

4.7 Workers providing their services through intermediaries

This section deals with the following:

- workers supplied by agencies, for more information, read [paragraph 4.2](#)
- workers paid by intermediaries which do not meet the definition of managed service companies 'IR35' rules
- workers paid by managed service companies
- IR35: At the end of the tax year
- offshore employment Intermediaries

From 6 April 2016 new legislation affects the application of the travel expenses and subsistence rules for workers who provide their services through an employment intermediary and who are subject to the supervision, direction or control of any party. When such a worker personally provides services (other than an exception for 'excluded services' – see below) to a client through an employment intermediary, including a recruitment agency, umbrella company or other similar structure, then each assignment is considered to be a separate employment. Therefore when a worker regularly commutes from home to a workplace for each assignment they will not be eligible for relief on travel and subsistence. Each workplace is classed as a permanent workplace and so the travel is ordinary commuting.

For more information, read [480: expenses and benefits](#).

Where a worker is supplied through their own company (for example, a personal service company (PSC)) or partnership, it is not necessary to consider the test of supervision, direction, or control.

In 2017, the government changed the off-payroll working rules for the public sector, shifting responsibility for operating the rules from the worker's PSC to the organisation they work for. This is how employment status for tax is decided for the vast majority of people, who do not work through their own company. From April 2020, large and medium-sized organisations are due to be responsible for assessing the employment status of the contractors they engage to work for them. If the rules apply, the organisation that pays the individual's PSC will be responsible for deducting and paying the associated employment taxes and NICs to HMRC. These rules are at Chapter 10, Part 2, ITEPA 2003.

However, when a deemed employment payment:

- is payable under IR35 legislation
- would have been payable but for the fact that the worker received remuneration as employment income

then the 2016 legislation will apply as the workplace will be classed as a permanent workplace and no relief on travel and subsistence will be available for home to work travel.

4.7.1 Workers paid by intermediaries which do not meet the definition of managed service companies (IR35 rules)

The intermediaries legislation at Chapter 8, Part 2, ITEPA 2003 (commonly referred to 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
- the worker is an office-holder of the client or, 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 held by the worker, as if the worker had contracted directly with the client

The existing rules which outline the boundary between employment and self-employment for tax or National Insurance contributions 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, read [check employment status for tax](#).

The IR35 legislation will apply where the intermediary is a company and the worker has:

- beneficial ownership of, or entitlement to acquire rights entitling them to receive, more than 5% of the ordinary share capital of the company
- possession of, or entitlement to acquire rights entitling them to receive more than 5% of any distribution made by the company
- 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 they provide to clients
- rights which would entitle them to receive or acquire more than 5% of the assets available for distribution in the event of a close company being wound up

The 'IR35' rules do not 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 National Insurance contributions, 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 them, is entitled to 60% or more of the partnership profits
- 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 a single client and associates of that client
- 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 or an office holder of the client, but for the presence of the service company or partnership, the service company or partnership may

pay the worker a salary which is liable to PAYE and National Insurance contributions. If the salary actually paid is less than the income received by the service company or partnership, from relevant engagements with a client (less certain deductions) then the balance will be deemed to have been paid to the worker as a deemed employment payment on the last day of the tax year.

Legislation was introduced at Chapter 10, Part 2, ITEPA 2003 in April 2017 for public sector engagements. Part of that was the abolition of the 5% deduction for individuals operating through intermediaries in the public sector. It also shifted responsibility for determining employment status for tax from the worker's PSC to the organisation they work for.. From 6 April 2020, , large and medium-sized organisations are due to be responsible for assessing the employment status of the contractors they engage to work for them. From April 2020 where services are provided to a small non-public sector client, the intermediary will still be responsible for operating PAYE and paying National Insurance contributions under Chapter 8, Part 2, ITEPA 2003 as follows.

Intermediaries which are companies

Where a worker's intermediary is a company and receives income in respect of relevant engagements:

- the intermediary must operate PAYE and pay National Insurance contributions 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 earnings on 5 April (earlier in certain circumstances), and tax and National Insurance contributions must be paid accordingly.
- From April 2017 responsibility for determining employment status for tax from the worker's PSC to the organisation they work for in the public sector. From April 2020 medium and large-sized organisations are due to be responsible for assessing the employment status of the contractors they engage to work for them.
- where salary is deemed in this way, appropriate deductions will be allowed in calculating Corporation Tax profits – no further tax or National Insurance contributions will be due if the worker subsequently withdraws the money from the company

Intermediaries which are partnerships

Where a worker's intermediary is a partnership and 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 earnings from a deemed employment held by the worker.
- the partnership will be required to operate PAYE and pay National Insurance contributions on any deemed employment payment
- From April 2017 responsibility for determining employment status for tax from the worker's intermediary to the organisation they work for this responsibility shifted from the intermediary to the client or agency where the individual is working in the public sector. From April 2020 medium and large-sized organisations are due to be responsible for assessing the employment status of the contractors they engage to work for them,

- any deemed employment payment taxed as PAYE income, will not be included when calculating the worker's share of partnership trade profits

Expenses

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

- all expenses otherwise eligible for deduction under the normal expense rules
- any employer pension contributions made to an approved scheme which are allowable under normal rules, plus
- a flat rate 5% of the gross income from the relevant engagements, new legislation was introduced in April 2017 for public sector engagements which removed this 5% deduction. From April 2020 this deduction is also removed for engagements with medium and large-sized non public-sector clients.
- certain capital allowances
- the salary already taxed as employment income and the amount of the employer's National Insurance contributions paid during the year, plus any due on the deemed payment

For more information on the deemed employment payment, read [how to calculate the deemed employment payment](#).

Payment of tax and National Insurance contributions on the deemed payment

[Section 1](#) of this guide explains how to work out PAYE and National Insurance contributions for various pay intervals. For National Insurance contributions purposes, the deemed employment 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 National Insurance contributions 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.

Read, [CA44: National Insurance for company directors](#).

For more information about the legislation:

- read [off-payroll working through an intermediary \(IR35\)](#)
- phone the IR35 Helpline on 0300 123 2326

4.7.2 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 is a form of intermediary company through which workers provide their services to end clients. In essence a scheme provider promotes the use of

these companies and provides the structure to workers. The worker (although a shareholder) does not exercise control over the company.

Where a worker provides their services through a managed service company, the existing rules which outline the boundary between employment and self-employment for tax and National Insurance contributions 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 managed service company is responsible for deducting PAYE and accounting for National Insurance contributions. The managed service company must deduct PAYE and account for National Insurance contributions on payments of income to the worker during the year, in the normal way.

On each occasion when the worker or their associate receives a payment or benefit from the managed service company which is not earnings from an employment, the managed service company must calculate the deemed employment payment in accordance with the legislation and operate PAYE and Class 1 National Insurance contributions 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, read [Employment Status Manual](#).

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 National Insurance contributions on the deemed payment

Chapter 1 of this guide explains how to work out PAYE and National Insurance contributions 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. Read [section 1](#).

For National Insurance contributions purposes, the deemed employment payment should be aggregated with any other earnings paid to the worker by the managed service company. A managed service company must pay the PAYE and National Insurance contributions 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 National Insurance contributions on deemed payments (that's, the total PAYE and National Insurance contributions due for the year must be paid by 19 April).

Where a managed service company fails to pay the PAYE and National Insurance contributions, and the sum is irrecoverable from it, HMRC may transfer the debt to a number of third parties.

The third parties include:

- the managed service company's director or other office holder or an associate of the managed service company
- the managed service company 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 managed service company

For more information about the legislation, read [off-payroll working through an intermediary \(IR35\)](#).

4.7.3 IR35 – At the end of the tax year

The normal end of year payment rules apply to the PAYE and National Insurance contributions on the deemed employment payment made under the IR35 Intermediaries Legislation. The calculation of the deemed employment payment should be reported on a FPS on or before 5 April 2020.

If the intermediary is not able to calculate the actual amount of the deemed employment payment and the PAYE and National Insurance contributions due for 2019 to 2020 by 5 April 2020, a payment on account of the estimated tax and National Insurance contributions due should be made by 19 April 2020 supported by a provisional calculation of the deemed payment reported on the final FPS submitted on or before 5 April 2020.

Where a provisional payment of tax and National Insurance contributions has been made because it was not possible to accurately calculate the deemed payment and deductions on time, any adjustments should be reported through an earlier year update submitted to HMRC after the end of the tax year between 20 April 2019 and on or before the following 31 January 2020.

Where HMRC does not receive the earlier year update and balancing payment by the following 31 January 2020, the last FPS submitted will be considered to be the final and correct details.

Interest will be charged on late payments made after 19 April 2019 (when the payment was due), but no penalties will be charged for sending the final earlier year update figures late if:

- the final FPS was received on or before 5 April 2019 showing remuneration paid during the year, plus an amount on account of the provisional deemed employment payment, with tax and National Insurance contributions correctly calculated on that additional figure
- payment of tax and National Insurance contributions is made by 19 April 2019, including an amount paid on account of the provisional deemed employment payment
- an earlier year update is submitted notifying the correct final amount for the deemed employment, and payment and the tax and National Insurance contributions due are sent to us by 31 January 2020
- any additional tax and National Insurance contributions due as a result of the earlier year update are paid by 31 January 2020

For more information, read [off-payroll working through an intermediary \(IR35\)](#).

4.7.4 Offshore agencies and employment intermediaries

Where there's an employer based in the UK, that employer is responsible for operating PAYE and National Insurance contributions.

Where a person is employed by or engaged through a foreign employer with no presence or place of business in the UK and there's:

- no UK agency in the contractual chain, the end client is the person who's responsible for operating PAYE and National Insurance contributions
- a UK agency in the contractual chain, the UK agency is responsible for operating PAYE and National Insurance contributions
- more than one UK agency in the contractual chain, the UK agency that contracts with the end client is responsible for operating PAYE and National Insurance contributions

Where a UK agency is involved in the supply of workers overseas and the worker is liable for Class 1 National Insurance contributions whilst working abroad, then the UK agency is responsible for operating PAYE and National Insurance contributions.

A worker who would otherwise be self-employed is subject to Class 1 National Insurance contributions and PAYE when they work through an agency and:

- the worker personally provides services to another person (the client)
- there's a contract between the client and an agency under or in consequence of which the services are provided or the client provides consideration for the services, and remuneration is receivable by the worker

[Section 1](#) Class 1 National Insurance contributions if it can be shown the worker is not subject to (or to the right of) supervision, direction or control by anyone as to the manner in which they provide their services to the end client.

PAYE and National Insurance contributions in relation to workers employed on the UK Continental Shelf

There are different rules in relation to the UK Continental Shelf when there's a foreign employer with no presence of place of business in the UK. For workers who are employed on the UK Continental Shelf, the person responsible for operating PAYE and National Insurance contributions is the:

- employer, if they're present in the UK
- associated company, where the employer is not present in the UK but has an associated company in the UK
- oil field licensee, (under Part 1 of the Petroleum Act 1998), where the employer is not present and does not have an associated presence in the UK

Where the oil field licensee is responsible as the secondary contributor, a certificate system has been introduced. A foreign employer can apply to HMRC for a certificate to discharge the oil field licensee's secondary contributor responsibilities.

Where HMRC issues a certificate, the foreign employer takes over the oil field licensee's secondary contributor responsibilities. This will allow oil field licensees to continue dealing with foreign employers and agencies within the industry without exposing themselves to liabilities for tax and National Insurance contributions.

4.7.5 Employment intermediaries reporting requirements

Employment intermediaries must send HMRC a return every 3 months containing details of all workers they place with clients where they do not operate PAYE on the payments.

For more information, read [what this means for an intermediary](#) or phone the Employment Intermediaries Compliance Unit on Telephone: 03000 555995.