

Employment Tax Alert

Off-payroll working in the private sector

Further information

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HMRC has published its long-awaited consultation on tackling non-compliance with the intermediaries legislation (commonly known as IR35). That legislation requires a simplified form of PAYE/NIC to be operated if the worker is paid via their own limited company but operates as a 'deemed employee'. The consultation follows on from changes made for public sector engagers in April 2017 which made the public sector engager responsible for assessing whether IR35 applies or not and the entity paying the worker's company liable for making any PAYE/NIC deductions.

At the time, a decision was made to restrict these changes to the public sector and private sector business could continue to pay workers via limited companies without having to undertake assessments or risk any liabilities. However, HMRC considers that non-compliance in the private sector currently amounts to £700m per annum rising to £1.2bn by 2022/23 and believes this needs to be addressed.

The latest consultation now seeks to provide an early evaluation of the public sector reform and invites views on how to achieve similar improved compliance in the private sector. The closing date for responses is 10 August 2018.

What topics are included?

Three main areas are covered by the consultation.

1. Firstly, HMRC is seeking views on whether an extension to the changes made in the public sector to cover all engagers would tackle non-compliance effectively.
2. Alternatively, the consultation asks whether this non-compliance in the private sector can be addressed by either encouraging or requiring the private sector to help ensure that their labour supply chains are

complying with IR35 (with potential penalties, including loss of tax relief for the engager where they are not).

3. Finally, whether the objectives could be achieved by requiring private sector engagers to gather and retain information for all off-payroll engagements covering all the topics HMRC would typically cover during any compliance review. The purpose of this proposal would be to speed up HMRC compliance activity (as well as presumably to discourage non-compliance).

Our view

The consultation appears to be very limited in choice and weighted in favour of a simple roll out of the public sector changes into the private sector. Within the consultation itself, there is an acceptance that the other alternatives will not necessarily achieve the intended results. Other alternatives, such as a flat-rate withholding tax or a de minimis length of engagement before IR35 applies have already been ruled out of scope.

Whilst no implementation date has been given, HMRC has stated previously that it will not rush any implementation - although a start date of 6 April 2019 cannot be entirely ruled out.

Any business engaging contractors will need to consider this consultation very carefully as the impact could be significant.

If, as is likely, the conclusion is that the IR35 changes are extended to the private sector, the impact on a business in terms of increased costs, systems changes, talent retention and project delivery needs to be understood.

We strongly recommend that any affected business fully understands the impact that these changes could have on them and responds to the consultation appropriately.

How we can help

Our Global Employment Tax Services team has significant experience in advising clients on this topic including helping them to:

- ▶ Understand the current position and how this could be affected by any change
- ▶ Review current policies, standard documents, etc and understand how they may need to change
- ▶ Cost out the alternatives
- ▶ Understand how these alternatives sit with all stakeholders
- ▶ Review systems and policies in advance of change
- ▶ Liaise with their supply chain to agree actions and responsibilities
- ▶ Undertake supply chain reviews
- ▶ Respond to the consultation
- ▶ Communicate with all stakeholders including contractors and the supply chain

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