d) is met in the case of the engagement and explains the reasons for that conclusion, or
  - (b) states (albeit incorrectly) that the client has concluded that the condition in section 61M(1)(d) is not met in the case of the engagement and explains the reasons for that conclusion.
- (2) But a statement is not a status determination statement if the client fails to take reasonable care in coming to the conclusion mentioned in it.
- (3) For further provisions concerning status determination statements, see section 61T (client-led status disagreement process) and section 61TA (duty for client to withdraw status determination statement if it ceases to be medium or large).]

### **Textual Amendments**

**F177 S. 61NA** inserted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 para. 13](#) (with [Sch. 1 paras. 30-34](#))

## **61O Conditions where intermediary is a company**

- (1) The conditions mentioned in section 61N(9)(b) are that—
- (a) the intermediary is not an associated company of the client that falls within subsection (2), and
  - F178** (b) subsection (1A) or (1B) is satisfied.]
- F179** [ This subsection is satisfied where the worker has a material interest in the intermediary.]
- (1A)**
- (1B) This subsection is satisfied where—
- (a) the worker has a non-material interest in the intermediary,
  - (b) the worker—
    - (i) has received,
    - (ii) has rights which entitle, or which in any circumstances would entitle, the worker to receive, or
    - (iii) expects to receive,
 a chain payment from the intermediary, and
  - (c) the chain payment does not, or will not, wholly constitute employment income of the worker (apart from as a result of this Chapter).]
- (2) An associated company of the client falls within this subsection if it is such a company by reason of the intermediary and the client being under the control—
- (a) of the worker, or
  - (b) of the worker and other persons.
- (3) The worker is treated as having a material interest in the intermediary if—
- (a) the worker, alone or with one or more associates of the worker, or
  - (b) an associate of the worker, with or without other associates of the worker,

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has a material interest in the intermediary.

(4) For this purpose “material interest” has the meaning given by section 51(4) and (5).

[ The worker is treated as having a non-material interest in the intermediary if—

- <sup>F180</sup>(4A) (a) the worker, alone or with one or more associates of the worker, or  
 (b) an associate of the worker, with or without other associates of the worker,  
 has a non-material interest in the intermediary.

(4B) For this purpose a non-material interest means—

- (a) beneficial ownership of, or the ability to control, directly or through the medium of other companies or by any other indirect means, 5% or less of the ordinary share capital of the company,  
 (b) possession of, or entitlement to acquire, rights entitling the holder to receive 5% or less of any distributions that may be made by the company, or  
 (c) 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 5% or less of the assets that would then be available for distribution among the participators.

(4C) In subsection (4B)(c) “participator” has the meaning given by section 454 of CTA 2010.]

(5) In this section “associated company” has the meaning given by section 449 of CTA 2010.

#### Textual Amendments

**F178** S. 61O(1)(b) substituted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 21\(3\)\(a\)](#)

**F179** S. 61O(1A)(1B) inserted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 21\(3\)\(b\)](#)

**F180** S. 61O(4A)-(4C) inserted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 21\(3\)\(c\)](#)

### 61P Conditions where intermediary is a partnership

(1) The condition mentioned in section 61N(10)(d) is—

- (a) that the worker, alone or with one or more relatives, is entitled to 60% or more of the profits of the partnership, or  
 (b) that most of the profits of the partnership derive from the provision of services under engagements to which one or other of this Chapter and Chapter 8 applies—  
     (i) to a single client, or  
     (ii) to a single client together with associates of that client, or  
 (c) that under the profit sharing arrangements the income of any of the partners is based on the amount of income generated by that partner by the provision of services under engagements to which one or other of this Chapter and Chapter 8 applies.

(2) In subsection (1)(a) “relative” means spouse or civil partner, parent or child or remoter relation in the direct line, or brother or sister.

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- (3) Section 61(4) and (5) apply for the purposes of this section as they apply for the purposes of Chapter 8.

## 61Q Calculation of deemed direct payment

- (1) The amount of the deemed direct payment is the amount resulting from the following steps—

*Step 1* Identify the amount or value of the chain payment made by the person who is treated as making the deemed direct payment, and deduct from that amount so much of it (if any) as is in respect of value added tax.

*Step 2* Deduct, from the amount resulting from Step 1, so much of that amount as represents the direct cost to the intermediary of materials used, or to be used, in the performance of the services.

*Step 3* Deduct, at the option of the person treated as making the deemed direct payment, from the amount resulting from Step 2, so much of that amount as represents expenses met by the intermediary that would have been deductible from the taxable earnings from the employment if—

- (a) the worker had been employed by the client, and
- (b) the expenses had been met by the worker out of those earnings.

*Step 4* If the amount resulting from the preceding Steps is nil or negative, there is no deemed direct payment. Otherwise, that amount is the amount of the deemed direct payment.

- (2) For the purposes of Step 1 of subsection (1), any part of the amount or value of the chain payment which is employment income of the worker by virtue of section 863G(4) of ITTOIA 2005 (salaried members of limited liability partnerships: anti-avoidance) is to be ignored.
- (3) In subsection (1), the reference to the amount or value of the chain payment means the amount or value of that payment before the deduction (if any) permitted under section 61S.
- (4) If the actual amount or value of the chain payment mentioned in Step 1 of subsection (1) is such that its recipient bears the cost of amounts due under PAYE regulations or contributions regulations in respect of the deemed direct payment, that Step applies as if the amount or value of that chain payment were what it would be if the burden of that cost were not being passed on through the setting of the level of the payment.
- (5) In Step 3 of subsection (1), the reference to expenses met by the intermediary includes—
- (a) expenses met by the worker and reimbursed by the intermediary, and
  - (b) where the intermediary is a partnership and the worker is a member of the partnership, expenses met by the worker for and on behalf of the partnership.
- (6) In subsection (4) “contributions regulations” means regulations under the Contributions and Benefits Act providing for primary Class 1 contributions to be paid in a similar manner to income tax in relation to which PAYE regulations have effect (see, in particular, paragraph 6(1) of Schedule 1 to the Act); and here “primary Class 1 contribution” means a primary Class 1 contribution within the meaning of Part 1 of the Contributions and Benefits Act.

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## 61R Application of Income Tax Acts in relation to deemed employment

- (1) The Income Tax Acts (in particular, Part 11 and PAYE regulations) apply in relation to the deemed direct payment as follows.
- (2) They apply as if—
  - (a) the worker were employed by the person treated as making the deemed direct payment, and
  - (b) the services were performed, or to be performed, by the worker in the course of performing the duties of that employment.
- (3) The deemed direct payment is treated in particular—
  - (a) as taxable earnings from the employment for the purpose of securing that any deductions under Chapters 2 to 6 of Part 5 do not exceed the deemed direct payment, and
  - (b) as taxable earnings from the employment for the purposes of section 232.
- (4) The worker is not chargeable to tax in respect of the deemed direct payment if, or to the extent that, by reason of any combination of the factors mentioned in subsection (5), the worker would not be chargeable to tax if—
  - (a) the client employed the worker,
  - (b) the worker performed the services in the course of that employment, and
  - (c) the deemed direct payment were a payment by the client of earnings from that employment.
- (5) The factors are—
  - (a) the worker being resident or domiciled outside the United Kingdom or meeting the requirement of section 26A,
  - (b) the client being resident outside, or not resident in, the United Kingdom, and
  - (c) the services being provided outside the United Kingdom.
- (6) Where the intermediary is a partnership or unincorporated association, the deemed direct payment is treated as received by the worker in the worker's personal capacity and not as income of the partnership or association.

<sup>F181</sup>(7) .....

### Textual Amendments

**F181** S. 61R(7) omitted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by virtue of Finance Act 2020 (c. 14), [Sch. 1 para. 15](#) (with [Sch. 1 paras. 30-34](#))

## 61S Deductions from chain payments

- (1) This section applies if, as a result of section 61R, a person who is treated as making a deemed direct payment is required under PAYE Regulations to pay an amount to the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”) in respect of the payment.  
(But see subsection (4)).
- (2) The person may deduct from the underlying chain payment an amount which is equal to the amount payable to the Commissioners, but where the amount or value of the

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underlying chain payment is treated by section 61Q(4) as increased by the cost of any amount due under PAYE Regulations, the amount that may be deducted is limited to the difference (if any) between the amount payable to the Commissioners and the amount of that increase.

- (3) Where a person in the chain other than the intermediary receives a chain payment from which an amount has been deducted in reliance on subsection (2) or this subsection, that person may deduct the same amount from the chain payment made by them.
- (4) This section does not apply in a case to which 61V(2) applies ([<sup>F182</sup>relevant person] treated as making deemed direct payment).
- (5) In subsection (2) “the underlying chain payment” means the chain payment whose amount is used at Step 1 of section 61Q(1) as the starting point for calculating the amount of the deemed direct payment.

#### Textual Amendments

**F182** Words in s. 61S(4) substituted (with effect in accordance with s. 21(10) of the amending Act) by Finance Act 2021 (c. 26), s. 21(4)

#### [<sup>F183</sup>61T Client-led status disagreement process

- (1) This section applies if, before the final chain payment is made in the case of an engagement to which this Chapter applies, the worker or the deemed employer makes representations to the client that the conclusion contained in a status determination statement is incorrect.
- (2) The client must either—
  - (a) give a statement to the worker or (as the case may be) the deemed employer that—
    - (i) states that the client has considered the representations and has decided that the conclusion contained in the status determination statement is correct, and
    - (ii) states the reasons for that decision, or
  - (b) give a new status determination statement to the worker and the deemed employer that—
    - (i) contains a different conclusion from the conclusion contained in the previous status determination statement,
    - (ii) states the date from which the client considers that the conclusion contained in the new status determination statement became correct, and
    - (iii) states that the previous status determination statement is withdrawn.
- (3) If the client fails to comply with the duty in subsection (2) before the end of the period of 45 days beginning with the date the client receives the representations, section 61N(3) and (4) has effect from the end of that period until the duty is complied with as if for any reference to the fee-payer there were substituted a reference to the client; but this is subject to [<sup>F184</sup>sections 61V and 61WA].
- (4) A new status determination statement given to the deemed employer under subsection (2)(b) is to be treated for the purposes of section 61N(8)(za) as having been

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given to the deemed employer by the person immediately above the deemed employer in the chain.

(5) In this section—

“the deemed employer” means the person who, assuming one of conditions A to C in section 61N were met, would be treated as making a deemed direct payment to the worker under section 61N(3) on the making of a chain payment;

“status determination statement” has the meaning given by section 61NA.

#### Textual Amendments

**F183** Ss. 61T-61TA substituted for s. 61T (with effect in accordance with Sch. 1 para. 25 of the amending Act) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 para. 16](#) (with [Sch. 1 paras. 30-34](#))

**F184** Words in [s. 61T\(3\)](#) substituted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 21\(5\)](#)

### 61TA Duty for client to withdraw status determination statement if it ceases to be medium or large

- (1) This section applies if in the case of an engagement to which this Chapter applies—
- the client is not a public authority,
  - the client gives a status determination statement to the worker, the client's agent or both, and
  - the client does not (but for this section) qualify as medium or large for a tax year beginning after the status determination statement is given.
- (2) Before the beginning of the tax year the client must give a statement to the relevant person, or (as the case may be) to both of the relevant persons, stating—
- that the client does not qualify as medium or large for the tax year, and
  - that the status determination statement is withdrawn with effect from the beginning of the tax year.
- (3) If the client fails to comply with that duty the following rules apply in relation to the engagement for the tax year—
- the client is to be treated as medium or large for the tax year, and
  - section 61N(3) and (4) have effect as if for any reference to the fee-payer there were substituted a reference to the client.
- (4) For the purposes of subsection (2)—
- the worker is a relevant person if the status determination statement was given to the worker, and
  - the deemed employer is a relevant person if the status determination statement was given to the client's agent.
- (5) In this section—
- “client's agent” means a person with whom the client entered into a contract as part of the arrangements mentioned in section 61M(1)(c);
- “the deemed employer” means the person who, assuming one of conditions A to C in section 61N were met, would be treated as making a deemed



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direct payment to the worker under section 61N(3) on the making of a chain payment;

“status determination statement” has the meaning given by section 61NA.]

#### Textual Amendments

**F183** Ss. 61T-61TA substituted for s. 61T (with effect in accordance with Sch. 1 para. 25 of the amending Act) by [Finance Act 2020 \(c. 14\)](#), [Sch. 1 para. 16](#) (with [Sch. 1 paras. 30-34](#))

### 61U Information to be provided by worker [<sup>F185</sup>or intermediary] and consequences of failure

(1) In the case of an engagement to which this Chapter applies, [<sup>F186</sup>the relevant person] must inform the potential deemed employer of which one of the following is applicable—

- (a) that one of conditions A to C in section 61N is met in the case;
- (b) that none of conditions A to C in section 61N is met in the case.

(2) If [<sup>F187</sup>the relevant person] has not complied with subsection (1) then, for the purposes of section 61N(1), one of conditions A to C in section 61N is to be treated as met.

(3) In this section [<sup>F188</sup>—

“relevant person” means the worker or, in a case where the worker has not complied with subsection (1), the intermediary;]

“the potential deemed employer” is the person who, if one of conditions A to C in section 61N were met, would be treated as making a deemed direct payment to the worker under section 61N(3).

#### Textual Amendments

**F185** Words in s. 61U heading inserted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 21\(6\)\(a\)](#)

**F186** Words in s. 61U(1) substituted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 21\(6\)\(b\)](#)

**F187** Words in s. 61U(2) substituted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 21\(6\)\(c\)](#)

**F188** Words in s. 61U(3) inserted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\)](#), [s. 21\(6\)\(d\)](#)

### 61V Consequences of providing fraudulent information

(1) Subsection (2) applies if in any case—

- (a) a person (“the deemed employer”) would, but for this section, be treated by section 61N(3) as making a payment to another person (“the services-provider”), and
- (b) the fraudulent documentation condition is met.

(2) Section 61N(3) has effect in the case as if the reference to the fee-payer were a reference to the [<sup>F189</sup>relevant person (or if more than one, the first relevant person) in relation to whom the fraudulent documentation condition is met], but—

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- (a) section 61N(4) continues to have effect as if the reference to the fee-payer were a reference to the deemed employer, and
  - (b) Step 1 of section 61Q(1) continues to have effect as referring to the chain payment made by the deemed employer.
- (3) Subsection (2) has effect even though that [<sup>F190</sup>may involve a services-provider] being treated as both employer and employee in relation to the deemed employment under section 61N(3).
- (4) “The fraudulent documentation condition” is that a relevant person provided any person with a fraudulent document intended to constitute evidence—
- (a) that the case is not an engagement to which this Chapter applies, or
  - (b) that none of conditions A to C in section 61N is met in the case.
- (5) A “relevant person” is—
- (a) the services-provider;
  - (b) a person connected with the services-provider;
  - (c) if the intermediary in the case is a company, an office-holder in that company;
  - [<sup>F191</sup>(d) a person in the chain who is resident in the United Kingdom or has a place of business in the United Kingdom.]

#### Textual Amendments

- F189** Words in s. 61V(2) substituted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 21\(7\)\(a\)](#)
- F190** Words in s. 61V(3) substituted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 21\(7\)\(b\)](#)
- F191** S. 61V(5)(d) inserted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021 \(c. 26\), s. 21\(7\)\(c\)](#)

### 61W Prevention of double charge to tax and allowance of certain deductions

- (1) Subsection (2) applies where—
- (a) a person (“the payee”) receives a payment or benefit (“the end-of-line remuneration”) from another person (“the paying intermediary”),
  - (b) the end-of-line remuneration can reasonably be taken to represent remuneration for services of the payee to a [<sup>F192</sup>another person (“the client”)],
  - (c) a payment (“the deemed payment”) has been treated by section 61N(3) as made to the payee,
  - (d) the underlying chain payment can reasonably be taken to be for the same services of the payee to [<sup>F193</sup>the client], and
  - (e) the recipient of the underlying chain payment has (whether by deduction from that payment or otherwise) borne the cost of any amounts due, under PAYE regulations and contributions regulations in respect of the deemed payment, from the person treated by section 61N(3) as making the deemed payment.
- (2) For income tax purposes, the paying intermediary and the payee may treat the amount of the end-of-line remuneration as reduced (but not below nil) by any one or more of the following—
- (a) the amount (see section 61Q) of the deemed payment;

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- (b) the amount of any capital allowances in respect of expenditure incurred by the paying intermediary that could have been deducted from employment income under section 262 of CAA 2001 if the payee had been employed by the <sup>F194</sup>client] and had incurred the expenditure;
  - (c) the amount of any contributions made, in the same tax year as the end-of-line remuneration, for the benefit of the payee by the paying intermediary to a registered pension scheme that if made by an employer for the benefit of an employee would not be chargeable to income tax as income of the employee.
- (3) Subsection (2)(c) does not apply to—
- (a) excess contributions paid and later repaid,
  - (b) contributions set under subsection (2) against another payment by the paying intermediary, or
  - (c) contributions deductible at Step 5 of section 54(1) in calculating the amount of the payment (if any) treated by section 50 as made in the tax year concerned by the paying intermediary to the payee.
- (4) For the purposes of subsection (3)(c), the contributions to which Step 5 of section 54(1) applies in the case of the particular calculation are “deductible” at that Step so far as their amount does not exceed the result after Step 4 in that calculation.
- (5) In subsection (1)(d) “the underlying chain payment” means the chain payment whose amount is used at Step 1 of section 61Q(1) as the starting point for calculating the amount of the deemed payment.
- (6) Subsection (2) applies whether the end-of-line remuneration—
- (a) is earnings of the payee,
  - (b) is a distribution of the paying intermediary, or
  - (c) takes some other form.

#### Textual Amendments

**F192** Words in s. 61W(1)(b) substituted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), Sch. 1 para. 17(2)(a) (with Sch. 1 paras. 30-34)

**F193** Words in s. 61W(1)(d) substituted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), Sch. 1 para. 17(2)(b) (with Sch. 1 paras. 30-34)

**F194** Word in s. 61W(2)(b) substituted (with effect in accordance with Sch. 1 para. 25 of the amending Act) by Finance Act 2020 (c. 14), Sch. 1 para. 17(3) (with Sch. 1 paras. 30-34)

#### <sup>F195</sup> 61WA Anti-avoidance

- (1) This section applies if in any case at least one relevant person in a chain participates in a relevant avoidance arrangement.
- (2) An arrangement is a “relevant avoidance arrangement” if its main purpose, or one of its main purposes, is to secure a tax advantage by securing that at least one of the conditions mentioned in section 61O or 61P is not met in relation to an intermediary.
- (3) Section 61N(3) has effect as if the reference to the fee-payer were a reference to the participating person, but—
  - (a) section 61N(4) continues to have effect as if the reference to the fee-payer were a reference to the deemed employer, and

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- (b) Step 1 of section 61Q(1) continues to have effect as referring to the chain payment made by the deemed employer.
- (4) The participating person is—
- (a) in a case where only one relevant person participates in the arrangement, that person;
  - (b) in any other case the highest relevant person in the chain who participated in the arrangement and from whom HMRC considers there is a realistic prospect of recovering, within a reasonable period, the amount of tax that would have been paid (or not repaid) in the absence of the arrangement.
- (5) Subsection (3) has effect even though that may involve a participating person being treated as both employer and employee in relation to the deemed employment under section 61N(3).
- (6) In this section—
- “arrangement” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “deemed employer” means a person who would, but for this section, be treated by section 61N(3) as making a payment to the worker;
- “relevant person” means—
- (a) the worker;
  - (b) a person who is resident in the United Kingdom or who has a place of business in the United Kingdom;
- “tax” means income tax (and “tax advantage” is to be construed accordingly”);
- “tax advantage” includes—
- (a) avoidance or reduction of a charge to tax or an assessment to tax,
  - (b) repayment or increased repayment of tax,
  - (c) avoidance of a possible assessment to tax, and
  - (d) deferral of a payment of tax or advancement of a repayment of tax.]

#### Textual Amendments

**F195** S. 61WA inserted (with effect in accordance with s. 21(10) of the amending Act) by [Finance Act 2021](#) (c. 26), s. 21(8)

## 61X Interpretation

In this Chapter—

- “associate” has the meaning given by section 60;
- “company” means a body corporate or unincorporated association, and does not include a partnership;
- “engagement to which Chapter 8 applies” has the meaning given by section 49(5).]

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 452(2)(aa) inserted by [2013 c. 29 Sch. 23 para. 11](#)
- s. 574A(2A) inserted by [2024 c. 3 Sch. 9 para. 61\(2\)](#)
- s. 637G(2)(a)(b) inserted by [S.I. 2024/356 reg. 2](#)
- s. 637Q applied (with modifications) by 2004 c. 12, Sch. 36 para. 20(1A) (as inserted) by [2024 c. 3 Sch. 9 para. 77\(3\)](#)
- s. 637R applied (with modifications) by 2004 c. 12, Sch. 36 para. 19(2)(2A) (as substituted) by [2024 c. 3 Sch. 9 para. 76\(4\)](#)
- s. 637S applied (with modifications) by 2004 c. 12, Sch. 36 para. 20(2) (as amended) by [2024 c. 3 Sch. 9 para. 77\(4\)\(a\)](#)
- s. 688AB inserted by [2024 c. 3 s. 17\(1\)](#)
- s. 707A inserted by [2024 c. 3 s. 36\(4\)](#)