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IR35 - 5 KEY MILESTONES TO ENSURE YOU'RE READY FOR THE NEW UK REGIME

Feb 27, 2020

Summary

With the revised IR35 (off-payroll working) rules coming into force in the UK for private sector employers in just a few weeks, are you ready for the new regime? Here are 5 key actions to benchmark your readiness.

Are you definitely in scope for the new IR35 rules?

'Small' companies can continue to operate the existing IR35 regime (obligation to assess IR35 status and account for tax/NICs falls on the Personal Service Company (PSC)), rather than apply the new regime which puts the obligation on the fee payer/client.

'Small' companies are those that satisfy at least two of the following requirements:

- annual turnover not more than £10.2 million;
- balance sheet not more than £5.1 million; and
- not more than 50 employees.

If you are a subsidiary within a group, your parent company must also satisfy the small company test for the exemption to apply.

Have you mapped all your Personal Service Company (PSC) relationships?

This includes identifying both direct engagements with PSCs as well as those provided through an agency.

Have you set up robust processes to make consistent employment status determinations and appropriately communicate them?

The client (the recipient of the consultancy services) must take reasonable care determining whether the consultant would have been an employee if they were engaged directly. HMRC expects

you to make a correct and complete determination, and preserve sufficient records to show how the decision was reached. Blanket assessments of a PSC population as a whole are unlikely to be appropriate.

Similarly, care needs to be taken to ensure proper compliance with the Status Determination Statement rules and communication of determinations to relevant parties (including the individual contractor), to limit the risk of liability to account for tax/NICs shifting to you.

Where you assess deemed employee status, have you decided how best to deal with that arrangement?

Various options are available, including:

a. Make changes to the PSC consultancy relationship so that the employment status determination is of self-employment rather than deemed employment. You should ensure that any such changes are commercially viable, reflect the true reality of the situation and don't revert over time to a relationship that would be characterised as deemed employment.

b. Renegotiate the consultancy fees to take account of the additional costs and compliance obligations that fall on you as a result of the new regime.

c. Employ the consultants directly to avoid the new regime applying at all.

d. Engage an agency or other intermediary to supply the PSC consultants to you, in order to shift liability to account for tax/NICs. You might also consider delegating responsibility to the agency to generally ensure compliance with the regime on your behalf, with indemnities to take account of the fact that liability for any failure to comply remains with you.

Have you geared up your payroll, HR and compliance functions to implement your approach to deal with the new IR35 regime?

The work required of these functions may be material, depending on the approach you decide to take.

It goes without saying that the new IR35 regime is complex and properly implementing it can be demanding. If you have any questions about your readiness, please feel free to get in touch.

RELATED PRACTICE AREAS

- Employment & Labor

MEET THE TEAM

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