The IR35 “off payroll” rules are coming … again

By Darren Isaacs - 28 January 2021

The much-dreaded IR35 “off payroll” tax change is coming to the private sector from April this year.

Readers will recall that the changes were originally slated to start operation in April 2020, but they were delayed until this year due to the pandemic.

There is a chance they will be postponed again in the coming Spring budget, but that is perilously close to their current start date in April – so it would be a real gamble to ignore the changes in the meantime.

The off-payroll rules apply to independent contractors who are engaged by a client via a corporate entity (or more than one corporate entities) acting as an intermediary. For example, an individual consulting through that individual’s own company, providing services to a client.

The changes do not affect independent contractors where the contractor is engaged directly as an individual with the client (i.e. with no company or companies in the middle). However, the usual tax and employment laws about independent contractors really being disguised employees, will still apply.

The changes also do not apply where the client entity (i.e. the entity receiving the services) is considered to be a “small” business in UK corporate law, which depends on the client satisfying at least two out of three specific tests:

- It has an annual turnover not exceeding £10.2m
- It has a balance sheet total not more than £5.1m
- It had an average of no more than 50 employees for the company’s financial year

If a client company is not a “small” business then it will need to take the IR35 changes seriously.

The changes essentially do the following: they ask what the position of the independent contractor would be if there was no corporate entity or entities in the picture. If the contractor was engaged directly by the client, would they be a proper consultant or would they be a deemed employee for tax laws?

If the independent contractor would really be a "deemed" employee (ignoring any company in the middle), then the IR35 changes shift the burden of withholding employment taxes and employee social security deductions from the contractor's company (which is currently liable) to the client entity itself. In addition, the client entity becomes liable for employer's social security deductions (13.8% on payments above a threshold) and these cannot be recovered from the independent contractor or any other third party.

So what to do now?

The first step for HR is to audit their consulting/contracting relationships, to determine whether there are any potentially-effected contractors of the business. Once that is done, the business will need to consider if they will be caught by the new IR35 law changes. This may involve some tricky legal assessments. If the answer is yes, then the contractual documents will need to be updated, and in some cases there may need to be pricing negotiations with the contractor to reflect the new economics of the relationship.

If you would like to discuss these changes further please get in touch with your usual GQ|Littler contact or email .