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Changing status

New rules concerning the tax and employment status of off-payroll workers will be introduced on 6 April 2021. The change applies to those off-payroll workers who provide personal services to clients in the private sector through an 'intermediary'. Under the rules, commonly known as IR35, the responsibility for determining that status will pass to medium and large private sector organisations.

The most common type of intermediary is a worker's own 'personal service' company (PSC) and PSCs, but please note that an intermediary can also be an individual, partnership or unincorporated association.

Determining employment status

How employment status is determined revolves around whether the off-payroll worker would be an employee if any intervening entities, like the PSC, did not exist so they were engaged directly by the client. However, the factors to weigh up are frequently complex. HMRC's online status checker tool (CEST) can be used to make a determination but has come in for criticism in the past.



CEST has been refreshed to support the new regime: <https://bit.ly/2ECbM1M>. Despite this, many commentators remain sceptical about its efficacy in determining status in all cases.

HMRC has pledged to stand by the results produced if CEST is 'used in accordance with its guidance and the information entered is accurate and remains accurate'.

The Status Determination Statement (SDS)

The SDS is a new part of the status determination procedure. If an organisation decides an engagement amounts to employment, it should provide the off-payroll worker with an SDS. This sets out its employment status decision, giving the reasons underpinning it.

Reasonable care

Organisations must take 'reasonable care' when making the status determination. In practice, this means intermediaries have the right to expect staff making the decision to be trained to know what to consider, seeking professional support if needed. They should examine each contract individually, rather than making a 'blanket' determination, treating all contractors the same.

HMRC advises that using CEST accurately is one example of taking reasonable care.

Off-payroll workers are entitled to disagree with an SDS, and organisations must have a process in place to deal with this.

However, if an off-payroll worker now falls within the rules for the first time, HMRC has undertaken not to use this information to review their status for previous tax years. This is subject to there being no reason to suspect fraud or criminal behaviour.

Tax matters

Where a medium or large client decides a contract is within scope of the rules, it will then:

- calculate a 'deemed direct payment', based on the fees charged by the PSC
- deduct PAYE and employee national insurance contributions (NICs) from fees, reporting and paying these to HMRC
- pay employer NICs based on the deemed payment.

This effectively means the end of the tax advantage of receiving income via a PSC, with its traditional profit extraction strategy of low salary plus dividend payments. If a contract falls within the rules then the intermediary will essentially be treated as an employee of the party paying the PSC for tax purposes.

Next steps

Steps intermediaries can take include checking the size of the clients they work for to see if the changes will apply and using CEST now to examine any contract running beyond 6 April 2021. It may also be possible to renegotiate fees where an engagement now falls within the rules.

In some cases it will be worth considering whether operating via a PSC is still optimal for the long term. Please do contact us to discuss the impact of the new legislation on your business.

Just one click? Your Business Tax Account

Think of it as the portal to HMRC's online services.

Many businesses will already have made use of their Business Tax Account (BTA), for example in connection with Making Tax Digital for VAT (MTD for VAT). But they may not have explored all the services on offer, so HMRC is currently encouraging all businesses to access their BTA and do just that.

The BTA is designed to allow you to manage all your business taxes online at the click of a button. It can be used by sole traders, partnerships and limited companies. It should summarise your business tax position for any tax you have registered for, from VAT and income tax self assessment to corporation tax and the Construction Industry Scheme (CIS). For best results, look to use just one Government Gateway ID for all taxes and consolidate access to just one ID if needs be.

You can use the BTA for a range of tasks. It has two distinct areas: firstly, a top menu to manage your account, view secure messages and get help. From this 'manage account' area you can add or remove online

access to particular taxes; give an employee access to a particular tax; authorise an agent to act for you; or change account details such as address, phone or email. Secondly, there is a business tax summary (or homepage). From this, you can make payments, file returns and carry out other tasks. It's a quick way to get an at-a-glance overview of your liabilities and payments: via the PAYE for employers service, for instance, you can check the data HMRC has received from your full payment submissions and employer payment summaries and the payments it has received. The PAYE section also has a new feature to allow you to check your Employment Allowance status.

Current pressures on business make this a particularly good time to get to grips with the BTA. A business that has new compliance responsibilities around imports and exports as a result of the end of the Brexit transition period, for example, will find the BTA a useful management tool. Additionally, if you want to apply online for time to pay either an income tax self assessment liability or a VAT liability under the VAT deferral new payment scheme, the BTA will provide the route to do so. More details, including steps to set up a BTA, can be found here: <http://bit.ly/37t7LbE>.

Health-check your Self-employment Income Support Scheme claim

With the Self-employment Income Support Scheme (SEISS) having been rolled out at pace, errors have crept into claims.

HMRC may charge penalties if you are overpaid and fail to notify it of the fact within the correct timescale. Notification should be made within 90 days of the date you received an amount to which you were not entitled. HMRC states that it is not looking for innocent errors or small mistakes. Where someone didn't know they didn't qualify for a grant when they received it, HMRC will only charge a penalty if the grant is not repaid by 31 January 2022.

There are some key areas worth revisiting. Check, for example, that there isn't a significant discrepancy between the amount(s) HMRC has advised you were due, and amount(s) received. Overpayment could potentially occur if you have a business that has permanently stopped trading, or (because companies aren't eligible for the SEISS) if you have incorporated a sole trader or partnership business since 5 April 2018. Or indeed if you misunderstood the rules and claimed when you weren't eligible.

The process to notify HMRC of an error, or to make repayment, involves completing an online form, then making the payment. HMRC is unlikely to contact you unless it needs more information or if there is a problem with your payment. The details can be found here: <https://bit.ly/2XamItP>.



Deferred VAT payments: what now?

What are the options if you took up the government's offer to defer VAT payments between 20 March 2020 and 30 June 2020, and still need to pay?

The first option is to settle the liability, in full, on or before 31 March 2021, and HMRC has reminded taxpayers financially able to pay that they should do so. The second option is to use the VAT deferral new payment scheme, announced in the government's Winter Economy Plan. This can provide you with up to an additional year to pay. The third option, where more time than this is likely to be needed to pay, is to contact HMRC: this link provides guidance here <http://bit.ly/3fQrovQ>.

New payment scheme

The VAT deferral new payment scheme means that instead of settling the full amount by the end of March 2021, you can pay by equal monthly instalments, and no interest will apply. All instalments must be paid by the end of March 2022, and the scheme gives you the discretion to choose how many monthly instalments you make, with a minimum of two and maximum of 11. Using the scheme does not prejudice your applying for a time to pay arrangement for other HMRC debts or outstanding tax. To use the scheme, you opt in, online, and it falls to the taxpayer to do this. HMRC systems do not allow us, as your agents, to opt in on your behalf.

***Tip:** watch the deadline. You must opt in before the end of March 2021.*

Certain terms and conditions apply: see <http://bit.ly/3q2akb1>. You must, obviously, still have deferred VAT to pay: you must also be up to date with your VAT returns, and able to pay the deferred VAT by direct debit. Your first instalment must be paid before the end of March 2021.

In order to get ready for the opt-in, HMRC requires you to have created a Government Gateway account, if you don't already have one, and to have submitted any outstanding VAT returns from the last four years. In addition, any errors on your VAT returns must be corrected as soon as possible. Corrections received after 31 December 2020 may not show in the deferred VAT balance.

HMRC advises that you must make sure you know how much VAT is owed, taking into account both the amount originally deferred and any sums you may already have paid. It also requests that if you intend to make any payment towards the deferred VAT before the scheme begins, you do so as soon as possible in order for it to show the correct deferred VAT balance.

At this particularly testing time for business, it's important to take stock of levels of committed expenditure, coupled with realistic appraisal of overall liquidity and ability to repay. We are on hand to discuss the best way forward for your business. Please don't hesitate to contact us for advice.

Reminders for your diary

February 2021

- 2** Deadline for submitting P46(Car) for employees whose car/fuel benefits changed during the quarter to 5 January 2021.
- 19** PAYE, Student loan and CIS deductions are due for the month to 5 February 2021.

March 2021

- 1** New Advisory Fuel Rates (AFR) for company car users apply from today.
- 3** 5% late payment penalty on any 2019/20 outstanding tax which was due on 31 January 2021 and still remains unpaid.
- 19** PAYE, Student loan and CIS deductions are due for the month to 5 March 2021.
- 31** End of corporation tax financial year.
End of CT61 quarterly period.
Filing date for Company Tax Return Form CT600 for period ended 31 March 2020.
Last minute planning for tax year 2020/21 – please contact us for advice.

April 2021

- 1** Digital links required in Making Tax Digital for VAT returns.
- 5** Last day of 2020/21 tax year.
Deadline for 2020/21 ISA investments and pension contributions.
Last day to make disposals using the 2020/21 CGT exemption.
- 14** Due date for income tax for the CT61 period to 31 March 2021.
- 19** Automatic interest is charged where PAYE tax, Student loan deductions, Class 1 NI or CIS deductions for 2020/21 are not paid by today. Penalties may also apply if any payments have been made late throughout the tax year.
PAYE quarterly payments are due for small employers for the pay periods 6 January 2021 to 5 April 2021.
PAYE, Student loan and CIS deductions are due for the month to 5 April 2021.
Deadline for employers' final PAYE return to be submitted online for 2020/21.

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