Calling all small organisations engaging contractors…

New Off Payroll Working rules from 6 April 2021

The special tax rules applying to Personal Service Companies (IR35) have been around for some time now. The rules were designed to deal with individuals who HMRC believe should be taxed as employees.

IR35 has not been as successful as HMRC predicted and so, in April 2017, the Government introduced the off payroll working rules in the public sector. From 6 April 2021, these rules will be extended to medium and large organisations in the private sector, who will become responsible for determining whether the rules should apply, and for paying the right tax and NICs.

Will these changes affect my organisation?

If your organisation is a ‘small’ end-client, there are still actions you will need to take in due course. If a contractor or agency asks about the size of your organisation, you have 45 days to provide this information.

You will remain responsible for assessing the tax employment status for any workers who invoice in their own name (rather than through a company). You will also have to check annually that your organisation is still classified as small.

Action points for end-clients engaging contractors

Even if you think your organisation is exempt from the new rules because it is small, there are some essential steps you should take before 6 April 2021

Step 1 – Decide if you are the ‘end-client’

- The ‘end-client’ is the organisation in receipt of the worker’s services.
- Where an organisation outsources and enters into a contract for a fully contracted out service, they will not be the ‘end client’. They will be above the ‘end-client’ in the contractual chain and will have no obligations under the off payroll working rules.

*If your organisation is not the ‘end client’, all you need to consider is step 5.

*If your organisation is the ‘end-client’, check Steps 2 to 5.

Step 2 – Is your organisation based outside the UK?

- Wholly overseas ‘end-clients’ are excluded from the off payroll working rules.
- A client is based wholly outside the UK if it does not have a UK connection in the form of being UK resident or having a permanent establishment (ie a UK branch of office).
- In this scenario, the worker’s intermediary (usually their own limited company) bears all the liability and must consider if the IR35 rules apply.

*If your organisation is based wholly overseas, you don’t have any obligations under the new rules.

*If UK based, consider Steps 3 to 5

Step 3 - Check if your organisation is small

- The rules are complex and cannot be covered here in full.
- Partnerships and sole traders are small if their turnover is below £10.2m.
- Companies and LLP's follow the Companies Act rules and will be small unless 2 out of 3 of the below limits are exceeded for two consecutive years:
  - Turnover - £10.2m
  - Gross assets - £5.1m
  - Employees – 50
- Figures for groups, connected companies and joint ventures need to be aggregated before considering the limits.
- You will have to compare your figures to these limits each tax year to check if the rules apply.
- The limits are applied to the latest year where the accounts filing date falls before the start of the tax year (and the prior year).
- For example, for a 31 July year end, the year ended 31 July 2019 is the relevant year as the filing date of 30 April 2020 (9 months after the year end), is the last accounts filing date before 6 April 2021). The limits are applied to the year ended 31 July 2019 and 31 July 2018 to see if the small exemption is met for the tax year starting on 6 April 2021.

*If small, your only obligation under the new rules is to inform workers and agencies you are small if requested (within 45 days). Consider Steps 4 & 5.

*If not small, you need to operate the new rules – see our factsheet for Medium/Large End-Clients regarding your obligations.

Step 4 – Set up system to check your size each tax year

- If you are small, there is no need to operate the off payroll working rules yet.
- However you need a system to ensure you review your figures before the start of each tax year. This is to ensure you identify if you breach the small exemption limits.
- Breaching the limits for 2 years in a row means you will need to start operating the off payroll working rules from the next tax year.

Step 5 – Determine the tax employment status of workers invoicing in own name

- Assess the tax employment status for any workers who invoice in their own name (rather than through a company).
- This is not a specific requirement of the new rules from 6 April 2021, but it has always been and will continue to be your responsibility to do this.
- Workers who are effectively employees for tax purposes should go on your payroll, or you need to change the way they work for you in order to reduce the risk of a challenge.
- If HMRC determine that any workers should have been classified as employees they will collect up to 6 years' worth of unpaid tax, NI, interest and penalties from your organisation not the worker. The costs of non-compliance can therefore be significant.

How can we help?

Contact us for more in-depth information. We can also provide assistance making tax employment status determinations and setting up internal procedures to manage these new rules.

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