# OFF-PAYROLL WORKING (IR35)

JANUARY 2020

How is off-payroll working changing?

From 6 April 2020, a law will come into effect which will potentially impose further tax collecting burdens on all but the smallest businesses.

Businesses currently collect tax for their employees and remit that to HMRC via payroll system. But this new tax legislation will create duties on businesses over a certain size to decide the tax status of non-employed workers where personal services are provided via personal service companies (**"PSCs"**). If deemed an employee for tax purposes, the party paying the PSC will be obliged to collect PAYE and NICs on the payment and remit it to HMRC before it pays the balance plus VAT on the gross amount.

In addition, the payer will have to pay employer's NICs – 13.8%. This tax burden moves from PSC to the party paying it. Supply chains will need to develop new systems to manage this change properly under sanction of picking up the tax liability if they do not.

Determination of tax status of off-payroll working
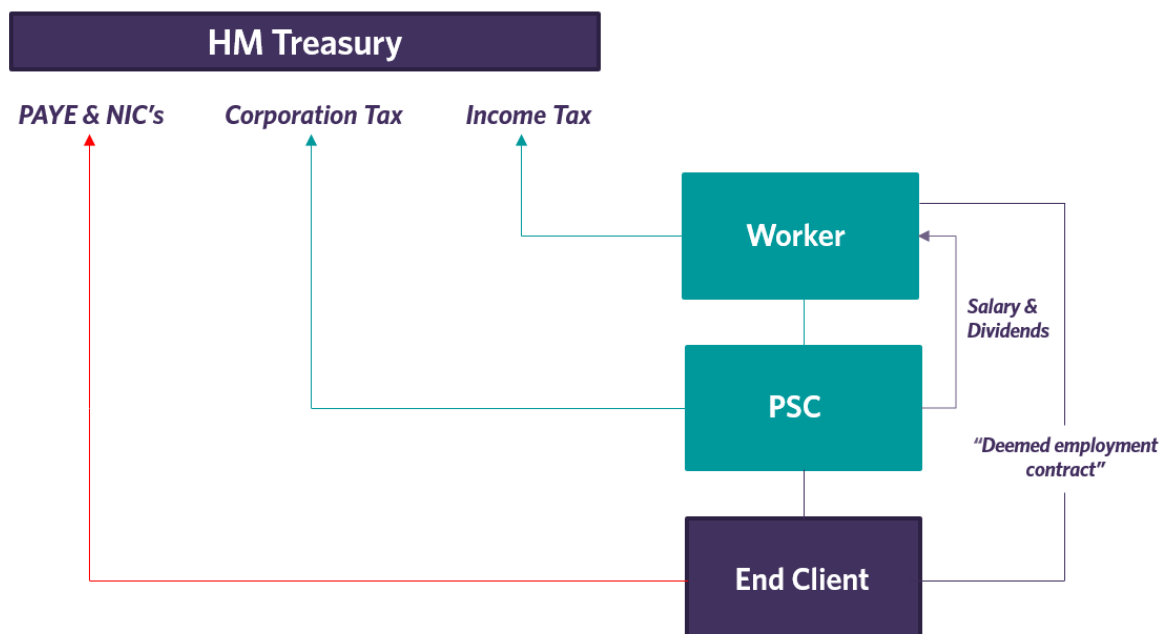
What do we recommend you do?

- Assemble a cross-functional project team. Don't place the burden wholly on HR; procurement, legal and finance should all weigh in;

- Carry out due diligence on your supply chain; are you the end client or the intermediary?

- Audit 'straddle' contracts and pro-formas now;

- Perform status determinations on those providing personal services to you.

- Negotiate terms and enter into new contracts with those contractors who are now going to be taxed as "employees".

- Seek indemnities from your contractors.

What is the risk?

As the end client, your failure to carry out a status determination, or to pass its conclusion and reasons on to the worker or down the supply chain to the payer, can result in you having to account to HMRC for PAYE and NICs where a gross payment has already been made to your supplier. Don't get caught out.

Indemnities are advisable where that liability has been passed down a supply chain or you have assessed the worker as not deemed employed. However, it is worth remembering that the effectiveness of enforcing those indemnities will only be as good as the party granting them.

Disputes with PSCs

As an end client you will require to establish a review process to handle challenges to the determination by the worker or payer. Failure to respond promptly may place the tax burden back on the end client. Clear audit trails of compliance will be essential.

How can we help?

The prospect of the new law and its possible implications on the business if you get it wrong can be daunting for clients but our team can help support you and navigate through the complexities. We can help you:

- Devise a Governance and Compliance Strategy. You may wish to put in place a policy statement & procedure to empower people to make decisions. Who has the authority within your organisation to make the decision on tax status?

- Assess whether you are receiving personal services or have wholly outsourced the contract?

- Undertake tax status determinations and support your people to do so to ensure they are confident with the process

- Provide independent verification of tax status determinations (if difficult or disputed by PSC)

- Provide specialist training to staff

- Conduct Audits or review audits results, all within the protection of legal privilege

- Support with tricky negotiations – PSC or Client

- Consider and assist with drafting indemnities

![Burness Paull logo]

Key Contacts

RONNIE BROWN
Partner – Tax

e   ronnie.brown@burnesspaull.com
t   +44 (0)141 273 6734
m +44 (0)7392 311 490

TRICIA WALKER
Partner – Employment

e   tricia.walker@burnesspaull.com
t   +44 (0)1224 618529
m +44 (0)7793 067 159

Burness Paull

Aberdeen

2 Marischal Square
Broad Street
Aberdeen
AB10 1DQ
T +44 (0)1224 621621
F +44 (0)1224 627437

Edinburgh

50 Lothian Road
Festival Square
Edinburgh
EH3 9WJ
T +44 (0)131 473 6000
F +44 (0)131 473 6006

Glasgow

2 Atlantic Square
31 York Street
Glasgow
G2 8AS
T +44 (0)141 248 4933
F +44 (0)141 204 1601