

Questions Log C:\Users\David Kirk\Documents\QuestionsLog 2021_03_05 10_47.rtf

Audience Question:

Q: If I fall under IR35 and contracted privately, Do i have to run payroll on monthly basis or just do the calcaiton on yearly basis and pay the ER NIC AND EE nic and tax

A: Where a contractor falls within the offpayroll rules, it will be for the deemed employer to run payroll everytime a deemed payment is made. ESM10019 provides more detail on operating PAYE.
<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10019>

Audience Question:

Q: Does the SDS have to be sent to the PSC?

A: The SDS has to be made by the client and passed to the contractor/worker and any 3rd party they contract with. More info on the SDS and what constitutes a valid SDS can be found from in ESM10012 & ESM10013

Audience Question:

Q: Is that PAYE TAX and NI's or NI Company contributions

A: On payment that falls inside the OPW rules a deemed employer will need to deduct PAYE tax, employees and employers NIC and, if applicable, apprenticeship levy

Audience Question:

Q: How PSE shows payment recieved after IR35 deduction in PSE accounts ?

A: Since the deemed payment amounts have already been subject to tax and NICs, no further tax is due on those amounts or this would be double taxation. Avoiding double taxation can be achieved in different ways depending on whether income from off-payroll working arrangements is recorded gross or net within the PSC's accounts and whether the money is taken out of the PSC as payroll payments or dividends. Please see page ESM10035 of our employment status guidance on GOV.UK for more detail on this: ESM10035 - Employment Status Manual - HMRC internal manual - GOV.UK (www.gov.uk)

Audience Question:

Q: If we engage a worker through an agency do we have to complete a SDS. I'm thinking that the agency would be responsible for PAYE is that correct ? Thanks

A: Where a worker is contracted directly to an agency (ie no intermediary) this would fall under the agency regulations. Where the contractor is engaged by the agency via their own intermediary then the offpayroll rules will need to be considered. An SDS will only be required for offpayroll engagements.

Audience Question:

Q: When calculating VAT on the contractor Invoice is the VAT calculated on the net amount after the Tax and NIC have been calculated via the payroll or is the VAT calculated on the pre Tax and NI invoice amount?

A: I believe there will be a worked example shortly, however VAT would be calculated on the gross amount before the calculation of PAYE/NIC. Per step one at <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10028>

Audience Question:

Q: If the client already operates payroll and we deem that the contractor falls under IR35 do we just have to add the contractor to our normal payroll and run on a monthly basis

A: If the agency already deducts PAYE/NIC i.e. under agency regulation, then there would be no requirement to consider the OPW rules. It is important to understand what is happening in the contractual chain to determine if you have any responsibilities under the OPW rules

Audience Question:

Q: In some cases an agency may uses the services of an Umbrella to process a worker's wages. Can an Umbrella company be considered to be a deemed employer and a fee payer?

A: Where an umbrella company has workers engaged via their own intermediaries (so not on the

umbrellas PAYE scheme) then the umbrella may be the fee payer and the deemed employer.

Audience Question:

Q: Do off payroll workers have rights to holiday pay?

A: Employment rights are a separate matter to the off-payroll working rules.

Audience Question:

Q: Can agency request PSC to operate via umbrella of the contractor is deemed inside IR35?

A: That would be a business's decision and isn't something we can comment on.

Audience Question:

Q: Does Contractor have any responsibility to deduct tax and NI ?

A: If the client deems the contractor inside scope of the OPW rules, therefore a deemed employee, then the deemed employer will have the responsibility for deducting tax and NIC's, not the contractor

Audience Question:

Q: If there is no agency involved then the client must have contracted with the PSC. In this case does the client have to issue SDS to both the contractor and the PSC?

A: If there is no agency in the chain then the client is only required to send the SDS to the contractor

Audience Question:

Q: Does the deemed employer have to issue payslips to the PSC when tax is deducted?

A: Deemed employees may be given a payslip showing the amounts of the deductions. Alternatively, these can be shown in a different way such as including them on a remittance notice.

Audience Question:

Q: Where is it documented, in Law, the definition for PSC please?

A: For the off-payroll working rules to apply, an intermediary can be a limited company, a partnership or an individual. Page ESM10003 of our Employment Status Manual guidance on GOV.UK goes into more detail about how a limited company or PSC may be within the scope of the rules: ESM10003 - Employment Status Manual - HMRC internal manual - GOV.UK

Audience Question:

Q: What if the Client and Agency are not in the UK?

A: If there is no UK connection for the client in the form of being a UK resident or having a permanent establishment then the off-payroll rules at Chapter 10 do not need to be considered. The workers intermediary will need to consider whether the Chapter 8 rules will apply. The residency of the Agency is not relevant for off-payroll purposes. Further information regarding International matters are available at <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10025> and <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10026>

Audience Question:

Q: what if our PSC is an ROI company, do we still need to assess the ROI PSC?

A: The residency of the PSC does not affect the OPW rules. It is the residency of the client and the individual which would determine if the OPW rules need to be considered and whether there is any UK PAYE/NIC to be paid

Audience Question:

Q: I have seen that the Deemed Employer can charge the Employers NI back to the PSC - is this correct please?

A: Employers NIC is the responsibility of the Deemed Employer rather than the contractor.

Audience Question:

Q: Why is the Limited Company in the supply chain? Is it deemed that Companies will continue to operate even if their operatives are deemed IR35??

A: I don't fully understand your question I'm afraid. The Limited Company as in the PSC?

Audience Question:

Q: How does this apply to staff employed via a temp agency

A: I would mention first that the OPW rules only apply to individuals that are engaged via their own intermediary. If they have PAYE deducted from the temp agency then there would be no requirement to operate the OPW rules. You will need to ensure, as a client, that you understand how agencies are engaging contractors

Audience Question:

Q: If the Client employes a company to administer it's payroll, who is then responsible for determinations?

A: It is possible that a company may outsource the determination process, however the need for reasonable care to be taken when making the determinations does not move from the Client in these circumstances.

Audience Question:

Q: What denotes a medium size company please?

A: ESM10006 explains how to determine the size of a client.

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10006>

Audience Question:

Q: Where client has paid to PSC after deducting Tax, PSC director withdrawing the money does not need to pass the money for CT tax ?

A: There is guidance on CT accounting here

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10035>

Audience Question:

Q: Is a personal allowance relevant or is the whole payment subject to income tax. What rate is used , is it always 20%?

A: In the event of a contractor being deemed inside scope of the rules and classed as a deemed employee by the client, the contractor will be added to the payroll of the deemed employer. They will be issued with a starter checklist so they can provide the deemed employer with info they need to run the payroll. The declaration the contractor uses will determine their tax code. Usually this will be declaration C as the contractor already has a primary employment with their intermediary. This would mean that tax code BR is allocated to the deemed employer and HMRC can issue a new tax code if required. More info on this can be found in ESM10019

Audience Question:

Q: If the contractor's agency which is a qualifying person and deemed employer in UK has not informed his contractor at this stage the contractor's and his PSC is within IR35, is the responsibility lie with the deemed employer to rectify the situation in future and will the contractor's liable to pay back NI and tax in future?

A: Once the client has determined whether the off-payroll working rules apply to an engagement, it should communicate that decision in the form of an SDS to the worker and any third party it contracts with. Failure to pass on the SDS will result in the client being responsible for the deduction of tax and NICs, and paying these, along with any apprenticeship levy, to HMRC if due. Agencies will not be responsible for determining the status of a worker, this rests with the client. All agencies in the chain will have the responsibility for passing on the SDS if there are other persons between them and the worker's intermediary in the contractual chain. The contractor will not be liable for any unpaid tax or NICs from an off-payroll working engagement.

Audience Question:

Q: We have a sister company. We're not a subsidiary but are Connected for Apprenticeship Levy purposes. Does this make us Connected for IR35 as well? We don't meet 2 of the 3 criteria for Small business if we combine figures from both companies, but do meet 2 of the criteria if just consider our company figures only. I think this means we are not considered a Small business for IR35. I have asked HMRC but not a clear answer from them

A: <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10007> contains information regarding groups. A group's size is determined by the size of its parent company. In order to identify the

size of a parent company you should aggregate the figures from all members together. Therefore, to determine the size of a company within a group, you add together all figures of the members within the group and the outcome will apply to all members.

Audience Question:

Q: In your Deemed Employment - examples 2 & 3 the offshore agency's margin is being subject to PAYE, not just the payment the contractor is entitled to. Is that correct?

A: The agencies margin would not be subject to PAYE/NIC and would be removed when calculating the chain payment. We will check the examples so thank you for pointing this out

Audience Question:

Q: How do these rules apply for small (SME) consultancies who are delivering projects to customers where they hire a contractor to help with the project or deliver the project workpackage on behalf of the consultancy? These projects are where the consultancy is accountable for delivery and contractor is part of the team to deliver the work. The consultancy is not a recruitment agency but one provides specialist skills. Can a small consultancy hire contractors to deliver project or service work they undertake as turnkey delivery and how do they determine the SDS?

A: Where a fully contracted out service is being provided, it is the entity providing this service who would be the client, where they are small (as per ESM10006) then the off payroll rules would not need to be considered. Where the service is not fully contracted out it would be the client who has responsibility for determining whether the offpayroll rules apply. ESM10010 provides further information on contracted out services, <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10010>

Audience Question:

Q: Is there an SDS template that clients can use?

A: There is no standard template, however the output received from HMRC's CEST system is an acceptable format of SDS. Even if you do not intend to use the CEST tool going forward you could use it to obtain a sample output.

Audience Question:

Q: If a contractor is engaged via an Umbrella and not a PSC, will the employers NI and apprentice levy be shown as deductions on the payslip from the payment made from umbrella to the contractor under OPW?

A: In an umbrella company engagement, it will be the responsibility of the umbrella company to make all relevant deductions. How it wishes to show this on a payslip is a business's decision.

Audience Question:

Q: Where agency is deemed employer, can PSC deduct 5% expenses under rule of IR35 ?

A: The 5% expenses deduction would not apply. ESM10028 explains how the deemed payment is calculated. <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10028>

Audience Question:

Q: Who bears the ADDITIONAL ERs NIC cost ?

A: Employers NIC is the responsibility of the Deemed Employer.

Audience Question:

Q: How is VAT treated when a PSC is deemed an employee, can you supply a link.

A: The first step for a deemed employer when calculating the deemed payment is to identify the value of the chain payment and deduct any amounts in respect of VAT. More info and guidance on how to calculate the deemed direct payment can be found in ESM10028 & ESM10029

Audience Question:

Q: who is a medium sized company

A: The criteria for a medium or large non-public sector organisation is at the following link. If 2 of the 3 criteria bullet-pointed are met then the organisation will be medium or large.

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10006>

Audience Question:

Q: if a client takes reasonable care in an SDS but gets the answer wrong- what are the consequences for the chain?

A: If a client is not already the deemed employer, and has taken reasonable care and fulfilled its other duties (such as issuing the SDS), the responsibility for deducting tax and NICs and paying these to HMRC will not rest with it. This is the case even if it turns out that the client got the decision wrong.

Audience Question:

Q: Does this only relate to PSC, I have a client who has staff on payroll that they bill to the end client for contracts.

A: The off payroll working rules apply only where individuals are providing their services via their own intermediary, such as a personal service company. If there is no intermediary in place then the off payroll rules do not need to be considered. Further information can be found at <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10003>

Audience Question:

Q: if and sds is appealed and corrected is the effect backdated

A: Yes. ESM10015 provides further detail.

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10015>

Audience Question:

Q: is ansds is capped and corrected is the effect back dated

A: If it is necessary to do so, then yes an amendment on RTI can be done as normal. Further info available at the section about corrections on

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10015>

Audience Question:

Q: If contractor is on payroll of PSC, surely the contractor will then get taxed and Nic'd twice on teh same money?

A: If the contractor has already paid PAYE/NIC on a deemed employment they won't be double taxed. Please see the guidance here

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10030>

Audience Question:

Q: If the end client pay directly to the contractor, will they bcome deemed employer and deemed fee-payer (rather than the agency in the supplychain)?

A: If the client contracts directly with the contractor and the contractor is deemed to be inside scope of the OPW rules then the client will also be the deemed employer as they are the first and only qualifying person within the supply chain and will have to operate PAYE on any payments made to the contractor.

Audience Question:

Q: Can a contractor operate inside their limited PSC inside IR35? Do they always need to go via an umbrella? In case of Limited company what are deductions they should make and what proof they should provide to the client?

A: A contractor/PSC will determine their own IR35 status if the engagement is with a small client. We cannot comment on whether you want to use an umbrella company or not. If the engagement is with a medium- or large-sized client then you only need to confirm that you work via your own intermediary and that you have material interest in the intermediary.

Audience Question:

Q: are we going to get these slides?

A: You will receive a follow up email which will contain a link to a recording of the webinar and it will include visuals of the slides.

Audience Question:

Q: I have to unexpectadly leave - will you still send me the full video?

A: Yes you will receive a recording of the webinar in a follow up email.

Audience Question:

Q: Do the SDS responsibilities fall under Public and Private, Client, as same ?

A: All public sector organisations and medium and large sized non-public sector organisations have the same SDS responsibilities.

Audience Question:

Q: Re the deemed payment, do salary payments to the contractor from his PSC count as expenses ?

A: No. It is only expenses that are incurred in the performance of the job, the same rules that apply to an employee of a company

Audience Question:

Q: Agency paid the PSC after deducting PAYE and PSC pay the contractor, does PSC also need to deduct PAYE taxes, does that mean same amount deducted twice ?

A: ESM10024 explains how the PSC will deal with PAYE.

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10024>

Audience Question:

Q: If the contractor is already running payroll through his PSC and is deducting Tax and NIC through their own PSC then does the client need to assess OPW

A: Yes. For an engagement within the off-payroll working rules, it is the responsibility of the client to determine the employment status of the contractor for that engagement.

Audience Question:

Q: If we directly engage a PSC and we deem them to be caught by IR35 what Income tax & NIC do we deduct from the contractor?

A: You would operate PAYE as you normally would. A starter checklist should be completed which will determine the tax code. Full information available at

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10019>

Audience Question:

Q: Can I print off slides anywhere

A: We do not issue the slides but you will receive a recording of the webinar in a follow up email which will contain visuals of the slides.

Audience Question:

Q: A contractor that is deemed as inside IR35 from 6/4/2021. If we paid their March invoice after 6th April would we be required to deduct PAYE from the invoice even though it relates to work completed in March?

A: The OPW rules only apply to payments for services provided by the contractor on or after 6th April

Audience Question:

Q: Can the Tax and NI be paid by 22nd of the following month as with permanent employee payrolls?

A: Yes, you can pay your off-payroll working contractors in the same way that you would an employee, as long as the RTI flag is ticked to show that the worker is an off-payroll worker.

Audience Question:

Q: Could you please clarify again, I think I missed that part, Are deemed employees entitled to holiday pay and workplace pension scheme?

A: No, employment rights are a separate matter to off-payroll working rules.

Audience Question:

Q: If our agency has said the contractor they have sent us is through CIS Umbrella company does that mean they are within these IR35 rules?

A: The off payroll rules take precedence over CIS, just because a contractor is within CIS does not mean that OPW will not apply, if the contractor is engaged via an intermediary then OPW should be considered. ESM10004A explains how OPW and CIS interact.

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10004a>

Audience Question:

Q: what if a contractor doesnt operate through a PSC?

A: The off-payroll working rules apply only where workers are working via an intermediary such as a PSC. Information available at <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10003>

Audience Question:

Q: No, employment rights are a separate matter to off-payroll working rules. Will this be addressed at a later date?

A: This is not something which HMRC can comment on.

Audience Question:

Q: What happens when the PSC operates under an umbrella company will they be considered the deemed employer as they will be paying the PSc or is the agency still the deemed employer. where doe the liability lie?

A: An umbrella company usually deducts PAYE/NIC so the OPW rules would not need to be considered. However you do need to make sure you do due diligence on the supply chain to understand if there are any OPW responsibilities

Audience Question:

Q: The guidance on the treatment of VAT does not identify if the VAT is entirley ignored for the payment to the PSC if they are deemed an employee. If the deemed payment is less than the invoice charge (net of VAT) do you still apply VAT to the non-payroll deemed element of the payment? Have you any specific guidance relating to VAT or worked examples?

A: Step 1 of a deemed direct payment involves deducting any amounts in respect of VAT. The application of VAT to payments is not changed by the off-payroll working rules so you can carry on with the same VAT treatments that you apply currently.

Audience Question:

Q: If the PSC does not recharge to the client it's direct expenses how will the client know what they are ? Is it incumbant upon them to ask ?

A: The legislation and guidance is that when calculating the deemed direct payment, the deemed employer should deduct the direct cost to the intermediary of any expesnses occurred in the performance of services. We cannot prescribe what the invoice looks like, the deemed employer should establish from the intermediary, the actual expenses occurred so they cn work out the deemed direct payment and deduct the appropoiate tax and NIC on it. If they cannot establish this either from the invoice or any other evidence from the intermediary then they should not deduct any amounts for expesnses

Audience Question:

Q: Im a bookkeeper and my client does filming and editing of TV programmes of sporting events - they use self employed cameramen - will they now be deemed employed? They are engaged on adhoc basis as and when needed..

A: Are they engaged via their own intermediaries, if not, then the OPW rules do not apply.