



EMPLOYMENT TAX

Considerations for financial mutuals,
mutual insurers and friendly societies

Presented by John Weston, Associate Director, Global Employer Services
Monday 12 June 2023

EMPLOYMENT TAX

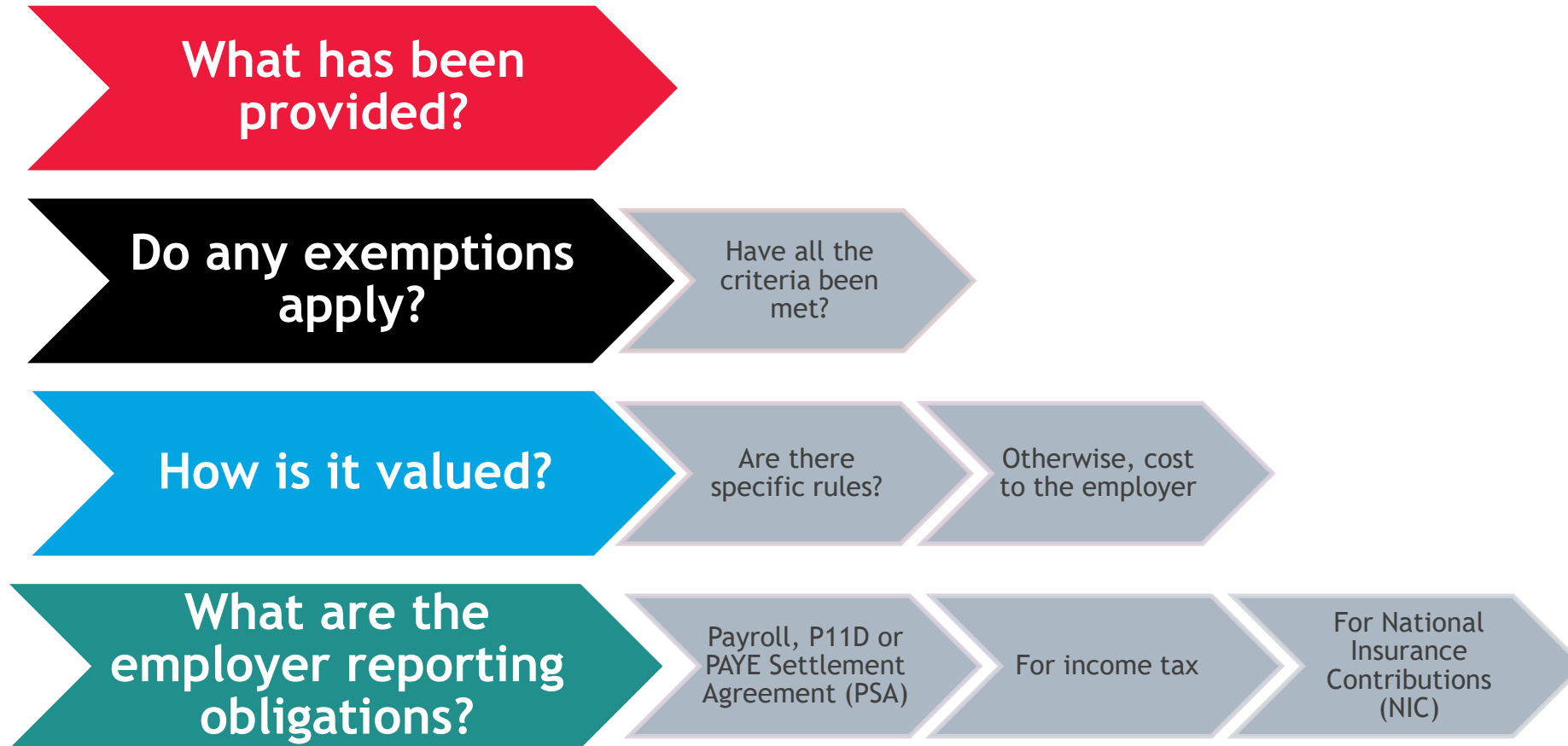
Introduction

- Off-payroll working (IR35) most significant recent new legislation - from 6 April 2021
- Covid-19 also brought changes:
 - Temporary changes to exemptions/reliefs
 - The working arrangements for many employees
- Also, changes to HMRC requirements and guidance, eg. P11D filing, trivial benefits



EMPLOYMENT TAX

Employee benefits - overview



EMPLOYMENT TAX

Employee benefits - P11D reporting

P11D - most common form of benefit reporting

- Exclude items reported via formal payrolling arrangement (or otherwise liable to PAYE)
- Include items informally payrolled - must include the value already taxed

The P11D(b) is the summary of items liable to Class 1A NIC

- Include payrolled benefits
- Exclude value of items where Class 1A NIC not due, e.g. Class 1 items or where employees are outside the scope of NIC

New for 2022/23: P11Ds/P11D(b) must be filed online

- Can use specialist P11D software
- Also, file via HMRC gateway

EMPLOYMENT TAX

Employee benefits - payrolling (PBIK)

- **Must register to payroll benefits before the start of the tax year**
 - Registration via the online PAYE service
 - Specifies the benefits which are to be payrolled
 - Once registered, specific employees can be excluded
 - Registration is on-going until cancelled or amended
- **All benefits can be payrolled except:**
 - Beneficial loans
 - Living accommodation
- **Payrolling is for income tax only**
 - Check payroll provider can operate payrolling
 - HMRC will amend employee's tax codes
- **P11D(b) still required (and P11Ds for any excluded employees)**
- **Employees must be notified in writing**



EMPLOYMENT TAX

Employee benefits - PAYE Settlement Agreement (PSA)

PSA for items which are:

- Minor, or
- Irregular, or
- Difficult to apply PAYE

Once agreed the PSA continues until amended or cancelled

Changes to scope by 6 July - strictly before any Class 1 NIC due

Filing deadline for computation (typically 31 July) not statutory

Must file computation before payment deadline (22 October) and make payment on time

EMPLOYMENT TAX

Employee benefits - trivial benefits

The cost of the benefit does not exceed £50*

Cost to employer - include VAT

Cost can be the average if provided to group of employees

Linked items/events (EIM21604)

*Additional rules for directors of close companies - total annual value £300

The benefit is not part of a salary sacrifice arrangement or contractual obligation

Contractual obligation wider than employment contract

Formal exemption
introduced 6 April 2017,
s.323A ITEPA 2003

The benefit is not in recognition of particular services

Events to mark company success likely to be accepted
HMRC will consider regularity

The benefit is not cash or a cash voucher

Excludes reimbursed expenses
Examples have been removed from guidance (EIM21866)

EMPLOYMENT TAX

Working from home - key concepts

Some specific exemptions apply in relation to:

- Additional household costs
- Equipment and services provided at home

These specific exemptions should not be confused with:

- General tax deductions for business expenses
- Deductions for business expenses under travel and subsistence legislation

EMPLOYMENT TAX

Working from home - supplies and services - s.316 ITEPA 2003

Supplies and services other than on the employer's premises

- Must be paid for and provided by the employer

Provided for sole purpose of enabling the employee to perform their duties

- HMRC will consider the role of the employee and items provided

Used for performing duties, and private use incidental

- No requirement to prove actual use, but suitable policy required governing use

Applies to most equipment or services

- Desks, chairs, office equipment and computer equipment - should be returned to employer
- Stationery and materials
- New or separate telephone/broadband connection - must be in the employer's name

Specifically excludes

- Any motor vehicle, boats (including yachts) and aircraft
- the extension, conversion or alteration of any living accommodation, or adjacent land

Temporary Covid-19 relief until 5 April 2022 only

- Allowed reimbursed items to be treated as meeting the exemption

EMPLOYMENT TAX

Working from home - additional household costs - s.316A ITEPA 2003

Requires there to be a homeworking arrangement

- Arrangement between employer and employee
- The employee must work at home regularly (i.e. not just ad hoc/evenings)

Employer can pay for reasonable additional household expenses

- Can be actual additional costs, supported by evidence, or
- £6 per week / £26 per month unreceipted.
- Can include additional broadband costs, e.g. if no previous broadband available

EMPLOYMENT TAX

Working from home - travel to the office - overview

Legislation determines whether travel costs from home to the office qualify as a business journey

- Travel and subsistence legislation s.337 ITEPA 2003
- Must be 'wholly, exclusively and necessarily in the performance of duties'

Employees can claim a tax deduction from their employment income for the cost of the business journey plus associated subsistence/accommodation

- Costs/expenses should also be exempt from employer reporting, provided the conditions are met

In broad terms, business travel in the performance of duties is:

- Travel (for work purposes) to a temporary workplace; or
- Travel (for work purposes) between two permanent workplaces.

The legislation specifies that anything which is 'ordinary commuting' is not a business journey

The legislation is supplemented by case law and HMRC of guidance in publications/internal manuals

Limited additional exemption for travel only - non-domiciled/non-resident individuals

EMPLOYMENT TAX

Working from home - travel to the office - is there a permanent workplace?

For travel costs to be tax deductible, either:

- the office location needs to be a temporary workplace, or
- home is a permanent work place (for tax purposes)

Is the office a temporary workplace?

- Is it a permanent workplace - i.e. somewhere the employee attends regularly or where on-going duties are performed to a significant extent
- Consider if on-going duties are of limited duration in relation to on-going employment ('24 month rule')
- What work is the employee undertaking in the office compared to elsewhere - part of usual on-going duties?

Is home a permanent workplace?

- Needs to be an objective requirement of the job that work is performed there, i.e. no element of personal choice on the part of the employee
- HMRC's starting point is that home is a matter of personal choice
- Even when the employer requires work to be performed at home, if that is on a part time basis, then HMRC consider that home is only a permanent workplace for tax purposes on the days which meet that requirement.

The substance of the arrangements is relevant, not just the contractual terms

EMPLOYMENT TAX

Off payroll labour - key concepts

Businesses must understand the supply chain to determine which rules apply

- What parties are in the supply chain?
- What are the contractual arrangements in the supply chain?
- What are the payment arrangements in the supply chain?

What arrangements are in place?

- Directly engaged/paid individuals
- Agency workers - current legislation in place since 6 April 2014
- Engagements directly/indirectly involving intermediaries - new requirements since 6 April 2021

Who is responsible for determining/applying relevant requirements?

- Is this a defined/documentated process?
- Are they suitably experienced?

EMPLOYMENT TAX

Off payroll labour - directly engaged individuals

Requirement to operate PAYE/NIC for payments to employees and office-holders

- Engager/payer liable to underpayments, including interest and penalties

Office-holder (e.g. including directors), defined in s.5(3) ITEPA 2003

- ‘any position which has an existence independent of the person who holds it and may be filled by successive holders’

Definition of an employee simply ‘any employment under a contract of service’ (s.4(1) ITEPA 2003)

- Case law has explored and shaped the definition of ‘contract of service’
- Looks at a number of criteria, including:
 - Mutuality of obligation (offer/accept work)
 - Integration (role within the organisation)
 - Control (right to exercise control) over how and where work performed - significant part of recent case law
 - Financial risk (including payment arrangements)
- Case law continues to evolve

HMRC CEST tool can be used to assess status - can be relied on if completed accurately: based on the substance of the arrangements

EMPLOYMENT TAX

Off payroll labour - intermediaries / 'off-payroll working' overview

New legislation introduced for medium/large private sector business from 6 April 2021

For end user/engager businesses within the legislation, obligation to assess the status of the worker, taking reasonable care, where:

- Worker supplied directly/indirectly via a third party 'intermediary'
- End user needs to understand if worker is supplied via an intermediary and therefore the 'off payroll' legislation is relevant:
 - An intermediary = a Company or LLP, where the worker owns $\geq 5\%$ or more of the ordinary shares, or a partnership where the partner as a worker is entitled to 60% or more of profits
 - Is the arrangement an outsourced service rather than personal service?
 - Consider if the worker is employed by an umbrella company (i.e. not supplied via an intermediary) - due diligence on umbrella recommended
- Assessment as for directly engaged workers - consider full facts and case law

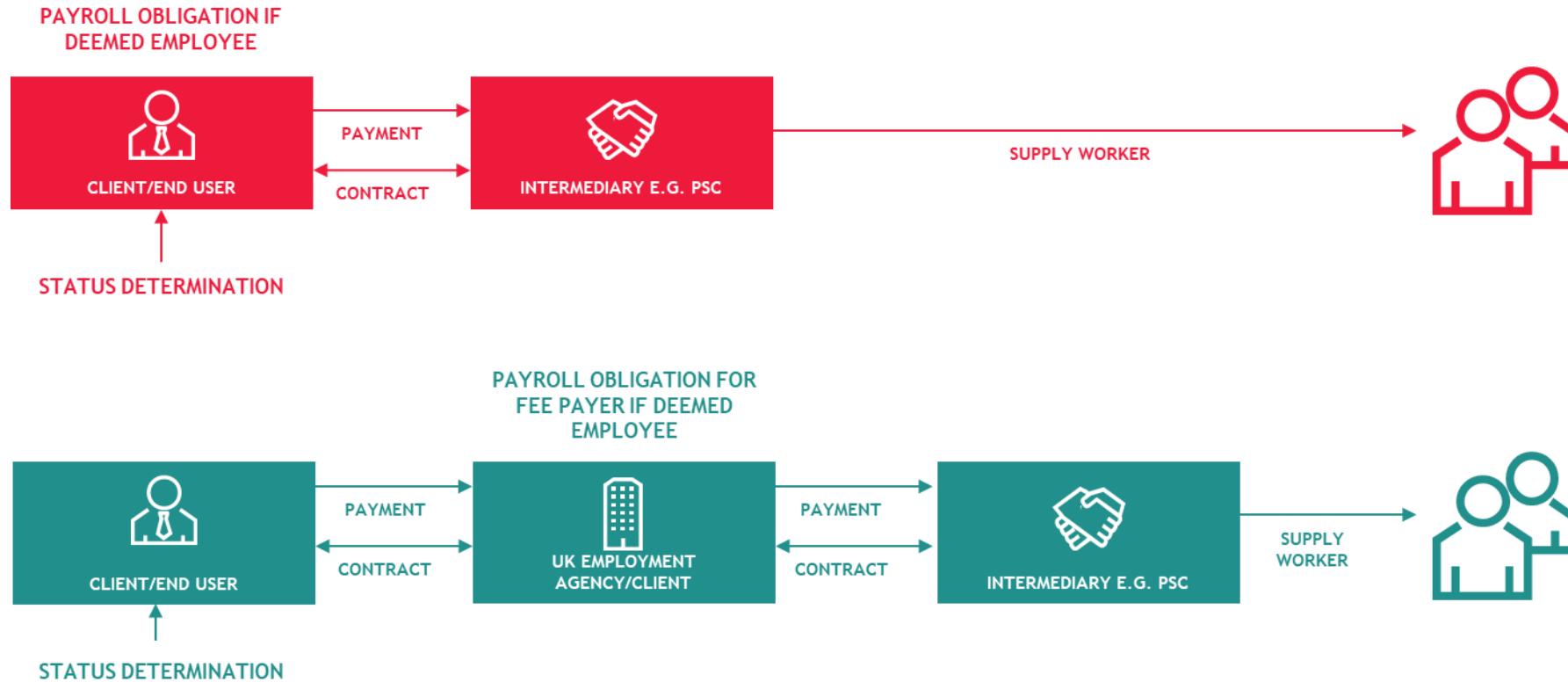
If deemed employee (or an office holder), the 'fee payer' needs to operate PAYE/NIC/Apprenticeship Levy on the deemed payment

A company (including LLPs), will be medium/large if it meets two of the following criteria (in two prior financial years) - also consider connected entities:

- have an annual turnover of more than £10.2 million
- have a balance sheet total of more than £5.1 million
- have more than 50 employees

EMPLOYMENT TAX

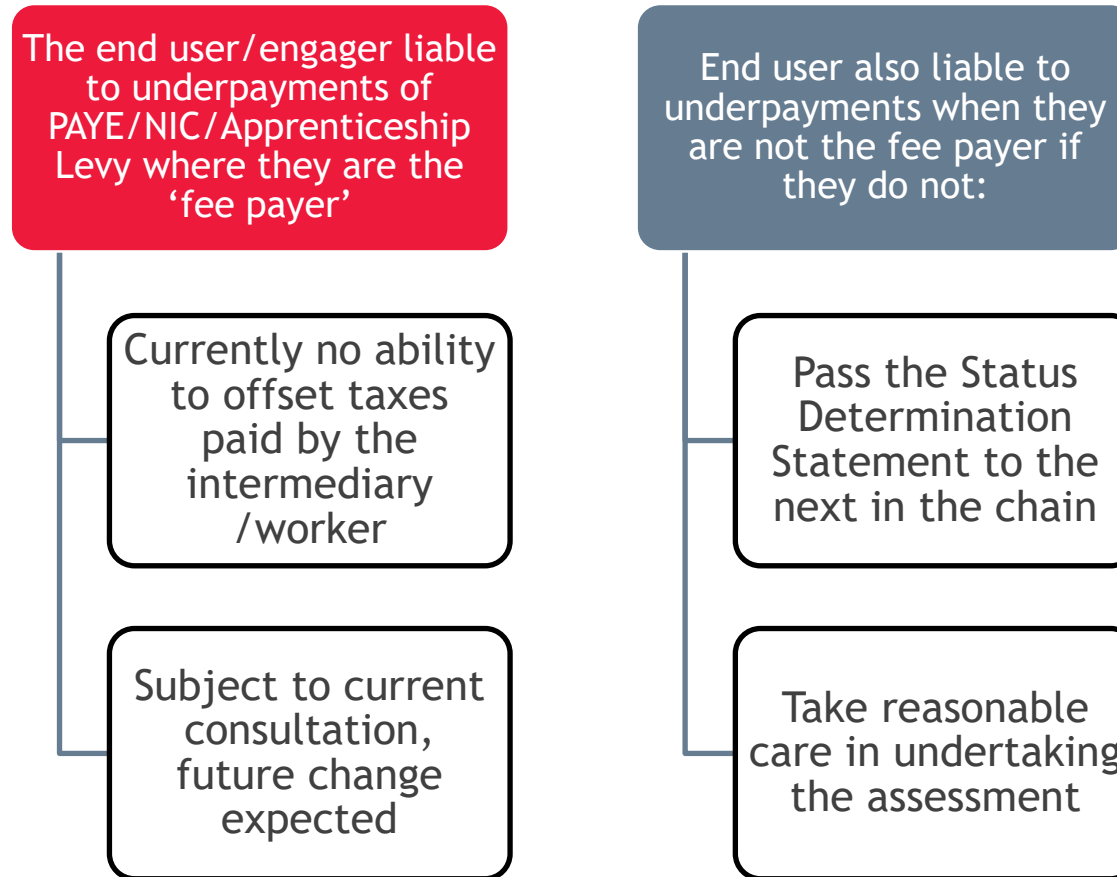
Off payroll labour - intermediaries / 'off-payroll working' engager obligations



- End user must assess status and pass the Status Determination Statement to next in chain, plus worker
- End user must have process to deal with disputes, and respond within 45 days

EMPLOYMENT TAX

Off payroll labour - intermediaries / 'off-payroll working' engager risks



EMPLOYMENT TAX

Questions



IDEAS | PEOPLE | TRUST





FOR MORE INFORMATION:

This publication has been carefully prepared, but it has been written in general terms and should be seen as containing broad statements only. This publication should not be used or relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained in this publication without obtaining specific professional advice. Please contact BDO LLP to discuss these matters in the context of your particular circumstances. BDO LLP, its partners, employees and agents do not accept or assume any responsibility or duty of care in respect of any use of or reliance on this publication, and will deny any liability for any loss arising from any action taken or not taken or decision made by anyone in reliance on this publication or any part of it. Any use of this publication or reliance on it for any purpose or in any context is therefore at your own risk, without any right of recourse against BDO LLP or any of its partners, employees or agents.

BDO LLP, a UK limited liability partnership registered in England and Wales under number OC305127, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. A list of members' names is open to inspection at our registered office, 55 Baker Street, London W1U 7EU. BDO LLP is authorised and regulated by the Financial Conduct Authority to conduct investment business.

BDO is the brand name of the BDO network and for each of the BDO member firms.

BDO Northern Ireland, a partnership formed in and under the laws of Northern Ireland, is licensed to operate within the international BDO network of independent member firms.

Copyright © June 2023 BDO LLP. All rights reserved. Published in the UK.

www.bdo.co.uk

