

New UK Tax Rules on Off-Payroll Working – Further Update

February 10, 2020

In a previous update, we outlined new UK tax rules on off-payroll working, which will apply from 6 April 2020. The rules seek to shift the burden of determining the employment status of individuals engaged through an intermediary (such as the individual's own personal service company, or PSC) to end clients and, further, make the "fee payer" (the end client or, if there is a chain, the entity paying the PSC), rather than the intermediary, responsible for UK payroll taxes. For more detail on what the rules require, please see [our previous alert](#).

Government review announced – but will it help?

The wide scope of the new rules has caused much concern, particularly in sectors where the use of PSCs by contractors is common.

In light of this, UK Treasury recently announced a review of the rules, which is set to conclude mid-February. The government has made it clear that the review is limited to ensuring "smooth and successful" implementation of the rules, rather than amending their scope and impact.

The review will include a series of roundtables with affected businesses, further analysis on impact and will consider whether any further steps could be taken to support businesses. In parallel, HMRC (the UK tax authority) will continue its own programme of "education and support activities" to help prepare for the reforms, as well as a review of their online tool to check employment status (known as CEST).

Based on announcements to date, it seems unlikely that the review will result in significant changes to the rules or a change to the 6 April 2020 introduction date. Affected businesses should continue to prepare for the measures based on existing announcements, given that any revised legislation and guidance is not likely to be published until after the UK government's budget on 11 March 2020. We understand that HMRC have been sending information letters to certain affected businesses, which may assist in preparations.

Draft regulations on compliance – is the client always going to be on the hook?

In instances of a chain (i.e., where the end client is not the fee payer), HMRC has now published draft regulations setting out when it will recover unpaid payroll taxes from the other parties in the chain (including the end client) when there is no reasonable prospect of recovering from the fee payer within a reasonable time.

The regulations can make businesses liable for the obligations of other parties in the chain – even when those businesses have taken reasonable care and all the steps required of them. HMRC has stated (in guidance, which does not have the force of law) that it will not use this power in the case of the "ordinary business failure" of the primarily liable party (for example, an insolvency situation), but this limited carve-out is unlikely to allay concerns. Businesses which engage contractors through chains of intermediaries should consider the potential risks involved.

Widening of the UK payroll withholding net – do the rules apply to non-UK businesses?

Long established case law dictates that the requirement to withhold UK payroll taxes (known as PAYE withholding) has a territorial limit in that it is only required to be operated by businesses that have a "taxable presence" in the UK, which is something in the UK similar to a branch or agency, office or establishment. HMRC guidance indicates that there needs to be a UK address where they can contact the employer and, if necessary, enforce compliance.

However, the new rules seem to anticipate a widening of these territorial limits, as they treat certain non-resident end clients who have no UK presence as UK resident (in circumstances where the worker and services are performed in the UK and the end client pays directly to the PSC). This would appear to bring such non-resident end clients within the scope of PAYE withholding where they would not otherwise have had any obligation to account to HMRC for UK payroll taxes.

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