

Workers in the Public Sector Face Significant Change in April 2017

Following various discussions and consultations the Chancellor announced during the Autumn Statement that it is the governments intention to press on with their plans to treat contractors operating in the public sector differently to those in the private sector.

The announcement states:

4.11 Off-payroll working rules – Following consultation, the government will reform the off-payroll working rules in the public sector from April 2017 by moving responsibility for operating them, and paying the correct tax, to the body paying the worker's company. The government believes public sector bodies have a duty to ensure that those who work for them pay the right amount of tax. This reform will help to tackle the high levels of non-compliance with the current rules and means that those working in a similar way to employees in the public sector will pay the same taxes as employees. In response to feedback during the consultation, the 5% tax-free allowance will be removed for those working in the public sector, reflecting the fact that workers no longer bear the administrative burden of deciding whether the rules apply.

In this article we focus on what this could mean to workers in the public sector and actions that it would seem prudent to take.

The draft legislation is due to be released on 5th December when we hope many of the unanswered questions will be addressed.

We will provide an update to contractors on this as soon as we have reviewed and fully considered the details.

The Worker's Company

Whilst the discussion and consultation frequently referred to a PSC contractor, that is one that is working through their own limited company, this is not defined in law. The Autumn Statement refers to '*paying the worker's company*' so we wait to see how this is defined within the legislation before we can fully assess the impact

For the purposes of this article we will assume that it will catch the limited company contractor and prevent easy work arounds.

Deciding Status

The statement is clear on this point stating that '*by moving responsibility for operating them, and paying the correct tax, to the body paying the worker's company*'.

That being the case it suggests that deciding the status of the assignment and therefore the tax that becomes due will no longer rest with the worker and will move to either the recruitment company or where the engagement is direct to the end client themselves.

IR35 has never been a concern for the recruitment company or end clients as it has always rested with the worker. A major concern with this move is that by placing all the tax liability on the recruitment company, who is normally the one paying the workers company, the recruitment companies will limit this by just assessing all public sector workers as within IR35 and apply the deductions required by the legislation.

Public Sector Bodies Duty

The statement comments: '*The government believes public sector bodies have a duty to ensure that those who work for them pay the right amount of tax.*'

This statement can provide a bit of hope for the worker as it suggests that if the recruiters can become comfortable with the status, either by being removed from the liability or receiving confirmation from the end client, then the worker could still be assessed correctly.

The general concern in the sector is whether assessments will be carried out as recruiters may not be prepared to accept the tax risks associated with this. HMRC has also made it clear that sectors such as education and health would be considered by them as always caught.

Removal of the 5% deemed payment allowance

It has also been confirmed in the statement that the 5% deemed payment allowance will be removed from public sector workers caught by the IR35 rules;

'the 5% tax-free allowance will be removed for those working in the public sector, reflecting the fact that workers no longer bear the administrative burden of deciding whether the rules apply'.

The removal of this allowance raises several questions on how the tax will be calculated as it could result in significantly more tax been paid than is actually required when the accountants calculations are carried out. This could cause cashflow issues for some contractors and HMRC will need to consider how any overpays will be repaid back to companies to prevent these difficulties.

Expenses

It should be remembered that changes that came in to effect in April 2016 removed travel and subsistence expenses from those caught by IR35 by deeming the workplace a permanent place of work.

New Employment Status Indicator Tool

HMRC plan to provide a new employment status indicator tool to help parties assess the status of an assignment. This has been greeted with wide spread scepticism and, based on the number of status cases taken and lost by HMRC, there is little confidence that the tool will be reliable enough. There are many situations where the

outcomes are less than straight forward and clear and it will be interesting to see how the tool deals with these situations.

Where the tool is used HMRC will provide an assurance that when the answers reflect the actuality of the arrangements and they subsequently disagree they will not seek to recover the differences in tax. With the new ESI tool expected to have numerous questions the value of this reassurance is already being questioned.

We believe that the only real way of delivering a robust outcome is the use of specialists to review all the information in the round. The issue here is that this fails to remove the liabilities from the recruitment companies and therefore they are unlikely to use these assessments.

Draft Legislation is due 5th December

We await the draft legislation due on the 5th December as with all these changes the devil will be in the detail.

We will be providing updates once this has been reviewed and considered by us.

What actions should be considered now?

New contracts or assignments

We would suggest that any worker taking on a new contract from today that runs beyond April 2016 should seek to clarify and confirm the status of that assignment post April. The true value of the contract could significantly change after April 2017 and this will be a key decision in deciding the rate you are prepared to take or whether you even want to take the assignment at all.

Will this open action from HMRC on previous assignments?

This is a key question for any contractor who has been involved in public sector engagements previously. Whilst we cannot be certain how HMRC intend to deal with this there is a real concern that where the status changes post April 2017 this will be used as a trigger to open enquiries in to previous assignments.

One thing that could be considered by workers with that fear would be to close their current company prior to April and start trading through a new limited company with no history.

Whilst this does not guarantee total protection many feel it will reduce the risk of HMRC connecting current and past engagements.

What if I disagree with my status

So far there is no indication of how the status could be challenged by the worker. This may have to be done through either company accounting processes or SATR, one of the many unanswered questions.

Professional Passport Launches New Service for Contractors in The Public Sector

The impact of all the changes we have just covered for those contracting in the public sector centres on two key aspects:

1. Whether the recruitment company and/or end client will be prepared to carry the potential liabilities where they assess a

worker outside of IR35.

2. Whether the assessment will deliver the true and correct status outcome for the assignment.

Both of these points are inter connected and from the reaction we have seen across sectors where similia liabilities and risks were imposed it seems to suggest an unfavourable outcome for the contractors.

Professional Passport in an attempt to ensure the correct assessment of status and the correct application of taxes on contractors in the public sector is launching a new service - **REMIT**.

Whilst the absolute detail can only be finalised when we see the draft legislation the framework is clear.

REMIT will take on the assessment of the assignments status, be responsible for paying the correct monies to both the contractors company and, where the assignment is inside IR35, to HMRC.

REMIT will remove all risks and liabilities from the recruitment company and/or end client and hold these themselves.

With our experience in the sector we are happy to make real assessments based on all the facts and where we assess an assignment as outside IR35 we will also be happy to put our money where our expertise is and defend our assessments if required to do so by HMRC.

To be clear this is not some new insurance offering - it is a service designed to deliver true outcomes that we fear will be lacking as a result of the threat of liabilities to third parties.

To be kept up to date on developments and register your interest in this new service please email remit@professionalpassport.com.

Flat rate VAT being removed for most contractors

The Chancellor announced a new category for flat rate VAT in the Autumn Statement;

- 4.51 VAT Flat Rate Scheme – The government will introduce a new 16.5% rate from 1 April 2017 for businesses with limited costs, such as many labour-only businesses. This will help level the playing field, while maintaining the accounting simplification for the small businesses that use the scheme as intended. Guidance which has the force of law, published today, will introduce anti-forestalling provisions.

This change clearly goes much wider than just those contractors that operate through PSCs and is likely to have much wider reaching impacts that we are not sure have been fully considered or appreciated. Never the less the key question is - Does this spell the end of the FRS for most limited company contractors?

A limited cost trader will be defined as one whose VAT inclusive expenditure on goods is either:

- less than 2% of their VAT inclusive turnover in a prescribed accounting period
- greater than 2% of their VAT inclusive turnover but less than £1000 per annum if the prescribed accounting period is one year (if it is not one year, the figure is the relevant proportion of £1000)

Goods, for the purposes of this measure, must be used exclusively for the purpose of the business but exclude the following items:

- capital expenditure

- food or drink for consumption by the flat rate business or its employees
- vehicles, vehicle parts and fuel (except where the business is one that carries out transport services - for example a taxi business - and uses its own or a leased vehicle to carry out those services)

These exclusions are part of the test to prevent traders buying either low value everyday items or one off purchases in order to inflate their costs beyond 2%.

The tests would seem to catch many contractors PSCs and remove the benefit of flat rate VAT from them. We suggest reviewing this with your accountancy service provider who will be able to advise whether this impacts your limited company.

Draft legislation is due 5th December with 8 weeks to comment.