

## The Off-payroll rules post April 6th 2020: A brief guide for clients

### New Off-Payroll Rules

The extension into the private sector is timetabled to come into force in April 2020; potentially under a revision of Chapter 10 Income Tax (Earnings and Pensions) Act 2003. Please read through our Legal Speedread below to learn about the legislation. This guide is based on what the legislation is likely to look like and will be subject to change as consultation documents and draft legislation are published.

### Scope

Are you a medium or large private sector organisation using the services of limited company contractors?

The definition of a medium or large private sector organisation will likely be based on Companies Act 2006 definitions. Please find the up to date act on [legislation.gov.uk](http://legislation.gov.uk).

The government anticipates the changes will not apply to the smallest 1.5 million private sector businesses, which may need flexible resource. Existing rules will continue to apply for client engagements with small businesses, meaning the limited company and contractor will remain liable and responsible for determining the IR35-status.

### 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 limited companies in this guide.

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

### Making the Decision

The client 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 the client. Off-payroll always applies to contractors holding an office for you, e.g. finance director.

HMRC have developed an Employment Status Tool for Tax. This tool can be used to understand HMRC's view, although it is voluntary to use. Speak to your recruiter about how to work together. There are third-party assessors who can advise on the off-payroll decision.

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

Both you and the recruitment company must continue to review the decision throughout an assignment and notify the other party of status changes. Off-payroll status can change mid assignment.

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

### Employment Status Questions -HMRC Tool

The tool 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?

### Criticality

The criticality of the contractor, skills or role is likely to influence your decision-making. In the public sector, we have seen an increase in rates for sought after skills, reduced supply of contractors, some clients converting contract roles to permanent roles and a keen interest in statement-of-work models. We expect to see all of this when it rolls out into the private sector and you should therefore plan for this.

### 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 possibly run a deemed employment payroll.

You need to consider utilising other types of workers such as umbrella-employed workers for assignments where the off-payroll rules will apply.

It is difficult to anticipate contractors' responses to the new rules, but you should be prepared for rate increases or possibly contractors moving to permanent work or even contracting abroad.

The fee payer needs to remit the Employers' NICs and if applicable apprenticeship levy. Therefore, 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 not apply.

The contractor is neither your nor the recruitment company's employee and has no entitlement to employment rights.

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

# POTENTIAL LEGISLATION: OFF-PAYROLL WORKING POST APRIL 2020

## 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 potential revision of Chapter 10 ITEPA 2003 may extend scope to include off-payroll in both the public and private sector and there will be matching NICs legislation. Chapter 10 takes precedence over Chapters 8 and 9.
- Off-payroll is likely to be in force in both the public and the private sector for payments made after 6<sup>th</sup> April 2020 on assignments in scope.
- This summary is on the basis that the public sector rules are extended into the private sector. Changes are to be expected in draft legislation.

### In Scope

- Assignment with the public sector or a medium or large private sector organisation (the definition of which is likely to be based on Companies Act 2006 definitions);
- 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 a 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;
- Payment reasonably taken to be for the individual's services; and
- When contracting for outsourced services it is likely to be the consultancy that will be considered the client and will need to apply the rules, not the end client.

### Not in Scope

- Small companies (likely to be defined in Companies Act 2006).
- 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

- Client will be responsible for deciding whether the assignment is in scope and must take "reasonable care" otherwise fee-payer liability will be transferred to them.
- Employment status rules – the IR35 factors - have not changed. The HMRC employment status for tax tool is available for all parties to use.
- The Client 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 April 2020 by payment date. There will be a time limit of 31 days from request for clarification of decision.

- Liability will be transferred to Intermediary or Consultant if the public or private sector organisation provides fraudulent information.
- Status may change during an assignment.

### Making the Payment

- The party holding contract with the 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.

This guidance is for information only, includes our opinion and is not legal advice. It is subject to change as the final legislation and government guidance is yet to be published.