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IR35 – Changes to off payroll working in the Private Sector

April 2021

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The Automotive Industry's Trusted Advisor

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Off payroll working - new tax year, new rules

Many motor dealers engage the services of valeters, drivers or cleaners on a self-employed basis. You will be used to making an assessment of whether there is any risk that HMRC could take the alternative view that they are actually employees for tax purposes. Up until now, this risk was mitigated if they provided their services through a company. New measures introduced from this month however, may mean that this is no longer the case.

From 6 April 2021, rules have been introduced for individuals who provide their personal services via an 'intermediary' to a medium or large business. We will cover the definition of medium/large later, however we would expect most dealers to qualify. An intermediary may be another individual, a partnership, an unincorporated association or a company. The most common structure is a worker providing their services via their own company (PSC) but agency relationships may also be caught. For ease we will use the term PSC to summarise the rules which will apply to all intermediaries.

As the new tax rules apply to amounts paid from 6 April 2021 they may affect current contracts.

What are the implications of the rules?

If the new rules apply to you they create a payroll situation akin to that of employer/employee and will mean:

- As the medium or large business you will calculate a 'deemed payment' based on the fees the PSC has charged for the services of the individual
- Generally, the entity that pays the PSC for the services must first deduct PAYE and employee National Insurance contributions (NICs) as if the deemed payment is a salary paid to an employee
- You will have to pay to HMRC not only the PAYE and NICs deducted from the deemed payment but also employer NICs on the deemed payment
- The net amount received by the PSC can be passed on to the individual without paying any further PAYE and NICs.

The practical effect of these rules is that your contractor/worker will no longer benefit from the potential tax advantages of receiving such income via their own company, which may lead them to try and renegotiate contracts with you. You might also feel it necessary to amend existing contracts due to your increased cost of employer NICs.

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What is a medium or large business?

The legislation uses an existing statutory definition within the Companies Act of a 'small company' to exempt small businesses from the new rules. Therefore the rules will exempt businesses meeting any two of these criteria:

- A turnover of £10.2 million or less;
- Having £5.1 million on the balance sheet or less;
- Having 50 or fewer employees.

If you are part of a group and the parent of the group is medium or large, all subsidiaries will also have to apply the off-payroll working rules.

Where the business receiving the work of the individual is not a company, it is only the turnover test that will apply.

You must respond within 45 days if your contractor/worker asks for information on size. It is important to be clear on the size of the business to whom your contractor/worker is providing their services at the outset, so they know who is responsible for making the status decision and paying tax, and where liability lies if there is an error.

There is no change if your contractor/worker provides services to a small business. Even after the changes are introduced from 6 April 2021, the contractor/worker remains responsible for deciding if IR35 rules apply to contracts they have in such cases.

Who will decide if the rules apply?

You, the medium or large business, will decide. The business needs to form an opinion as to whether, if the personal services of the individual were provided under a contract directly between the individual and themselves, the individual would be regarded as an employee of the business. This is the same kind of employment status test based on case law that businesses and agencies have to consider when they hire staff directly.

It is a matter of judgement whether the nature of and manner in which the services provided point to employment or self-employment. HMRC has a Check Employment Status Service tool (CEST) to help businesses decide the status of individuals providing personal services to them.

The link to the Employment Status Service tool is

www.gov.uk/guidance/check-employment-status-for-tax

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The Status Determination Statement (SDS)

The SDS is a new part of the status determination procedure. If you as the business to whom the contractor/worker is providing services decides the engagement amounts to employment, you should provide them with an SDS, setting out your employment status decision, and giving the reasons underpinning it.

If your contractor/worker is part of a longer labour supply chain, you should also pass the SDS information to the next entity you deal with, and so on, so that the information flows along the chain as required. There is no hard and fast rule about how the SDS is issued, but it should be in a format that you can 'receive or access'. However, the result of using HMRCs CEST constitutes an SDS.

What can your contractor/worker do if they disagree with the business deducting PAYE and NICs?

The business must take 'reasonable care' in coming to its conclusion. If it doesn't, the statement is not a valid SDS. HMRC guidance states: 'What is necessary for each client to discharge that responsibility must be viewed in the light of their abilities, experience and circumstances.' More will be expected of a large multi-national company, for example, than a smaller business.

If your contractor/worker disagrees with the decision they can use HMRCs CEST tool to see if they obtain a different conclusion. If they obtain a result which confirms self-employment they can discuss the results with you or you can contact us to discuss the matter. Even if they obtain a self-employment result, this does not necessarily mean the result is correct. CEST has come in for criticism over the years, and has been refreshed to support the new regime.

HMRC has been working with stakeholders to enhance the service and guidance on the use of CEST but many commentators consider that the law on status is too complicated for a yes/no checklist to provide the right answer in all cases.



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SDS dispute process

Your contractor/worker has a statutory right to make a representation to you where they believe that the conclusion mentioned in the SDS is incorrect. Written disagreement is prudent: they should give you details of the SDS they disagree with, explain why they disagree, and both you and they should keep a record of proceedings. You have 45 days, from when the representation is received, to review the decision and either confirm the original decision and explain why you have done so or alternatively, withdraw it and provide a new one, with confirmation of the date it is valid from.

What is the tax effect on your contractor/worker if the new rules apply?

The important point to appreciate is that they will be treated in tax terms as an employee of the entity that pays the PSC for their services. So if a contract ends during the 2021/22 tax year, the paying entity should send the contractor/worker a P45 showing the total deemed payment and deductions for PAYE and NICs. If the contract extends over the 2021/22 tax year, the paying entity should issue a P60 to the contractor/worker showing the total payment and deductions in the 2021/22 tax year.

Your contractor/worker will need to show the amounts on the P45 or P60 as an employment on the employment pages of their 2021/22 self-assessment tax return.

The amounts of income tax recorded as paid by your contractor/worker on the P45 or P60 may well not be the correct amount of income tax payable by them. However, that is a matter for them not you.

How we can help

If you have any queries about whether these rules will apply to your business, please do not hesitate to contact us at michelle.malone@ase-global.com