

Getting Ready for Off-Payroll Working Changes

Introduction

From 6 April 2020 the off-payroll working rules that have applied since 6 April 2017 where the end client is a public sector body are to be extended to large and medium private sector organisations who engage workers providing their services through an intermediary, such as a personal service company.



There are tax and National Insurance advantages to working 'off-payroll' for both the engager and the worker. The typical off-payroll scenario is the worker providing his or her services through an intermediary, such as a personal service company. Providing services via an intermediary is only a problem where the worker would be an employee of the end client if the services were provided directly to that end client. In this situation, the IR35 off-payroll anti-avoidance rules apply and the intermediary (typically a personal service company) should work out the deemed payment arising under the IR35 rules and pay the associated tax and National Insurance over to HMRC.

New rules

Compliance with IR35 has always been a problem and it is difficult for HMRC to police. In an attempt to address this, responsibility for deciding whether the rules apply was moved up to the end client where this is a public sector body with effect from 6 April 2017. Where the relationship is such that the worker would be an employee

if the services were supplied direct to the public sector body, the fee payer (either the public sector end client or a third party, such as an agency) must deduct tax and National Insurance from payments made to the intermediary.

These rules are to be extended from 6 April 2020 to apply where the end client is a large or medium-sized private sector organisation. This will apply if at least two of the following apply:

- turnover of more than 10.2 million;
- balance sheet total of more than £5.1 million;
- more than 50 employees.

Where the end client is 'small', the IR35 rules apply as now, with the intermediary remaining responsible for determining whether they apply and working out the deemed payment if they do.

Getting ready for the changes

To prepare for the changes, HMRC recommend that medium and large private sector companies should:

- look at their current workforce (including those engaged through agencies and intermediaries) to identify those individuals who are supplying their services through personal service companies;
- determine whether the off-payroll rules will apply for any contracts that extend beyond 6 April 2020 (HMRC's Check Employment Status for Tax (CEST) tool can be used to determine a worker's status);
- start talking to contractors about whether the off-payroll rules apply to their role; and
- put processes in place to determine if the off-payroll working rules will apply to future engagements. These may include assigning responsibility for making a determination and determining how payments will be made to contractors who fall within the off-payroll working rules.

Workers affected by the changes should also consider whether it is worth remaining 'off-payroll'; providing their services as an employee may be less hassle all round.

Recommendation

It is important to understand the rules and how this will impact on your business, both as a end user or the personal company service provider. This is clearly a direction of travel which the HMRC are following and will continue to impact more and more businesses

Ashley Clarkson FCA BSc(Hons)

Director

AMEC Consultancy Limited

M: 07775 940992

E: ashley@amec-consultancy.co.uk

For more information about AMEC Consultancy and its services, please visit:

www.amec-consultancy.co.uk

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