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IR35 Private Sector Reform - Update

In the Autumn Statement on Monday October the 29th, Chancellor Phillip Hammond announced that the Government will extend the off-payroll rules (commonly referred to as 'IR35 rules') within the Private Sector. This follows changes to Public Sector rules which were implemented in April 2017. The reformed legislation will take effect from April 2020 – so whilst we understand that this is undoubtedly a significant – and in many cases, worrying - change for all of our contractors (and the clients for whom you are providing services), the small glimmer of good news is that for once we have been given adequate time to prepare.

We are not underestimating the impact of this legislation for our workers, and we understand that you are keen to understand how Outsorce and our clients are responding to the October announcement. Over the past couple of months we have been busy trying to speak to as many of our clients as possible in order to make sure that they understand the upcoming changes, and that they are taking early steps to prepare for the new legislation. Whilst it is early days, we are pleased to report that a lot of our clients have started projects to manage this reform, and are very aware of the need to manage this project carefully.

This document aims to summarise what we know, what we are doing to prepare for change, and what you can expect in terms of next steps.

Inside or Outside?

The off-payroll (IR35) rules were introduced back in 2000 to tackle concerns about businesses hiring individuals as consultants rather than employees.

The premise of IR35 is that any individual caught by the legislation (also known as being “inside IR35”) must pay tax and NICs on a deemed payment broadly equivalent to the tax and NIC that an employee would pay.

There are many factors to consider when assessing whether a particular contract assignment is caught by (or ‘inside’) the off-payroll rules, but some of these are:

- How much a worker is supervised and controlled in their day to day work
- Whether they can provide a substitute worker
- Whether there is mutuality of obligation
- How far a worker is ‘part and parcel’ of the organisation to whom they are providing services.

What will new legislation look like?

The changes we saw in April 2017 to the legislation around IR35 in the Public Sector shifted the responsibility to make an IR35 status assessment for each assignment from the Limited Company (so effectively from you, the worker) to the agency and End client. As the intermediary paying the worker, agencies like Outsorce have had to take responsibility for deducting taxes and NI contributions if an inside IR35 status is made for an assignment, and the legislation also puts an onus on the end client to tell an agency whether an assignment is inside or outside of IR35.

From the government’s perspective, this shift of responsibility has increased tax and NI contributions collected at source, as there has been a high percentage of workers who previously assessed themselves as being ‘outside’ of IR35 who have been caught by this legislation change.

From the announcements we have seen so far, it looks as though legislation in the Private Sector will follow a similar format.

Why 2020?

The Government says that it has ‘listened’ to businesses, and “will build on learnings from the introduction of the reform to the public sector”. A 2020 implementation date will therefore give businesses adequate time to prepare.

The message that Outsource has been conveying to our clients is that, in our opinion, the key to managing the impact of these changes is in taking steps now to be prepared. This legislation **does not mean** that businesses won't be able to use Limited Company contractors, and it **is not the intention of the legislation that businesses should take a 'blanket' approach** and assess all workers as 'inside' of IR35. We are advising clients that they should take steps now to educate appropriate stakeholders on the content of the legislation, and take steps to understand how IR35 applies to assignments, so that they can make correct, compliant, and tailored assessments in preparation for April 2020.

It is reassuring that most of the clients that we have spoken to so far are taking heed of the above, and are starting to take appropriate steps to prepare. We haven't spoken to any clients – so far – who are advising us that they are intending to take a 'blanket' approach to assessments, which is good news.

What is happening next?

- The Government is due to be releasing a new Consultation document (any day now) which will ask for responses to a series of questions around some of the proposed detail of the legislation.
- The Government will then use the responses to this Consultation as they finalise the draft legislation.
- We expect draft legislation to be released in Autumn this year
- Reform will then take effect from April 2020

What else do we know?

The following information is taken from a Government document which was published shortly after the Budget announcement*:

- The reform is not retrospective – as it has in the public sector HMRC will focus its efforts on ensuring businesses comply with the reform rather than focusing on historic cases
- HMRC will not carry out targeted campaigns into previous years when individuals start paying employment taxes under IR35 for the first time following the reform and businesses' decisions about whether their workers are within the rules will not automatically trigger an enquiry into earlier years
- HMRC will provide extensive support and guidance to help businesses implement the off payroll working rules to ensure they apply them correctly, and will ensure the guidance is appropriate to the needs of the private sector, which are more diverse than those of the public sector

*This information may be subject to change

Contact us!

We will advise you as soon as we have any further information either in terms of Government announcements, or in relation to the clients for which you are providing services. Please be assured that managing this reform is a key priority for us over the coming months.

If you have any specific queries or questions relating to anything to do with IR35 legislation, please get in touch, either via your usual Contractor Care Consultant, or directly to Vicky Roythorne, Head of Compliance.

Similarly, if you have any suggestions or requests for information which has not been included in this document, please let us know!

vroythorne@outsource-uk.co.uk

Or email contractorcare@outsource-uk.co.uk

www.outsource-uk.co.uk

