

The new off-payroll rules in the public sector: A brief guide for clients

New Off-Payroll Rules

The changes came into force on 6th April 2017 as Chapter 10, Part 2 Income Tax (Earnings and Pensions) Act 2003. Please read through our Legal Speedread to learn about the legislation.

Scope

Are you a public authority or do you supply into public authorities?

Public authorities in scope are listed in Schedule 1 to the Freedom of Information Act 2000 and 2002. Please find the up to date list on legislation.gov.uk.

If you deliver services into a public authority or receive services, these could be outsourced services. This is complex but if payments made are primarily for workers' services then an assignment is in scope whilst if payments are primarily for delivery of goods or other services e.g. construction, accountancy, I.T. expertise then it is likely to be outsourced services and not in scope.

Impact

LLPs, Managed Service Companies (MSCs) and payments through individuals acting as an intermediary are also subject to the changes but for ease we refer only to a company.

If you are the public authority client you are responsible for deciding whether the off payroll rules apply to an assignment.

Making the Decision

The public authority must decide if the off-payroll rules apply to an assignment and must take "reasonable care" when doing so otherwise the fee payer burden shifts to it. Off payroll always applies to office holders.

HMRC have developed a new Employment Status Tool for Tax which is in beta version. Our recommendation is that this tool is used to aid the decision, although it is voluntary. Speak to us about how to work together.

You need to decide who will be responsible for making the status decision. We recommend that "super users" are trained to understand the process and the law.

Both parties must continue to review the decision throughout an assignment and notify the other of status changes. Off payroll status can change mid assignment.

The worker must confirm the status of the PSC to us.

Employment Status Questions -HMRC Tool

The tool only asks questions about the assignment:

- Is there a right of substitution, has it been exercised and how was the substitute paid?
- Is there a right to control how the work is performed, under contract or in practice?
- Is the company responsible for defects and has this been invoked?
- What are the requirements in terms of place of work, hours of work, the type of work performed?
- How is the company paid?

Impact of the Changes

Both you and your recruitment companies will need to adequately resource to ensure that you are ready

to apply the off payroll rules and run a deemed employment payroll.

You need to consider utilising other types of worker such as PAYE umbrella employed workers particularly for roles where the off payroll rules will generally always apply.

It is difficult to anticipate contractors' responses to the changes but you should be prepared for rate increases or possibly contractors leaving the public sector.

The fee payer needs to remit the Employers' NICs and possibly apprenticeship levy so this extra cost of supply must be factored into the rates for the assignment.

A variation to your contractual terms with recruitment firms may be required or a reissue of terms.

If an assignment is outside of the off payroll rules then, the gross invoice will be processed as normal and IR35 will apply.

The consultant is not your or our employee and has no entitlement to employment rights.

For more information please contact your recruitment firm, your professional body, or advisors.

OFF PAYROLL WORKING IN THE PUBLIC-SECTOR POST 6th APRIL 2017

LEGAL SPEEDREAD

The Legislation

- Chapter 8 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) contains the IR35 legislation and Chapter 9 contains the Managed Service Companies (MSC) legislation.
- A new Chapter 10 ITEPA 2003 contains the “off payroll in the public sector” legislation and there is matching NICs legislation. Chapter 10 takes precedence over Chapters 8 and 9.
- Off payroll is in force for payments made after 6th April 2017 for assignments in scope.

In Scope

- Assignment with a public sector body (defined by Freedom of Information Acts 2000 and 2002 Schedule 1 and some parliamentary offices;
- Assignment through an Intermediary; personal services company (PSC), partnership or another individual;
- Consultant personally provides services or has obligation to do so;
- Were it not for the Intermediary the consultant would be treated as client employee for tax purposes;
- Consultant holds material interest in PSC of more than 5% shareholding or is entitled to 60% or more of profit in partnership. Statutory duty on consultant to confirm status of Intermediary; and

- Payment reasonably taken to be for the individual’s services.

Not in Scope

- Non-public sector body assignment.
- Outsourced services provided to a public sector body.
- Consultant is an umbrella company or agency employee, a PAYE agency worker, genuinely self –employed or otherwise employed by a third party (not an MSC)
- Assignment does not fall within the criteria listed above under “In Scope”.

Decision Making

- “Public sector body” (PSB) responsible for decision as to whether assignment in scope and must take “reasonable care” otherwise fee payer liability transferred to PSB.
- Employment status rules – the IR35 factors - have not changed – new HMRC employment status for tax tool for all parties to use.
- PSB must inform party with whom they have a contract whether the assignment falls within the rules by latest start date of assignment or for current placements live on 6th April 2017 by payment date. Time limit of 31 days from request for clarification of decision.
- Liability transferred to Intermediary or Consultant if they provide fraudulent information.

- Status may change during an assignment.

Making the Payment

- Party holding contract with intermediary (Fee Payer) must run deemed employment payroll.
- The Fee Payer will disregard VAT, deduct direct cost of materials used and allowable expenses (optional) and calculate PAYE and employees’ NICs due on the remainder of the Intermediary’s gross invoice.
- It will calculate employers’ NICs based on the gross invoice.
- It will remit PAYE and NICs to HMRC through Real Time Information.
- It will pay the net to the Intermediary in satisfaction of its invoice.
- There is no standard 5% allowance for expenses.