

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

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

These rules apply to public authority assignments or assignments through a third party into a public authority in which **payment is made by the public authority primarily for your personal services.**

Your services are only in scope if you **provide your services through an intermediary; a personal services company (PSC) including a Managed Service Company (MSC) LLP or another individual.** We will refer only to PSCs as this is the most common intermediary used by contractors.

The off-payroll rules do not apply if you are employed by an umbrella company, you are an agency worker or you are a self-employed trader.

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

Impact of the Change

Previously if you work through a PSC then you and your PSC are responsible and liable for determining IR35 status on an assignment basis and PAYE and NICs are paid by your PSC.

From 6th April 2017, the decision to determine employment status has moved from you and your PSC to the public authority.

The person responsible for calculating the deemed employment payment is called the fee payer and is the party

with the contract with your PSC, which may be us or a third party.

If the Public Authority decides the off-payroll rules apply to an assignment then the fee payer will calculate a **deemed employment payment on your gross invoice (net of VAT). It will remit PAYE and NICs to HMRC directly.** It will pay the net to your PSC in satisfaction of its invoice. The PSC remains your employer and you have no employment rights against the fee payer, your recruitment firm or the public authority.

Making the Decision

The public authority has the legal duty to take 'reasonable care' to decide if the off-payroll rules apply to an assignment as soon as they can, ideally at role specification, but by latest the start date of an assignment.

Their contracting party can query the decision and the public authority has 31 days to respond to queries.

HMRC have developed a new Employment Status Tool and it is available in an anonymous, beta version.

Our recommendation is that this tool is used to aid the decision, although it is voluntary. The employment status law has not changed, responsibility for making the decision has. You will be required to promptly **provide accurate information** to enable the public authority to make the decision.

You must also confirm to the fee payer the valid and current status of your PSC.

HMRC state that if an assignment is live and the questions are answered accurately then HMRC will stand by the tool outcome.

You must notify us if you think your status changes during an assignment.

Employment Status Questions -HMRC Tool

The version of the tool only asks questions about the assignment and not your PSC. Below are some details of the type of questions asked:

- 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?
- Can the client ask you to switch tasks or role mid assignment?

Impact of the Changes

We have re-issued terms to facilitate the new rules.

The fee payer will need to remit Employers' NICs to HMRC. This is therefore an additional cost of supply which must be factored into the overall cost of the assignment.

If an assignment is outside of the off-payroll rules or if it is not in the public sector then, the gross invoice will be processed as normal and IR35 will apply.

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 authority (defined by Freedom of Information Acts 2000 and 2002 Schedule 1 and some parliamentary offices;
- Assignment through an Intermediary; personal services company (PSC) including a MSC, 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 authority assignment.
- Outsourced services provided to a public authority.
- 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 authority” (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.