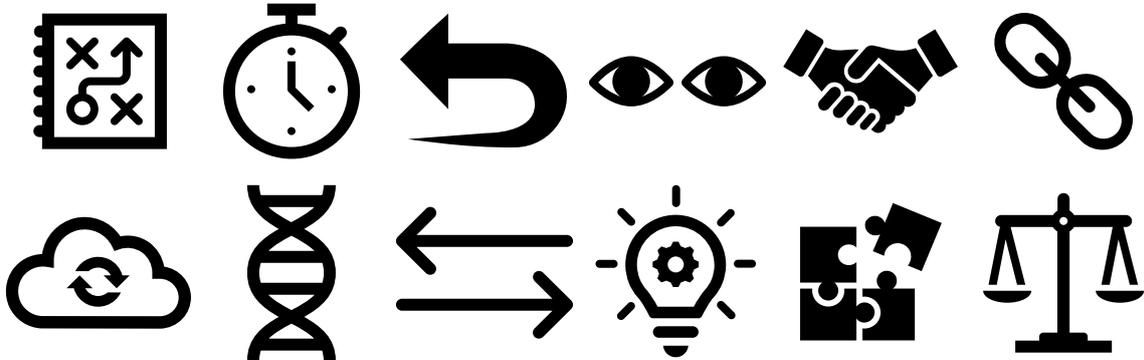




## OFF-PAYROLL WORKERS IN THE PRIVATE SECTOR

### PREPARE YOUR BUSINESS NOW



If your business engages workers who supply their services through a Personal Service Company (PSC) you should consider acting now in preparation for new rules that are due to come into force from 6th April 2020.

#### BACKGROUND

The government believes that there is widespread non-compliance in applying employment taxes by workers engaged through PSCs.

HMRC have always contended that workers who are engaged through a PSC, under terms and conditions that reflect an engagement of employment, should be taxable under PAYE.

The problem that HMRC faced is that under rules commonly known as the IR35 rules, each single contract undertaken by a PSC had to be challenged individually.

The employed v self-employed rules are not governed by an exact science and HMRC challenges before the Courts, have resulted in mixed, and at times, seemingly conflicting decisions.

In April 2017 new rules were introduced for PSC's engaged in Public Sector contracts which shifted the obligation of determining status and for the liability for PAYE tax and NICs, from the PSC onto the end user (this includes the situation where the engagement is made via an agency).

HMRC proposes to introduce the same rules to businesses that are not small within the private sector with effect from 6th April 2020.



## **SMALL BUSINESS EXEMPTION**

The new rules will only apply to medium and large businesses outside of the public sector. “Small” businesses will not be caught by the new rules but the IR35 rules will continue to be applicable.

Small businesses are those which meet two out of the following threshold tests: -

- annual turnover – not more than £10.2m
- balance sheet total – not more than £5.1m
- number of employees – not more than 50

Subsidiary companies will be measured by the aggregate of the group accounts.

## **IMPLICATIONS**

Under the new rules businesses who engage PSCs will need to review each contract to determine the employment status of the engagement, disregarding the corporate structure of the PSC.

Where the engagement is deemed to be one of employment, the engaging company will need to deduct tax and NICs at source from the payments made. The Apprenticeship Levy charges will also apply.

If HMRC successfully challenge a company’s decision on the employment status of a PSC engagement, the liability to PAYE tax and NICs, interest and penalties, will fall upon the end user company.

## **TESTING EMPLOYMENT STATUS**

Under HMRC’s own admission, their published guidance on the question of employed v self-employed lacks clarity. Whilst HMRC provide an online Check Employment Status Tool (CEST), this has been shown to be limited in its scope and apparently biased towards a decision of ‘employed’. Neither HMRC nor the Courts are under any obligation to give weight to a decision reached by using CEST.

HMRC have committed, to address these criticisms and release clearer guidance and updated CEST before the new rules come in to effect on 6th April 2020.

We shall be monitoring progress and provide further information as it becomes available.

Meanwhile here are a few suggestions of what businesses can do now in preparation for the new rules.



## PREPARING FOR THE CHANGES

We have identified four areas that businesses should consider for review:

- **Evaluation**
  - Identify PSC engagements
  - Review the PSC contracts
  - Consider process of PSC engagements
  - Determine employment status of each current engagement
- **Systems**
  - Employment status check procedures
  - Control of status decision records
  - Engagement process
  - Payroll facilities
- **Costs**
  - Impact on existing budgets/projects
  - Employer's NIC
  - Workers' rights, holiday pay, NMW
  - Professional fees
  - Costs of non-compliance
- **Resource**
  - HR/payroll facilities
  - Recruitment and engagement requirements
  - Retention of existing contractors
  - Employment of prior PSC workers

This is a summary of just some of the new provisions, you should contact Paul Southward or your usual KSK contact for further information and/or assistance.