

Off Payroll Working from April 2021

Who is Affected?

The new rules apply when a business engages a worker who supplies his personal services through an intermediary, such as a personal service company (PSC), where the worker would be treated as employed if he was engaged directly. It is the responsibility of the business to decide whether the worker would be treated as employed under these rules. Public sector bodies are already caught by similar rules.

Small Company Exception

Small companies are exempt from the new rules. A small company is one which can satisfy two of the following three conditions:

- Turnover for the year not more than £10.2m
- Total assets on the balance sheet not more than £5.1m
- Average number of employees in the year not more than 50

Where the company is part of a group or there are companies under the same control, these companies must be taken into account. Unincorporated businesses are treated as small if their turnover is less than £10.2 million.

New Requirements

From April 2021, businesses will have the following responsibilities in respect of off-payroll workers who provide personal services:

- They must determine the status of such workers, categorising them for this purpose only as “employed” or “self-employed.”
- They must provide a written statement of the status determination and the reasons for reaching it to the company to whom it makes payments, and to the worker himself;
- They must deduct PAYE/NIC from the payment to the PSC, and pay employer’s NIC. The PAYE and NIC must be accounted for to HMRC via the Real Time Information (RTI) service.

From April 2021, new rules apply to businesses who engage off-payroll workers.

In many cases, they will be required to deduct PAYE/NIC.

- They must operate an appeal process, to enable the worker to dispute the status determination and to respond within 45 days. This process does not involve HMRC.
- They must confirm their size upon request by the worker or the person with whom the contract is with.

Determining a Worker’s Status for Tax Purposes

It is not a straightforward matter to determine employment / self-employment status, as is evident from a long string of cases that have reached the courts over the last 50 years, and there are a myriad of factors to take into account.

To assist with this, HMRC has provided an on-line tool called CEST – Check Employee Status Tool - which can be found on by an on-line search for “HMRC CEST.”

The advantage of using CEST is that HMRC will stand by its conclusions, provided the user has entered the correct information. However, in some borderline cases, the CEST tool will not determine the status either way. In such cases, a judgement will be required to be made or professional advice will need to be taken.

It should be noted that determining the worker’s status as “employed” for tax purposes does not mean that he is actually employed by the end-client. The worker’s actual, contractual position is unchanged.

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Agencies

In some cases, businesses will pay an agency, who will in turn pay the PSC. The business must then pass the status determination to the agency as well as to the worker. Where the engaging business determines the worker's status as "employed," the agency will be responsible for the PAYE/NIC. The agency will also bear the cost of employer's NIC. However, they will have no say in the determination of the worker's status.

Non-resident Agencies

An agency that is not resident in the UK and has no place of business in the UK is not required to operate PAYE/NIC. In such cases, the engaging business may become liable to operate PAYE/NIC.

Non-compliant Agencies

Where an agency fails to account for PAYE/NIC, HMRC will have powers to seek payment of that liability from the engaging business. HMRC have stated that it would not propose to use these powers where the engaging business has taken reasonable care in applying the rules, or where the non-payment of PAYE/NIC was due to a genuine business failure. Clearly, HMRC is expecting businesses to carry out some degree of due diligence where there is a chain of intermediaries, to ensure that PAYE/NIC is being operated where appropriate.

Further Implications for PSCs

Where a worker's status is determined as "employed" for tax purposes, the PSC will be unable to make tax-free travelling

and subsistence payments to the worker, or to pay tax efficient dividends to the worker and his/her spouse. Off-payroll workers are therefore likely to be financially worse-off, and may seek to increase their charges.

Action Required

Companies who do not qualify as "small" should consider whether they have any workers who provide personal services, and are not on the payroll. If such individuals are expected to be paid after April 2021, it will be necessary to determine their status for tax purposes. This is the case whether or not an agency is used.

Where a worker's status is deemed to be "employed" for tax purposes, consideration should be given to reviewing the contractual arrangements, and entering into a dialogue with the worker to agree mutually acceptable terms.

Companies should ensure that copies of the status decision and the reasons for it are communicated before April 2021, and that they retain copies. The reasons for the status decision may be in the form of the printout from the CEST tool where it is used.


Where agencies are used, businesses should satisfy themselves that they comply with the new rules. Where agencies fail to account for PAYE/NIC, liabilities can fall back on the engaging business.


Concluding note

HMRC expects to raise £1.3 billion from the introduction of these new rules. Clearly, it is the view of HMRC that there are a huge number of PSCs who will become subject to deduction of PAYE and NIC.

It should also be stressed that there are no planned changes to the rules for paying freelance workers who do not operate via PSCs. Businesses should continue to check whether their status for tax purposes is employed or self employed.

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