Changes to Intermediaries Legislation (IR35)

News Article

As part of the 2016 Budget, the Government announced the reform of the Intermediaries Legislation (IR35) for public sector engagements. This is known as 'Off-payroll Working in the Public Sector'.

Up until 6 April 2017 the intermediary was responsible for ensuring compliance with the intermediaries legislation. Clients and other parties - like recruitment agencies – were not liable to operate IR35 if a worker was engaged through their own intermediary under a genuine commercial arrangement.

From 6 April 2017, where the intermediary provides a worker to an end client who is defined as a public authority then that end client, or employment agency, will be responsible for the operation of Pay as you earn (PAYE)/National Insurance contributions (NICs) on any payments made to the intermediary.

From **April 2017**, individuals working through their own Personal Service Company (PSC) in the public sector will no longer be responsible for deciding whether IR35 applies and then paying the relevant tax and National Insurance contributions. This responsibility will instead move to the public sector employer, agency or third party that contracts with the worker's PSC. The consultation period ended on 18th August 2016.

Where a PSC contractor is supplied by a recruitment business into a public sector body, the recruitment business must decide if IR35 applies. If IR35 applies, the recruitment business must make the appropriate tax and National Insurance deductions, report the taxes through Real Time Information (RTI) and account to HMRC for the amounts due. If the recruitment business gets it wrong, they will be liable for the underpayment and the subsequent interest and penalties imposed by HMRC. Where the public body engages the PSC directly the public body will be liable.

Who is affected?

- Government departments, local government, legislative, armed forces
- NHS
- Publicly owned companies
- Schools and further / higher education institutions
- Police
- Other public bodies including museums and television broadcasters

The Government will provide an interactive online tool which can be used to determine whether IR35 applies to a PSC contractor's assignment.

From **6th August 2016**, penalties began for employment intermediaries who fail to report information to HMRC of all workers they place with clients where the intermediary does not operate Pay As You Earn (PAYE) on their payments.

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The intermediary that has the contract with the client is responsible for sending the report (or reports) to HMRC at least once every 3 months.

Intermediaries can decide how frequently to upload and send reports.

The HMRC report template must be used to create the reports.

Penalties

5th August 2016 was the deadline for the reporting period 6th April to 5th July 2016. If the report was late, a penalty would be automatically charged. The size of the penalty is based on the number of offences within a 12 month period:

- £250 for the first offence
- £500 for the second offence
- £1000 for the third and later offences

The maximum is £3000 per quarter.

If the report is submitted late, but at least 12 months have passed since the last time a report was late, it will be treated as a first offence.

If a report is submitted incorrectly, penalties may apply. Penalties for incorrect reports will be determined on a case-by-case basis.

If an incorrect report is replaced before the deadline, of the next reporting period without being asked, HMRC will consider this when they decide if a penalty has to be paid.

Where there is a continued failure to send reports, or where reports are frequently sent in late, a penalty of up to £600 per day that the report is late (more than 30 days), may be charged.

There is a right of appeal and details will be included within the penalty notice.

If you would like any advice or support regarding IR35 Legislation, please contact us.

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Press Release Ends