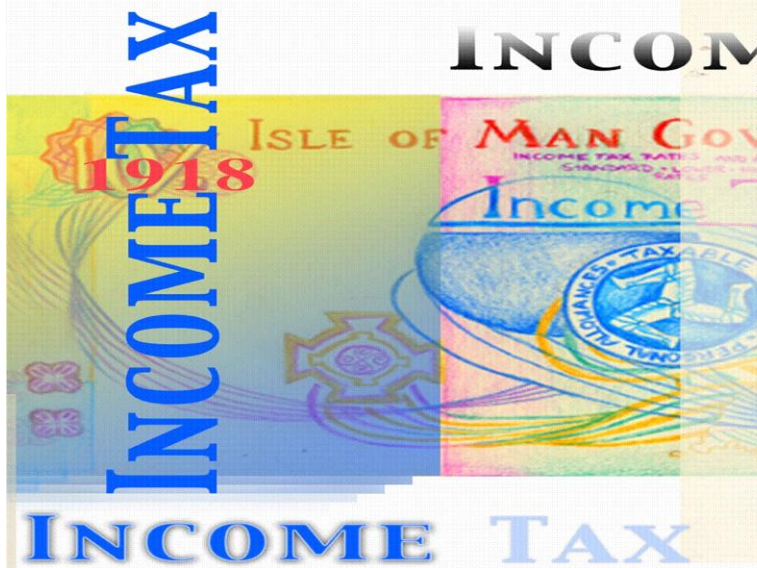




Isle of Man Government

Reiltys Ellan Vannin



1. Introduction

Income tax was first introduced in the Isle of Man by the Income Tax Act 1918 which is described in its preamble as being "An Act to provide for a Tax on income under the system of Manx taxation". The Income Tax Act 1918 introduced a system of taxation which was based broadly upon the system then in operation in the United Kingdom and in many respects the similarities remain. This is an important factor as regards the interpretation of the provisions of the Manx Income Tax Acts because in a case where the interpretation of a provision or an expression in those Acts has been the subject of an appeal in the courts of the United Kingdom, the judgment in that appeal is a persuasive authority for the adoption of the same interpretation in a similar case in the Isle of Man.

The Income Tax Act 1918 was followed by successive amending Acts in the years that followed until the then existing legislation was consolidated in the Income Tax Act 1946. This was, in turn, followed by successive amending Acts until the then existing legislation was consolidated in the Income Tax Act 1970.

The Income Tax Act 1970 has since been amended by the —

- (i) Income Tax Act 1971;
- (ii) Income Tax Act 1973;
- (iii) Income Tax Act 1974;
- (iv) Income Tax Act 1976;
- (v) Income Tax Act 1978;
- (vi) Income Tax (Retirement Benefit Schemes) Act 1978;
- and
- (vii) Income Tax (Amendment) Act 1979.

These Acts are collectively referred to as being "the Income Tax Acts 1970 to 1979". Section 120 of the Income Tax Act 1970 includes the following definitions—

"Income Tax Acts" means this Act and any other enactment relating to income tax;

"Manx income tax" and "Manx tax" means income tax payable under the Income Tax Acts.

The Income Tax Bill 1979 contains the new income tax provisions that were proposed by the Finance Board as a part of the Budget for 1979/80. The Bill was given its first and second readings by the House of Keys on 30th October and 6th November, 1979, respectively. It was then referred to a Select Committee for consideration. As it is unlikely to complete all its stages and obtain the Royal Assent before some time in 1980, the Bill is likely to be known as the Income Tax Act 1980 when it is enacted. It is proposed that the provisions of this Bill, when enacted, shall have effect in respect of the income tax year commencing on 6th April, 1979, and of each succeeding income tax year.

Personal Service Companies

Guidance Note – GN 50

PLEASE NOTE:

This guidance has no binding force and does not affect your right of appeal on points concerning your liability to tax.

The information in this booklet can be provided in large print on request.

CONTENTS

1	Introduction	5
1.1	Income Tax (Amendment) Act 2014	5
1.2	National Insurance	5
2	Overview	6
2.1	The Worker	7
2.2	The Client	7
2.3	The Third Party	7
3	Determination of Employment	7
3.1	Employment Status	7
3.2	Employed	8
3.3	Self-Employed	8
3.4	Example 1	9
3.5	Example 2	10
3.6	Example 3	10
4	Clearance Procedure	11
5	Appeals	12
6	Deemed Employment – The Client’s Obligations as an Employer	12
7	Agencies & Other Intermediaries	13
7.1	Example 4 - Approved Agency	13
7.2	Example 5 - Unapproved Agency	15
8	Deduction of Tax and National Insurance	15
8.1	Example 6 – Deemed Employment, No Agency	15
8.2	Example 7 – Deemed Employment with Agency	17
9	Compliance Aspects	18
9.1	Employer Registration	18
9.2	Notification of Employee Commencing	19
9.3	Example 8 – Notification of Employee Commencing; Existing Arrangements	19
9.4	Example 9– Notification of Employee Commencing; New Arrangements	19
9.5	Other Obligations	20
9.6	Late Payment Penalties	20
9.7	Late Payment of NICs – Interest	20
9.8	Example 10 – Late Payment Surcharge & NI Interest	20
9.9	Late Return Penalties	21

9.10	Example 11 – Late Return Penalty	21
9.11	Example 12 – Late Return Penalty	21
10	The Third Party	22
10.1	Example 13 – Calculation of Third Party’s Taxable Income	22
10.2	Distributions from the Third Party to the Worker	23
10.3	Dividends	23
10.4	Example 14 – Taxation of Dividends Paid by the Third Party	24
10.5	Salary	25
11	The Worker	25
11.1	Expenses	26
12	Further Information	26
13	Appendix	27

1 Introduction

In August 2012 the Income Tax Division issued a consultation document on personal service companies.

A personal service company (PSC) is one through which services are rendered to its clients by a shareholder of the company or by a relative of such a person. The company will typically have few employees other than the director who holds most or all of the shares in the company and who delivers its services.

The use of a PSC may result in income tax deferral and loss of National Insurance Contributions (NICs) as the director can choose how and when to extract the income from the company, as salary, dividends or as a loan advance.

As it is possible for two individuals who perform exactly the same service for a business to be treated differently for income tax and NIC purposes the consultation proposed that new legislation should be introduced to prevent such inequality.

The Income Tax (Amendment) Act 2014 introduces 'Deemed Employment' provisions to tackle the use of PSCs and other such arrangements used to reduce or defer the payment of income tax and NICs.

This guide explains the legislation, policy and practice concerning 'Deemed Employment.'

The Income Tax (Amendment) Act 2014 received Royal Assent on 18 February 2014 and is effective from 6 April 2014.

The primary income tax legislation for Deemed Employment is also supported by the Social Security Contributions and Benefits Act 1992 (Application) (Amendment) Order 2014 for National Insurance.

1.1 Income Tax (Amendment) Act 2014

The Income Tax (Amendment) Act 2014 ('the 2014 Act') amends section 1 of the Income Tax (Instalments Payments) Act 1974 and introduces sections 2AA – 2AF.

1.2 National Insurance

The Social Security Contributions and Benefits Act 1992 (Application) (Amendment) Order 2014 substitutes section 4A and amends section 9A of the Social Security Contributions and Benefits Act 1992 (as applied to the Island).

2 Overview

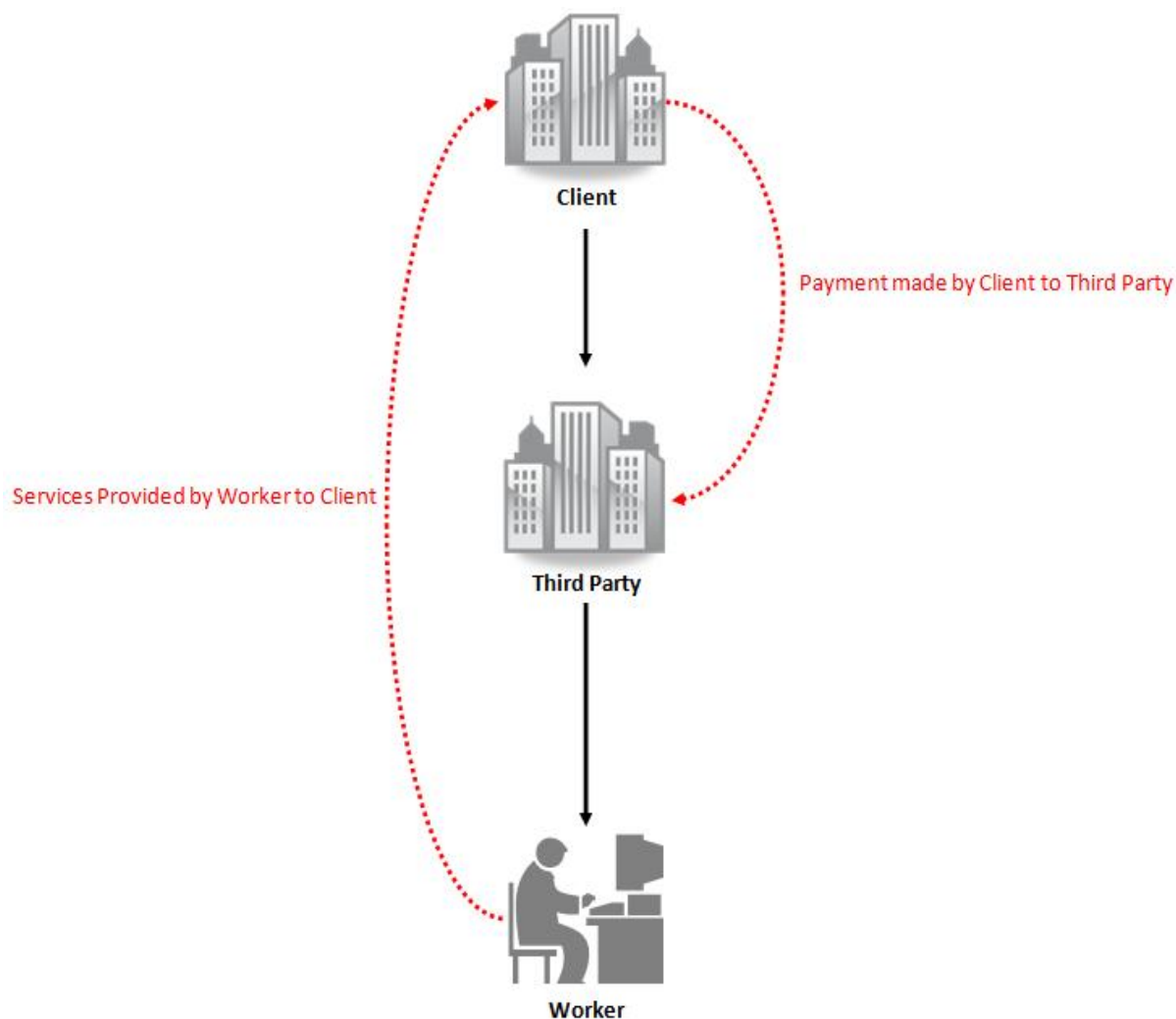
The Deemed Employment provisions will apply where an individual (*the worker*) provides services to another (*the client*), not under a contract between the *worker* and *client* but under an arrangement involving another party (*the third party*).

Assuming the services had been provided under a contract directly between the *worker* and *client*, and the *worker* would have been an employee of the *client*, deemed employment will exist.

As a result, the *worker* will be taken to be an employee of the *client* and not the *third party*. The *client*, and not the *third party*, will be the *worker's* employer and the *worker's* earnings are taken to have passed directly from the *client* to the *worker*, not through the *third party*.

Any sum which the *third party* receives for providing the services is taken to be the remuneration of the *worker*.

As the *worker's* employer, the normal obligations of an employer in relation to ITIP and National Insurance attach to the *client* in respect of the *worker's* earnings.



2.1 The Worker

The worker is an individual who has provided, or is under a contractual or other obligation to provide, services for the ultimate benefit of a client in connection with the business carried on by the client.

The worker can be an Isle of Man resident or non-resident, however the duties of the deemed employment must be performed in whole or in part in the Isle of Man for the deemed employment to be liable.

2.2 The Client

The client is the party who engages the worker, via a third party, to provide them with a service in connection with the business they carry out.

For the deemed employment provisions to apply the client must be either:-

- Resident in the Isle of Man, or
- Have a place of business in the Isle of Man

2.3 The Third Party

The third party is any other party to an arrangement involving the provision of services between a client and a worker.

Most commonly, the third party will be the worker's own PSC but can be any other company, trust, foundation or other entity.

Where the third party is an employment agency, please see section 7 for details.

The third party can be an Isle of Man resident or non-resident.

3 Determination of Employment

The Deemed Employment provisions will only apply where an employer/employee relationship would have existed between the client and the worker had it not been for the existence of the third party.

In order to determine if such a relationship exists between the client and worker, the worker's employment status must be considered.

3.1 Employment Status

The term 'employment status' refers to whether a person is employed or self-employed.

A worker's employment status will determine the tax to be charged on income arising from that employment or self-employment. It will also determine which class of NICs will be charged.

Employment status is not a matter of choice, either for the client who engages a worker or for the worker themselves. It is a matter of fact based on the terms, conditions and reality of the working relationship.

In most cases, an individual's employment status is clear from the terms and conditions set out in the contract between the client and the individual worker, with employees having contracts *of* service and those in self-employment having contracts *for* services.

In cases where the contract details are insufficient for this purpose, the employment status is determined by applying common law principles to the working arrangement. It might therefore be necessary for the Income Tax Division (the Division) to meet with the client and the worker to acquire details of the working arrangement.

3.2 Employed

If some or all of the following statements apply to someone engaged by a client, then they are likely to be an employee:

- the client can tell them what work to do, as well as how, where and when to do it;
- the worker has to do the work them self and cannot send a substitute in their place;
- the client can move them from task to task;
- they are contracted to work a set number of hours;
- they get a regular wage or salary, even if there is no work available;
- they have benefits such as paid leave or a pension as part of their contract;
- the client pays them overtime pay or bonus payments;
- they manage people who work for the client;
- they are integral to the client's business, i.e. the services they provide are part and parcel of the client's business, rather than merely being ancillary to it.

These are the most common points, but the list is not exhaustive and there are many other factors which may be material in determining whether a person is an employee.

3.3 Self-Employed

Someone would normally be regarded as self-employed if some or all of the following statements apply to them:

- they can provide someone else to do the work that the client has given them, or can take on people, at their own expense, to help them;
- they can decide what work is done and when, where, or how it is done;
- they are not obliged to accept work;
- the client pays them an agreed fixed price - regardless of how long the job takes to finish;
- they can make a loss or a profit from the work that they do;
- they are required to correct errors or mistakes in their own time and at their own expense.

Other considerations include:

- whether the person provides their own equipment;
- whether the person takes financial risk;
- the economic reality that the person is in business in their own right with multiple customers.

3.4 Example 1

ABC Ltd is an Isle of Man resident company. ABC Ltd, *the client*, has a contract with A Ltd, *a third party*, for the provision of marketing consultancy services.

Amy, *the worker*, who provides the services to ABC Ltd, is the sole shareholder and director of A Ltd.

ABC Ltd requires Amy to work 35 hours per week, 9am – 5pm daily, as specified in the contract between ABC Ltd and A Ltd.

Amy works from ABC Ltd's premises and has use of the staff car park, gym and a subsidised canteen.

Amy has an ABC Ltd email address and is described as the company's Deputy Head of Marketing. She reports directly to ABC Ltd's Marketing Director who allocates her work. She is also responsible for overseeing the work undertaken by ABC Ltd's two Marketing Interns.

ABC Ltd pays £45,000 a year to A Ltd for Amy's services, paid in monthly instalments. ABC Ltd allows Amy 25 days paid leave per annum.

Looking at Amy's employment status, Amy meets a significant number of tests indicating she is an employee of ABC Ltd:-

- ✓ Amy's work is controlled by ABC Ltd
- ✓ Amy works a prescribed number of hours
- ✓ Amy has a regular salary and paid leave entitlement
- ✓ Amy is entitled to employee benefits such as the use of subsidised facilities
- ✓ Amy works from ABC Ltd's premises using their equipment
- ✓ Amy supervises ABC Ltd employees
- ✓ Amy's description as Deputy Head of Marketing suggests she is integral to ABC Ltd's business.

3.5 Example 2

XYZ Ltd is an Isle of Man resident construction company. XYZ Ltd, *the client*, has a contract with B Ltd, *a third party*, to install bathrooms in 25 new houses it has recently constructed.

Brian, *the worker*, who provides the services to XYZ Ltd, is the sole shareholder and director of B Ltd.

The contract between XYZ Ltd and B Ltd specifies that the bathrooms must be installed over a period of six months.

Brian works for XYZ Ltd for between 20 - 45 hours per week, at times of his choosing.

Brian can elect to take on other contracts or work to fill any gaps in his working week

Brian works on XYZ Ltd's construction site but provides his own tools and equipment.

In order to complete the work within the specified time B Ltd hires Chris to assist Brian with the installations.

B Ltd quotes XYZ Ltd £50,000 for the labour cost and invoices XYZ Ltd for the materials purchased in order to complete the work. Part payment is made at the start of the contract with the balance payable on completion of the work.

Looking at Brian's employment status:-

- X Brian chooses what work he does, how, where and when he does it
- X Brian varies his hours to suit himself and his other contracts
- X Brian is able to send a substitute to complete the work and hire a helper to help him complete the job
- X B Ltd's contract with XYZ Ltd is limited and is for a fixed price
- X Brian uses the equipment provided for him by B Ltd, not XYZ Ltd.

Based on the above facts, if Brian was providing his services to XYZ Ltd himself, and not through B Ltd, he would be self-employed not employed.

3.6 Example 3

LMN Ltd is an Isle of Man resident accountancy firm. LMN Ltd, *the client*, has a contract with C Ltd, *a third party*, for the provision of accountancy services.

Cath, *the worker*, who provides the services to LMN Ltd, is the sole shareholder and director of C Ltd.

LMN Ltd requires Cath to work 30 hours per week, 9am – 4pm daily, as specified in the contract between LMN Ltd and C Ltd.

Cath works from LMN Ltd's premises, preparing and auditing accounts, for LMN Ltd's clients. Cath has an LMN Ltd email address and is described on the company's website as one of the company's Accounting Managers.

Cath looks after a number of important client accounts and is paid year-end bonuses by LMN Ltd for her hard work.

LMN Ltd pays £60,000 a year to C Ltd for Cath's services, paid in quarterly instalments.

At weekends and in the evenings Cath also provides services to C Ltd which has between 10 – 15 clients who require bookkeeping and accountancy services on an ad hoc basis.

Looking at Cath's employment status, Cath meets a significant number of tests indicating she is an employee of LMN Ltd:-

- ✓ Cath's work is controlled by LMN Ltd
- ✓ Cath works a prescribed number of hours
- ✓ Cath has a regular salary and is entitled to bonuses
- ✓ Cath works from LMN Ltd's premises using their equipment
- ✓ Cath's description as an Accounts Manager and the fact she looks after important client accounts suggests she is integral to LMN Ltd's business.

The additional work Cath undertakes for C Ltd's other clients would not meet the hallmarks of employment if she were to provide her services to those clients directly.

It is therefore possible for a worker to be in an employer/employee relationship with the primary client, and therefore be subject the deemed employment provisions in relation to their earnings from that client, whilst also providing services to other clients which will not be subject to those provisions.

4 Clearance Procedure

The determination of employment status can be complex because it is not based solely on the wording of the contract between the client and the third party, but is also affected by the facts and reality of the relationship that exists between the client and the worker.

The time at which income tax and NICs are payable and the total amount due may be different depending on the deemed employment status of the worker. Therefore, it is important that a worker's employment status is correctly determined as soon as the worker is engaged.

Failure to correctly determine a worker's employment status may result in the client who engages them being liable to penalties, interest and even prosecution action if they are subsequently found to be the worker's employer (see section 9 of this guide for details of penalties).

For the avoidance of doubt, a client who has engaged, or is intending to engage, a worker to provide services can seek clearance from the Division as to whether the deemed employment provisions will be applicable to them where the arrangement involves a third party.

In order for clearance to be given, the Division will, in the first instance, require the client, or the worker, to provide a copy of the written contract between them and, if separate, the terms and conditions.

The client, or worker, should also complete an 'Application for Categorisation of Employment Status' form R237, which can be found in the Appendix.

In certain instances the worker's employment status may not be clear even from this information. Therefore, it may be necessary for the Division to invite the client and/or the worker to a meeting to discuss the working arrangements before a decision can be made.

5 Appeals

Any decision by the Assessor regarding a worker's employment status will be made in writing.

If the client or the worker does not agree with a decision made regarding a worker's employment status either party can make a written appeal against the decision within 30 days, stating why they think it is wrong.

Differences of opinion will normally be settled by correspondence or by having a meeting.

If it is still not possible to reach agreement, the appeal will be referred to the Income Tax Commissioners.

6 Deemed Employment – The Client's Obligations as an Employer

Once a client or the Assessor has determined that a worker engaged through a third party is in the client's deemed employment the client will be liable to pay employer's NICs in respect of those payments.

They will also be required to deduct income tax instalment payments (ITIP) and employee's NICs from any payments made to that worker through the third party from the later of:-

- 6 April 2014, or
- the date the worker was engaged by the client.

If the client is not already registered as an employer they should do so immediately by completing and submitting the appropriate T30 form 'Employer's Registration'.

Compulsory online filing for employers now applies to any employer engaging more than five employees in a year. Therefore, a client should also consider whether they need to register and enrol for online tax services.

Following the determination that a worker is the client's deemed employee, the client must submit form T20 'Employee Commencing Certificate' to the Division.

The Division will then issue a T6 'Notice of Coding' to the client, as the employer, so that the correct amount of tax can be deducted from payments made to the third party in respect of the worker's services (see section 8 for further information).

NICs will also be due in respect of any payments and should be calculated with reference to the NI table applicable to the worker.

ITIP and NIC deductions should be remitted to the Division on a monthly basis, by the 19th of the month following the date of payment.

Finally, at the end of the tax year, a form T37 'Employer's Annual Return' will be issued to the client which should be completed and submitted to the Division no later than 5 May following the end of the tax year.

Full details of an employer's tax obligations can be found in guidance note GN 46 'Employers Guide' while details for NICs can be found in CWG2 'Employers Guide to National Insurance' which are both available to view or download on the Division's website www.gov.im/incometax.

7 Agencies & Other Intermediaries

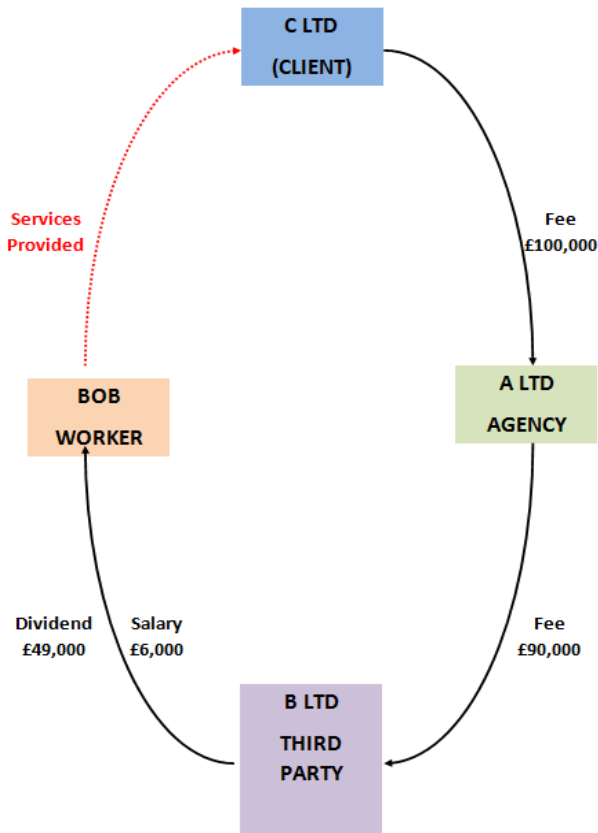
Some arrangements may involve more than one third party between the client and the worker.

Where one of the third parties to an arrangement is an employment agency or other such intermediary, any fee deducted for the agency's services will not form part of the employee's deemed employment income, and is therefore not subject to income tax and NICs.

An employment agency or similar intermediary is an independent business which is used by the client to find a worker or by a worker to find an employer.

For the fee to be excluded from the deemed remuneration of the worker the agency must be approved by the Assessor.

7.1 Example 4 - Approved Agency



C Ltd, the client, requires a full time software developer to support and upgrade their IT systems.

Unable to find a suitable developer, C Ltd contact A Ltd, an approved employment agency, to find them a developer.

A Ltd arrange with B Ltd for Bob to provide the necessary services to C Ltd.

C Ltd pays A Ltd £100,000 per year for Bob's services, from which A Ltd deduct a 10% agency fee.

The remaining £90,000 is paid to Bob's company B Ltd, from which he takes a small annual salary and dividend.

C Ltd controls all aspects of Bob's work; dictates his hours and he is integral to C Ltd's business.

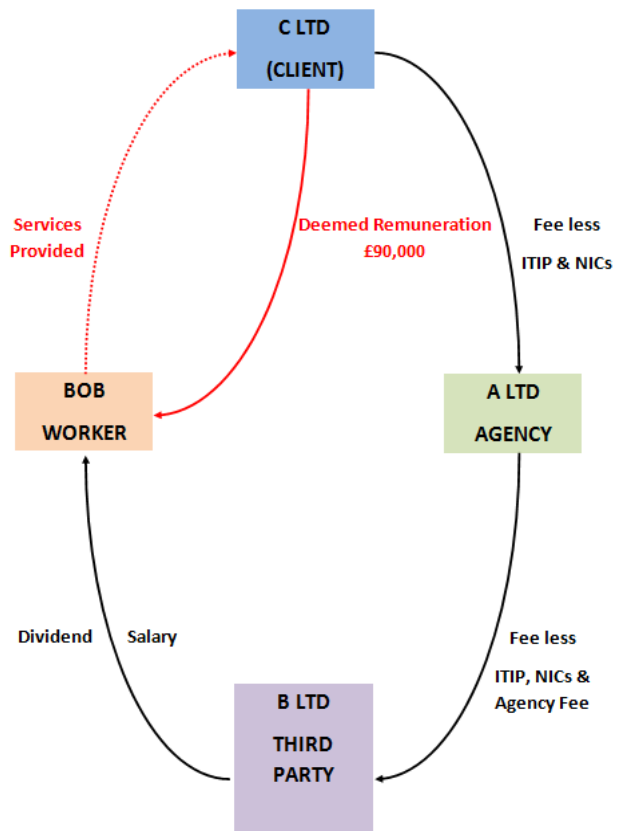
C Ltd will not accept a substitute in Bob's place and he is therefore deemed to be in C Ltd's employment.

C Ltd will be required to deduct ITIP and NICs from Bob's deemed employment income with effect from 6 April 2014.

A Ltd is an approved employment agency.

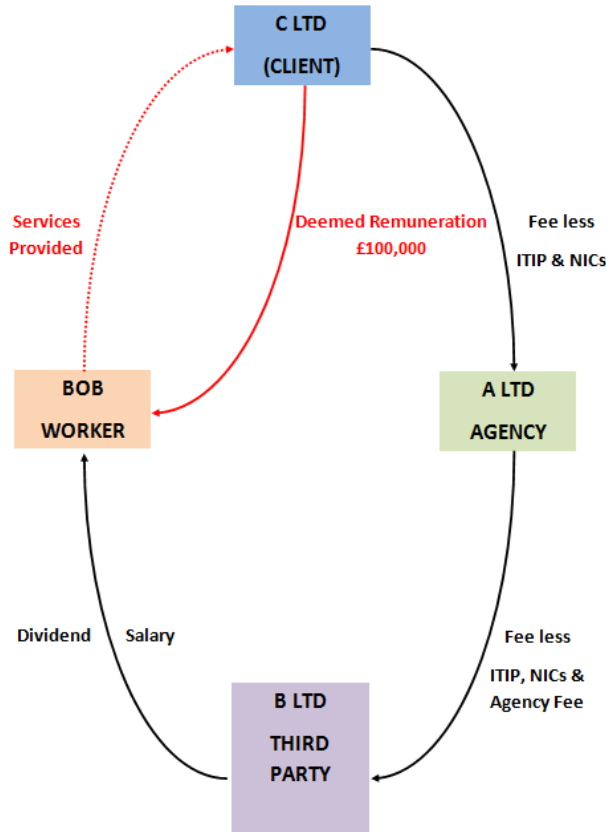
The 10% fee of £10,000 withheld by A Ltd for finding Bob's services will not therefore form part of his deemed employment income.

C Ltd will have to pay employer NICs and deduct ITIP and employee NICs from the balance of £90,000



7.2 Example 5 - Unapproved Agency

If an agency, or other such intermediary, is not approved by the Assessor, any fee withheld by them will form part of the worker's deemed employment income and will therefore be subject to ITIP and NICs.



Using the same example shown in 7.1, if A Ltd did not receive approval from the Assessor, Bob's deemed employment income would instead be £100,000.

8 Deduction of Tax and National Insurance

Once it has been determined that a worker is a client's deemed employee, any sum paid to a third party in respect of the worker's services will be liable to income tax and NICs as if it were the employee's remuneration.

The payment will therefore be subject to the deduction of ITIP and NICs at source by the client.

8.1 Example 6 – Deemed Employment, No Agency

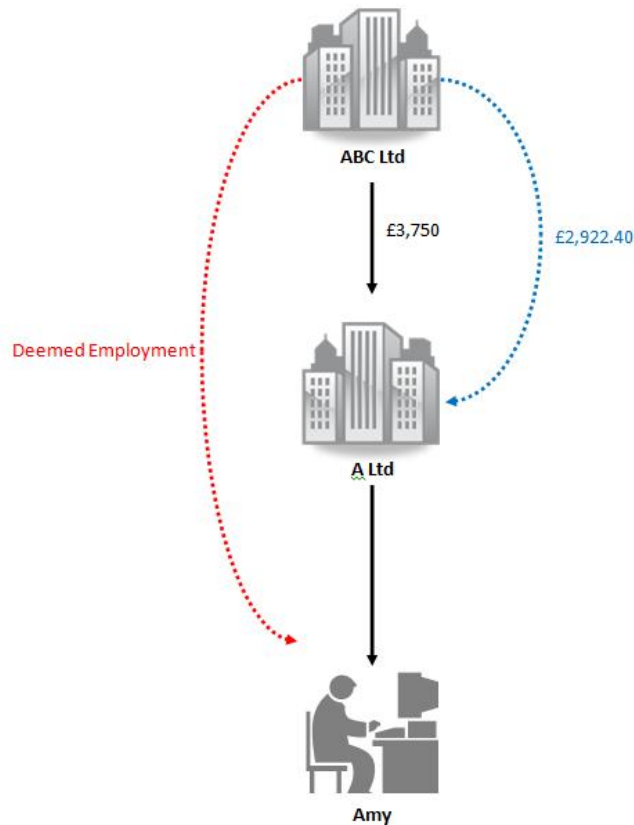
Following on from example 1 in section 3.4, Amy will be deemed to be an employee of ABC Ltd from 6 April 2014.

A Ltd is paid £3,750 per month by ABC Ltd for Amy's services. Amy's tax code is 930F and NICs should be deducted in accordance with Table A.

ITIP Calculation					
Gross Payment	3,750				
Free Pay	- 775				
Taxable Pay	2,975	875	@ 10%	87.50	
		2,100	@ 20%	420.00	
				ITIP	507.50

NIC Calculation					
Gross Payment	3,750				
Primary Threshold	- 520				
NIC Liable Payment	3,230	2,878	@ 11%	316.58	
		352	@ 1%	3.52	
				Employee NIC	320.10
Gross Payment	3,750				
Secondary Threshold	- 507				
NIC Liable Payment	3,243		@ 12.8%	415.10	
				Employer NIC	415.10

As Amy is a deemed employee of ABC Ltd, A Ltd will receive a net payment of £2,922.40 after the deduction of ITIP and employee’s NICs from the £3,750 fee.



8.2 Example 7 – Deemed Employment with Agency

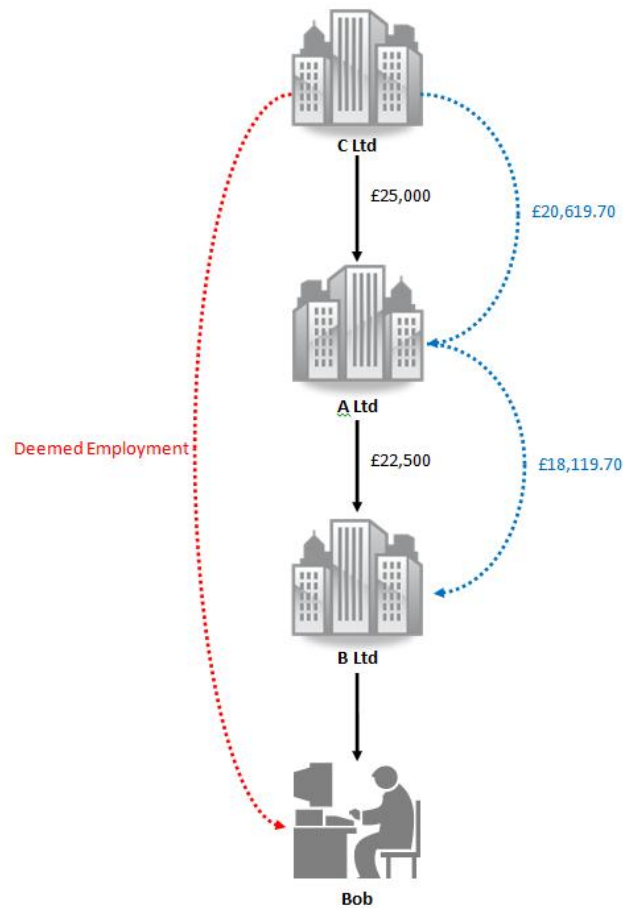
Following on from example 4 in section 7.1, Bob will be deemed to be an employee of C Ltd from 6 April 2014.

A Ltd is paid £25,000 per quarter by C Ltd for Bob's services. A Ltd, an approved agency, retains 10% of that payment as their fee, with the balance of £22,500 being paid to B Ltd.

Bob's tax code is 1860M and NICs should be deducted in accordance with Table A.

ITIP Calculation				
Gross Payment	25,000			
Less: Agency Fee	2,500			
	<u>22,500</u>			
Free Pay	- 4,650			
Taxable Pay	17,850	2,625	@ 10%	262.50
		15,225	@ 20%	3,045.00
				ITIP 3,307.50

NIC Calculation				
Gross Payment	25,000			
Less: Agency Fee	2,500			
	<u>22,500</u>			
Net Monthly Equivalent	7,500			
Primary Threshold	- 520			
NIC Liable Payment	6,980	2,878	@ 11%	316.58
		4,102	@ 1%	41.02
			Monthly Equivalent Employee NIC	<u>357.60</u>
			Quarterly Employee NIC	1,072.80
Gross Payment	25,000			
Less: Agency Fee	2,500			
	<u>22,500</u>			
Net Monthly Equivalent	7,500			
Secondary Threshold	- 507			
NIC Liable Payment	6,993		@ 12.8%	<u>895.10</u>
			Monthly Equivalent Employee NIC	<u>895.10</u>
			Quarterly Employer NIC	2,685.30



9 Compliance Aspects

If a client engages a worker through a third party it is the client's responsibility to ensure that worker's employment status is determined immediately.

It is also important that clients review the employment status of any such workers who are already working with them at 6 April 2014 to ensure that they are correctly categorised from that date for the purposes of the deemed employment legislation.

Failure to properly categorise a worker may lead to a client being liable to penalties, interest and prosecution if the worker is subsequently found to be in the client's deemed employment.

Full details of a client's obligation as an employer can be found in GN 46 'Employer's Guide'. However, a brief overview of those particularly applicable with the deemed employment legislation are detailed in this section.

9.1 Employer Registration

If a deemed employee is the first worker the client has employed, the client must:-

- Notify the Assessor within 14 days of making their first payment as an employer to an employee by completing the appropriate T30 form 'Employer's Registration'

This also applies where a worker, who has been engaged through a third party prior to 6 April 2014, becomes a deemed employee from 6 April 2014.

In this instance the T30 should be submitted within 14 days of making the first payment for the workers services following 6 April 2014.

Failure to carry out any of the above responsibilities within the statutory deadlines may result in a penalty of £250.

9.2 Notification of Employee Commencing

As the employer of a deemed employee a client must:-

- Notify the Assessor of new employee details within 14 days of taking on an employee by completing the appropriate T20 'Employee Commencing Certificate'

This also applies where a worker, who has been engaged through a third party prior to 6 April 2014, becomes a deemed employee from 6 April 2014.

In this instance the T20 should be submitted within 14 days of making the first payment for the workers services following 6 April 2014.

Failure to carry out any of the above responsibilities within the statutory deadlines may result in a penalty of £250.

9.3 Example 8 – Notification of Employee Commencing; Existing Arrangements

David has worked for RST Ltd for a number of years through his PSC, D Ltd. RST Ltd review David's employment status and conclude that he is a deemed employee and the deemed employment provisions will apply to him with effect from 6 April 2014.

RST Ltd pays £30,000 a year to D Ltd for David's services, paid in £2,500 monthly instalments on the last day of every calendar month.

RST Ltd must provide the Division with a T20 'Employee Commencing Certificate' no later than 20 April 2014, 14 days from 6 April 2014 when David became RST Ltd's deemed employee, when the deemed employment legislation became effective.

Failure to carry out any of the above responsibilities within the statutory deadlines may result in a penalty of £250.

9.4 Example 9– Notification of Employee Commencing; New Arrangements

In August 2014 RST Ltd engage E Ltd to provide Edward's services. Like David, Edward's employment status is reviewed and RST Ltd again conclude that he is a deemed employee and the deemed employment provisions will apply.

Edward commences working for RST Ltd from 16 August 2014. Therefore, RST Ltd must complete and submit form T20 by 30 August 2014 to notify that Edward has commenced employment.

9.5 Other Obligations

In addition employers must:-

- Retain payroll records and other supporting documents for three years.
- Notify the Assessor within 14 days of a person ceasing to be an employee.

Failure to carry out any of the above responsibilities within the statutory deadlines may result in a penalty of £250.

9.6 Late Payment Penalties

A client may be liable to late payment surcharge in respect of ITIP if they fail to remit the correct amount of income tax due by the 19th of the month following the date a payment is made. This includes any ITIP due in respect of a deemed employee's earnings.

Where payment of ITIP is late, the surcharge will be 5% of the total ITIP due. Where the payment is more than 6 months late an additional 5% surcharge will also be due.

9.7 Late Payment of NICs – Interest

A client may also be liable to pay interest if they fail to remit the correct amount of employer's and employee's NICs in respect of any deemed employee that is due by the 19th of the month following the date a payment is made.

Where payment of NICs is late, the interest will be calculated at a rate of 5% per annum on the total employer's and employee's NICs that are outstanding from the deemed employment.

9.8 Example 10 – Late Payment Surcharge & NI Interest

Following on from Example 8, the Division issues RST Ltd with a tax code of HR for David.

With effect from 6 April 2014, ITIP of £500 should therefore be deducted from the £2,500 monthly payments being made to D Ltd for David's services.

A further deduction of £217.80 for employee's NICs should also be made and RST Ltd should pay £255.10 in employer's NICs.

If RST fail to remit the ITIP and NICs due for the payment made on 30 April 2014 until 27 October 2014, a late payment surcharge will apply to the ITIP and interest will be charged on the total NICs due as shown below:-

- ITIP Surcharge $£500 \times 5\% = £25$
- NICs Interest $£472.90 \times 5\% \times 160/365 = £10.36$

If, instead, RST Ltd failed to remit the ITIP and NICs due until 31 December 2014 an additional late payment surcharge will be due in respect of unpaid aggregate of the ITIP and the first late

payment surcharge (as the payment will be more than 6 months late). NI interest will also be due will be as shown below:-

- ITIP Surcharge $£500 \times 5\% = £25$
- Additional ITIP Surcharge $£525 \times 5\% = £26.25$
- NICs Interest $£472.90 \times 5\% \times 225/365 = £14.58$

The above surcharge calculations assume that RST Ltd had no further ITIP to remit in respect of any other employees at 19 May 2014.

If RST Ltd had already remitted ITIP of £2,000 in respect of its other employees on time on 19 May 2014 but failed to remit the £500 in respect of David until 27 October 2014, the late payment surcharge would be £125 ($£2,500 \times 5\% = £125$).

9.9 Late Return Penalties

A client with deemed employees must also complete and submit form T14 in respect of each worker's earnings at the end of each tax year.

The T14s should be completed and submitted with an Employer's Annual Return form T37 which is due within 30 days of the end of the tax year. Failure to submit this form on time will result in an initial penalty of £250, together with a further penalty of £50 per day that the return remains outstanding following the date on which the initial penalty is issued.

9.10 Example 11 – Late Return Penalty

Following on from the previous examples, RST Ltd will be required to submit its T37 Employer's Annual Return for 2014/15 no later than 5 May 2015.

If the T37 is not filed until 31 May 2015, an initial penalty of £250 will be charged and a further penalty of up to £1,250 will be due in respect of the 25 days the Return remained outstanding (£50 per day).

A partially completed T37 may also attract penalties. Even if a T37 is submitted on or before the 5 May due date penalties may be issued if the Return is subsequently found to be unacceptable because it is missing information and was therefore not fully complete at the due date.

9.11 Example 12 – Late Return Penalty

Following on from the previous examples, RST Ltd files its T37 early in April 2015.

However, when the T37 is reviewed by the Division on the 20 June 2015 it is found that RST Ltd have failed to submit a T14 in respect of David's deemed employment income.

RST Ltd's Return would be deemed unacceptable at this date and the initial late return penalty of £250 would be issued to RST Ltd with a request to complete the outstanding T14.

A further penalty of £50 per day will be due for each day the Return remains outstanding from the date on which the initial penalty was issued.

Assuming the T14 is submitted on 25 June 2015, RST Ltd will be liable to a further penalty of £200 (4 x £50).

10 The Third Party

If it is determined that a worker is a client's deemed employee, any payments made to a third party for that worker's services will be treated as the worker's remuneration and will be taxed in the worker's hands.

Prior to 6 April 2014, if the third party through which the payment passes is a company, most commonly the worker's own PSC, the payment is the income of that company.

However, from 6 April 2014, if the client is deemed to be the worker's employer, the payments received by the third party company will already have been taxed and subject to NICs at source.

In order to prevent double taxation, any such payments will not be considered to be taxable income in the hands of the third party company.

10.1 Example 13 – Calculation of Third Party's Taxable Income

TVW Ltd engages the services of Fred from F Ltd. Fred's employment status is considered and he is found to be a deemed employee of TVW Ltd. Therefore, the deemed employment provisions will apply to any payments made to F Ltd in respect of his services.

TVW Ltd pays F Ltd £10,000 a month for Fred's services which, from 6 April 2014, will be subject to ITIP and NICs.

Fred's tax code is 930F and his NICs are calculated in accordance with table A.

ITIP Calculation					
Gross	10,000				
Free Pay	775				
Taxable	9,225	875	@	10%	87.50
		8,350	@	20%	1,670.00
				ITIP	1,757.50

NIC Calculation				
Gross	10,000			
Primary Threshold	- 520			
NI Liable Payment	9,480	2,878	@ 11%	316.58
		6,602	@ 1%	66.02
Employee NIC				382.60
Gross Payment	10,000			
Secondary Threshold	- 507			
NI Liable Payment	9,493		@ 12.8%	1,215.10
Employer NIC				1,215.10

After deducting tax of £1,757.50 and employee's NICs of £382.60 from the £10,000, F Ltd will receive a net payment of £7,859.90 on a monthly basis.

Despite the fact that F Ltd will have received payments totalling £94,319 (12 x £7,859.90) during the accounting period, for tax purposes F Ltd's taxable income will be nil as the gross income, before ITIP and NIC deductions, will be taxed fully in Fred's hands as deemed employment income.

Company Income Tax Assessment				
Consultancy Services	0			
Taxable Income	0	0	@ 0%	Nil
Tax Liability				Nil

10.2 Distributions from the Third Party to the Worker

As explained earlier, in order to prevent double taxation, any payments received by the third party that are deemed to be the worker's employment income will not form part of the third party's taxable income. Similarly, any distribution of that income from the third party will not be taxable in the worker's hands.

10.3 Dividends

Where a third party makes a distribution of deemed employment income to the worker by way of a dividend, that dividend will not be taxable in the employee's hands.

If the third party has other sources of income, not treated as the deemed employment income of the worker, from either the current year or a previous accounting period, the third party must specify which income stream the dividend has been paid from, as only those dividends paid from the deemed employment income can be paid free of tax.

The legislative and concessional treatment for the taxation of dividends paid from Isle of Man resident companies to resident individuals is outlined in GN 49 'Distributions from Corporate Taxpayers'. However, dividends paid from deemed employment income can be made at any time without reference to the concession.

For further information on company distributions please refer to GN 49 which can be found on the Division's website www.gov.im/incometax.

10.4 Example 14 – Taxation of Dividends Paid by the Third Party

Following on from Example 13, assume Fred commenced his engagement with TVW Ltd on 6 April 2013, the same date on which F Ltd was incorporated.

Prior to the deemed employment legislation taking effect on 6 April 2014, F Ltd would have been paid £10,000 per month gross in respect of Fred's services so by the year end the company's profit would be £120,000 assuming it has no other income or expenses.

If Fred did not take any distributions from F Ltd during the year ended 5 April 2014, the company would have retained profits of £120,000 available for future distribution.

For the purposes of GN 49 (mentioned in 10.3 the £120,000 taxable profit would be allocated to Box 1.

From 6 April 2014, Fred is categorised as being TVW Ltd's deemed employee and all future payments received by F Ltd in respect of Fred's services are paid net of ITIP and employee's NICs, as shown in example 13.

To prevent double taxation F Ltd's taxable profit for the year ended 5 April 2015 will be nil, because the income will already have been taxed in Fred's hands as deemed employment income. As a result the income will not be added to Box 1 and instead can be distributed at any time without reference to the boxes or with further tax being payable in the recipients hands.

If F Ltd wishes to distribute, say, £50,000 to Fred at 5 April 2015 it has three choices:-

1. To treat the distribution as having come in full from the £120,000 income of the previous accounting period.

This would reduce the balance of Box 1 to £70,000 and the distribution of £50,000 would be taxable in full in Fred's hands in his 2014/15 assessment.

In addition, Fred's 2014/15 assessment would also include the £120,000 deemed employment income from TVW Ltd.

2. To treat the distribution as having come in full from the income of the current accounting period.

This would be paid free of tax as it will already have been taxed as deemed employment income from TVW Ltd in Fred's 2014/15 assessment.

F Ltd would still have Box 1 income of £120,000 available for distribution in the future.

3. To treat part as having come from the previous year's income thus reducing the company's Box 1 reserve and part from the deemed employment income of the current accounting period.

In this case only the amount paid from Box 1 would be taxable in Fred's hands in addition to his deemed employment income from TVW Ltd.

10.5 Salary

In some cases, a third party may also be registered as an employer in its own right, employing the worker.

If a worker is deemed to be an employee of the client, and the third party pays the worker a salary from the deemed employment income, that payment will not be subject to income tax in order to prevent double taxation.

Similarly, in order to prevent NICs from being charged twice on the same income, neither employer nor employee NICs will be payable in respect of a salary paid out of deemed employment income by the third party to the worker as the client will have paid and deducted any NICs due from the payment at source.

As a result, the third party should complete a nil T14 in respect of such payments.

Where a third party is in receipt of any other sources of income, not subject to the deemed employment provisions, distributions from those sources will be liable to income tax and NICs in the normal manner.

11 The Worker

Where a worker is deemed to be in the employment of the client he/she provides services for, they will receive a T14 from the client at the end of the tax year confirming their deemed employment income.

The remuneration shown on this T14 should be declared on their personal income tax return.

Any other payments, such as dividends or salary from the third party, do not need to be declared if they have been paid in full from the deemed employment income.

Where the payment from the third party has been made in part or full from income not forming part of the employee's deemed employment income this should be declared in the normal manner.

11.1 Expenses

As with all employed persons, a worker in deemed employment will only be allowed a deduction for an expense if the expenditure is incurred wholly, exclusively and necessarily in the performance of their duties for the client and has been expended by them personally.

If the expense is paid on the worker's behalf by the third party no deduction will be available in the worker's assessment.

12 Further Information

All forms and additional guidance notes referenced in this guidance note can be found on the Division's website www.gov.im/incometax.

If you require further information about anything contained in this Guidance Note please contact:

The Treasury
Income Tax Division
Second Floor
Government Office
Buck's Road
Douglas
Isle of Man
IM1 3TX

Telephone: (01624) 685400
Fax: (01624) 685351
E-mail: incometax@itd.treasury.gov.im
Website: www.gov.im/incometax

Opening hours:

Monday to Thursday 9.15 am – 5.00 pm
Friday 9.15 am – 4.30 pm

13 Appendix**Treasury – Income Tax Division**

**DEEMED EMPLOYMENT
APPLICATION FOR CATEGORISATION OF EMPLOYMENT STATUS**

Name of Client	<input type="text"/>	Tax Reference Number	<input type="text"/>
Name of Worker	<input type="text"/>	Tax Reference Number	<input type="text"/>
Name of Third Party	<input type="text"/>	Tax Reference Number	<input type="text"/>

The Arrangement

What is the nature of the work provided?

When did the engagement start?

How long will the engagement last?

Is there a notice period? **Yes / No** If yes, please specify

Is the worker able to refuse work given to them by the client? **Yes / No**

Does the client pay overtime or bonus payments to the third party, in respect of the workers services or provide the worker with other benefits such as the private use of a car? **Yes / No**

Does the worker have to fix mistakes for the client in their own time and at their own, or the third party's, expense? **Yes / No**

Does the client set the hours worked? **Yes / No**

Does the client set the price/rate of pay? **Yes / No**

Does the client pay the third party even if the worker is unable to work? **Yes / No**

Does the client require the worker to attend the client's day to day business meetings? **Yes / No**

Does the client expect the worker to supervise/manage people who work for the client? **Yes / No**

Does the client provide the worker with the equipment required to perform their duties? **Yes / No**

If yes, please specify

Does the client tell the worker how, where and when the work is done? **Yes / No**

Does the client allow the worker to hire additional staff/helpers to assist them with the work or send a substitute? **Yes / No**

Can the client prioritise the work the worker performs? **Yes / No**

I declare that this information is, to the best of my knowledge, true and correct in every detail.

Name Signature Date / /

Please provide any additional information on a separate sheet.

If there is a written contract between the client and third party and any additional written terms and conditions please submit copies with this form.

R237