What do the Public Sector changes mean?

1. About the new rules

Q. What is IR35?

IR35, or 'the intermediaries legislation' was introduced in 2000 to ensure that workers who operate through PSCs but work like an employee pay employment taxes and national insurance contributions (NICs) in a similar way to an employee. The risk of HMRC chasing for unpaid tax has historically been with the PSC.

Q. What is changing?

The Government has introduced new rules (changes to ITEPA 2003) which apply to "Off-payroll working in the public sector" which moves responsibility for determining whether IR35 applies to the Public Sector Body and moves responsibility for paying the tax to the "fee payer" normally the Agency.

Q. When do the new rules come into force?

The new rules operate in respect of payments made on or after 6 April 2017. This means that they are relevant to contracts entered into before 6 April 2017 but where the payment for the work is made after 6 April 2017.

2. Making the IR35 decision

Q. How does the Public Sector Body make the decision?

It is up to the Public Sector Body how it makes the decision. HMRC has released on online checking tool called the "ESS tool" which most are using. Some are getting independent reviews done to back up an ESS tool decision.

Q. When does the Public Sector Body have to notify the Agency of the decision?

The Public Sector Body must notify the Agency before the placement is made or in respect of existing contracts before 5 April.

Q. Does the Public Sector Body hold liability for the decision it makes on employment status?

In practice no. If however the Public Sector Body refuses to make a decision on whether a role is inside or outside IR35 it may pick up the tax liability. Usually it is the Agency, as the fee payer, that holds the liability.

Q. What if the role is determined inside IR35?

If a role is determined as **inside IR35** the new rules mean the fee payer must:

* Deduct from the payment to a PSC employee taxes (PAYE and employee's NICs) and pay these directly to HMRC.

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* In addition the fee payer must pay employer taxes (employer's NICs and apprenticeship levy) to HMRC.

Q. What if the role is determined outside IR35?

If a role is determined as outside IR35, an Agency can pay the PSC gross. This is the same process that existed prior to April.

3. The Agency process

Q. What are Agencies doing in respect of those PSCs that are inside IR35?

The worker is being given a choice of Agency PAYE, umbrella, or the PSC being paid Inside IR35.

PayStream's payment company, My Max Payment Services Limited ("Payment Services") is making the Inside IR35 payment.

New contracts are being offered from April.

* If the worker chooses Agency PAYE he will be quoted the Agency PAYE rate. The Agency will be responsible for paying employer taxes (employer's NICs and apprenticeship levy) to HMRC on top of the rate.
* If the worker chooses the Payment Services option the rate offered by Payment Services will be broadly similar to the PAYE rate since Payment Services will also have to account for employer taxes to HMRC.
* If the worker chooses umbrella the rate quoted will be higher as it includes an uplift to cover the employer taxes. From the rate the umbrella as employer will also have to account for employer taxes to HMRC.

In all three scenarios above PAYE and Employee's NIC are deducted prior to any payments being made (whether to the individual or the PSC).

Q. What does a worker need to do to continue to get paid inside IR35 through their PSC?

The worker needs to be set up by the Agency as "PSC inside IR35" and referred to Payment Services. The Agency payroll will send a file to Payment Services with a list of affected workers. Payment Services will email and call these workers.

The worker will need to go on the Payment Services portal and confirm their details in order to get paid.

Q. Can a worker choose the umbrella option?

Yes. Workers can discuss their options with PayStream including the financial impact of each option.

PayStream My Max is on the Agency PSL if the worker chooses Umbrella. Set up takes 5 minutes and the Agency will receive automated emails from PayStream My Max if the worker chooses Umbrella.

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Q. What are the contact details for Paystream?

The details are the same for umbrella quotes or the Payment Services Option.

The worker can call 0161 929 6000 (option 1) to discuss with one of PayStream's consultants. Alternatively he/she can email new.business@paystream.co.uk with a contact number and PayStream will call back.

Please note that volumes of referrals may be high and it may be best to email and to arrange a time for a call.

Q. Will there be a delay in payment?

No.

Umbrella: the payment process is well established with Agencies. Workers are paid weekly on a Friday. A text message will be sent to the worker to confirm that the payment has gone.

PSC Inside IR35: As long as the worker has signed up in time for the first payment the PSC will be paid as usual but by Payment Services. This may be weekly or monthly depending on what is agreed with the Agency.

Q. Does the worker have to give Payment Services his Tax Code before he gets paid?

No. But without a P45 from their PSC, the deemed payment is treated as a second employment (as the primary employment is still with the PSC). This means that, when a worker engages with Payment Services, he will be asked to complete a starter declaration and therefore will be taxed under a BR tax code.

For higher rate tax payers, this will normally result in an additional personal tax liability at the year end. For basic rate tax payers their weekly take home pay will be negatively impacted as they do not receive their personal tax allowance, instead having to wait until the end of the tax year for a refund from HMRC on completion of a self-assessment tax return.

Alternatively, if the PSC issues a P45 ceasing their employment, the worker could then transfer the primary employment to PayStream who could then update their tax code immediately. The PSC accountant should advise whether this is a sensible course of action.

If the worker chooses umbrella then the PSC should issue a P45 which should be passed to the umbrella.

Q. What is a BR tax code?

A BR tax code means all the income under the deemed payment model is taxed at the basic rate of 20% with no personal allowances.

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4. Practical considerations for the PSC worker

Q. What are the pros and cons to a worker continuing to work through a PSC inside IR35?

Pros:

- Each assignment is on a case by case basis so even though one placement may be inside IR35, the next one may be outside IR35. So retaining a company may be beneficial if the worker expects to work in the private sector in the future or has a concurrent assignment outside IR35.

Cons:

- The worker does not benefit from any other "worker/employee rights" such as sickness pay, pension or dismissal rights that would be available in an umbrella.
- The worker will have to pay additional accountancy and insurance costs if working through a PSC. In most cases the worker will be unlikely to be better off than in an umbrella.
- The worker has responsibilities as a director but he should already be aware of these.

Q. If a PSC is now "inside IR35" can HMRC look back in time?

Yes there is a possibility that HMRC will investigate the IR35 status of the PSC pre April 2017 and this liability sits with the PSC/worker. This is why some workers are closing down their companies.

Q. Will workers need to set up a new PSC if the Public Sector Body decides the role will be inside IR35?

No. This is not necessary. The worker should speak to his accountant about whether to set up a new company.

Q. What expenses are allowable for tax purposes going forward?

Under the new rules company expenses such as accountancy fees cannot be deducted in the deemed calculation. The 5% allowance for company expenses has also been removed.

Employee expenses, such as mileage for example, may be allowable subject to the normal rules for employees. It is the PSC's accountant that normally advises on the deductibility of expenses for tax and questions on expenses should be referred back to the accountant. Neither the Agency nor Payment Services will be involved in the decision.

Q. What happens with Reimbursed Expenses?

Reimbursed expenses will be subject to tax under the deemed calculation.

Tax relief may be claimed through the PSC or on a self-assessment tax return. The PSC's accountant will advise on the best route. Unlike in an umbrella NI relief may not be available.

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Q. Can pension's contributions still be made?

The rules on pension's contributions have not changed. The difference in the new world is that the PSC receives funds net of tax. If the worker has a pension scheme the simplest thing to do would be for a contribution to be made personally to the pension scheme. In this case the worker would receive tax relief directly with the pension provider.

Additionally as part of the worker's self-assessment return higher rate income tax relief should be given on any contributions made during the year (if the worker is a higher rate tax payer). Unfortunately NI relief may be lost. The PSC's accountant should be able to advise whether a company pension scheme is beneficial, which may be the case if the PSC has other income/retained profits from which to make the contribution (and to attract full relief). It would be difficult for Payment Services to make payments to a scheme without due diligence on the scheme and there would be no financial advantage to the worker in any event versus a payment personally to a pension scheme.