

OFF-PAYROLL WORKING IN THE PRIVATE SECTOR

What it means for you

You may have read a lot in the press over the last couple of years about self-employment tax rules in the public sector with many BBC reporters having been challenged over their tax affairs.

Not unexpectedly, the same changes that were introduced to the public sector have been widened to the private sector and will take effect from April 2020.

What do the changes mean?

When your organisation hires consultants, contractors or freelancers via personal service companies, you may still be responsible for deducting tax at source (e.g. PAYE) from the payments to that personal service company, even though the individual doing the work is not your employee.

This is the government's way of putting responsibility for collection of taxes into fewer, larger organisations' hands and effectively making their tax collections easier.

Will these rules apply to my organisation?

The operation of the new rules is expected to largely mirror those currently in play in the public sector with the exception that small businesses will not be affected. A small business for these purposes means one that, based on the last financial statements prepared before each tax year commences, has two out of three of the following:

- not more than 50 employees;
- turnover of less than £10.2 million; or
- a balance sheet total of not more than £5.1 million.

So what do the changes mean for my business?

The set of considerations, and thus burden of deciding on a contractor or freelancer's employment status, is now the same regardless of whether they are invoicing your business personally, via a personal service company or via an intermediary. Your business can no longer rely on the protection that being invoiced via a personal service company or intermediary currently offers it.

The new rules will mean that when engaging with individuals, consultants, contractors or freelancers who provide their services through their own company, your organisation will need to decide if tax should be deducted at source.

So, if the individual is regarded as an employee and is providing their services directly to your business, 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.

If your business 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 whether the off-payroll working rules apply.

What should I do now?

If these changes apply to your business (i.e. you are not classified as a small business) then you should review all relationships and contracts held with contractors, freelancers, consultants etc to determine whether you should be deducting tax at source. You may decide whether to make changes to the way you engage with these individuals and the contracts you have with them, in order to reduce the chances of them being caught by the new legislation.

HMRC recommend that businesses use the 'Check Employment Status for Tax' ('CEST') service to determine the worker's status and that a copy of the results are kept on file. This can easily be found on the HMRC website although there is some doubt whether this tool accurately reflects the rules.

The main factors HMRC considers in this test are control, substitution and financial risk. Would your business be prepared to accept a suitable experienced substitute if the preferred contractor was unavailable?

There is an on-going consultation into the definition of self-employment. In addition, the current version of CEST has also been heavily criticised for ignoring one of the key tests for self-employed status, namely "mutuality of obligations". Therefore, we may well see the CEST tool being re-written in the future, once there is a conclusion to the employment status consultation.



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

The business 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 business, will it expect to pay a reduced day rate to the contractor to cover this? Will the contractor be willing to accept this?

Finally, the consultation also suggests that there will be a legal requirement for each business 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.

Some businesses may find this change too difficult to administer and perhaps offer short-term employment contracts, rather than contracts with personal service companies.

HOW MOORE KINGSTON SMITH CAN HELP YOU

Moore Kingston Smith LLP is one of the UK's Top 20 audit and advisory firms, and has been helping clients build their businesses for more than 90 years. Outside the UK, our membership of Moore Global offers our clients the strength and experience of 609 offices in 112 countries throughout the world to support their international reach.

As a multidisciplinary practice we are able to provide a full range of audit, tax, outsourcing and corporate finance services, as well as legal and business advisory services. Such specialist areas of advice include employee incentive schemes, benchmarking, succession planning, exit planning, business valuations, profit improvement reviews, business plans, preparing for sale, pre-sale tax planning, mergers and acquisitions.

We also provide strategic support to business owners and managers who are serious about growing their business, by helping them to take a step back and think strategically about how to dramatically improve business performance. The key areas we cover include: business development, people management, finance & operations and strategy & planning.

Our services have been developed to advise growing, successful businesses at every stage of their growth, with our clients ranging from start-ups and sizeable independents through to multinationals and AIM listed groups. International expansion is of increasing significance to our clients' growth plans. At Moore Kingston Smith, we support our clients as they move into new markets, providing commercial and timely advice throughout the transition and using our membership of Moore Global to assist them locally.

CONTACT US

If you would like to discuss what off-payroll working in the private sector means for your business and to find out how we can support you, please contact a member of our team:

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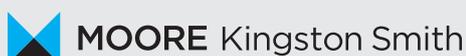


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