

Part-time or casual employees

You must follow the same PAYE and NICs procedures for part-time or casual employees as you follow for full-time or permanent employees.

You should particularly note that the normal P46 procedures for new employees who do not give you a P45 will apply if you take on an employee for one week or less but then:

- keep the employee on for more than one week, or
- arrange for the employee to work for you again (for example, for a few days every week or month at particular peak times or holiday periods and so on).

For more information:

- go to www.businesslink.gov.uk/payingnewemployees
- see the Employer Helpbook E13(2011) *Day-to-day payroll*.

Workers supplied by agencies

For NICs purposes

A person who gets work with a client through an agency or some other third party, but who is not an employee of the client, is usually treated for NICs purposes as an employee of the agency.

The agency is responsible for the payment of NICs where:

- the worker is expected to carry out work personally, and
- someone has the right, even if not exercised, to supervise, direct or control the way the work is done and **any** of the following apply:
 - the worker is paid by or through the agency
 - the worker is paid based on accounts sent by the agency to the client
 - the worker is paid by arrangements made with the agency
 - there are payments other than worker's pay (for example, fees or commission between the agency and the client).

If the agency has no place of business or is not present in the UK, the client can be treated as the employer.

A person who gets work through an agency or some third party is not treated as an employee if any of the following apply:

- the only payment made is an introductory fee
- the work is done at home or somewhere not controlled or managed by the firm or person for whom the work is done, unless it is the kind of job done on other premises (for example, an audit clerk supplied to an accountant through

an agency who works on the premises of the accountant's clients)

- the person is employed as an actor, singer, musician, other entertainer or a fashion, photographic or artist's model.

For Income Tax purposes

PAYE must be operated for individuals:

- who personally provide, or are under an obligation to personally provide, services to the client
- who are supplied to a third person (the agency) under the terms of an agency contract
- who are subject to (or to the right of) supervision, direction, or control as to the manner in which the services are provided, and,
- where the remuneration received under or in consequence of the agency contract is not (or should not be) already taxed under PAYE.

This applies even if the worker makes a Tax Return as a self-employed person.

Where a UK agency pays a worker direct the agency will normally be responsible for operating PAYE.

Where the client pays the worker, the client should operate PAYE.

An agency ceasing to employ an agency worker should issue form P45, at the earlier of:

- the end of the relationship, between the agency and the worker
- the end of a period of three months during which the agency makes no payments to the worker.

An agency should, in respect of any agency workers for whom it is required to operate PAYE, issue form P45 at the earlier of:

- the end of the relationship between the agency and the worker
- the end of a period of three months during which the agency makes no relevant payments to the worker.

Students who work for you during their holidays

110 Students who are on courses in the UK

You can use a special procedure for employees who are students on courses in the UK working for you solely during their holidays. The special procedure, known as the P38(S) procedure:

- **does not affect the payments of NICs which must be worked out in the normal way**
- allows you to pay a student employee:
 - without the need to follow the normal P45 or P46 procedures

- without deduction of tax, even if the student's weekly or monthly pay exceeds the emergency code limit
- does **not** apply to students:
 - who are working for you part-time outside normal holiday times
 - who work for you both during and outside normal holiday times.

Where you take on an employee who is a student on a course in the UK and the condition that the student is working for you solely during normal holiday times is **not** satisfied, you should follow the normal procedures. For more information:

- go to www.businesslink.gov.uk/payingnewemployees
- see the Employer Helpbook E13(2011) *Day-to-day payroll*.

If the conditions are satisfied you can take the following special actions.

- Obtain a form P38(S)
 - Ask the employee to complete the 'Student's Declaration' as soon as they start working for you, only accept a P38(S) you have issued.
 - You may also obtain the P38(S) information from the student electronically, provided it is exactly the same information as is required by the P38(S). You must put in place adequate safeguards to confirm it was the student who provided the information. And you **must** maintain an audit trail which is available to HMRC in support of any future query or compliance visit.

Note that the qualifying students must fill in form P38(S) for each tax year they work for you. If, therefore, they work for you during the Easter holidays both before and after the 5 April, they must complete two forms P38(S).

- If the student is paid more than the NICs lower earnings limit:
 - work out and account for any NICs due
 - complete a form P11 for NICs purposes entering 'NI' in Box L (tax code) on form P11.
- If the student is paid less than the NICs lower earnings limit:
 - record details of all payments you make to the student
 - keep your record of payments for at least three years after the end of the tax year to which they relate.

A student, who completed a P38(S) and their holiday earnings exceed the personal allowance

If you hold a P38(S), but at any time the total pay in the employment with you exceeds the personal

allowance for the year (as shown on the P38(S)) you should send a completed form P46 showing the date of commencement as the original start date of the employment. Where the employee completes statement A or B you should deduct tax from the first payment made which takes them over the personal allowance level, using code OT on a Week 1/Month 1 basis.

Where statement C is completed, code BR on a Week 1/Month 1 basis should be applied. If the employee has not completed the form P46, or provided you with the information to fully complete Section one, in time for the first payday in which their holiday pay exceeds their personal allowance, you **must** complete **Section one** to the best of your knowledge on their behalf and use code OT on a Week 1/Month 1 basis.

As this differs from the P46 prescribed codes, an entry needs to be made in the 'Tax Code Used' field on the P46. You must send in a P46 for all cases on the employee's first payday.

A student, having completed a P38(S) continues employment into term-time

If it becomes apparent a student, having completed a P38(S), is going to continue with their employment with you into term-time, send a completed form P46 showing the date of commencement as the original start date. Where the employee completes statement A or B you should deduct tax using the emergency tax code on a Week 1/Month 1 basis. Where statement C is completed code BR on a Week 1/Month 1 basis should be applied. As this differs from the P46 statement A and C prescribed codes, an entry needs to be made in the 'Tax Code Used' field on the P46 for these cases.

If the employee has not completed the form P46, or provided you with the information to fully complete Section one in time for the first payday of their employment in term-time, you **must** complete **Section one** to the best of your knowledge on their behalf and use code OT on a Week 1/Month 1 basis.

As this differs from the P46 prescribed codes, an entry needs to be made in the 'Tax Code Used' field on the P46. You must send in a P46 for all cases on the employee's first payday.

When making a payment:

- prepare a form P11 if you have not already prepared one for NICs purposes
- for tax purposes you should:
 - enter on the P11 the total payments to date, and
 - show total tax to date as 'NIL' for the week or month immediately preceding the first payment you are taxing.

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A student, works under the P38(S) procedures and leaves but returns to work for you in term-time

If a student worked for you in the holidays under the P38(S) procedures, and then after a break in employment returns to take up employment with you outside of term-time, a P46 should be completed as though the student was a new employee.

At the end of the student's period of employment with you (or 5 April if the student is continuing working for you during the Easter holidays), complete the 'Employer's statement' on form P38(S).

Note that you should not fill in a form P45 when an employee leaves, for a student who, because of the P38(S) procedure, has not had tax deducted.

At the end of the tax year you should:

- for any student for whom you have had to complete a form P11, prepare form P14 and enter on form P35 to show total earnings for the year, that is, including earnings for the period P38(S) procedures applied and only National Insurance being deducted – if the student had worked under the P38(S) procedure and then following a break in employment recommenced with you in term-time a P14 should be completed in respect of each period of employment.
- keep all forms P38(S), including those relating to students for whom a P11 has been prepared, for at least 3 years after the end of the year to which they relate, or longer if you are asked to do so. These forms must be made available for inspection by us if required.

111 Students who are on courses abroad

If, during their holidays, you take on an employee who is a student on a course abroad, take the following action.

For NICs purposes

If the employee is a UK national studying abroad, work out NICs in the normal way on any payments you make.

If the employee is a foreign student, NICs may not be payable in certain circumstances. See paragraph 114 or 115 as appropriate.

For PAYE purposes

The P38(S) procedure can be used for students on courses abroad who work for you during their holidays if they are:

- UK nationals
- European Union (EU) Nationals (excluding Bulgaria and Romania), or
- students (including Bulgaria and Romania nationals - see below) who are sponsored by one of the organisations listed below.

In all other cases follow the normal procedures.

- Go to www.businesslink.gov.uk/payingnewemployees
- See the Employer Helpbook E13(2011) *Day-to-day payroll*.

Sponsored students

You may accept forms P38(S) from students who have been given one by any of the sponsors listed below. These organisations sponsor students, from a school or college abroad, to work here during a visit to the UK.

General sponsors

CFS/AOSC Canadian Federation of Students/
Association of Student Councils (Canada)

EURO EMPLOY

IAESTE International Association for the Exchange of
Students for Technical Experience

LEICESTER TWIN City of Leicester Twinning
Association

WORKABOUT UK LTD Claverley

Farming sponsors

BARWAY SERVICES, Ely

CONCORDIA (YSV) LTD, Portslade, East Sussex

FRUITFUL LTD, Evesham

HAYGROVE LTD, Ledbury

HOPS (Labour Solutions), Kenilworth

R & J M PLACE LTD (International Farm Camp),
Tunstead, Norwich

S & A PRODUCE, Hereford

SASTAK LTD, Craven Arms, Shropshire

WILKIN & SONS LTD (International Farm Camp),
Tiptree, Essex

Other points to note about the sponsorship scheme are:

- the form P38(S) the student will bring along will show the sponsor's name, and
- the student must also produce his or her Passport or Registration Card as appropriate.

Where you take on a student who produces a P38(S) from one of the recognised sponsors, check the photograph on the Passport or Registration Card to make sure the sponsor gave the form P38(S) to the student you are employing. The farming sponsored students eligible to use the P38(S) procedure will be working in the UK under a UK Government immigration scheme called the Seasonal Agricultural Workers Scheme (SAWS). Non-students from Bulgaria and Romania can apply for places on SAWS, but, the P38(S) procedure does not apply to them. They are subject to deduction of tax through PAYE and to pay NICs, in the normal way as for all other employees. Employees on the SAWS scheme are not eligible for the PAYE and NIC concessions for Harvest Casuals contained in the table on page 76.

Information for farmers

112 Harvest casuals

For PAYE purposes

The special rules shown overleaf apply only to **casual employees, taken on for harvest work, who are not members of your family.**

You must follow the normal procedures on page 72 for any part-time or casual employees:

- that you take on for non-harvest work
- who are members of your family, regardless of the type of work they do.

Remember:

- if earnings do not exceed the ST or PT no NICs are payable
- if earnings reach or exceed the LEL but do not exceed the PT the employee is treated as having paid NICs when claiming benefit
- if earnings exceed the ST and PT, Class 1 NICs are payable by the employee and employer.

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112 Harvest casuals For PAYE	
Circumstances	Action
The person is a daily casual and: <ul style="list-style-type: none"> is taken on for one day or less paid off at the end of that period with no contract for further employment. 	Do not deduct tax. Keep a record of the employee's name, address and amounts paid. Enter these details on form P38A at the end of the tax year as requested on form P35.
The employee is taken on for no more than two weeks and has not been taken on previously by you since 6 April and paid above the PAYE threshold without PAYE being applied.	Do not deduct tax. Keep a record of the employee's name, address and amounts paid. Enter these details on form P38A at the end of the tax year as requested on form P35.
The employee is taken on for more than two weeks.	No special procedures apply and normal procedures must be followed. Follow the guidance: <ul style="list-style-type: none"> online, go to www.businesslink.gov.uk/payingnewemployees in the Employer Helpbook E13(2011) <i>Day-to-day payroll</i>
For NICs	
Circumstances	Action
The employee is employed as a regular casual, for example taken on for a specified period and paid at regular intervals.	No special NIC rules apply and normal procedures must be followed. Follow the guidance: <ul style="list-style-type: none"> online, go to www.businesslink.gov.uk/payingnewemployees in the Employer Helpbook E13(2011) <i>Day-to-day payroll</i>
The employee is engaged on an irregular basis: <ul style="list-style-type: none"> to work outdoors harvesting perishable crops is paid off at the end of each engagement, for example at the end of the day has no contract for further employment. 	NICs will not be collected where it is impossible for the employer to identify individuals and record their earnings. If the identity details are known NICs are due when the earnings for each engagement exceed the ST for employers and PT for employees: <ul style="list-style-type: none"> work out the NICs due at the time the earnings are paid complete form P11. Follow the guidance <ul style="list-style-type: none"> – online, go to www.businesslink.gov.uk/payingnewemployees or – in the Employer Helpbook E13(2011) <i>Day-to-day payroll</i>.

113 Gangmasters or contractors engaged to carry out specific jobs

If you engage a gangmaster or a contractor who is not one of your own regular employees, to carry out specific jobs such as:

- a contractor supplying own machinery or equipment for threshing, ploughing, haulage and so on
- a gangmaster supplying a squad of workers for potato, fruit, hop or other crop picking

the gangmaster or contractor is usually responsible for operating PAYE and accounting for the NICs due for any worker he or she provides.

In such cases you must:

- still record details of all payments you make to the gangmaster or contractor as we may ask for them at the end of the tax year
- keep your record of payments for at least three years after the end of the tax year to which they relate.

If one of your own regular workers acts as a gangmaster, you may be responsible for operating PAYE. In such circumstances you should contact us for advice on PAYE.

You should be aware that those who supply workers to agriculture and food/drink processing and packaging must be licensed with the Gangmasters Licensing Authority (GLA). It is an offence for gangmasters to operate without a licence or for contractors to use unlicensed gangmasters.

Employees coming to or leaving the UK – treatment for NICs purposes

In this section:

- UK means England, Scotland, Wales and Northern Ireland. People living in the Isle of Man are usually treated as living in the UK
- European Economic Area means Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, and the UK
- countries with which the UK has a full Reciprocal Agreement covering both NICs and benefits are Barbados, Bermuda, Guernsey, Israel, Jamaica, Jersey, Mauritius, Philippines, Turkey, USA, and the Federal Republic of Yugoslavia including Serbia and Montenegro/Bosnia-Herzegovina/ Croatia and Macedonia.
- countries with which the UK has a Double Contributions Convention (DCC) which covers NICs liability only and do not contain a provision for benefits are Canada, the Republic of Korea and Japan
- the UK also has reciprocal agreements which are benefit related and do not contain a provision for NICs with Canada and New Zealand. The insurability of workers coming to the UK from New Zealand will come under UK domestic legislation while those from Canada will come under the separate DCC covering NICs (see above)
- further information about these arrangements may be obtained from

HM Revenue & Customs
NICO International Caseworker
Room BP1301
Benton Park View
Longbenton
Newcastle upon Tyne
NE98 1ZZ

Phone: **0845 915 4811**

Fax: **0845 915 0067**

Resident, present or having place of business in the UK

Whether you are resident, present or have place of business is a question of fact and may depend on how your business operates.

Generally, an employer can be said to be resident, present or in the UK if the registered office of the company is in the UK, even if no actual business is carried on there.

Generally, an employer can be said to have a place of business in the UK if:

- they have a fixed address or occupy premises where they are, or are present with the consent of the lawful owner or tenant, and
- an activity takes place which need not necessarily be remunerative in itself, but is in furtherance of the purposes of the business. The business does not need to be of a trading or commercial nature.

Some pointers to look for when considering if you have a place of business include:

- a name plate displayed on the door or premises
- headed letter paper
- a listing in a phone directory
- a lease or rent agreement or some sort of financial transaction for the use of the premises
- a registered office
- registration as a company incorporated outside the UK but with a place of business here for the purpose of the Companies Act 1985
- other premises in the UK.

If you have any doubt as to whether you have a place of business in the UK contact the Employer Helpline.

From 1 May 2010 new European Community regulations will treat certain employers in European Community countries as having a place of business in the UK for all Class 1 National Insurance purposes in relation to their employees who become liable to UK National Insurance on or after 1 May 2010.

At the time of going to press the countries signed up to the new regulations are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain and Sweden but some other countries may follow suit.

For further details and an up-to-date position please see the National Insurance pages on our website, go to www.hmrc.gov.uk/work/new-rules.htm

114 Employees coming from within the European Economic Area (EEA) and countries with which the UK has a Reciprocal Agreement (RA) covering NICs or a Double Contributions Convention (DCC)

You do not have to pay Class 1 NICs for employees who:

- have come from a country:
 - in the European Economic Area, or

- with which the UK has a Reciprocal Agreement or a Double Contributions Convention, and
- hold a certificate issued by the other country showing that they are entitled to pay contributions only in that other country.

Once the period of exception shown on the certificate has elapsed:

- if you are resident, present or have a place of business in the UK, Class 1 NICs (both employer's and employee's contributions) must be paid
- if you are not resident, present or do not have a place of business in the UK, you do not have to pay employer's contributions but the employee's contribution must still be paid.

NICs must be worked out in the normal way following the rules shown in this manual and the Employer Helpbook E13(2011) *Day-to-day payroll*. If the employee does not have a certificate exempting them from the payment of UK NICs you must deduct UK NICs.

115 Employees coming from countries outside the European Economic Area (EEA) with which the UK does not have a Reciprocal Agreement (RA) covering NICs or a Double Contributions Convention (DCC)

If you are resident, present or have a place of business in the UK

The general rule is that Class 1 NICs (employer's and employee's contributions) must be paid for an employee who has come to work in the UK from a country outside the EEA and with which the UK does not have an RA covering NICs or a DCC. NICs are payable from the date they start work in the UK. This is the case even if the employee is supplied by an agency whose place of business is not in the UK.

Work out pay and record NICs in the normal way following the rules set out in other parts of this manual and the Employer Helpbook E13(2010) *Day-to-day payroll*.

Exceptions

NICs are not payable for the first 52 weeks starting from the first Sunday after the employee arrives in the UK for:

- an employee not normally living or working in the UK who is sent to work here temporarily by their overseas employer who has a place of business outside the UK even if that employer also has a place of business in the UK
- a student studying full-time outside the UK who starts temporary work in the UK if:
 - they do not normally live in the UK
 - the job is done during their holidays and
 - the job is similar to, or related to, their studies

- an employee who is similar to an apprentice if:
 - the employee does not normally live in the UK and starts work in the UK before reaching the age of 25, and
 - the job in the UK is similar to, or related to, their job outside the UK.

When the 52-week period finishes you pay NICs for that employee and the normal rules about working out, paying and recording NICs apply.

If you are not resident, present or do not have a place of business in the UK

You do not have to pay employer's contributions but the employee's contribution must still be paid.

Host Employer Regulations

If an employer outside the UK with no place of business in the UK makes their employees available to you to work in your business, the law treats you as their employer.

This most commonly arises where you are supplied with workers by a foreign agency or perhaps you are loaned employees from a foreign company linked to yours. You will be liable for the payment of NICs (both primary and secondary) in respect of that person.

For further information phone the Employer helpline.

116 Liability to pay NICs for employees going abroad

If you have employees who work outside the UK, the basic National Insurance rules for you and your employees are explained online, go to www.hmrc.gov.uk/nic/work/abroad-index.htm

For further advice we recommend you contact:

HM Revenue & Customs
NICO International Caseworker
Room BP1301
Benton Park View
Longbenton
Newcastle upon Tyne
NE98 1ZZ

- Phone **0191 203 7010**
- go to www.hmrc.gov.uk/cnr/osc.htm

117 Modified NICs Schemes – Applying for simplified reporting for employees coming to or leaving the UK

Some employers can apply for simplified reporting for employees coming to or leaving the UK.

Details are in the PAYE Manual, PAYE82003 (EP Appendix 7A) and PAYE82004 (EP Appendix 7B). The arrangements allow certain employers to apply to pay NICs and complete the end of year return P14 at the normal time using a best estimate of the earnings and benefits, and later submit a minor correction to the amount of Class 1 or Class 1A NICs, without then attracting a penalty. The idea is to help businesses with internationally mobile workers, by giving them a little longer to identify and account for minor benefits and payments that were not paid from the UK payroll. Conditions apply.

For more information:

- go to www.hmrc.gov.uk/manuals/pommanual/PAYE81500.htm or
- phone the Employer Helpline.

Employees coming to or leaving the UK – treatment for PAYE purposes

118 Employees coming from abroad

Subject to certain exceptions PAYE must be operated in the usual way for:

- all employees working at a UK branch or office of any overseas business, and
- all employees (including directors) who work under the day to day control and management of a business in the UK or the UK branch or office of an overseas business.

The concern in the UK who is using the services of an employee of an overseas employer, must operate PAYE as if it was the employer. This is the case regardless of whether the employee is paid by the UK concern, the overseas concern, or partly by both.

If all or part of an employee's income, including any benefits provided, is paid by the overseas concern, the UK employer must get together all details needed to operate PAYE and make Returns on forms P11D.

If an employee is sent to you by an overseas concern and you do not think they will be working under your day to day control or management, contact us as soon as possible for advice. We will want to know all about the employee concerned and the work they have been sent to the UK to do to decide whether you have to operate PAYE for them.

If a decision has not been made before the first

payday for work done in the UK, you should deduct tax using the emergency code until we tell you otherwise.

When it is confirmed that PAYE is to be operated:

- work out the employee's pay
- work out the PAYE to deduct
- if the employee is paid by the overseas concern:
 - tell the overseas employer how much to deduct for PAYE and
 - arrange for the overseas employer to account to you for these amounts either by allowing you to recover them from any charge made for the employee's services or by direct reimbursement
- keep all the usual PAYE records
- send the payments for PAYE to the Accounts Office in the usual way.

If the overseas employer will not tell you how much the employee is earning, contact us for advice.

Employees who are not resident, or if resident, not ordinarily resident in the UK

Where, because work is performed both in the UK and abroad, it is unclear at the time of making a payment how much of the payment will ultimately be assessable as PAYE income, the whole payment should be subjected to PAYE unless we have directed otherwise.

Such a direction may be possible where you consider it necessary to determine by apportionment what proportion of a payment is assessable to tax. You can ask us for a direction that PAYE need only be applied to a certain proportion of the payment(s) made.

The direction may cover more than one employee and any number of years, provided these details are specified in the direction. Most commonly such a direction will be appropriate in a situation where a payment is made to an employee who is not resident (or if resident, not ordinarily resident) in the UK and that payment comprises of earnings which relate to duties in the UK and abroad.

Employees on short term business visits to the UK

Where an employee is likely to qualify for protection from UK Income Tax under the Dependent Personal Services Article of a Double Taxation Convention it may be possible to relax the strict PAYE requirements that arise.

Certain information will need to be provided and the criteria in the Dependent Personal Services clause met. In the latter respect normally:

- the employee must be present in the UK for a period not exceeding in aggregate 183 days in the calendar or fiscal year concerned

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- the remuneration is paid by, or on behalf of, an employer who is not a resident of the UK, and
- the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the UK.

Contact us for further details in these cases.

Employee seconded to work in the UK

Where you employ a worker who has been seconded to work in the UK you must provide them with a form P46(Expat). The form should be returned to you so you can complete the employer sections and then send the fully completed form to us online.

Section one of form P46(Expat) must be completed by the employee and section two must be completed by you as the employer.

For the purpose of the form and this procedure, a seconded employee includes:

- individuals working wholly or partly in the UK for a UK employer on assignment **whilst remaining employed by an overseas employer**
- individuals assigned to work wholly or partly in the UK at a recognised branch of their overseas employer's business
- all individuals included by an employer within a dedicated expatriate PAYE scheme
- all individuals included by an employer within an expatriate modified PAYE scheme.

Form P46(Expat) must not be used for any worker whose circumstances are not as within the descriptions above. In all other circumstances the normal P46 procedures must be followed.

Note: If the employee has entered 'X' in the 'European Economic Area citizen box' on section one of form P46(Expat) you must use the emergency tax code on a cumulative basis even if the employee has completed statements B or C.

Form P46(Expat) is available:

- to download, go to www.businesslink.gov.uk/payeformsandpublications
- on our Online Return and Forms - PAYE product.

It may also be included in commercial payroll software (please check with your software provider for confirmation).

It is not available to order from the Employer Orderline.

For further advice about employees seconded to work in the UK please phone the Employer Helpline.

119 Employees going abroad

The normal PAYE system applies to all employees of a UK employer even if the employees are working abroad for all or part of the time.

When you send an employee to work abroad you should provide the employee with a letter giving the following details:

- the date the employee went abroad
- the gross pay and tax deducted whilst in your employment for the period from 6 April last to the date the employee was sent abroad.

If an employee is working in full time employment abroad for more than a complete tax year you should ask them to complete a P85. They should send the completed P85 to HMRC who will consider if an NT code can be operated.

Overseas tax deductions

If you have employees on an overseas contract, the overseas Revenue authorities abroad may get in touch with you about making foreign deductions from the employees' pay. It is advisable that you contact the overseas authority on or before the start of the overseas contract to establish your obligations in that country. This is because you are likely to have obligations to both UK and overseas Revenue authorities.

Although foreign deductions may be due, you must explain to the overseas authority that you are still responsible for operating PAYE under UK arrangements for these employees. Find out whether, and why, the foreign Revenue authority wants you to make deductions for them and when you have this information contact us. We will tell you what you can do to make things easier for the employee who will have two lots of deductions made from their pay.

120 Employees working in offshore areas

You must operate PAYE for employees working offshore, but there are exceptions. Contact us before employees start working in these areas.

121 Coding for payroll purposes for non-resident employees

Where a business in the UK or the UK branch or office of an overseas business employs an employee who is non-resident, and:

- the employee is working wholly outside the UK
- the employee has not been resident in the UK before
- **the employee does not intend to and will not perform any duties in the UK**

code 'NT' may be used for payroll purposes if the paying system demands a code number.

No P14 or entry on the P35 is required and there is no liability for NICs.

If the residency position of the employee or the place the duties are performed change so that the employee becomes liable to UK tax, you should immediately stop using code 'NT' and follow the P46 procedure, as if the employee is a new employee with no P45.

Workers providing their services through intermediaries

This section deals with the following:

- workers paid by intermediaries which do not meet the definition of Managed Service Companies ('IR35' rules)
- workers paid by Managed Service Companies
- how to complete question 6 on the P35 Employer Annual Return
- IR35: final figures unknown by April/May.

122 Workers paid by intermediaries which do not meet the definition of Managed Service Companies (IR35 rules)

The Intermediaries Legislation (also known as 'IR35') applies to income earned from engagements (known as relevant engagements) where:

- a worker provides services to a client under a contract between the client and one or more intermediaries, and
- but for the presence of the intermediary, the income arising under the contract would have been treated as coming from an employment (or an office (NICs only)) held by the worker, if the individual had contracted directly with the client.

The existing rules which outline the boundary between employment and self-employment for tax or NICs purposes, continue to be used to determine whether an office or employment would have existed but for the use of an intermediary.

For more information on how to decide whether someone is employed or self-employed, please go to www.businesslink.gov.uk/employmentstatus

An individual working through a service company (defined on page 83 under 'How to complete question 6 on the P35 Employer Annual Return') is treated as a worker for the purposes of the legislation if he or she has:

- beneficial ownership of, or entitlement to acquire rights entitling him or her to receive,

more than 5 per cent of the ordinary share capital of the service company, or

- possession of, or entitlement to acquire rights entitling him or her to receive 5 per cent of any distribution made by the company, or
- received, or could have received, payments or benefits from the company which are not salary but could reasonably be taken to represent payment for the services he or she provides to clients.

The 'IR35' rules don't apply where the worker is only entitled to receive income from the intermediary which is all taxed as PAYE income and liable to Class 1 NICs, and has no other rights to income or capital from the intermediary.

The 'IR35' rules also apply to engagements where the intermediary is a partnership. However, they only apply if:

- an individual worker, or persons connected with him or her, is entitled to 60 per cent or more of the partnership profits, or
- all or most of the partnership's income in the relevant tax year is derived from the provision of services, in a form which would fall within the definition of relevant engagements, to a single client or associate of that client, or
- the profit sharing arrangements in the partnership provide for the income of any of the partners to be based on the amount of income generated by those partners through relevant engagements.

Where the worker would have been an employee of the client, but for the presence of the service company or partnership, the service company or partnership must pay the worker a salary which is liable to PAYE and NICs. The amount must be an equivalent to all of the income received by the service company or partnership, from a relevant engagement with a client, less certain deductions. If the salary actually paid is less than this amount, the balance will be deemed to have been paid to the worker on the last day of the tax year.

The intermediary will be responsible for operating PAYE and paying NICs as follows:

Intermediaries which are companies

Where a company intermediary receives income in respect of relevant engagements:

- the intermediary must operate PAYE and pay NICs on payments of salary to the worker during the year, in the normal way
- if at the end of the tax year, the total of the worker's employment income from the intermediary, including benefits in kind, amounts to less than the intermediary's income

from all that worker's relevant engagements, then the difference (net of allowable expenses described below) will be deemed to have been paid to the worker as salary on 5 April (earlier in certain circumstances), and tax and NICs must be paid accordingly

- where salary is deemed in this way appropriate deductions will be allowed in calculating Corporation Tax profits and no further tax or NICs will be due if the worker subsequently withdraws the money from the company.

Intermediaries which are partnerships

Where a partnership intermediary receives income in respect of relevant engagements:

- income of the partnership from all relevant engagements in the year (net of allowable expenses described below) will be deemed to have been paid to the worker on 5 April as salary from a deemed employment held by the worker. The partnership will be required to operate PAYE and pay NICs on any deemed salary
- any amount deemed to be salary and taxed as PAYE income, will not be included when calculating the worker's share of partnership trade profits
- our current practice of including small amounts of PAYE income in the calculation of trade profits will also apply in these cases.

The HM Revenue & Customs office dealing with the partnership accounts can advise you on whether PAYE income can be regarded as small, in this context.

Expenses

In computing the deemed salary, the following deductions shall be allowed against income from relevant engagements:

- all expenses otherwise eligible for deduction under the normal expense rules, plus
- any employer pension contributions made to an approved scheme which are allowable under normal rules, plus
- a flat rate 5 per cent of the gross income from the relevant engagements, plus
- the amount of the employer's NICs paid during the year, plus any due on the deemed payment.

Payment of tax and NICs on the deemed payment

Chapter 1 of this guide explains how to work out PAYE and NICs for various pay intervals. But where regular payments have been made to the director or employee in question throughout the tax year, the deemed payment should be treated as a week 53 payment – see page 14 of this guide.

For NICs purposes, the deemed payment should be aggregated with any other earnings paid to the worker by the intermediary in the year which are derived from employed earner's employment. The amount of Class 1 NICs payable in respect of that aggregate amount should be calculated using an annual earnings period, irrespective of whether the worker is a director of the company in the tax year.

Where the provisions of the Intermediaries Regulations apply to the worker from the beginning of the tax year, the worker will have an annual earnings period. Where a later start date applies the worker is prescribed a pro rata annual earnings period. See also CA44 *National Insurance for Company Directors*.

For further information about the legislation:

- go to www.hmrc.gov.uk/ir35 or,
- phone the 'IR35' Helpline on **0845 303 3535**.

123 Workers paid by Managed Service Companies

Separate legislation applies to income received from 6 April 2007 by workers providing their services through Managed Service Companies.

A Managed Service Company (MSC) is a company through which a worker provides their personal services and:

- the worker's entire income is not treated as employment income, and
- there is a person who carries on a business of promoting or facilitating the use of service companies (an MSC Provider), and
- the MSC Provider exercises influence or control over the company, or benefits financially on an ongoing basis from the provision of the worker's services, or promotes an undertaking to make good a tax loss.

Where a worker provides their services through an MSC, the existing rules which outline the boundary between employment and self-employment for tax and NICs purposes do not apply.

Payments or benefits received by the worker or an associate which are not already treated as earnings, and can reasonably be taken to be in respect of the services of the worker, are treated as employment income and earnings.

For the purposes of the legislation, a company means a limited company, a limited liability partnership or a general partnership.

The MSC is responsible for deducting PAYE and accounting for NICs.

The MSC must deduct PAYE and account for NICs on payments of income to the worker during the year, in the normal way.

On each occasion when the worker or their associate receives from the MSC a payment or benefit which is not earnings from an employment, the MSC must calculate the deemed employment payment in accordance with the legislation and operate PAYE and Class 1 NICs on the deemed employment payment.

Appropriate deductions will be allowed on account of the deemed employment payment when calculating profits chargeable to Corporation Tax or partnership profits.

For guidance on calculating the deemed employment payment go to

www.hmrc.gov.uk/employment-status/msc.htm

Expenses

When calculating the deemed employment payment, a deduction can be made for specific allowable expenses. Expenses incurred in providing services at the client's premises: for example, travel, subsistence or accommodation costs, are not allowable expenses.

Payment of tax and NICs on the deemed payment

Chapter 1 of this guide explains how to work out PAYE and NICs for various pay intervals. But where regular payments have been made to the director or employee in question throughout the tax year, the deemed payment should be treated as a week 53 payment - see page 14 of this guide.

For NICs purposes, the deemed employment payment should be aggregated with any other earnings paid to the worker by the MSC.

An MSC must pay the PAYE and NICs in respect of the deemed employment payment to HMRC on a monthly basis. The normal end of year payment rules will apply to the PAYE and NIC on deemed payments (that is, the total PAYE and NICs due for the year must be paid by 19 April).

Where an MSC fails to pay the tax and NICs, and the sum is irrecoverable from it, HMRC may transfer the debt to a number of third parties.

The third parties include:

- the MSC's director or other office holder or an associate of the MSC
- the MSC Provider, its directors or other office holders or associates
- a person who encouraged or was actively involved in the provision of the worker's services through the MSC.

For further information about the legislation go to www.hmrc.gov.uk/employment-status/msc.htm

124 How to complete question 6 on the P35 Employer Annual Return

Question 6 is deliberately in two parts because the first question identifies those employers who need to consider whether the second question applies. The online product you use may show 6a and 6b. The first part asks, 'Are you a Service Company?'

For the purposes of question 6, service company includes a limited company, a limited liability partnership, or a partnership (but not a sole trader) which provides your personal services to third parties.

The first part of the question should be answered 'Yes' if:

- an individual performed services (intellectual, manual or a mixture of the two) for a client or clients, and
- the services were provided under a contract between the client and the service company of which, at any time during the tax year, the individual performing the services was a shareholder or partner, and
- the service company's income was, at any time during the tax year, derived wholly or mainly (that is, more than half of it) from the services performed by the shareholders or partners personally.

So, if you are a service company (as explained above) in the year to 5 April 2011, tick the first 'Yes' box under this question.

If your answer to the first question is 'No' then you do not need to consider the second part because the answer to it will also be 'No'.

The second part then asks 'If 'Yes', have you operated the intermediaries legislation (sometimes known as IR35) or the Managed Services Companies legislation?' The second part of the question should only be answered 'Yes' if:

- income has been treated as deemed employment income and PAYE and NICs deducted in accordance with the MSC or Intermediaries legislation (IR35), or
- an engagement is within the IR35 rules but the deemed payment is nil because sufficient amounts of employment income have been paid.

In all other circumstances answer 'No'.

The only engagements affected by the IR35 rules are those in which the worker would be classed as an employee (for NICs, employed earner) of the client if it were not for the service company involvement.

125 IR35: final figures unknown by April/May

The normal end of year payment rules apply to the PAYE and NICs on the deemed payment made under the Intermediaries legislation (that is, the total PAYE and NICs due for the year must be paid by 19 April).

If the intermediary is able to finalise the calculation of the deemed payment and the PAYE and NICs by 19 May, which is the final date by which the P35 should be sent, the P35 should be submitted showing the correct figures of tax and NICs on the deemed payment.

If the intermediary is not able to calculate the actual amount of the deemed payment and the PAYE and NICs due for 2010–11 by 19 April 2011, a payment on account of the estimated tax and NICs due should be made by 19 April 2011 supported with a P35 showing provisional figures.

HMRC will write to all employers later in the year reminding them that if their P35 figures were provisional in accordance with the above guidance, they must submit an amended P35 and make a balancing payment by 31 January 2012.

Where HMRC does not receive an amended P35 and balancing payment by 31 January 2012, the original P35 submitted will be considered to reflect figures which the employer declares to be final and correct.

Interest will be charged on late payments made after 19 April 2011 (when the original payment was due), but no penalties will be charged for sending the P35 with final figures late if:

- the original P35 and relevant P14s were received by 19 May 2011 with part 2 of question 6 of the P35 answered 'Yes' and showing remuneration paid during the year, plus an amount on account of the deemed payment, with tax and NICs correctly calculated on that additional figure
- an amended P35, and accompanying documents, notifying the correct final amount for the deemed payment and the tax and NICs due is sent to us by 31 January 2012, and
- any additional tax and NICs due as a result of the amended P35 were paid by 31 January 2012.

126 – 129 not used - reserved for future use