Heather&Co

CHARTERED ACCOUNTANTS

Heather and Co Chartered Accountants
The Old Stables Frosbury Farm Gravetts Lane Guildford GU3 3JW
Telephone: 01483 237799 Email: enquiries@heatherltd.co.uk
www.heatherltd.co.uk

IR35-changes to off payroll working in the private sector

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

From 6 April 2021, new tax rules are introduced 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 letter to summarise the rules which will apply to all intermediaries.

Similar rules were introduced in 2017 for public sector organisations receiving services from PSCs.

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

- the medium or large business (or an 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 on to the individual without paying any further PAYE and NICs.

The practical effect of these rules is that you will 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 2021 and so may affect current contracts.

What is a medium or large business?

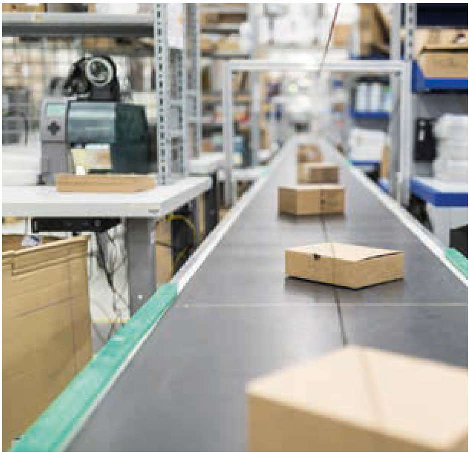
The legislation uses an existing statutory definition within the Companies Act of a 'small company' to exempt small businesses from the new rules. Therefore the rules will exempt businesses meeting any two of these criteria: a turnover of £10.2 million or less; having £5.1 million on the balance sheet 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.

The business must respond within 45 days if you ask for information on size. It is important to be clear on the size of the business to whom you are providing your services at the outset, so you know who is responsible for making the status decision and paying tax, and where liability lies if there is an error.

There is no change if you provide services to a small business. Even after the changes are introduced from 6 April 2021, you remain responsible for deciding if IR35 rules apply to contracts you have in such cases.

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 under a contract directly between the individual and themselves, 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.

The link to the Employment Status Service tool is **https://bit.ly/3powyVt**.

The Status Determination Statement (SDS)

The SDS is a new part of the status determination procedure. If the business to whom you are providing services decides your engagement amounts to employment, it should provide you with an SDS, setting out its employment status decision, and giving the reasons underpinning it.

If you are part of a longer labour supply chain, the business should also pass the SDS information to the next entity it deals with, and so on, so that the information flows along the chain as required. There is no hard and fast rule about how the SDS is issued, but it should be in a format that you can 'receive or access'.

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

The business must take 'reasonable care' in coming to its conclusion. If it doesn't, the statement is not a valid SDS. HMRC guidance states: 'What is necessary for each client to discharge that responsibility must be viewed in the light of their abilities, experience and circumstances.' More will be expected of a large multi-national company, for example, than a smaller business.

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. CEST has come in for criticism over the years, and has been refreshed to support the new regime.

HMRC has been 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.

SDS dispute process

You have a statutory right to make a representation to the medium or large business where you believe that the conclusion mentioned in the SDS is incorrect. Written disagreement is prudent: give details of the SDS you disagree with, explain why you disagree, and keep a record of proceedings. The medium or large business has 45 days, from when the representation is received, to review the decision and either confirm that the decision and explain why they have done so or alternatively, withdraw it and provide a new one, with confirmation of the date it is valid from.

What is the tax effect on you if the new rules apply?

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 2021/22 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 2021/22 tax year, the paying entity should issue a P60 to you showing the total payment and deductions in the 2021/22 tax year.

You will need to show the amounts on the P45 or P60 as an employment on the employment pages of your 2021/22 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. Please look at the first part of the example in the Appendix which illustrates how PAYE and NICs are deducted from the deemed payment by the paying entity.

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 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.

Please see the second part of the example in the Appendix which illustrates the procedures your PSC will take in passing the net deemed payment to you.

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 possible application of IR35 needs to be considered but there is no change in the law regarding IR35. If contracts are not caught by IR35, we will help you decide on an appropriate profit extraction strategy for the profit from these contracts.

How we can help

We can help you decide whether to discuss the operation of the legislation with the medium or large business.

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

APPENDIX

Example of operation of the off-payroll rules

Derek provides personal services to a large business via his personal services company, Derek Ltd. The business considers the off-payroll working legislation applies. The contract will end on 30 September 2021.

In 2021/22, Derek Ltd invoices the business £4,000 a month. There is no VAT and no expenses in the invoices.

The business would treat each of the monthly payments as deemed payments. Derek will need to provide the business with his National Insurance Number, address, date of birth and P45 if appropriate in order that they can set him up on their payroll.

As Derek has a 'primary employment' with his PSC, the services he provides to the business are treated as a 'secondary employment'. The authority would initially operate tax code BR which means income tax is deducted at basic rate. Employee NICs would be deducted at normal rates on £4,000 a month.

Employer NICs would be payable by the business on the deemed payment of £4,000.

The business will report and pay PAYE and NICs to HMRC. In due course, HMRC may issue the authority with a tax code to use against future payments made to Derek Ltd.

When the contract ends on 30 September 2021, the business should send to Derek a P45 showing the total deemed payment and deductions for PAYE and NICs.

If the contract extends beyond the 2021/22 tax year, the business should issue a P60 to Derek showing the total payment and deductions in the 2021/22 tax year.

The total amount invoiced by Derek Ltd and recorded as gross deemed payments by the business is £24,000 (6 X £4,000).

Assuming the tax code BR does not get adjusted the net deemed payments total (the figures below are based on rates and allowances for 2020/21):

	£
Amount invoiced	24,000.00
Less: PAYE - £24,000 at 20%	(4,800.00)
Less: Employee NIC	
6 x monthly NICs of £384.96	(2,309.76)
Total net deemed payments	**16,890.24**

If VAT has been charged by Derek Ltd, the business would pay Derek Ltd £16,890.24 plus the VAT charged on £24,000.

The business will also need to pay employer NICs. The monthly amounts due will be £450.98 which totals £2,705.88.

Effect in Derek Ltd

The company will get relief from corporation tax for the VAT exclusive amount of the invoices ie £24,000.

Procedure if Derek Ltd pays Derek the net deemed payment through the payroll

Any amount of income paid to Derek up to £16,890.24 will have already been subject to deduction of PAYE and NICs. HMRC guidance is that the payment should be recorded on a Full Payment Submission as non-taxable income.

Procedure if Derek Ltd pays Derek the net deemed payment as dividend

Alternatively, Derek can receive a dividend up to £16,890.24. This will not be reported as a dividend on his self assessment return.

Effect for Derek

Derek would be treated as having received the net deemed payment from the company in the 2021/22 tax year irrespective of whether he has received it as salary or dividend (or even if he has not received it from his company).

On his 2021/22 self assessment return he will record the information supplied to him from the business:

Employment income	£24,000
PAYE deducted	£4,800

There may be a tax repayment due to Derek if he has not utilised his personal tax allowance against other income. Alternatively, income received from the medium or large business may attract a higher rate tax liability, if Derek has other taxable income.