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Off Payroll Working

New tax rules for individuals working via their own companies for a medium or large business

From 6 April 2020, new tax rules are proposed for individuals who provide their personal services via an 'intermediary' to a medium or large business. An intermediary may be another individual, a partnership, an unincorporated association or a company. The most common structure is a worker providing their services via their own company (PSC) which is the term used in this factsheet.

Similar rules were introduced in 2017 for public sector organisations receiving services from PSCs. The 2020 rules will use the 2017 rules as a starting point which means, in practical terms, that the principles have already been decided but some aspects of the detailed operation of the rules will be decided in a consultation process. Draft legislation has been published which will, subject to consultation, be included in the next Finance Bill.

The effect of these rules, if they apply to you, will mean:

- the medium, large business or agency paying the PSC will calculate a 'deemed payment' based on the fees the PSC has charged for the services of the individual
- generally, the entity that pays the PSC for the services must first deduct PAYE and employee National Insurance contributions (NICs) as if the deemed payment is a salary paid to an employee
- the paying entity will have to pay to HMRC not only the PAYE and NICs deducted from the deemed payment but also employer NICs on the deemed payment
- the net amount received by the PSC can be passed onto the individual without paying any further PAYE and NICs.

The practical effect of these rules is that you may no longer benefit from the potential tax advantages of receiving such income via your own company.

There may also be pressure from businesses to renegotiate contracts due to their increased cost of employer NICs.

The new tax rules apply to amounts paid from 6 April 2020 and so may affect current contracts.

What is a medium or large business?

The government intends to use an existing statutory definition with the Companies Act of a 'small company' to exempt small businesses from the new rules. Therefore the rules will exempt businesses meeting any two of these criteria: a turnover of £10.2 million or less; having £5.1 million on the balance sheet or less; having 50 or fewer employees. If the business receiving the work of the individual is not a company, it is only the turnover test that will apply.

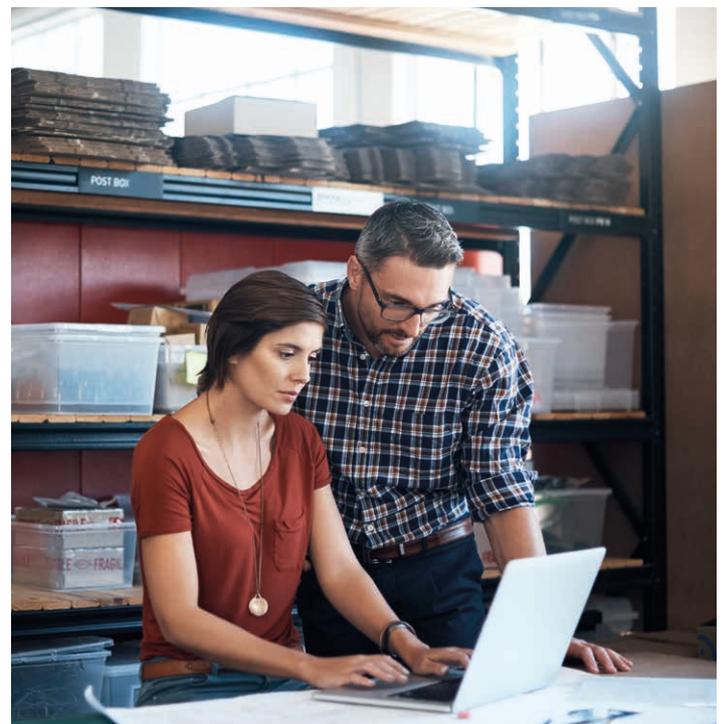
Who will decide if the rules apply?

The medium or large business will decide. The business needs to form an opinion as to whether, if the personal services of the individual were provided directly, the individual would be regarded as an employee of the business. This is the same kind of employment status test based on case law that businesses and agencies have to consider when they hire staff directly.

It is a matter of judgement whether the nature of and manner in which the services provided point to employment or self-employment. HMRC has a Check Employment Status Service tool (CEST) to help businesses decide the status of individuals providing personal services to them. HMRC is currently working 'to identify improvements to CEST and wider guidance to ensure it meets the needs of the private sector'.

For reasons which are explained below, the business may be tempted to err on the side of employment particularly if CEST indicates employment.

The link to the Employment Status Service tool is www.gov.uk/guidance/check-employment-status-for-tax.



Why have these rules been introduced?

The 2020 rules will replicate many of the effects of the 'intermediaries' legislation enacted many years ago (often called the IR35 rules). This legislation requires, for example, a one person company to judge whether the IR35 rules apply. If IR35 applies the PSC would then treat the relevant fees received by the company as deemed payments to the worker and thus account for PAYE and NICs.

HMRC have found it difficult to enforce their view of the applicability of the IR35 legislation to many PSCs. Many view the risk of being 'caught' and being required to pay PAYE and NICs, is outweighed by the benefit of company profits being paid out under a 'low salary, balance as dividends' regime.

The new legislation therefore shifts the responsibility and risk to the business receiving the services of the individual. If the business decides the new rules do not apply this ultimately could go to a Tax Tribunal. If the Tribunal decides against the business, the business will have to pay over PAYE and NICs to HMRC, having already paid the gross fees to the PSC.

What can you do if you disagree with the business deducting PAYE and NICs?

The government will require the medium or large business when it makes a status determination to:

- communicate the decision to the worker in a Status Determination Statement (SDS), and
- give the reasons for that determination if requested by the worker.

This will be in addition to communicating the decision to the party with whom the business has contracted; for example an agency.

The business must take 'reasonable care' in coming to its conclusion.

If you disagree with the decision you can use the tool to see if you obtain a different conclusion. If you obtain a result which confirms self-employment you can discuss the results with the business or you can contact us to discuss the matter. Even if you obtain an employment result, this does not necessarily mean the result is correct. HMRC state that the current tool is 'able to determine employment status in 85% of cases' which, of course, means it is not correct in 15% of cases. Many commentators consider the accuracy of the tool to be much lower.

HMRC is currently working with stakeholders to enhance the service and guidance on the use of CEST but many commentators consider that the law on status is too complicated for a yes/no checklist to provide the right answer in all cases.

The government will introduce a 'client-led status disagreement process' where you can make a representation to the medium or large business where you believe that the conclusion mentioned in the SDS is incorrect. The medium or large business has 45 days, from when the representation is received, to review the decision and either confirm that the decision or give the worker a new SDS with a different conclusion. If the business confirms the decision it must give its reasons for deciding that the conclusion is correct.

What is the tax effect on you?

The important point to appreciate is that you will be treated in tax terms as an employee of the entity that pays the PSC for your services. So if a contract ends during the 2020/21 tax year, the paying entity should send you a P45 showing the total deemed payment and deductions for PAYE and NICs. If the contract extends over the 2020/21 tax year, the paying entity should issue a P60 to you showing the total payment and deductions in the 2020/21 tax year.

You will need to show the amounts on the P45 or P60 as an employment on the employment pages of your 2020/21 self assessment tax return.

The amounts of income tax recorded as paid by you on the P45 or P60 may well not be the correct amount of income tax payable by you.

The other important point to appreciate is that it is your company which is receiving the amounts from the paying entity. How can you extract such income tax efficiently? The draft legislation has special rules to allow you to do so.

What procedures does your PSC need to follow if deemed payments are received?

The PSC will deduct the amount of the payment it receives, as well as the PAYE/employee NICs costs incurred, from its taxable income, so it will not be taxed twice.

What if your company has other contracts hiring out your personal services?

Nothing is expected to change in respect of contracts your company has with small private sector clients. The application of IR35 will still need to be considered but there is no change in the law regarding IR35.

We can help you determine the status of existing and new contracts to identify if you are caught and provide further guidance on tax efficient extraction of funds from the company relevant to your specific circumstances.

If you have any queries, please do not hesitate to contact us.



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