



HM TREASURY

Finance Bill 2013 Explanatory Notes

Clauses 1 to 90 (Volume 1 of 2)

March 2013

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**FINANCE BILL 2013
EXPLANATORY NOTES
INTRODUCTION**

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Finance Bill 2013 as introduced into Parliament on 28 March 2013. They have been prepared jointly by the HM Revenue & Customs and HM Treasury in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes are designed to be read alongside with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So, where a section or part of a section does not seem to require any explanation or comment, none is given.

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EXPLANATORY NOTE

CLAUSE 22: ARRANGEMENTS MADE BY INTERMEDIARIES

SUMMARY

1. Clause 22 amends Chapter 8 of Part 2 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003 – the intermediaries legislation (commonly known as IR35) to extend the application of this chapter to office holders. As an office holder is not considered to be an employee, prior to this amendment, an office holder engaged via an intermediary would not come within this legislation.

DETAILS OF THE CLAUSE

2. Subsection (1) replaces subsection 49 (1)(c) of Part 2 of ITEPA 2003. It extends Chapter 8 of Part 2 of ITEPA 2003 so that it applies to office holders when they are engaged through a third party intermediary. The extension applies both where the worker is named as an office holder of the client but paid through an intermediary and where the intermediary (third party) is named as the office holder of the client. It applies in each case where the worker would be considered as an office holder of the client if the services were provided directly under a contract between the worker and the client. In the situations described above, providing there is also a requirement for the personal service of the worker, this clause brings into charge for income tax, as the worker's deemed earnings from employment, any payment made to the worker via an intermediary (third party).

BACKGROUND

3. The intermediaries legislation in Chapter 8 of Part 2 of ITEPA 2003 considers the underlying nature of the relationship between the worker and the engager; if this relationship would be considered to be employment, if it were not for the interposition of the intermediary, then the legislation applies. Where the intermediaries legislation applies, the income received by the intermediary (third party) is deemed to be employment earnings of the worker and the worker is liable for income tax on it, calculated in accordance with Chapter 8.
4. This change equalises the tax treatment of office holders engaged through third parties with the treatment under the relevant National Insurance legislation, under which they are already in the same position as individuals who would be in an employment relationship if engaged directly.
5. Section 5(3) of ITEPA provides a non-exhaustive definition of the term "office", which applies to this clause. It states that "office" includes in particular any position which has an existence

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independent of the person who holds it and may be filled by successive holders. It is based on guidelines derived from case law: see in particular *Great Western Railway Company v Bater* (1922) 8 TC 231 and *Edwards v Clinch* (1981) 56 TC 367. However, since these are only guidelines, any explanation can only be non-exhaustive. An office is a separate and independent position to which duties are attached; an office does not owe its existence to the incumbent or the discretion of an organisation. For example, the post of manager of a factory or a head of division in an organisation is not an office because such a post will normally only exist as long as the organisation wishes. It will not have the independent existence or endurance required to establish it as an office