



M+A Partners

Off-payroll working in the private sector

From April 2020, certain private sector firms will have to check whether their contractors are caught by the latest version of the 'IR35' rules.

Background - what is IR35?

The IR35 rules were introduced in 2000 to combat the perceived exploitation of the tax system, whereby workers were being paid via their personal service companies instead of having tax and National Insurance (NI) deducted at source via PAYE.

It was up to the contractor to determine whether the rules applied. If applicable, the rules required contractors to operate PAYE on the income received by their personal service company as if it was income received in a personal capacity. A complex calculation determined the amount to be subjected to tax and NI and this in turn was reflected in the company's accounts and corporation tax return, as well as the individual's personal tax return. This resulted in more tax being paid than if the IR35 rules did not apply.

However, many contractors simply ignored the IR35 rules altogether and so from April 2017 the rules were modified for those working with public sector bodies. These rules shifted the onus, for determining whether contracts were caught by the new rules, from the contractor to the public sector end client. The public sector body is required to deduct tax and NI at source from the amounts paid to the contractor company if it determines that the rules apply.

IR35 for the private sector

From April 2020 this new approach will be extended to 'medium and large' private sector firms, who will now be

required to determine whether they need to deduct tax and NI when paying contractors. Importantly, those classed as a small business will not be required to implement the new off-payroll working rules.

A 'small' business is one which satisfies two of the following conditions:

- + An annual turnover of less than £10.2m.
- + A balance sheet total of less than £5.1m.
- + Fewer than 50 employees.

When do the rules apply?

The aim of the off-payroll working rules is to ensure that, where an individual would have been an employee if they were providing their services directly, they pay broadly the same tax and NI as an employee.

Over the years a number of tests and considerations have been developed via case law which are used to determine whether an individual is employed or self-employed. These same tests are applied to determine a contractor's status for off-payroll working purposes.

They include:

- + What is the client's business?
- + Is there any form of contract?
- + Is the contractor at financial risk in the project?
- + Is the contractor working exclusively only for one client?
- + Does the contractor work with their own materials/equipment on site?
- + Does the contractor have to rectify work at their own expense?

- + Can he or she provide substitutes to carry out the work in place of themselves?
- + Is the contractor "part and parcel" of the client's organisation?
- + The intention of the parties?
- + The length of the contract?
- + Terms of contract - e.g. does the contractor have a notice period, the hours of work, where and how is the work carried out?
- + Is the contractor prevented from working for other clients?
- + The pay structure e.g. holiday pay. Is the worker paid by the job/project or a fixed wage at a fixed time (as an employee would be)?
- + Are any benefits provided similar to those offered to employees (company car/van, sick pay, bonuses etc.)?
- + Has any Government Department (including the Revenue/Contributions Agency) ever provided a written status ruling in the past?

The above is not a simple checklist to be ticked through and some factors will be more important than others in any given situation. Therefore any contractual arrangement needs to be considered as a whole.

HMRC provide an online tool, CEST, www.gov.uk/guidance/check-employment-status-for-tax which can be used to determine whether a worker should be classed as employed or self-employed for tax purposes. However it has its limitations and a number of critics. This has contributed to public sector bodies often taking a blanket approach and applying the off-payroll working rules to all of their contractors, although the Government has stressed that this approach shall not be permitted when the rules are extended to the private sector in April 2020.

→ Next steps

For engagers, it will be necessary to first establish whether they meet the definition of a 'small' business. If they do then there is no further action to be taken. If not, then they will need to assess the status of the contractors working for them on a case by case basis to determine whether the off-payroll working rules apply.

They will then be required to issue a Status Determination Statement (SDS) notifying the worker of the decision reached. The draft legislation includes complex rules for situations where one or more agencies are involved and the need to pass the SDS (and the liability to operate PAYE) down the supply chain.

Contractors should also consider whether the rules are likely to apply to them and how this will affect their overall tax liability. It may be necessary to review the terms of their contracts and, if caught by the off-payroll working rules, determine how this affects their business strategy and fee structure for the future. Upon receipt of an SDS, the contractor can challenge the decision and the engager has 45 days to confirm its finding, giving reasons, or withdraw and replace the SDS with a revised decision.

Both parties should also consider future working arrangements applicable from 6 April 2020 with a view to assessing the impact of this new legislation and possible steps to modify working arrangements. In some circumstances, it is likely that the nature and substance of the contract results in the application of the new off-payroll working legislation and so early advice should be sought so that the additional tax burden is identified at the earliest opportunity.

This is a complex area of tax law and the effects can be significant for both engagers and contractors.

At **M+A Partners** we are able to offer a fixed fee contract review service so you can determine if your contract or your business is affected by the off-payroll working legislation and what options you have. Please contact one of our experts on this new legislation to understand how this impacts your business:



Clare Goodswen - Partner

☎ 01603 227600

✉ clare.goodswen@mapartners.co.uk



Steve Dack - Tax Director

☎ 01603 227660

✉ steve.dack@mapartners.co.uk

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MA Partners LLP

7 The Close Norwich NR1 4DJ

2 Cyprus Court Queens Square
Attleborough NR17 2AE

12 Church Street Cromer NR27 9ER

☎ 01603 227600

✉ enquiries@mapartners.co.uk

mapartners.co.uk



mapartnersuk