

Offshore umbrella companies and National Insurance

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As the [FT have noted this morning](#):

A BBC investigation on Sunday said thousands of UK supply teachers were employed by ISS, a Channel Islands-based company, which did not have to pay employers' national insurance contributions because it was based offshore. The BBC did not suggest that ISS was breaking the law and there is no evidence that ISS is one of the companies being investigated by the Revenue. ISS said it was "meticulous in complying with HMRC codes on taxes and expenses". It told the BBC that HMRC had no grounds to challenge its employees or business partners.

All of which is true. And the [BBC said it here](#).

However, as I said, [and as the FT notes](#):

Richard Murphy, director of Tax Research UK, told the BBC the growth of "umbrella" companies was "the next big UK tax scandal". At least 150,000 workers are estimated to use such companies, which are set up to pay the salaries and expenses of temporary workers, particularly in engineering, IT and construction.

Now by no means all those people will be paid without employer's NIC being settled, of course. And it is also true that as result of being an offshore employer ISS may not be liable to pay employer's NIC. But the HMRC manual has a lot to say on this issue. The relevant page from the [HMRC manual is here](#). It says:

Where an overseas agency supplies workers within the agency legislation to clients in the United Kingdom, PAYE in respect of those workers should be operated by any branch or permanent representative of the overseas agency in the United Kingdom.

Where the overseas agency has no such branch or representative then the client should be regarded as the relevant person under Section 689 ITEPA 2003, provided the worker is

* *within the scope of Part 2 Chapter 7 ITEPA 2003, and*

* *subject to the general control and management of the client.*

The client is, therefore, responsible for the operation of PAYE. The procedure to be applied is set out in paragraph 122 of the Employer's further guide to PAYE.. This procedure should be adopted generally where Section 203C ICTA 1988/Section 689 ITEPA 2003 applies. It is not restricted to employees from abroad.

Similarly for NICs purposes, if the agency does not fulfil the conditions as to residence or presence in Great Britain, the client is treated as the liable secondary contributor by virtue of paragraph 2(c) of column B of Schedule 3 to the Categorisation Regulations. If the worker is covered by European Community regulations or a reciprocal agreement and has a certificate stating that they do not have to pay UK NICs, send the case via the Status Inspector and EST Technical Consultants, to PSN (Technical) for advice if there is any doubt about liability.

In other words, HMRC are very clear employer's NIC (that's the secondary contribution they refer to) is due, and that if ISS are not liable then someone else is. That is the risk I pointed out last night on Radio 5. There could be technical argument as to whether the person liable is the employee (who has been winning from these arrangements to date) or the UK based user of their services but either way NIC is due in my opinion, it is just not payable by ISS. What seems absolutely clear to me (for the technically minded) is that the exceptions in sections 689 and 690 of the ITEPA 2003 will not apply.

Of course it is hard to quantify losses from this arrangement but I note ISS said to the BBC that over £70 million of other PAYE contributions had been made by their staff over the last few years. If employer's NIC was missing using a rule of thumb I would guess up to £20 million has not been paid as a result. I said this on air.

Five things follow. First this needs to be investigated. Second HMRC need the staff to do that investigation. Third legislation is needed to make sure that if there is any doubt in this area it is eliminated. Fourth, massive publicity on this issue from HMRC is needed. But most of all, government itself needs to end the 'temp' culture that promotes this sort of abuse.