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A fresh approach to accounting

OFF-PAYROLL WORKING AND PERSONAL SERVICE COMPANIES

The off-payroll working rules are designed to prevent the avoidance of tax and national insurance contributions (NICs) through the use of personal service companies and partnerships.

The rules do not stop individuals selling their services through either their own personal companies or a partnership. However, they do seek to remove any possible tax advantages from doing so where the worker would otherwise be an employee of the client.

The application of the rules differs depending on the client to whom the services are provided; whether the client is a public sector body, a large or medium private sector business or a small private sector business.

Summary of approach

Removal of tax advantages

The tax advantages mainly arise by extracting the net taxable profits of the company by way of dividend. This avoids any national insurance contributions (NICs) which would generally have been due if that profit had been extracted by way of remuneration or bonus. In addition, dividend tax rates are lower than those applicable to salary income.

The intention of the rules is to tax most of the income received from the client as if it were the salary of the person doing the work.

To whom does it apply?

The rules apply if, had the individual sold their services directly rather than through a company (or partnership), they would have been classed (by HMRC) as employed rather than self-employed.

For example, an individual operating through a personal service company but with only one customer for whom they effectively work full-time is likely to be caught by the rules. On the other hand, an individual providing similar services to many customers is far less likely to be affected.

Employment v self-employment

One of the major issues under the rules is to establish whether particular relationships or contracts are caught. This is because the dividing line between employment and self-employment has always been a fine one.

All of the factors will be considered, but overall it is the intention and reality of the relationship that matters.

The table below sets out the factors which are relevant to the decision.

HMRC will consider the following to decide whether a contract is caught under the rules

Mutuality of obligation	the customer will offer work and the worker accept it as an ongoing understanding?
Control	the customer has control over tasks undertaken/hours worked etc?
Equipment	the customer provides all of the necessary equipment?
Substitution	the individual can do the job himself or send a substitute?
Financial risk	the company (or partnership) bears financial risk?

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Basis of payment	the company (or partnership) is paid a fixed sum for a particular job?
Benefits	the individual is entitled to sick pay, holiday pay, expenses etc?
Intention	the customer and the worker have agreed there is no intention of an employment relationship?
Personal factors	the individual works for a number of different customers and the company (or partnership) obtains new work in a business-like way?

HMRC has provided a digital tool to help identify the employment status of a worker.

Planning consequences

The main points to consider if you are caught by the legislation are:

- the broad effect of the legislation will be to charge the fee paid by the client income of the company to NICs and income tax, at personal tax rates rather than corporate tax rates
- there may be little difference to your net income whether you operate as a company or as an individual
- to the extent you have a choice in the matter, do you want to continue to operate through a company?
- if the client requires you to continue as a limited company, can you negotiate with the client for increased fees?
- if you continue as a limited company you need to look at the future company income and expenses to ensure that you will not suffer more taxation than you need to.

Exceptions to the rules

If a company has employees who have 5% or less of the shares in their employer company, the rules will generally not be applied to the income that those employees generate for the company.

Note however that in establishing whether the 5% test is met, any shares held by 'associates' must be included.

How the rules operate

There are different rules which apply depending on the client to whom the services are being provided.

Where the client is a small, private sector body then responsibility for determining the status of the worker lies with the personal service company.

Where the client is a public sector organisation or a medium or large-sized private business, broadly that entity will have responsibility for determining the status of the worker and communicating that via the issue of a status determination statement.

Definition of a small company

The legislation uses an existing statutory definition within the Companies Act of a 'small company' to exempt small businesses from the new rules. A small company is one which meets 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.

Application - services provided to small, private sector client

These rules are sometimes referred to as the IR35 rules.

The personal service company operates PAYE & NICs on actual payments of salary to the individual during the year in the normal way.

If, at the end of the tax year - ie 5 April, the individual's salary from the company, including benefits in kind, amounts to less than the company's income from all of the contracts to which the rules apply, then the difference (net of allowable expenses) is deemed to have been paid to the individual as salary on 5 April and PAYE/NICs are due.

Allowable expenses include:

- certain employment expenses (but not travel)
- certain capital allowances
- employer pension contributions

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- employers' NICs - both actually paid and due on any deemed salary
- 5% of the gross income to cover all other expenses.

Where salary is deemed in this way:

- appropriate deductions are allowed in arriving at corporation tax profits and
- no further tax/NICs are due if the individual subsequently withdraws the money from the company in a HMRC approved manner (see below).

Application - services provided to public sector or medium/large private sector client

Where the legislation applies, the public sector engager or fee-payer is treated as an employer for the purposes of tax and Class 1 NICs (including employer NICs) and the amount paid to the worker's intermediary will be deemed to be a payment of employment income to that worker.

The 5% allowance used by the worker's intermediary for certain business expenses is not available for contracts with the public sector.

Income received by the personal service company which has been taxed as employment income under these rules is not chargeable to corporation tax, nor is there additional income tax to pay on extraction of the funds.

Points to consider from the working of the rules

- In order to perform the calculations of the deemed payment under the first set of rules, you need to have accurate information for the company's income and expenses for this period. You may need to keep separate records of the company expenses which will qualify as 'employee expenses'. There is a tight deadline for the calculation of the deemed payment and paying HMRC. The deemed payment is treated as if an actual payment had been made by the company on 5 April and tax and NICs have to be paid to HMRC by 19 April.

- Payments made by your personal company into a personal pension plan will reduce the deemed payment. This can be attractive as the employer's NICs will be saved in addition to PAYE and employee's NICs.

- The timing and method of future extraction of funds from the personal service company should be considered in order to minimise cashflow impacts of taxation.

Other points to consider

Partnerships

Where individuals sell their services through a partnership, the rules are applied to any income arising which would have been taxed as employment income if the partnership had not existed.

Many partnerships are not caught by the rules even if one or more of the partners performs work for a client which may have the qualities of an employment contract.

The rules will only apply to partnerships where:

- an individual, (either alone or with one or more relatives), is entitled to 60% or more of the profits or
- all or most of the partnership's income comes from 'employment contracts' with a single customer or
- any of the partners' profit share is based on the amount of income from 'employment contracts'.

Penalties

Where a personal service company or partnership fails to deduct and account for PAYE/NICs due under the rules, the normal penalty provisions apply.

If the company or partnership fails to pay, it will be possible for the tax and NICs due to be collected from the individual as happens in certain circumstances under existing PAYE and NIC legislation.

Managed Service Companies (MSCs)

MSCs had attempted to avoid the IR35 rules. The types of MSCs vary but are often referred to as 'composite companies' or 'managed PSCs'. Broadly, the main difference is that an MSC provider is involved with the worker's company. For example where the provider benefits financially from providing the services of the worker or influences/controls the provision of those services or the way payments are made to the individual. Legislation has been introduced to ensure that workers providing services through an MSC are subject to similar rules to those for PSCs above.

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How we can help

We can advise as to the best course of action in your own particular circumstances. If IR35 does apply to you we can help with the necessary record keeping and calculations so please do contact us.

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