



Offshore employment intermediaries

Who is likely to be affected?

Offshore employers and agencies, whose workers are engaged in the UK or on the UK Continental Shelf (UKCS). UK and UKCS workers, who are engaged by or through an offshore agency or employed by an offshore company. UK agencies who place workers with end clients.

General description of the measure

The measure is aimed at ensuring the correct amount of tax and National Insurance contributions (NICs) is paid when UK and UKCS workers are employed by offshore companies or engaged by or through offshore employment intermediaries. The measure also introduces a record keeping and return requirement for intermediaries placing workers with end clients but not deducting income tax and NICs at source.

Employers of workers on the UKCS that are located outside the UK and where there is no presence, residence, or place of business in the UK may not be liable for employers NICs. Some are also not making employee NICs and income tax deductions and returns to HM Revenue & Customs (HMRC) through Pay As You Earn (PAYE) in respect of those workers. This measure sets out who is the secondary contributor and responsible for operating PAYE for workers on the UKCS. It also introduces a certification system for employers when someone other than the deemed employer (for tax and NICs purposes) is administering and paying NICs, income tax and NICs through PAYE on the deemed employer's behalf.

Policy objective

This measure supports the Government's anti-avoidance strategy and its fairness agenda by helping to ensure that offshore employer pay their fair share of employment taxes.

Background to the measure

The Government announced at Budget 2013 that it intended to strengthen legislation to prevent offshore intermediaries being used to avoid employment taxes.

A consultation document *Offshore Employment Intermediaries* was published on 30 May 2013 on the GOV.UK website with a proposal to tackle the level of avoidance from offshore intermediaries. The Government's aims were supported by all the respondents to the consultation. However, a large majority thought the original proposals were overly complex. As a result, the Government has revised their proposals.

This Tax Information and Impact Note (TIIN) updates and replaces the TIIN published on 14 October 2013.

Detailed proposal

Operative date

This measure will have effect from 6 April 2014.

Current law

Currently the legislation that deals with workers who are engaged in the UK but employed by companies based outside the UK requires the 'person to whom the labour has been made available' to be the secondary contributor for National Insurance and to deduct employees primary NICs, Paragraph 9 of Schedule 3 to the Social Security (Categorisation of Earners) Regulations.

Social Security Regulations 114 2001/1004 deals with National Insurance obligations for workers engaged on the UKCS.

Chapter 7 ITEPA 2003 is the legislation that deals with agency workers and how they should be taxed.

S689 ITEPA deals with situations where a worker is undertaking work for someone other than their employer and the PAYE regulations do not apply to the employer.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to amend Chapter 7 ITEPA 2003 and introduce a new clause in regard to who has to operate PAYE at section 689A ITEPA 2003. It also introduces a power for regulations to be made in respect of record keeping, return requirements and penalties.

In addition it prescribes who is responsible for operating PAYE in regard to UKCS workers when their employer is outside the UK and introduces a power to introduce in regulations a certification scheme where the offshore employer is operating PAYE.

The proposed revision amends the power at section 120 Social Security Contributions and Benefits Act 1992 to make provision for regulations in respect of a certification scheme where someone other than the secondary contributor is paying and administering NICs as the agent of the secondary contributor. All other National Insurance legislation is being made through regulations using existing vires.

Summary of impacts

This table represents the Government's current understanding of the offshore intermediaries measure as a whole.

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18
	-	+80	+85	+85	+90
	These figures were set out in Table 2.1 of Budget 2013 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Budget.				
Economic impact	This measure is not expected to have any significant economic impacts.				
Impact on individuals and households	No impact on individuals or households has been identified.				
Equalities impacts	No equalities impact has been identified.				

Impact on business including civil society organisations	This measure is expected to have an impact on approximately 10,000 businesses.		
	These businesses will now have to assure their supply chain and fulfil new record keeping requirements. These requirements include businesses submitting a quarterly return to HMRC which provides details of workers they place with end clients but for whom they do not deduct income tax and NICs at source.		
	The total cost of this increased administration requirement is expected to be approximately £800,000 per year (for all affected businesses). There will also be a negligible one-off total cost for these businesses becoming familiar with their new obligations.		
		Cost	Time Period (yrs)
	Compliance Costs		
	One-off Costs	negligible	N/A
	Average Annual Costs	£0.8m	5
	Total Costs (PV)	£5m	N/A
	Compliance Benefits		
	One-off Benefit	N/A	N/A
	Average Annual Benefit	N/A	N/A
	Total Benefit (PV)	N/A	N/A
	Net Benefit (NPV)	-£5m	N/A
	Impact on Administrative Burden (included in Net Benefit)		
Increase	Decrease	Net Impact	
£0.8m	£0M	£0.8m	
Operational impact (£m) (HMRC or other)	Implementing the system to allow HMRC to be able to collect and risk profile the records from employment intermediaries is estimated to cost HMRC in the region of £1 million. It is also anticipated that there will be a small increase in cost to administer the certification process.		
Other impacts	<u>Small and micro business assessment</u> : the majority of businesses impacted are not expected to be small or micro businesses. Other impacts have been considered and none have been identified.		

Monitoring and evaluation

The measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Sarah Radford on 03000 586474 (email: sarah.radford@hmrc.gsi.gov.uk).



Onshore employment intermediaries: false self-employment

Who is likely to be affected?

Onshore employment intermediaries and the workers engaging with them.

General description of the measure

The measure is aimed at preventing employment intermediaries being used to avoid employment taxes and obligations by disguising employment as self-employment.

Policy objective

This measure supports the Government's anti-avoidance strategy and its fairness agenda by helping to ensure that employment intermediaries and workers pay their fair share of employment taxes.

Background to the measure

The Government announced at Autumn Statement 2013 that it intended to strengthen existing legislation to prevent false self-employment facilitated by employment intermediaries.

A consultation document, *Onshore Employment Intermediaries: False Self-Employment* was published on 10 December 2013 setting out the proposal to tackle the level of avoidance from false self-employment.

Detailed proposal

Operative date

This measure will have effect from 6 April 2014.

Current law

For Income Tax, the relevant legislation is known as the Agency Legislation and is found at Chapter 7 Part 2 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003. This legislation places the responsibility for deducting income tax and National Insurance contributions (NICs), and paying this to HM Revenue & Customs through RTI and paying employer NICs, on the agency that has a relationship with the worker. However, for this legislation to apply a number of criteria need to be met, including an obligation for the worker to be providing personal service.

For NICs, the relevant legislation is contained within The Social Security (Categorisation of Earners) Regulations 1978 and The Social Security (Categorisation of Earners) (Northern Ireland) Regulations 1978. These regulations dictate that a person, the worker, will be treated as being an employed earner for the purpose of NICs when all of the stipulated conditions are met, including, again, that the worker provides (or is under obligation to provide) their personal service.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to amend Chapter 7, Part 2 ITEPA 2003 to remove the need for personal service and the obligation for personal service for recruitment businesses and other intermediaries based in the UK.

It also introduces a power for regulations to be made in respect of record keeping, return requirements and penalties.

The required NICs legislation will be made using existing vires.

Summary of impacts

This table represents the Government's current understanding of the impact of tackling false self-employment facilitated by onshore intermediaries.

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<p>-</p> <p>+520</p> <p>+425</p> <p>+380</p> <p>+415</p> <p>+445</p> <p>These figures are set out in Table 2.1 of the Autumn Statement and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Autumn Statement.</p> <p>This measure supports the Exchequer in its commitment to protect revenue.</p>						
<p>Economic impact</p>	<p>The measure will increase NICs liabilities for employment intermediaries whose workers are registered as falsely self-employed by a small amount, with the impact expected to be focused on the construction sector.</p>					
<p>Impact on individuals and households</p>	<p>Around 200,000 workers in the construction sector, and 50,000 in other sectors, are reckoned to be engaged with and through onshore employment intermediaries.</p> <p>By virtue of being treated (correctly) as employees, all qualifying workers within this measure will gain Statutory Payments such as statutory sick pay and maternity pay and some will be eligible for National Minimum Wage (NMW). In the majority of cases the worker will also gain the benefits of being an employee for employment rights purposes, although this will depend on them being within the case law tests set out by the courts.</p> <p>These workers will face higher tax and NIC liabilities, but will no longer be paying service charges (which can be as high as £1,250 per year) to an intermediary company. Some workers will gain overall although for others there will be a net loss.</p>					
<p>Equalities impacts</p>	<p>No equality groups have been identified as being impacted differently from this change.</p>					
<p>Impact on business including civil society organisations</p>	<p>As the status of false self-employed workers will change to employees the onshore employment intermediaries will have to pay Class 1 employer NICs. The measure is not expected to have a significant impact on other businesses or civil society organisations.</p> <p>There are known to be approximately 10,000 Business Services companies and it is expected that most of these are likely to be affected in a small way by this measure. There are no expected impacts, either one-off or ongoing in terms of requiring new IT or training as these businesses are expected to already be employers and thus will be already operating PAYE.</p>					

Operational impact (£m) (HMRC or other)	The operational impact of this measure is expected to be negligible.
Other impacts	<u>Small and micro business assessment</u> : the impact on small or micro businesses is expected to be negligible. Other impacts have been considered and none have been identified.

Monitoring and evaluation

This measure will be kept under review through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Robert Burton on 03000 526659 (email: robert.burton@hmrc.gsi.gov.uk).

1 Treatment of agency workers

(1) Chapter 7 of Part 2 of ITEPA 2003 (income tax treatment of agency workers) is amended as follows.

(2) For section 44 (treatment of workers supplied by agencies) substitute –

“44 Treatment of workers supplied by agencies

(1) This section applies if –

- (a) an individual (“the worker”) personally provides, or is personally involved in the provision of, services (which are not excluded services) to another person (“the client”),
- (b) there is a contract between the client and a third person (“the agency”) under or in consequence of which –
 - (i) the services are provided, or
 - (ii) the client pays, or otherwise provides consideration, for the services, and
- (c) remuneration receivable by the worker in consequence of providing, or being involved in the provision of, the services does not constitute employment income of the worker apart from this Chapter.

(2) But this section does not apply if it is shown that the manner in which the worker provides the services, or (as the case may be) the manner of the worker’s involvement in the provision of the services, is not subject to (or to the right of) supervision, direction or control by any person.

(3) If this section applies –

- (a) the worker is to be treated for income tax purposes as holding an employment with the agency, the duties of which consist of –
 - (i) the services the worker provides to the client, or
 - (ii) the worker’s involvement in the provision of the services to the client, and
- (b) all remuneration receivable by the worker (from any person) in consequence of providing, or being involved in the provision of, the services is to be treated for income tax purposes as earnings from that employment.”

(3) In section 45 (arrangements with agencies) –

- (a) in paragraph (a), after “providing” insert “, or being personally involved in the provision of,” and
- (b) in paragraph (b), after “provided”) insert “or the worker’s involvement in their provision”.

(4) In section 46 (cases involving unincorporated bodies etc) –

- (a) in subsection (1)(a), for “or is under an obligation to personally provide” substitute “or is personally involved in the provision of”, and
 - (b) in subsection (2), for the words from “under” to “contract” substitute “by the worker in consequence of providing, or being involved in the provision of, the services”.
- (5) In section 47 (interpretation of Chapter 7), omit subsection (1).
- (6) In Chapter 3 of Part 11 of that Act (PAYE: special types of payer or payee), in section 688 (agency workers) –
- (a) for subsection (1) substitute –
 - “(1) Subsections (1A) and (1B) apply if the remuneration receivable by an individual in consequence of providing, or being involved in the provision of, services falls to be treated under section 44 (agency workers) as earnings from an employment.
 - (1A) The relevant provisions have effect as if the individual held the employment with or under the agency.
 - (1B) For the purposes of sections 687, 689 and 689A, if –
 - (a) a person other than the agent or an intermediary of the agent makes a payment of, or on account of, PAYE income of the individual, and
 - (b) the payment is not within subsection (2)(b),the person is to be treated as making the payment as an intermediary of the agent.”
 - (b) in subsection (2)(a), for “under or in consequence of any contract” substitute “in consequence of providing, or being involved in the provision of, services”.
- (7) The amendments made by this section are treated as having come into force on 6 April 2014.

2 PAYE obligations of UK intermediary in cases involving non-UK employer

- (1) Section 689 of ITEPA 2003 (PAYE: employee of non-UK employer) is amended as follows.
- (2) After subsection (1A) insert –
- “(1B) Subsection (1C) applies if –
- (a) the employee worked for the relevant person during the period under or in consequence of arrangements made between the relevant person and a third person,
 - (b) the third person did not make the payment of, or on account of, PAYE income of the employee, and
 - (c) PAYE regulations would apply to the third person if the third person were to make a payment of, or on account of, PAYE income of the employee.
- (1C) The third person is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the employee of an amount equal to the amount given by subsection (3).”
- (3) In subsection (2), for “The” substitute “If subsection (1C) does not apply, the”.

- (4) The amendments made by this section are treated as having come into force on 6 April 2014.

3 Oil and gas workers on the continental shelf: operation of PAYE

- (1) ITEPA 2003 is amended as follows.
- (2) In section 222 (payments by employer on account of tax where deduction not possible) –
- (a) in subsection (1)(a), after “689” insert “, 689A”, and
 - (b) in subsection (3), after “employer)” insert “or section 689A(3) (deemed payments of PAYE income of continental shelf workers by person other than employer)”.
- (3) In section 689 (provision about PAYE for employees of non-UK employers), after subsection (1) insert –
- “(1ZA) But this section does not apply if section 689A applies or would apply but for a certificate issued under regulations made under subsection (7) of that section.”
- (4) After that section insert –

“689A Oil and gas workers on the continental shelf

- (1) This section applies if –
- (a) any payment of, or on account of, PAYE income of a continental shelf worker in respect of a period is made by a person who is the employer or an intermediary of the employer or of the relevant person,
 - (b) PAYE regulations do not apply to the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, to the employer, and
 - (c) income tax and any relevant debts are not deducted, or not accounted for, in accordance with PAYE regulations by the person making the payment or, if that person makes the payment as an intermediary of the employer or of the relevant person, by the employer.
- (2) Subject to subsection (5), subsection (1)(a) does not apply in relation to a payment so far as the sum paid is employment income under Chapter 2 of Part 7A.
- (3) The relevant person is to be treated, for the purposes of PAYE regulations, as making a payment of PAYE income of the continental shelf worker of an amount equal to the amount given by subsection (4).
- (4) The amount referred to is –
- (a) if the amount of the payment actually made is an amount to which the recipient is entitled after deduction of income tax and any relevant debts due under PAYE regulations, the aggregate of the amount of the payment and the amount of any income tax and any relevant debts deductible due, and
 - (b) in any other case, the amount of the payment.

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- (5) If, by virtue of any of sections 687A and 693 to 700, an employer would be treated for the purposes of PAYE regulations (if they applied to the employer) as making a payment of any amount to a continental shelf worker, this section has effect as if –
 - (a) the employer were also to be treated for the purposes of this section as making an actual payment of that amount, and
 - (b) paragraph (a) of subsection (4) were omitted.
 - (6) For the purposes of this section a payment of, or on account of, PAYE income of a continental shelf worker is made by an intermediary of the employer or of the relevant person if it is made –
 - (a) by a person acting on behalf of the employer or the relevant person and at the expense of the employer or the relevant person or a person connected with the employer or the relevant person, or
 - (b) by trustees holding property for any persons who include, or a class of persons which includes, the continental shelf worker.
 - (7) PAYE regulations may make provision for, and in connection with, the issue by Her Majesty's Revenue and Customs of a certificate to a relevant person in respect of one or more continental shelf workers –
 - (a) confirming that, in respect of payments of, or on account of, PAYE income of the continental shelf workers specified or described in the certificate, income tax and any relevant debts are being deducted, or accounted for, as mentioned in subsection (1)(c), and
 - (b) disapplying this section in relation to payments of, or on account of, PAYE income of those workers while the certificate is in force.
 - (8) Regulations under subsection (7) may, in particular, make provision about –
 - (a) applying for a certificate;
 - (b) the circumstances in which a certificate may, or must, be issued or cancelled;
 - (c) the form and content of a certificate;
 - (d) the effect of a certificate (including provision modifying the effect mentioned in subsection (7)(b) or specifying further effects);
 - (e) the effect of cancelling a certificate.
 - (9) Subsection (10) applies if –
 - (a) there is more than one relevant person in relation to a continental shelf worker, and
 - (b) in consequence of the same payment actually made to the worker, each of them is treated under subsection (3) as making a payment of PAYE income of the worker.
 - (10) If one of the relevant persons complies with section 710 (notional payments: accounting for tax) in respect of the payment that person is treated as making, the other relevant persons do not have to comply with that section in respect of the payments they are treated as making.
 - (11) In this section –

“continental shelf worker” means a person in an employment the duties of which are performed –

- (a) in the UK sector of the continental shelf (as defined in section 41), and
- (b) in connection with exploration or exploitation activities (as so defined);

“employer” means the employer of the continental shelf worker;

“relevant person”, in relation to a continental shelf worker, means –

- (a) if the employer has an associated company (as defined in section 449 of CTA 2010) with a place of business or registered office in the United Kingdom, the associated company, or
- (b) in any other case, the person who holds the licence under Part 1 of the Petroleum Act 1998 in respect of the area in which the duties of the continental shelf worker’s employment are performed.

- (12) The Treasury may by regulations modify the definitions of “continental shelf worker” and “relevant person”, as the Treasury thinks appropriate.
- (13) Regulations under subsection (12) may –
 - (a) make different provision for different cases or different purposes,
 - (b) make incidental, consequential, supplementary and transitional provision and savings, and
 - (c) amend this section.”
- (5) In section 690 (employee non-resident etc), in subsection (10) –
 - (a) after “689”, in the first place it appears, insert “or 689A”, and
 - (b) after “689”, in the second place it appears, insert “or (as the case may be) 689A”.
- (6) In section 710 (notional payments: accounting for tax), in subsection (2) –
 - (a) in paragraph (a) –
 - (i) after “689” insert “, 689A”, and
 - (ii) for “or 689(3)(a)” substitute “, 689(3)(a) or 689A(4)(a)”, and
 - (b) in paragraph (b), after “689(2)” insert “or 689A(3)”.
- (7) The amendments made by this section are treated as having come into force on 6 April 2014.

EXPLANATORY NOTE

TREATMENT OF AGENCY WORKERS

SUMMARY

1. Clause [X] amends existing agency legislation (treatment of workers supplied by agencies) in the Income Tax (Earnings and Pensions) Act (ITEPA) 2003.

DETAILS OF THE CLAUSE

2. Subsection 1 provides that Chapter 7 of Part 2 of ITEPA is amended.

3. Subsection 2 substitutes a new section 44 ITEPA 2003:

- New 44 (1) if the conditions in 44(1) (a), (b), and (c) apply then this section applies. Those conditions are where:
 - (a) a worker personally provides their services or is personally involved in a service that is being supplied, such as a composite service;
 - (b) there is a contract between an end client (the person who the worker is providing their services to) and a third party (known as the agency in this legislation but could be any third party) as a result of which either services of the worker are provided, or the client pays, or otherwise provides consideration, for services to be provided; and
 - (c) payments receivable by the worker under or in consequence of the contract is not chargeable elsewhere as employment income for example the worker does not have income tax deducted because they are an employee of another company.
- New 44 (2) provides that new section 44 will not apply where the manner in which the service is provided or the involvement in the provision of a service (such as a composite service) by the worker is not subject to (or the right of) control, direction or supervision by any person.
- New 44 (3) (a) & (b) provide that where the worker is providing services personally or as part of a composite service (a service made up of a number of services) they must be treated as an employee of the agency for income tax, and all income receivable by the worker in consequence of providing a service is to be treated for income tax as earnings to have come from said employment.

4. Subsection 3 amends section 45 ITEPA 2003: New 45 (a) & (b) extends this subsection to include a composite service (as defined above).
5. Subsection 4 amends section 46 ITEPA 2003:
 - in (1) (a) the obligation to personally provide is removed and replaced by “personally involved in the provision”, which applies it to composite services.
 - in (2) removes the reference to an agency contract and instead inserts a reference to the remuneration being received by the worker as a consequence of providing, or being involved in the provision of, the services.
6. Subsection 5 amends section 47 ITEPA 2003: 47 (1) has now been omitted, removing the definition of an agency contract and the obligation for personal service.
7. Subsection 6 amends Chapter 3 Part 11 of ITEPA. It substitutes sub-section (1) of section 688 for new sub-section (1). New subsections 1A and 1B apply if the income receivable by the worker would be treated as employment income under the new section 44.
8. New subsection 1A that the worker is treated as being an employee of the agency (third party)
9. New sub-section 1B is that for the purposes of sections 687, 689 and 689A if:
 - a. Someone other than the third party (agency) or their intermediary makes a payment on account of PAYE income of the worker, and
 - b. the payment is not within subsection (2)(b) – a payment of, or on account of PAYE income of the worker is made by the client (the person whom the worker is providing their services to) or at the expense of the client.

(b) substitutes ‘under of in consequence of any contract’ with ‘in consequence of providing, or being involved in the provision of services’. This changes the wording to reflect the amended wording of new section 44.

BACKGROUND NOTE

10. This change has been introduced to prevent the avoidance of employment taxes by UK agency engaging UK workers via non-UK agencies. It supports the Government’s anti-avoidance policy.
11. If you have any questions about this change, or comments on the legislation, please contact Sarah Radford on 03000 586474 (email: sarah.radford@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

PAYE OBLIGATIONS OF UK INTERMEDIARY IN CASES INVOLVING NON-UK EMPLOYER

SUMMARY

1. Clause [X] sets out that a UK agency is responsible for operating PAYE where the worker is employed or engaged by or through a non-UK company and works for a UK company. Where there is no UK agency the arrangements remain as they are currently and the UK company who the employee works for in the UK is responsible for operating PAYE.

DETAILS OF THE CLAUSE

2. Subsection 1 provides for amendments to Section 689 ITEPA 2003.
3. Subsection 2 inserts into Section 689, employee of a non-UK employer, a new subsection. Section 689 applies where PAYE regulation do not apply to the employer of the worker. This is usually because the worker's employer is outside of the UK.
4. Subsection 2 sets that the third person (usually a UK agency) is responsible for making PAYE payments on the amounts paid to the worker. It sets out that for the third person to be responsible for making PAYE payments the following conditions must apply:
 - a. the employee works for a person who is not their employer (this person is called the relevant person) and that their working for this person is because another party - the third person (usually a UK agency) has facilitated these arrangements.
 - b. that the third person (the agency) has not made payments of or on account of PAYE income.
 - c. the PAYE regulations would apply to the third person (the agency). For example they are in the UK.
5. Subsections 3 sets out that this new subsection will take priority over the current arrangements, so where there is a third person (agency) involved in the provision it will be the third person and not the relevant person who is responsible for making PAYE payments.

BACKGROUND NOTE

6. This change has been introduced to prevent the avoidance of employment taxes by UK agency engaging UK workers via non-UK agencies. It supports the Government's anti-avoidance policy.

7. If you have any questions about this change, or comments on the legislation, please contact Sarah Radford on 03000 586474 (email: sarah.radford@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

OIL AND GAS WORKERS ON THE CONTINENTAL SHELF: OPERATION OF PAYE

SUMMARY

1. Clause [X] amends the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 to add in a new section, section 689A. This section applies where oil and gas workers on the UK Continental Shelf are supplied by a non-UK based employer. It provides that a UK-based associate company of the overseas employer, or in the absence of an associate, the oil field licensee, will be responsible for operating PAYE. Where PAYE is paid and accounted for by the offshore employer, HMRC may issue a certificate to confirm this. Whilst the certificate is in force, it relieves the oil field licensee of their obligation to operate PAYE.

DETAILS OF THE CLAUSE

2. Subsection 2 amends section 222 (payments by employer on account of tax where deductions not possible) so that the section also applies to section 698A. Section 222 regulates situations where the employee is paid by a means other than cash and it is not possible for the employer to deduct income tax and other relevant debts (such as overpayment of tax credits). It requires the employee to pay the amount of tax owed to the employer within 90 days for the employer to account to HMRC for it.

3. Subsection 3 amends section 689 to clarify that 689 does not apply in cases where 689A applies or would apply but for a certificate issued under the regulations made under subsection (7) of 689A. Section 689 applies where an employee works for someone in the UK, but is employed and paid by an employer outside the UK. The person in the UK for whom the employee works is treated, for the purposes of the PAYE regulations, as making any payments of, or on account of, PAYE income.

4. Subsection 4 inserts the new section 689A after section 689. The details of new section 689A are:

- a. Subsection 1 states the three conditions (subsections 4(1)(a) – (c)) necessary for section 689A to apply.
 - i. Subsection (1)(a): when a person (employer or intermediary) makes a payment of PAYE income (earnings on which tax is deductible), or what is deemed to be PAYE income, of a continental shelf worker for a certain period. This person can be an employer or an intermediary. An intermediary is someone acting on behalf of the employer or someone acting on behalf of the relevant person. A relevant person is defined in subsection 4(11) as the oilfield licensee or an associated company of

the employer (as defined in the Company Tax Act 2010) with a UK base or registered office.

- ii. Subsection (1)(b): when PAYE regulations do not apply to the person making the payment, or the employer, when the person making the payment is acting on behalf of the employer or the relevant person.
 - iii. Subsection (1)(c): when the person making the payment, or the employer, if that person is acting on behalf of the employer or relevant person, do not deduct or account for income tax or any relevant debts, in accordance with PAYE regulations.
- b. Subsection(3) states that for the purposes of PAYE regulations, the associated onshore company of the offshore-employer or the oilfield licensee is to be treated as making a payment of PAYE income of the continental shelf worker equal to the amount defined in subsection (4) of section 689A.
- c. Subsection (4) defines the amount of payment as:
- i. where the amount of payment made to the recipient has already had income tax and any relevant PAYE debts deducted, the amount referred to is the amount before any income and relevant PAYE debts were deducted,
 - ii. where the amount of payment made to the recipient has not had income tax and any relevant PAYE debts deducted, that is the amount to which subsection (3) refers.
- d. Subsection(5) states that if income from the employer is not paid by cash, but by vouchers and tokens, for example, it falls under sections 687A and 693-700. This means that for the purposes of PAYE regulations, the employer is treated as having made a payment of that amount in cash to a worker. Section 689A then applies as if the employer had made an actual payment of that amount to a continental shelf worker, and as if subsection (4)(a) were omitted.
- e. Subsection (6) defines what is meant by the term “an intermediary of the employer or of the relevant person” which makes a payment of, or on account of, PAYE income of a continental shelf worker. An intermediary of the employer or of the relevant person can be a person acting on their behalf, or on behalf of a person connected with the employer or the relevant person. They can also be trustees holding property for the continental shelf worker.
- f. Subsection (7) gives the power for PAYE regulations to make provision for, and in connection with, the issue of a certificate by HMRC to a relevant person in respect of one or more continental shelf workers. This certificate will confirm that income tax and any relevant debts for the PAYE income of specified continental shelf workers is being deducted and accounted for, as mentioned in subsection (1)(c). Whilst this certificate is in force section 689A does not apply to payments of, or on account of, PAYE income of the

specified workers. The relevant person (as defined in regulations) is relieved of their obligation to operate PAYE during this time.

- g. Subsection (9) provides that subsection (10) applies where there is more than one relevant person for a continental shelf worker.
- h. Subsection (10) states that if one of the relevant persons complies with section 710 (which regulates earnings, called notional payments, which are not paid by cash) and accounts for the income tax and relevant debts of any PAYE income of the worker, the other relevant persons do not have to comply with that section with regards the payments they are treated as making.
- i. Subsection (11) defines the terms “continental shelf worker”, “employer” and “relevant person”.
- j. Subsection (12) gives the Treasury the power to modify these definitions by regulations.
- k. Subsection (13) describes the ways in which regulations under subsection (12) can be used.

5. Subsection (5) changes section 690 (employee non-resident etc) of ITEPA 2003 to ensure that the section applies to those falling under section 689A. Section 690 ensures that where an employee, who is not resident or, if resident, not ordinarily resident in the UK, works or will work in the UK, and also works or is likely to work outside the UK, only part of their income may be taxable. Usually payments, which only partly consist of PAYE income, will not be subject to deductions under PAYE. Section 690 provides that payments, or at least a proportion of payments, are subject to PAYE.

6. Subsection (6) changes subsection (2) of section 710 (notional payments: accounting for tax) to ensure that the term notional payment includes the payments described in section 689A (4)(a) too, and that term employer includes those making payments and specified in section 689A. Notional payments are payments not made in cash. This means that section 710 covers those falling under section 689A. Section 710 ITEPA 2003 says how the employer should operate PAYE in respect of a notional payment.

BACKGROUND NOTE

7. At Budget 2013 the Chancellor announced that the Government would strengthen legislation in respect of offshore employment intermediaries. This change is intended to address avoidance schemes in the oil and gas industry involving the placement of the employer of oil and gas workers (who are working on the UK Continental Shelf) outside the UK.

8. Legislation is included in the National Insurance Contributions Bill 2013 (as introduced in the House of Commons on 14 October 2013) to create a similar certification scheme for National Insurance Contributions.

9. If you have any questions about this change, or comments on the legislation, please contact Sarah Radford on 03000 586474 (email: sarah.radford@hmrc.gsi.gov.uk).

2014 No. XXXX

INCOME TAX

**The Income Tax (Pay As You Earn) (Amendment No. X)
Regulations 2014**

Made - - - - - ***

Laid before the House of Commons ***

Coming into force - - - - - 6th April 2014

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations pursuant to section 1(1) and (2) of the Provisional Collection of Taxes Act 1968(a) and a resolution passed by the House of Commons on [] 2014(b):

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) (Amendment No.X) Regulations 2014 and come into force on 6th April 2014.

2. These Regulations have effect in relation to tax year 2014-15 and subsequent tax years.

Amendment of the Income Tax (Pay As You Earn) Regulations 2003

3.—(1) The Income Tax (Pay As You Earn) Regulations 2003(c) are amended as follows.

(2) After regulation 84 insert—

“Continental shelf workers: provisions relating to certificates

Application for certificate

84A.—(1) An employer who meets the conditions in paragraph (2) may apply to HMRC for the issue of a UKCS continental shelf workers certificate.

(2) The conditions are that—

- (a) the employer supplies or intends to supply a continental shelf worker for whom the relevant person, under section 689A of ITEPA(a) (oil and gas workers on the continental shelf), is the oil field licensee;

(a) 1962 c.2.

(b) Budget resolution number [], recorded in the House of Commons Votes and Proceedings for the [] 2014. The resolution contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act 1968. Sections 1(3) to (5) of that Act sets out the circumstances in which the resolution will cease to have statutory effect. By virtue of section 1(5), the resolution will cease to have effect once provisions corresponding to those are enacted by the Finance Act 2014. The resolution will in any case cease to have effect on 5th August 2014 by virtue of section 1(3). Relevant amendments to section 1(3) to (5) were made by section 60 of the Finance Act 1968 (c. 44), section 205(5) of the Finance Act 1993 (c. 34), section 50(1) of the Finance Act (No. 2) 1997 (c. 58), and section 112(1) of the Finance Act 2007 (c. 11).

(c) S.I. 2003/2682; relevant amendments made by S.I. 2012/822, 2012/1895 and 2013/521.

- (b) the employer has or intends to have a contractual relationship under which the employer acts, directly or indirectly, as an agent of the oil field licensee for the purposes of PAYE Regulations; and
 - (c) the employer or an associated company has not had a certificate cancelled previously for a failure to comply with their obligations and responsibilities under regulation 84B.
- (3) An application under this regulation must be made in writing and must include—
- (a) the name, address, and employer’s PAYE reference, of the employer;
 - (b) the name and address of a person in Great Britain who is authorised to accept service on behalf of the employer;
 - (c) confirmation that the employer understands and intends to discharge the obligations contained in regulation 84B; and
 - (d) the name, address, and employer’s PAYE reference of any associated company which is a current or former holder of a UKCS continental shelf workers certificate.
- (4) The first application made under this regulation may provide details including name, business address, and oil field licence number of the oil field licensees to whom they supply or intend to supply a continental shelf worker.
- (5) An application made under this regulation may be combined with an application made under regulation 114A of the SSC Regulations.
- (6) Upon receipt of an application under this regulation an officer of Revenue and Customs may issue a UKCS continental shelf workers certificate.
- (7) A UKCS continental shelf workers certificate must include—
- (a) the name of the UKCS continental shelf workers certificate holder;
 - (b) the PAYE reference of the UKCS continental shelf workers certificate holder; and
 - (c) the date on which the certificate is issued.
- (8) A Regulation UKCS continental shelf workers certificate may be issued to—
- (a) the person authorised to accept service on behalf of the employer;
 - (b) the employer; or
 - (c) both person authorised to accept service on behalf of the employer and the employer.
- (9) A certificate may be combined with a certificate issued under regulation 114A of SSC Regulations.
- (10) An officer of Revenue and Customs may, by notice in writing to the person authorised to accept service on behalf of the employer, cancel the UKCS continental shelf workers certificate from the date specified in the notice of cancellation.
- (11) The date specified in paragraph (10) may not be earlier than 10 working days after the date of the notice.
- (12) A notice under paragraph (10) may be combined with a notice under regulation 114A(10) of the SSC Regulations.

UKCS continental shelf workers certificate holder: obligations and responsibilities

84B. A UKCS continental shelf workers certificate holder must—

- (a) make such deductions, returns and repayments as are required of a Real Time Information employer;
- (b) keep written records of—

(a) 2003 c. 1. Section 689A is inserted by clause [] of the Finance Bill 2014

- (i) the name, date of birth, and national insurance number of the workers supplied;
- (ii) the name, registered office and oil field licence number of the oil field licensee to whom each of the workers were supplied; and
- (iii) the dates between which the workers were supplied to that oil field licensee;
- (c) keep the records required by sub-paragraph (b) for a period of 6 years from the end of the tax year to which they relate; and
- (d) where an officer of Revenue and Customs requires them, in writing, to do so, provide copies of the records required by sub-paragraph (b) to HMRC within 30 days of the date of the request;
- (e) before the first time they supply an oil field licensee inform HMRC, in writing, of the details of the oil field licensee including name, business address, and oil field licence number of the oil field licensee.

UKCS oil field licensee certificate:

84C.—(1) Where a UKCS continental shelf workers certificate holder has notified HMRC that the employer intends to supply continental shelf workers to an oil field licensee an officer of Revenue and Customs must issue a UKCS oil field licensee certificate to the oil field licensee.

(2) The UKCS oil field licensee certificate must include—

- (a) the name of the oil field licensee
- (b) the registered office of that oil field licensee;
- (c) the oil field licence number;
- (d) the name of the UKCS continental shelf workers certificate holder;
- (e) the date on which it is issued; and
- (f) a description of the continental shelf workers to whom it applies.

(3) Where a UKCS oil field licensee certificate is in force the holder of that certificate is not liable to pay any contributions in respect of any continental shelf worker of a description set out in the certificate.

(4) If a UKCS continental shelf workers certificate is cancelled by an officer of Revenue and Customs that officer must also, by notice in writing, cancel the UKCS oil field licensee certificate.

(5) A notice under paragraph (4) must—

- (a) be sent on the same day as the notice cancelling the UKCS continental shelf workers certificate;
- (b) specify the date of cancellation of the UKCS oil field licensee certificate; and
- (c) notify the oil field licensee that they are liable to meet its obligations as a Real Time Information employer from the date of cancellation.

(6) The date of cancellation of the UKCS oil field licensee certificate must be the date specified in the UKCS continental shelf workers certificate cancellation notice.

Interpretation of regulations 84A to 84C

84D. In regulations 84A to 84C—

“associated company” means any company within the meaning of section 449 of the Corporation Tax Act 2010(a);

(a) 2010 c.4.

“employer” means an employer with no presence in the United Kingdom;

“oil field licensee” means the holder of a licence under Part 1 of the Petroleum Act 1998(a) in respect of the area in which the duties of the continental shelf worker’s employment are performed;

“UKCS continental shelf workers certificate” means a certificate issued under regulation 84A;

“UKCS oil field licensee certificate” means a certificate issued under regulation 84C(1).”

Name

Name

Two of the Commissioners for Her Majesty’s Revenue and Customs

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Income Tax (Pay as You Earn) Regulations 2003 (“the 2003 Regulations”) make provision, amongst other things, for the deduction and payment of income tax on PAYE income and for returns for that purpose.

Regulation 3 inserts new regulations 84A to 84D into the 2003 Regulations in order to provide for the issue of certificates where an employer with no presence in the United Kingdom discharges filing and payment responsibilities on behalf of the oil field licensee.

These Regulations are made in exercise of a power contained in resolution number [], passed by the House of Commons on [] 2014 following the Budget held on []. The resolution has temporary statutory effect by virtue of section 1 of the Provisional Collection of Taxes Act 1968. It provides that the Commissioners for Her Majesty’s Revenue and Customs may by regulations make provision for and in connection with the issue by HMRC of a certificate to a relevant person in respect of one or more continental shelf workers.

The provisions of the resolution correspond to provisions contained in clause [] of Finance Bill 2014, as published by the House of Commons on [] 2014. Assuming that the clause is not rejected during the passage of the Bill through Parliament, those provisions will come into force when the Bill receives Royal Assent, and the Order made under the resolution will continue to have statutory effect by virtue of those provisions of the Act arising from the Bill.

(a) 1998 c.17.

**EXPLANATORY MEMORANDUM TO
THE INCOME TAX (PAY AS YOU EARN) REGULATIONS**

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument sets how to apply for and the requirements of certification for workers on the UK Continental Shelf where the person responsible for operating PAYE is the oil field licensee and the workers are provided by offshore employers who will be acting as an agent for the oil field licensee.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 The obligation of certain people to operate PAYE in relation to continental shelf workers comes into force on 6th April 2014, and therefore a Provisional Collection of Taxes Act 1968 (“PCTA”) resolution will be necessary. This instrument is being made under that resolution as the certificates are necessary for the administration of the system.

4. **Legislative Context**

- 4.1 The instrument is being made to implement the Government’s policy with regard to workers on the UK Continental Shelf employed by non-UK companies. This instrument is part of legislation introduced to prevent the avoidance of employment taxes by non-UK based companies employing UK workers. There are also an instrument bringing in a mirroring certification scheme for National Insurance.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 This instrument introduces a certification scheme for oil field licensees where they use workers engaged on the UK Continental Shelf who have non-UK employers. This is part of a wider measure strengthening existing legislation to ensure that employment taxes are paid for workers engaged in the UK who have non-UK employers.
- 7.2 A certificate can be applied for when the non-UK employer does not have a UK associate company, so the legislation deems the oil field licensee to be responsible for making returns through Real Time Information (RTI) and deductions of income tax at source from the workers pay. The certificate will also apply where the licensee is deemed to be an employer for NICs purposes.
- 7.3 The certificate confirms to the licensee that the non-UK employer is fulfilling the statutory tax and NICs requirements of the licensee. Whilst a certificate is in place HMRC cannot pursue the licensee for any under payments of income tax or failures under RTI the non-UK employer makes. A certificate can be withdrawn by HMRC for a failure by the non-UK employer. If a certificate is withdrawn then the licensee will become responsible for fulfilling the obligations under RTI from the date specified in the notice of withdrawal from HMRC. When a certificate is withdrawn then the company from whom it was withdrawn, and any associated companies, will not be eligible to apply for a certificate in the future.

8. Consultation outcome

- 8.1 The policy which this instrument enacts was subject to a public consultation. The consultation document was published on 30 May 2013. Almost all responses to the consultation from those engaged in the oil and gas industry requested a certification scheme to be implemented. The response to the consultation was published 14 October 2013 and set out the Governments intention to create a certification scheme. HM Revenue & Customs have also held meetings with the oil and gas industry separately about the operation of the certification scheme.

9. Guidance

- 9.1 HMRC will be publishing guidance about how to apply for a certification early in the New Year so that people are aware of what they need to do ahead of the certificates coming into effect in April 2014.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is expected to be negligible.

10.2 The impact on the public sector is expected to be negligible.

10.3 A Tax Impact and Information Note covering this instrument was published on 10 December 2013 alongside the draft Finance Bill legislation for this measure and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

11. Regulating small business

11.1 The legislation is not expected to apply to small business.

12. Monitoring & review

12.1 The outcome will be subject to an internal review after 12 months and the legislation may be amended accordingly.

13. Contact

Sarah Radford at the HM Revenue and Custom Tel: 03000 586 474 or email: sarah.radford@hmrc.gsi.gov.uk can answer any queries regarding the instrument.