

## **Draft Chapter 9 of The Income Tax (Earnings and Pensions) Act 2003**

Managed service companies (earnings from employment)

That.

(1) The Income Tax (Earnings and Pensions) Act 2003 is amended as follows.

(2) In section 7(5) (meaning of .employment income. etc), for paragraph (a) substitute.

“(a)Chapters 7 to 9 of this Part (agency workers, workers under arrangements made by intermediaries, and workers providing services through managed service companies),”.

(3) In section 48(2) (workers under arrangements made by intermediaries: scope of Chapter) for the “or” at the end of paragraph (a) substitute.

“(aa) applies to services provided by a managed service company (within the meaning of Chapter 9 of this Part), or”.

(4) After section 61 insert.

### **“CHAPTER 9**

#### **MANAGED SERVICE COMPANIES**

##### *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).

#### **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 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); but this subsection does not apply if the person, or an associate of the person, does anything within any of paragraphs (c) to (e) of subsection (2).

### **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) above “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.

#### *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.
- (5) Section 61F supplements this section.

### **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.
- (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-
  - (a) the worker being resident, ordinarily resident or domiciled

- outside the United Kingdom,
  - (b) the client being resident or ordinarily resident outside the United Kingdom, and
  - (c) the relevant services being provided outside the United Kingdom.
- (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.

#### *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.

- (6) Where the amount of a relevant distribution is reduced under this section, the amount of any associated tax credit is reduced accordingly.

### **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 he were not an associate of that other person.

- (6) In subsection (2), “relative” means ancestor, lineal descendant, brother or sister.

- (7) For the purposes of subsection (2) -

- (a) a man and woman living together as husband and wife are treated as if they were married to each other, and
- (b) two persons of the same sex living together as if they were civil partners of each other are treated as if they were civil partners of each other.

### **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,  
“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”.

(5) In section 218(1) (exclusion of lower-paid employments from parts of benefits code: calculation of earnings rate), in Step 1, at the end of paragraph (d) insert “and

(e) in the case of an employment within section 61G(2) (deemed employment payment by managed service company), the total amount of deemed employment payments for the year.”

(6) The amendments made by this Resolution come into force on 6th April 2007.

And it is declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act 1968.