Review of off-payroll working rules: Meetings with HMRC

Employment Tax

28 February 2020

We summarise various meetings with HMRC arising from the review of the proposed new off-payroll working rules.

On 7 January 2020, the government announced that it was launching a review of changes to the off-payroll working (OPW) rules. The review is expected to be concluded by mid-February (after this article was written but before it is published). As part of the review, the CIOT has met HMRC, attended a couple of HMRC IR35 Forum meetings and participated in various HMRC roundtable events. We summarise these meetings below.

Off-payroll working review

The review was tasked with gathering evidence to 'ensure smooth implementation of the reforms', rather than to postpone the reforms. The aim is to consider what the government can do to support affected parties who rightly expressed various concerns with the new OPW rules due to be implemented with effect from 6 April 2020.

The CIOT met HMRC in mid-January to discuss the scope of the review, its priorities and timings. We understand that the main aim is to make HMRC's guidance and support for businesses and workers as good as it can be. We agreed that a key aspect to the implementation of the new OPW rules from April 2020 will be the publication of guidance and urged HMRC to publish their detailed technical guidance as soon as possible.

We raised with HMRC various technical concerns with the draft Finance Bill legislation that was published in Summer 2019, including:

- identification of end users as 'small';

- the status determination statement (SDS) and the requirement to issue the SDS to agencies;
- whether there is a requirement to issue the SDS to a worker if the OPW rules do not bite;
- status dispute resolution and the timescale to raise a dispute and whether notice has to be in writing; and
- what happens if a worker disagrees with the outcome of the status dispute.

We also discussed guidance requirements in respect of distinguishing between a supply of services and a supply of labour (outsourced services and statements of work, etc.), as well as procedures for recovery of PAYE where status is wrong (offset for taxes paid by personal service companies where OPW rules should have applied or recovery of PAYE and NICs deducted in error by the fee-payer, etc.). We also discussed how the rules are to apply in international situations, such as where the end client, agency or worker are not UK resident. For example, the draft legislation seems to suggest that if there is a non-UK engager and a UK worker, the non-UK engager would be treated as UK resident and therefore need to operate the OPW rules. How, though, do you enforce UK tax obligations on a non-UK entity and, absent a UK agency, how would PAYE and NICs be accounted for?

In addition, we discussed HMRC's Check Employment Status for Tax (CEST) tool which was updated in November 2019, how mutuality of obligation (MOO) is referenced within the tool, and various employment status tax cases, which specifically refer to MOO as a fundamental starting point when considering status.

Draft secondary legislation

Subsequent to our meeting, HMRC published on 22 January draft secondary legislation for technical comment by 19 February. The draft PAYE Regulations contain detailed provisions allowing for the recovery of PAYE income tax liabilities from a third party where a fee-payer has failed to make PAYE tax deductions and provide for the reporting of an OPW indicator on real time information returns. The draft Social Security Contributions Regulations make similar provisions for NICs purposes to those provided for in the draft Finance Bill legislation and in the draft PAYE regulations. See next month's Technical Newsdesk for a summary of our response!

IR35 Forum

The forum has met twice recently and the review of OPW was the main topic of discussion. HMRC advised that an educational package on the OPW changes for large and medium sized business was being rolled out. HMRC will write directly to those businesses it thinks are likely to be impacted by the new rules and signpost them to various HMRC resources and factsheets.

The transition from current IR35 and OPW in the public sector rules to the new OPW rules was discussed (for example, the need for public bodies to provide SDSs, and what happens where payment for work done in 2019/20 is delayed to after 5 April 2020, etc.). HMRC's IR35 compliance work was also raised and it is understood that that there are around 200 HMRC staff working in this area. Forum representatives raised various unacceptable schemes they have seen that purport to circumvent the IR35/OPW rules and which undermine those businesses and agencies that comply with the rules. HMRC indicated that they are aware of these schemes and are taking action. Representatives urged HMRC to publicise this work as a deterrent.

Other developments

Ahead of the outcome of the government's review, in early February HMRC announced (see https://tinyurl.com/u7tbu2y) that the new rules will now apply only to payments made for services provided on or after 6 April 2020. (Previously, the rules would have applied to any payments made on or after 6 April 2020, regardless of when the services were carried out.)

Also in early February, The House of Lords Finance Bill Sub-Committee launched an inquiry (see https://tinyurl.com/sulaqsv) into the extension of the off-payroll working rules. CIOT and LITRG representatives gave oral evidence to the inquiry on 10 February.

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