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EXTENSION OF UK OFF-PAYROLL WORKING RULES (OFTEN REFERRED TO AS “IR35”) DELAYED TO APRIL 2021

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Summary

The extension of the UK off-payroll working rules to private sector clients, due to take effect from April 2020, has been delayed by one year. This follows growing calls from businesses and business leaders given the difficult and uncertain times faced by many in light of the coronavirus pandemic. This is a huge relief for many contractors and businesses but it is just a postponement. The extra time should be used wisely to prepare for the changes; given the year-long extension it is unlikely that HMRC’s promise not to be 'heavy handed' on penalties during the first year of IR35 will stand.

The delay may, however, put some in a difficult position. If, in anticipation of the new rules coming into force, it has already been determined by a private sector client that a relationship would be one of employer/employee if the intermediary was not involved, the intermediary (in most cases the contractor’s PSC) should seriously consider operating PAYE and account to HMRC for employer/employee NICs and employee income tax accordingly. HMRC previously stated that it will not carry out targeted campaigns into earlier tax years where a client determines that a worker would be an employee if engaged directly by the client. However, HMRC may see things differently if a determination has been made in relation to the current working arrangements, in anticipation of the new rules coming into force, and that determination is now ignored. Some contracts may also already have been re-negotiated on the basis of the status determination made by the client and it may not be possible to simply go back to how things were for another year.

If you have any concerns about this issue please get in touch.

Background - what is IR35 & what is changing?

IR35 applies where an individual personally provides services to a client through an intermediary, typically a personal services company (“PSC”), and, in substance, the relationship would be one of employer/employee if the intermediary was not involved. Where the rules apply, a deemed employment payment is treated as made to the individual, which will be subject to tax as employment income and employer/employee National Insurance Contributions (“NICs”).

Due to widespread suspected non-compliance with IR35 by PSCs, the way it applies to engagements in the private sector was due to change from April 2020 to place the compliance burden on the client (the “off-payroll working rules”). The changes will now not be implemented until April 2021.

This means that for private sector workers, responsibility for determining whether IR35 applies to engagements with clients will continue to rest with the individual worker’s PSC until April 2021. If within scope, the PSC must operate PAYE and account for employer/employee NICs and employee income tax accordingly.

From 6 April 2021, where the client is a medium or large enterprise, it will be up to the client to determine whether the off-payroll working rules apply. If within scope, the “fee payer” (i.e. the client or agency, where there is a contractual chain) must operate PAYE and account for NICs and income tax.

RELATED PRACTICE AREAS

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MEET THE TEAM

Katherine Pope

London

katherine.pope@bclplaw.com
+44 (0) 20 3400 3533
