

OFF-PAYROLL WORKING IN THE PRIVATE SECTOR - CHARITIES



What it means for charitable organisations

Not unexpectedly, the changes that were introduced to the public sector regarding off-payroll workers have been widened to the private sector and will take effect from 6 April 2021.

You may be aware that from 5 April 2017 the new tax rules on off-payroll working came into force for public sector engagements. The new regime had major implications for charitable organisations considered to be in the public sector (i.e. charities subject to the Freedom of Information Act 2000) that contracted with individuals providing their services to the charities via their own limited company.

What do the changes mean?

For private sector charitable organisations which are not already subject to the 2017 public sector rules, when your charitable organisation is engaging with individuals, consultants, contractors or freelancers who provide their services through their own company, your organisation will be responsible for deciding if tax should be deducted at source (e.g. PAYE). So, if you determine the individual is regarded as an employee and is providing their services directly to your organisation, then you will need to deduct income tax and employee NICs and pay employer NICs even when the services are provided through a personal service company.

What if our organisation engages with agencies?

If the organisation is paying an agency that has the contract with the individual's personal service company, then the agency would be responsible for the deduction of these payroll taxes but you, as the end user of the services, must tell the agency, as well as the contractor, whether the off-payroll working rules apply.

What if our organisation engages directly with individual contractors?

Where your organisation engages directly with a contractor (rather than with a contractor's personal service company), there will be no changes to the existing rules and your organisation will continue to be responsible for determining their employment status.

Will these rules apply to all charitable organisations?

These new off-payroll worker rules will apply to medium and large organisations, and an exemption from these rules is currently available for small organisations.

The main tests for determining whether an organisation is "small" are taken from the Companies Act 2006. To be treated as small two of three conditions need to be satisfied:

- Annual turnover of not more than £10.2 million
- Balance sheet total of not more than £5.1 million
- Number of employees not more than 50

An unincorporated organisation will be considered small if its annual turnover does not exceed £10.2m (known as the 'simplified test').

Despite recent HMRC guidance being released on the off-payroll working rules, there is no confirmation as to what the turnover of a charitable organisation should include. Should the turnover just include the income from sales of goods and services and exclude donations and grant income? Confirmation is expected from HMRC shortly.

What should I do now?

If these changes apply to your organisation (i.e. you are not classified as a small organisation) then you should review all relationships and contracts held with contractors, freelancers, consultants etc. to determine whether you should be deducting tax at source.

HMRC recommend that organisations use the 'Check Employment Status for Tax' ('CEST') service to determine the worker's status. This can easily be found on the HMRC website although there is some doubt whether the current version of the tool accurately reflects the rules. An expert opinion may need to be sought on the employment status of some engagements taking into account relevant case law and other relevant guidance.

If, after this review, you conclude that tax should be deducted at source from those invoicing via a company, then your payroll provider will need to be

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informed. The reporting requirements are different so a new PAYE scheme may be needed.

The organisation will also need to decide which party is bearing the cost of the employer's National Insurance contributions and apprenticeship levy. If this is to be paid by the organisation, will it expect to pay a reduced day rate to the contractor to cover this? Will the contractor be willing to accept this?

The draft legislation and recently released HMRC guidance also states that there will be a legal requirement for each organisation engaging contractors to develop and implement a process to resolve disagreements with off-payroll workers.

This could be a drain on management resources if managed internally or costly if outsourced to external HR consultants.

How can Moore Kingston Smith help you?

Moore Kingston Smith offer an off-payroll worker solution drawing on our experience with the existing public sector regime and dealing with HM Revenue & Customs on employment status issues generally.

To find out more about Moore Kingston Smith's services, please visit:

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