National Insurance Contributions (NICs)

Employing people on the UK Continental Shelf (UKCS)

Introduction

On 6 April 2014 the Government changed the PAYE and National Insurance rules for employment intermediaries where the workers are employed on the UKCS.

Offshore Employment Intermediaries

This note is aimed at agents. It looks at the new legislation in more detail and covers practical issues.

Background

From 6 April 2014 new rules changed the treatment of offshore employers and agencies with workers on the UKCS. These rules tackle attempts to avoid secondary “employer” National Insurance by moving staff to contracts with foreign employers. The avoidance schemes then argued that an exemption from employer NICs for certain host employers of mariners could be applied to the UK business.

The new rules

Where a worker is employed on the UKCS, the new rules apply the obligation for secondary National Insurance on:

- the employer in the UK; or
- the associated company, where the employer is not in the UK but has an associated company in the UK; or
- the oil or gas field licensee, where the employer is not present in the UK and has no associated company in the UK.

Where there is more than one associated company present in the UK, the one with the largest profits in the preceding year becomes the secondary contributor.

There is a system of certification in place for foreign employers to comply by paying secondary Class 1 NICs and operating PAYE. They can apply to HMRC for a certificate that will discharge the Oil and Gas field licensee’s filing and payment responsibilities.
Certificate Process

To obtain a certificate, a foreign employer must set up a Real Time Information (RTI) scheme with HMRC as if it were in the UK and should comply with all requirements to operate PAYE and Class 1 National Insurance, including secondary Class 1 National Insurance. In some cases, foreign employers will already have an existing scheme they have been operating on a voluntary basis. Where that is the case, they should start operating secondary Class 1 National Insurance too.

To apply to HMRC for a certificate, a foreign employer should write to:

Oil and Gas Certificates Unit
Grayfield House
Bankhead Avenue
Edinburgh
Lothian
EH11 4UY.

They should include:

- the name and address of the employer;
- the PAYE reference number;
- the name and address of a person in the UK who is authorised to accept service on their behalf;
- confirmation that the employer understands and intends to discharge the Oil and Gas field licensee’s obligations;
- The name, address and PAYE reference number of any associated company which is a current or former holder of a UKCS worker certificate.

Where this is the first application being made, they should also include the name, business address and oil field licence number of the oil field licensees to whom they supply or intend to supply a UKCS worker.

Where HMRC is satisfied that certain conditions are met, a certificate will be issued to the foreign employer. A certificate is also issued to the relevant Oil and Gas field licensee who is exempt from their liabilities as the secondary contributor as long as the certificate is held.

Withdrawing certificates

HMRC checks the foreign employer is complying. Companies that fail to comply will be warned and have a chance to put matters right before HMRC withdraws a certificate. When a certificate is withdrawn, HMRC will give 10 days’ notice in writing. No further certificates will be issued to this employer.

HMRC prefers to work with employers to help them comply. Minor errors or delays will not normally result in cancellation providing the employer works with HMRC to rectify the error.
Interaction between UKCS and mariner rules

Regulation 114 Social Security (Contributions) Regulations 2001 sets out the rules for workers on the UK Continental Shelf and treats a person employed there in connection with an activity mentioned in section 11(2) of the Petroleum Act 1998, as though employed in Great Britain and as meeting the conditions as to residence or presence for National Insurance liability.

This rule takes precedence over the National Insurance mariner rules, so that a person who might normally be a mariner but who is working on the UKCS, will be treated as being in the UK and liable to Class 1 National Insurance. The new rules will appoint a secondary contributor for them.

There is an exception from the new UKCS rules where the person is a mariner with a Safe Manning Certificate and falling within the following groups:

- Master or chief mate.
- Officer in charge of an engineering watch in a manned engine room, or a duty engineer officer in a periodically unmanned engine room, on a ship powered by main propulsion machinery of 750kW propulsion power or more.
- Chief engineer officer or second engineer officer on a ship powered by main propulsion machinery of 750kW to 3000kW propulsion power.
- Rating forming part of a navigational watch on a ship of 500 gross tons or more and whose duties are skilled in nature.
- Rating forming part of an engine-room watch or designated to perform duties in a periodically unmanned engine room on a ship powered by main propulsion machinery of 750kW propulsion power or more.

The new rules only apply in relation to persons employed on or in connection with an offshore installation.
Meaning of offshore installation

This is a structure put to relevant use while in water. It does not include structures

- that have permanently ceased to be put to relevant use;
- is not and is not to be put to relevant use;
- since ceasing to be put to a relevant use, it has been put to a use which is not a relevant use.

This is drawn so that for example, a vessel involved in drilling does not cease to be a structure in between drilling operations or each time it detaches from the well head.

The measure does not apply to vessels used wholly or mainly for the

- transport of supplies;
- as safety vessels;
- as cable laying vessels.

A use is a relevant use if it is:

- for the purposes of exploiting mineral resources;
- for the purposes of exploration with a view to exploiting mineral resources;
- for the storage of gas;
- for the recovery of gas;
- for the conveyance of things by means of a pipe;
- mainly for the provision of accommodation for people working on the structure;
- for de-commissioning.

It is important to remember that if a person or employer is not within the UKCS rules they may still be liable under the mariner rules. These can be found on our website.

_When would I be liable to pay National Insurance contributions in the UK?_
**Foreign employees on UKCS**

Although the UKCS rules treat a person as being employed in the UK when they work on the UKCS and liable to Class 1 National Insurance, there is an exception for the first 52 weeks of employment in the UK where the worker is coming from abroad to work temporarily on the UKCS and all the following conditions are met:

- not ordinarily resident in the UK;
- not ordinarily employed in the UK;
- employed by a foreign employer;
- their employment is one carried on mainly outside the UK.

**Example**

A Mexican employee, ordinarily resident there, who normally works for their employer in the Gulf of Mexico comes to work temporarily on the UKCS would benefit from this – as would the UK secondary contributor.

The exemption would not apply to a worker ordinarily resident in the UK or one who was hired to work on the UKCS and does not normally work for the foreign employer abroad.

**UK/ Norway agreement – Norwegians working temporarily on the UKCS**

Some Norwegians working temporarily on the UK Continental shelf are exempt under the provisions of the bi-lateral social security agreement between the two countries. A person claiming to be exempt should be able to produce a certificate of continuing liability in Norway in case HMRC require it.

**EU regulations 883/2004 and bi-lateral agreements**

Special EU social security coordinating rules do not apply to the UKCS. If an employee is seconded to the UKCS by an employer in another Member state, the work lasts longer than the 52 week period and the person faces double charging of contributions it may be possible for HMRC to assist. Contact HMRC for further advice.

**Employee works on UKCS and also outside the UKCS**

National Insurance is calculated in relation to payments in a pay period (usually a month for monthly paid staff) rather than by looking at a tax year as a whole. An employee may be on the UKCS in one pay period and outside the next.

The employer or person treated as the secondary contributor under the new rules is required to operate Class 1 National Insurance in relation to earnings for work on the UKCS. If the employee works outside the UKCS and UK to a significant extent – not merely a temporary absence for a few days or weeks, then they need to consider whether:

- Mariner rules make the person liable when outside the UKCS and whether there is a secondary contributor; or
- if the person is working in another country, where UK National Insurance could apply and whether there is a secondary contributor. [National Insurance for people going abroad](#)
Difficulties letting payroll know where the employee is during the pay period

We know that when people are at sea and working both on UKCS and also elsewhere at sea that it can be hard for payroll operators to keep track of all employee movements in time to operate NICs accurately on or before the earnings are paid for the purposes of Real Time Information.

Providing errors or delays are corrected promptly – no later than the following month, HMRC would not seek to impose a penalty.

**Personal Service Companies**

If a personal service company is a foreign employer and the worker is on the UKCS then these new rules apply.

**UK/ Norway agreement - UK nationals working temporarily in Norway**

Where an employer has workers on the UKCS and also working in Norway, it can simplify matters for the employer if the UK staff (and the employer) remain subject to UK Class 1 National Insurance and exempt Norwegian contributions. HMRC has had significant success (almost 100%) in securing special agreements for UK companies and workers to remain paying Class 1 National Insurance only for up to 5 years. You should apply in advance, see [National Insurance contributions when you work outside the UK](https://www.gov.uk/national-insurance-contributions-when-you-work-outside-the-uk)