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Off-payroll working in the private sector - proposed UK tax changes

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Agenda

- Background
- Overview of 2017 public sector changes
- Consultation proposals

Background

- Off-payroll working (IR35) rules introduced in 2000
- Designed to ensure that those who work through an intermediary (such as a personal service company (PSC)), who would be employees if directly engaged, are subject to the same employment and social security taxes as an employee
- Broadly, IR35 rules apply where:
  - worker personally performs services for another person (client);
  - services provided under arrangements involving a third party (the intermediary – commonly a PSC); and
  - circumstances are such that if worker had contracted directly with client, worker would be regarded for income tax purposes as employed by client
- No exhaustive list of factors pointing to worker being "employee" - relevant considerations include mutuality of obligation, right of control/supervision over worker, financial risk, extent to which worker part and parcel of client organisation, substitution rights etc.

Background

- 18 May 2018 – HMRC launched consultation on off-payroll working in the private sector (not linked to employment status consultation)
- Consultation runs to 10 August 2018
- Backdrop to current consultation – public sector off-payroll working reforms, Taylor Review, new corporate offence of failure to prevent facilitation of tax evasion
- HMRC statistics:
  - 250,000 “service” companies in 2000 rising to over 1 million “service” companies in 2015
  - HMRC estimate one third of such companies should fall within IR35
  - currently only 10% of this group (3% of total) pay taxes on this basis
  - cost of non-compliance estimated at £700m in 2017/18, estimated to rise to £1.2 billion in 2022/2023

Changes to public sector rules on off-payroll working

- Since 2017, public authority client responsible for determining whether the worker would have been an employee for income tax and NICs purposes if engaged directly
- Public authority or agency that pays the PSC is responsible for paying income tax and NICs under PAYE if the rules apply
- HMRC developed a digital service, “Check employment status for tax” (CEST), to assist (https://www.gov.uk/guidance/check-employment-status-for-tax)
- 58,000 extra individuals per month now within PAYE in public sector
- Extra £410 million of PAYE and NICs

Public sector changes

- Number of interventions (by HMRC!) required to reach the same number of PSCs vastly reduced
- Reform has been effective in reducing non-compliance
- However, concerns about impact on labour market flexibility and administrative burdens on clients and agencies
- Independent research – doesn't seem to have affected labour market, early difficulties in compliance, over caution about judgements, ongoing administrative costs likely to decrease over time with increased familiarity

Public sector changes

- CEST service key part of compliance
- Gives “clear” answer in 85% of cases
- Gives self-employment outcome 60% of the time, employment outcome 40% of the time (currently)
- HMRC will stand by determination where “it has been completed accurately and in accordance with HMRC’s guidance”
- HMRC helplines saw initial spike which has now decreased
- So now is the time…..

Compliance challenges for HMRC

To set the scene:

- need to deal with each PSC individually
- perception that limited chance of HMRC enquiry encourages non-compliance
- time lag between engagement taking place and HMRC enquiry
- fragmentation of responsibilities within supply chain
- challenges in collecting tax due from PSC (e.g. PSC may no longer exist)

- Leads to large numbers of non-compliant arrangements
- HMRC floats the possibility of improving the current compliance process…
- BUT go on to acknowledge that the rules are likely to require reform

Basis of reform

HMRC say any change needs to:

- address / mitigate compliance challenges
- be efficient for HMRC to enforce and provide taxpayer value for money
- not be disproportionately burdensome for clients, PSCs and agencies

“Lead” option in the consultation

- Extend the public sector rules to the private sector
  - end client responsible for determining employment status – HMRC considers best placed to make determination
  - end client (or agency) responsible for deducting income tax and NICs and paying employer NICs to HMRC
  - requirement removed from PSC
  - end client required to take reasonable care in making determination, and to make a determination, otherwise liability for income tax and NICs may transfer to them
- Improve the design of the rules
  - e.g. to stop agencies disregarding a determination made by the end client
- Potentially also some improvements for taxpayers?
  - minimisation of burdens for employers – familiarisation process and disputes over existing contracts
  - administrative simplification

Other options for reform

- Encourage / require businesses to “secure” their supply chains
  - enhanced diligence
  - contractual provisions concerning e.g. compliance / use of sub-contracting and offshore intermediaries
  - mandating PSC to provide a CEST determination
- Additional record keeping
- Invitation to suggest other options

Options already rejected by HMRC

HMRC confirmed they are not considering the following reforms:

- minimum length of engagement
- new tax regime for “freelancer” companies
- client pays employer NICs
- flat-rate withholding tax

Next steps

- Consultation closes 10 August 2018 (seems unlikely that HMRC will not implement changes)
  - any feedback welcome
- Scoping the potential impact
  - identify which parts of your business are engaging PSCs
  - review existing IR35 engagements to ascertain likely position and see whether end client or agency has power to withhold (power potentially exists under general law)
  - communicate with existing contractors to inform them the rules are likely to be changing
- Look at “future proofing” new IR35 engagements?
- Practical issues for end client – who has internal responsibility for making the CEST determination? Is the necessary data available to them?
- Broader context – Taylor Review related changes / CCO compliance

Q&A

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Thank you for watching

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