Reality starts to bite IR35

Despite concern about anomalies and lack of clear guidance, and with many businesses hoping for a further postponement, new off-payroll working rules took effect on 6 April.

The ongoing IR35 saga, as reported previously in *Shipshape*, continues. Businesses impacted by these rules are now expected to comply, even though the final legislation that governs them has not yet been enacted in law. It may be July before that happens and it's unclear what amendments will be made to the Bill to address the predicted teething problems of what are complex changes to tax and employment processes.

A brief refresh

The IR35 rules are designed to ensure that individuals working for a client in the same way as permanent employees but supplying their services through their own personal service company (PSC), pay broadly the same income tax and national insurance contributions (NICs) as individuals who are employed directly.

It used to be the responsibility of contractors and their PSCs to assess their own IR35 status and then to account for any tax and NICs due. However, in 2017, the balance began to change when that burden switched to the client in the public sector. Since 6 April this year, this shift in responsibility has also applied to medium and larger businesses in the private sector (and some charities).

Rule changes

The new rules mean that such businesses will need to determine the employment status of contractors and then communicate this to them in a Status Determination Statement (SDS), giving the reasons for their conclusion.

If an individual is deemed to be operating 'inside IR35', he or she will be regarded as a client's direct employee for income tax purposes, and the client, or 'fee-payer', will have to deduct tax and NICs under PAYE and pay employer's NICs – accounting to HMRC through its own payroll.

The contractor and their PSC is responsible for workplace pension contributions, student loan repayments and holiday pay, but the client is responsible for any apprenticeship levy payments.

For corporation tax, the payment received from the client that represents deemed earnings is not required to be brought into account in calculating the profits of the PSC's trade.

If a contractor works through an umbrella company – a third party operating between the contractor and the client – the contractor will be paid through the PAYE system by the umbrella company.

What's next?

Businesses using contractors working inside IR35 should review the terms of all contracts for services affected to reflect the fact that they, as the client, will have to pay employer's NIC. They will also need to justify the deduction of the tax and employees' NICs to be accounted for on the deemed employment earnings.

Many businesses finding themselves impacted by IR35, but with uncertainty about some aspects of the new system, have simply opted at this stage to take contractors onto their payroll.

Uncertainty about IR35 includes a lack of guidance on what action should be taken about payments for work carried out before a status determination statement is supplied. There are also concerns around who has liability for income tax and NICs when there is a chain of parties between the client and the individual carrying out work.

HMRC offers a Check Employment Status for Tax (CEST) tool to help determine the relationship between a contractor and a client at *https://tinyurl.com/zg4ufoc* If you would like advice or further information, please speak to your usual Shipleys contact. More on the Shipleys website at: *https://tinyurl.com/y6ezxnrd*