BUSINESS & PERSONAL TAX SUPPORT OPTIONS

Off-payroll working

2024/25

On Friday, 23 September 2022, Kwasi Kwarteng – during his brief spell as Chancellor – pledged to repeal the IR35 provisions. Not to be… A month later his replacement, Jeremy Hunt, announced the repeal would not go ahead.

And so, its back to square one.

New off-payroll working rules came into effect from 6 April 2021, and you may already have some experience of applying these rules. The rules may affect you if you if you are a private sector organisation that engages workers who provide their services through an intermediary, such as a personal service company, or if you are a worker who provides your services in this way.

Private sector engagers

You will fall within the ambit of the off-payroll working rules if you are a medium or large private sector organisation that engages workers who provide their services through an intermediary, such as a personal limited company. You will be classed as a medium or large private sector organisation if at least two of the following apply to you:

- your annual turnover is more than £10.2 million.
- your balance sheet total is more than £5.1 million.
- you have more than 50 employees.

If one or none of the above apply to you, you are classed as a 'small' organisation and do not need to comply with the rules. Instead, the intermediary will need to determine whether they fall within the scope of IR35.

Medium and large private sector organisations

If you are classified as a medium or large private sector organisation by applying the above tests, you will need to comply with the off-payroll working rules whenever you engage a worker who provides their services through a personal service company or other intermediary. The rules impose a number of obligations on you.

For all engagements of this nature, you must:

- determine whether the worker would be an employee if they provided their services directly to you. (HMRC's Check Employment Status for Tax (CEST) tool, available on the GOV.UK website, can be used for this purpose).
- give a copy of the determination and the reasons for reaching the decision that you arrived at to the worker, and to any other parties in the chain.
- if the determination is that the worker would be an employee, calculate the deemed direct payment by excluding VAT and the cost of materials from the amount billed by the worker.
- calculate tax and employee's National Insurance on the deemed direct payment and deduct this from the payment that you make to the worker's personal service company.
- account for employer's National Insurance on the deemed direct payment and pay this together with the tax and employee's National Insurance deducted from the payment over to HMRC; and
- report the pay and deductions to HMRC under Real Time Information, making it clear that the worker is an off-payroll worker.

It is important that you apply the rules as you may be penalised if you fail to do so.

Where the worker falls within the scope of the off-payroll working rules you will need to pay employer's National Insurance contributions on payment made to the worker's intermediary. You should budget for this cost.

Small private sector organisations

If you are classified as a small organisation by applying the above tests, you do not need to consider the off-payroll working rules, and there is no need for you to undertake a status determination. Instead, you will pay the worker's personal service company gross. There is no need to deduct tax and National Insurance from payments made to the worker's personal service company, or to account for employer's National Insurance. Instead, the worker's intermediary is responsible for determining whether the engagement falls within IR35 and complying with the IR35 rules if it does.

Workers providing services through a personal service company

If you are a worker and you provide your services to a private sector organisation, you should ask the client to confirm their size when agreeing the engagement. If the client is a medium or large private sector organisation or a public body, they will need to determine whether the off-payroll working rules apply, whereas if the client is a small private sector organisation, you will need to consider whether the engagement falls within the scope of the IR35 rules.

If the end client is a medium or large private sector organisation or a public sector body, they will determine your status and give you a status determination. If you do not agree with the determination (for example, if the end client determines that you would be an employee if you provided your services directly and you think you would be self-employed), you should tell the client.

The client must either confirm that their original determination stands or issue a new determination within 45 days.

If you are assessed as an employee and fall within the off-payroll working rules, the client will deduct tax and National Insurance from payments that they make to your personal service company. You will receive credit for this tax and National Insurance against payments that your personal service company makes to you personally.

The off-payroll working rules do not apply to services provided to an end client that is classed as ‘small’. Consequently, if you provide services through an intermediary to a small private sector organisation, you will need to consider the IR35 rules and determine whether you would be an employee if you provided your services directly. Where this is the case, the IR35 rules apply and you will need to calculate the deemed employment payment on 5 April at the end of the tax year, and account for tax and National Insurance on that payment direct to HMRC.

If you fall within the scope of the off-payroll working rules, you may wish to consider whether it is worthwhile to operate through a personal service company or whether it would be preferable to be ‘on payroll’ as an employee if this option is available.

New offset tax ruling

Before 6 April 2024, and when HMRC found that a business has made a mistake in applying the off-payroll working rules, the deemed employer was assessed for income tax, national insurance contributions (NIC) and the apprenticeship levy (where relevant). This assessment took no account of taxes paid by the contractor or their personal service company.

However, the November 2023 Autumn Statement provided welcome confirmation that a limited set-off for the taxes paid by the contractor or their personal service company would be introduced from April 2024.

This is achieved by allowing HMRC to set off taxes estimated to have already been paid by the worker or their intermediary against a deemed employer’s subsequent PAYE liability. This will ensure that the cost of the liability is shared more fairly between the deemed employer and the worker.

We can help

We can help you decide whether you fall within the scope of the off-payroll working rules, and if you do, what you need to do in order to comply.