

New UK Tax Rules on Off-Payroll Working – Go-Live Date Approaches

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The UK tax authority, HMRC, has published a policy paper regarding new off-payroll working rules due to come into force on 6 April 2021.

Publication of the policy at this stage can be read as a clear indication that the new rules will go live as planned and that there will not be a repeat of last year's deferral. Affected businesses should continue their preparations ahead of the go-live date, familiarise themselves with the policy and (where necessary and appropriate) engage with HMRC as the new rules bed in.

Off-payroll working rules – a recap

The scope of the new rules is set out in [our previous update](#). In summary, existing rules (often referred to as IR35), have been amended such that "large" and "medium" sized businesses will become responsible for determining the employment status of individuals they engage through personal services companies, or PSCs, and (if such individuals are deemed to be employees) for accounting for payroll taxes on amounts paid to the PSCs. As noted below, only businesses with a "UK connection" will be in scope.

Review and deferral

The UK government conducted a review of the new rules in early 2020 and subsequently deferred their introduction for a year, owing to the impact on business of COVID-19. The new rules will now automatically come into force on the go-live date.

UK connection

In [an update last year](#), we flagged that one of the potential areas of uncertainty about the new rules was their application to non-UK businesses. As a result of the review mentioned above, the new rules were amended such that businesses that are not resident for tax purposes in the UK and have no UK taxable presence (such as a branch, office or other "permanent establishment" in the UK) do not have to apply them when engaging individuals through a PSC (a very helpful concession by HMRC).

The policy

HMRC has stated that it intends to take a "supportive" approach in enforcing the new rules and a "light-touch" approach to penalties.

The policy restates this commitment and confirms that HMRC will not impose penalties in the 12 months following the go-live date for "inaccuracies", unless there is evidence of deliberate non-compliance. After that period, businesses should not be charged penalties in respect of mistakes (for example, in making employment status determinations) if "reasonable care" has been taken in applying the new rules. Note that HMRC expects to be notified of mistakes, and for mistakes to be corrected, as soon as possible

(and interest may still be payable in circumstances where payroll taxes were not accounted for when due, even if penalties are not assessed).

The policy makes clear that HMRC will continue, after the go-live date, to engage with businesses which require support in complying with the new rules, for example by providing webinars, workshops and other advice. HMRC also repeats assurances that it does not intend to use information it has acquired in connection with the new rules to open new enquiries in respect of historic arrangements involving PSCs, unless fraud or criminal behaviour is involved.

Go-live date approaches – time for final preparations

The go-live date is approaching fast. There is still time for affected businesses to revisit their current arrangements with PSCs and to make employment status determinations before the new rules come into force – [see our previous update](#) for guidance.

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