



## New Reporting Requirements for Employment Agencies

On 6 April 2015 the new record-keeping, returns and penalties provisions affecting employment agencies will come into force. The first return (for the period from 6 April to 5 July) will have to be made to HMRC by 5 August 2015.

This is a significant change and puts the onus onto employment agencies to explain to HMRC why, if they have not deducted PAYE, they consider an individual they have placed should not be subject to PAYE.

### Background

In December 2013, HMRC published a consultation on the tax treatment of workers supplied by agencies. The main proposals were that:

- a) A worker would be treated as employed if they personally provided or were personally involved in the provision of, services to the end user and received remuneration in any form.
- b) The agency supplying the worker to the end client must account for tax and NIC and report to HMRC using real time information if the worker was not on the payroll of any other person.
- c) The agency must submit a quarterly electronic return giving details of any workers from whom tax has not been deducted and the reason for the non-deduction.

At the same time HMRC published a note clarifying how the proposed new rules and the IR35 rules would work together. The note explained that, although a personal service company ("PSC") would fall within the definition of a "third party" or "agency" that stands between the worker and the end client, the agency rules would apply only if all four of the following conditions are met:



- a) The worker personally provides, or is personally involved in the provision of services to the end client as a result of a contract between the end client and the PSC.
  - b) The manner in which the worker provides the services is subject to (or to the right of) supervision by any person.
  - c) Remuneration is received by the worker in consequence of providing the services.
  - d) That remuneration does not constitute employment income apart from under the agency legislation. Where the agency legislation does not apply, but the relationship between the worker and the end client would (absent the PSC) be one of employment, IR35 still operates as before.
- In 2014, HMRC published responses to its consultation. Importantly, HMRC clarified that the record-keeping, returns and penalties provisions would only apply from 6 April 2015 (with the first return due by 5 August 2015).

What do agencies need to do?

Employment agencies will have to provide a report to HMRC detailing workers it has provided to end clients that it hasn't treated as employees for tax purposes.

If an agency is sending a report, it must include the following information in respect of each worker:

- a) The agency's name and address.
- b) The Agency's PAYE number and PAYE reference.
- c) The reporting period.
- d) Worker name.
- e) Worker National Insurance Number.
- f) Where no National Insurance Number is available, date of birth and gender.
- g) Worker UTR (where self-employed or in partnership).
- h) Worker address and postcode.
- i) Worker engagement details.
- j) Start date and end date of engagement.
- k) Amount paid for the workers services (currency and inclusive of VAT) (only for the self-employed and others they have engaged where PAYE has not been operated).
- l) Whether income tax has been deducted from the payments paid to the worker.
- m) The name and address of the party paid by the intermediary for workers' services.
- n) Companies House registration number of party paid by intermediary for the worker's services.
- o) If applicable, the agency must also be able to demonstrate why a worker has not been treated as an employee and paid through PAYE.

In relation to PSCs HMRC has clarified that, where a PSC has only one individual providing services to an end client, the PSC will not be a specified intermediary and will therefore have no filing responsibility.

Reports must be sent quarterly. As set out above, the first report must be sent by 5 August 2015.

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2. The manner in which the worker provides the services is subject to (or to the right of) supervision by any person.
3. Remuneration is received by the worker in consequence of providing the services.
4. That remuneration does not constitute employment income apart from under the agency legislation.

Where the agency legislation does not apply, but the relationship between the worker and the end client would (absent the PSC) be one of employment, IR35 still operates as before.

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12. Whether income tax has been deducted from the payments paid to the worker.
13. The name and address of the party paid by the intermediary for workers' services.
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15. If applicable, the agency must also be able to demonstrate why a worker has not been treated as an employee and paid through PAYE.

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