

## New UK Tax Rules on Off-Payroll Working – Time to Take Action

October 16, 2019

Important new UK tax rules will make businesses responsible for payroll taxes where individuals are engaged through an intermediary (such as the individual's own personal service company, or "PSC"), and impose a new compliance burden.

Businesses which may be affected should take action now.

### Current position

Where an individual is engaged via an intermediary, such as a PSC, UK tax rules (often referred to as "IR35") can deem the individual to be an employee (rather than a consultant) for tax purposes. These rules apply where the individual would be regarded as an employee if the individual's services were provided under a contract entered into directly between the individual and the client receiving the services.

At present, in the private sector, the risk of misclassification lies solely with the PSC.

Classification as a consultant, rather than as an employee, can offer significant tax benefits, and the UK government is concerned that the existing legislation is not being applied correctly by PSCs.

### April 2020 changes

From April 6, 2020, as part of the UK government's drive to tackle tax avoidance, IR35 is being changed such that "large" and "medium" sized businesses will become responsible for determining the employment status of individuals they engage through PSCs, and required to follow new administrative procedures.

As a result of these changes, the "fee payer" (the end client or, if there is a chain, the entity paying the PSC) will become responsible for payroll taxes where an individual should properly be classified as an employee.

As well as being required to collect any income tax and employee National Insurance contributions, the fee payer will have to pay employer National Insurance contributions (at a rate of up to 13.8%), and, in some cases, the apprenticeship levy (at 0.5%). The end client may be liable if the tax authority successfully challenges its determination of employment status, or if other fee payers in a chain fail to comply with their obligations.

The UK government estimates that the new rules will affect up to 80,000 businesses and will raise more than £3.1 billion over four years.

Although this measure has not yet been enacted, draft legislation and guidance have been published, and the government has confirmed its determination to proceed. It currently seems unlikely that an election or change of government would affect implementation.

## Action required

Before April 2020, businesses which receive services via PSCs from individuals within the scope of UK tax should:

### 1. Establish whether the extended IR35 rules apply

The new rules apply only to "large" or "medium" businesses. This means, broadly, businesses meeting two or more of the following conditions (applied on a worldwide group basis):

- turnover exceeding £10.2m
- balance sheet exceeding £5.1m
- more than 50 employees

### 2. Assess employment status

In-scope businesses need to review all PSC arrangements which will remain in place from April, using "reasonable care". The starting point will generally be a review of contracts, but it is important also to analyse the reality of the working arrangements. The UK government provides an online "Check Employment Status for Tax", or "CEST", tool. This been widely criticised (in particular for not correctly reflecting caselaw relevant to borderline situations), and businesses may prefer to work with their advisers.

### 3. Issue "status determination statements" ("SDSs")

For each PSC arrangement in place in April, the end client needs to prepare an SDS, and notify this to the individual and other relevant parties, stating its conclusion as to whether the individual should be classified as an employee, and giving reasons.

If the individual disagrees with an SDS, the parties must follow a dispute resolution process.

### 4. Revisit arrangements

Businesses may wish to revisit their existing arrangements involving PSCs, and to consider IR35 before entering into new ones. In some cases, engaging individuals directly as employees may be more attractive than having to determine status and issue SDSs. In other cases, it may be helpful to adjust current working arrangements, to ensure that an individual should not be treated as an employee. (This is also worthwhile where consultants are engaged directly by a business, rather than through a PSC; this has been a particular area of focus for the UK tax authority, with recent high profile enforcement activity.) Given that clients can be liable for non-compliance by other fee payers in a chain, businesses may want to look again at their supply chains. Decisions may also be need to be taken about which party should bear any additional costs.

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