

# Off payroll working in the private sector: HMRC consultation

## Employment Tax

01 May 2019

HMRC has launched a technical consultation on extending the off-payroll working rules to the private sector from April 2020, to which the ATT and CIOT will be responding. The consultation asks for views on the exemption for small entities, information requirements and status determination disagreements.

HMRC has launched a technical consultation on extending the off-payroll working rules to the private sector from April 2020.

The [consultation](#) confirms the Government's intention to extend the off-payroll rules (which currently apply to public sector bodies) to the private sector from April 2020. The intention is to use the current public sector rules as a starting point, but with some proposed changes, which will also then apply to the public sector. It is proposed that the rules would not apply to small businesses in the private sector that engage with off-payroll workers, although they will continue to apply to public bodies that are 'small'.

The consultation asks for views and information on several subjects, including:

- the scope of the reform and impact on non-corporate engagers;
- information requirements for engagers, fee-payers and personal service companies; and
- addressing status determination disagreements.

The consultation also sets out how businesses can prepare for these changes, and HMRC's plans to provide education and support for businesses that will be in scope.

## Small entities exception

At Budget 2018, the government announced that the smallest organisations will not be affected by the extension of the rules to the private sector. These entities will not need to determine the status of the off-payroll workers they engage, although the workers will still need to assess whether they are within IR35.

The consultation proposes using the existing statutory definition within the Companies Act to determine whether a corporate client is small, that is the qualifying as 'small' conditions will be met by a company if it satisfies two or more of the following requirements:

1. Annual Turnover - Not more than £10.2 million
2. Balance sheet total - Not more than £5.1 million
3. Number of employees - Not more than 50

For non-corporate entities the consultation proposes applying the new rules where the entity has either 50 or more employees or turnover exceeding £10.2 million, or both these characteristics. HMRC has clarified that 'employees' will follow the Companies' Act definition, which is average number of employees, but regardless of whether full or part-time and excluding 'IR35' cases. This may therefore penalise those engaging more employees on a part-time basis.

It is also proposed that for the purposes of the off-payroll working rules when an organisation ceases to be small in an accounting period (or becomes small) the requirement to operate the off-payroll rules (or cease to operate them) will apply from start of the tax year following the end of that accounting period. This fluctuation in and out of the new rules may be confusing. Also, for entities with an accounting period ended on, say, 31 March there leaves very little time to decide whether they are now within the off-payroll rules and, if so, assess and notify the status of relevant engagements.

## **Information requirements**

The consultation proposes that an engager must provide direct to a worker a determination of the worker's status (and, if requested, the reasons for reaching that conclusion). The engager will also have to provide that determination to the party they contract with (for example, an agency). The status determination (and reasons) will then have to be passed down the supply chain so that fee-payers who are further down the labour supply chain have the information they need to comply with

the rules. It is not, however, clear whether small entities will have to notify the worker or the party they contract with that they are 'small'.

It is also proposed to modify the rules that determine when the liability for income tax and NICs should be transferred up the supply chain from the fee-payer to the agency or engager in cases of non-compliance. Where HMRC are unable to collect a liability from a defaulting party the government proposes that the liability should transfer back to the first party or agency in the chain. Where HMRC cannot collect from that party it would seek payment from the engager. As proposed the liability could fall back on the engager even if they have taken reasonable care to ensure that all parties comply with the rules.

## **Status determinations**

The consultation proposes an engager-led status disagreement process starting with the requirement for the engager to provide their determination to the worker - with reasons - which the worker would be able to appeal, and which would require the engager to revisit their determination and relay their conclusion back to the worker. HMRC would not be involved in this process. HMRC's view is that either workers wouldn't take a role if they disagreed with the engagers' determination or they would appeal at the year end to HMRC.

The consultation period closes on 28 May 2019 and both ATT and CIOT will be responding. Input from members in response to the questions posed in the consultation, or other aspects of the off-payroll rules that require clarification, is very welcome.