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New Off Payroll Regulations

People and Organisation

March 2017

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Agenda

- Personal Service Companies
- New rules
- Recap on IR35 legislation as it currently stands
- Understanding employment status
- Employment status risks and penalties
- The consultation
- New draft legislation (published 5th December 2016)
- Who is affected and when do new rules apply from?
- In or out of scope
- Employment Status Service Tool
- What must public bodies and workers do?
- Deemed employment income accounting for tax
- Practical issues

Employment status tax risks for the Public Body: Personal Service Companies (“PSCs”)

What is a PSC?

- No clear definition in law
- The term "personal service companies" devised by HMRC following the introduction of IR35 in 2000 by the then Chancellor Gordon Brown.
- In the contracting sector, the generally accepted definition of a PSC
  - a limited company that typically;
  - has a sole director, the contractor, who owns most or all of the shares.
  - delivers professional services personally BUT.....

Employment status tax risks for the Public Body: New rules are to be applied more widely

What does this mean practically?

- Partnerships also need to be considered where the individual providing the service has a 60% or more interest in the partnership.
- Not just "traditional PSC's" but companies where the director providing personal service has a 5% or more shareholding.
- It could also includes those where close family has a 5% or more shareholding
- Public Bodies will need to identify these entities – they will need the help of contractors to do so

Recap – IR35 legislation as it currently stands

- Worker is engaged through an intermediary **usually** their own limited company (a personal service company)
- The personal service company (PSC) is responsible for considering the intermediaries legislation (IR35)
- PSC responsible for paying PAYE tax and NIC on deemed employment income of the worker
- **No** responsibility falls on the engager to operate PAYE and can therefore pay the limited company off-payroll subject to contractual terms supporting underlying nature of the engagement.

Understanding employment status – self employed – number of indicators including;

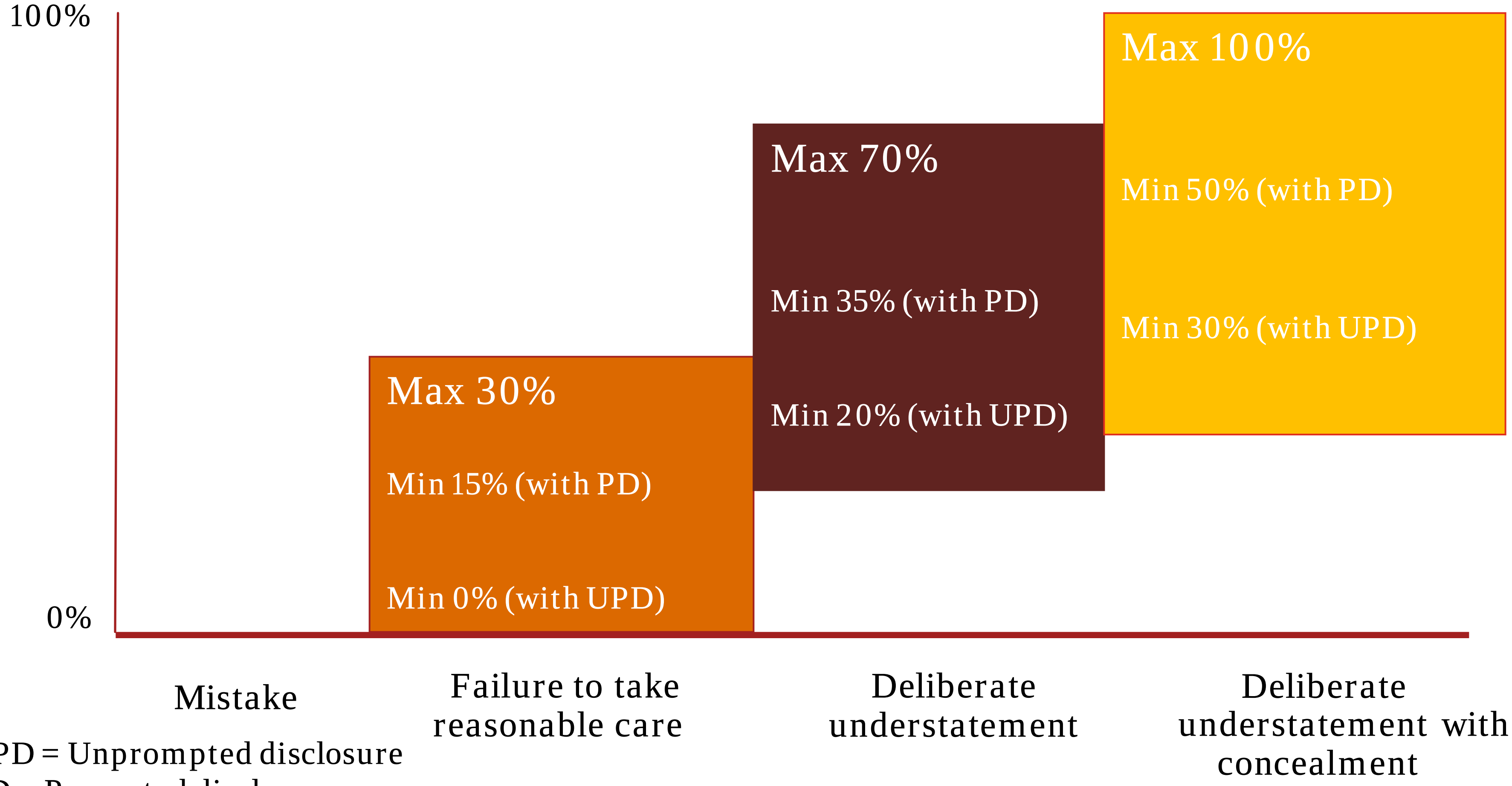
- Control
- Risk (Financial)
- Integration (Part and parcel of organisation)
- Substitution
- Provision of own equipment
- “Smell”
- Use of ESI

Current employment status tax risks for the Public Body

If wrong, who is exposed to the tax/NIC liability?

- Self-employed – the Public Body
- Office holder – the Public Body
- Limited Company – the Company (usually)
- Agency – if UK then the agency; if overseas then the Public Body
- Even if financial risk sits with a third party, the Public Body could face reputational risk
- In addition to tax/NIC risk, if incorrectly categorised as self employed, employment rights such as pensions could materialise for the Public Body

Ranges of penalties



UPD = Unprompted disclosure
PD = Prompted disclosure

The Original Consultation

- Published 26 May 2016; ended 18 August 2016
- 30+ HMRC events before and since with stakeholders seeking their views
- Consultation set out the framework for further discussions on the detail of how the changes to intermediaries legislation should work
- Consultation document covered:
    - Scope of the new rules;
    - How the new rules will work;
    - Minimising burdens on engagers.
- 188 written responses received to consultation

Draft tax and NIC legislation - consultation closed
Who is affected and when do the new rules apply?

New provisions apply when:

- A worker personally performs services, or is under obligation to personally perform service for the client
- The client is a Public Body
- The services are provided under circumstances where, if the contract had been directly with the client, the worker would be regarded for Income Tax purposes as an employee of the client or the holder of an office with the client, or the worker actually is an office holder with the client

The new rules

- Move the responsibility to make the determination about whether the intermediaries rules apply from the PSC to the Public Body end-client.
- This could be where an individual is engaged via
  - A limited company or
  - Partnership or
  - Individual
- New rules take precedence over Construction Industry Scheme (CIS)

APPLIES TO ALL PAYMENTS ON OR AFTER 6 APRIL 2017 REGARDLESS OF WHEN CONTRACT STARTED

New draft legislation - Determining whether an engagement is in or out of scope of the new rules

- Does not apply to Managed Service Companies (MSC) or Umbrella Companies (where MSC, umbrella company employs worker directly)
- Fully contracted out services are excluded – what does this mean in practice?
- Chapter 10 imposes employment status test and removes the suggested gateway tests outlined in consultation document

Off payroll issues – engagement, payment and reporting

Reform of the intermediaries legislation

Determining whether an engagement is in or out of scope of the new rules

- Original “Gateway test” – this has been removed.

- HMRC have introduced a digital tool to assist in making the decision as to whether the rules apply– it was released in BETA 2nd March

- Plan was to draw on the experience of the Employment Status Indicator (ESI)

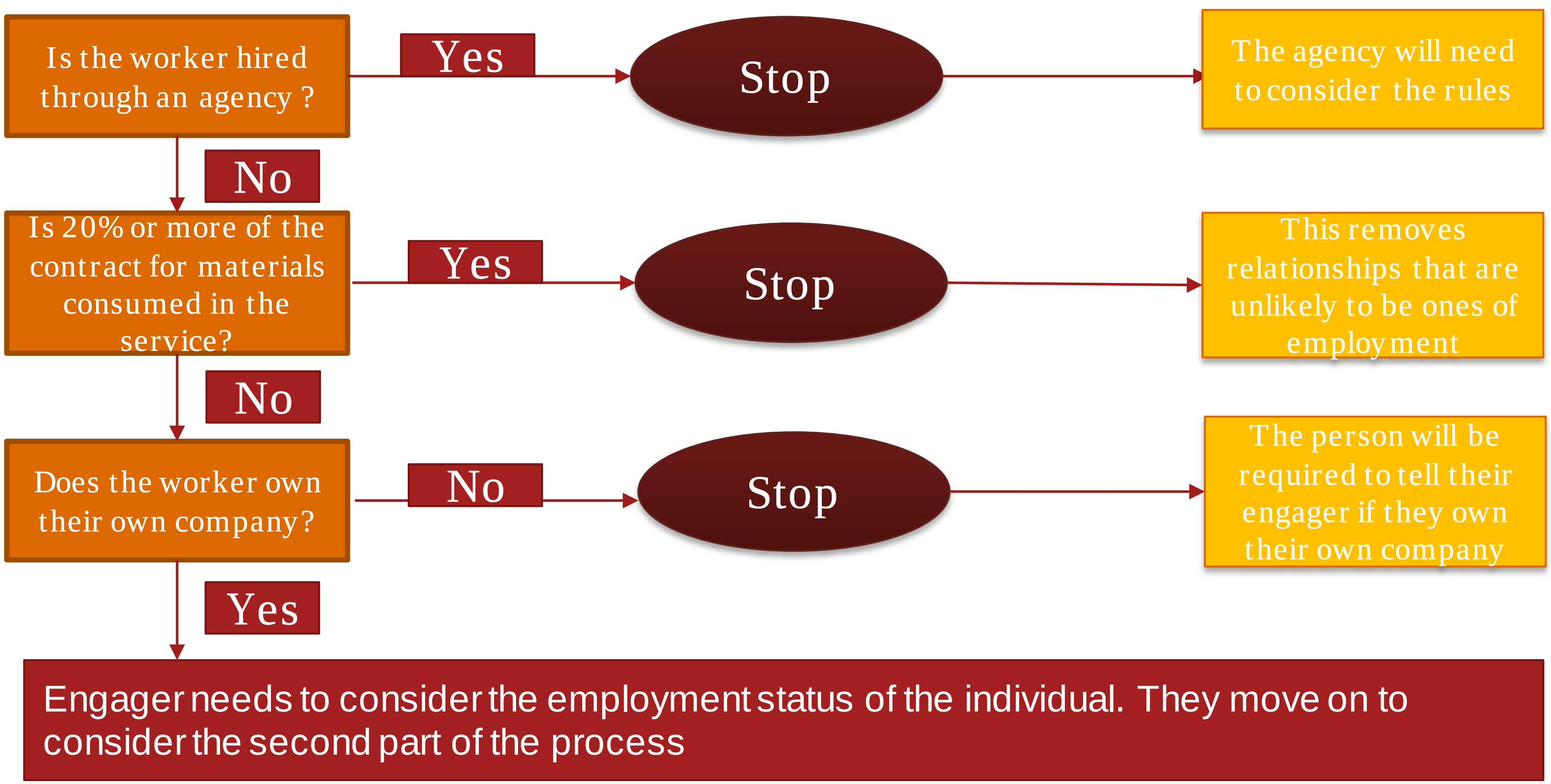
- Employment Status Service (ESS) only going forward

- Intention is that the private sector will also be able to use the tool

Originally proposed gateway test

Reform of the intermediaries legislation

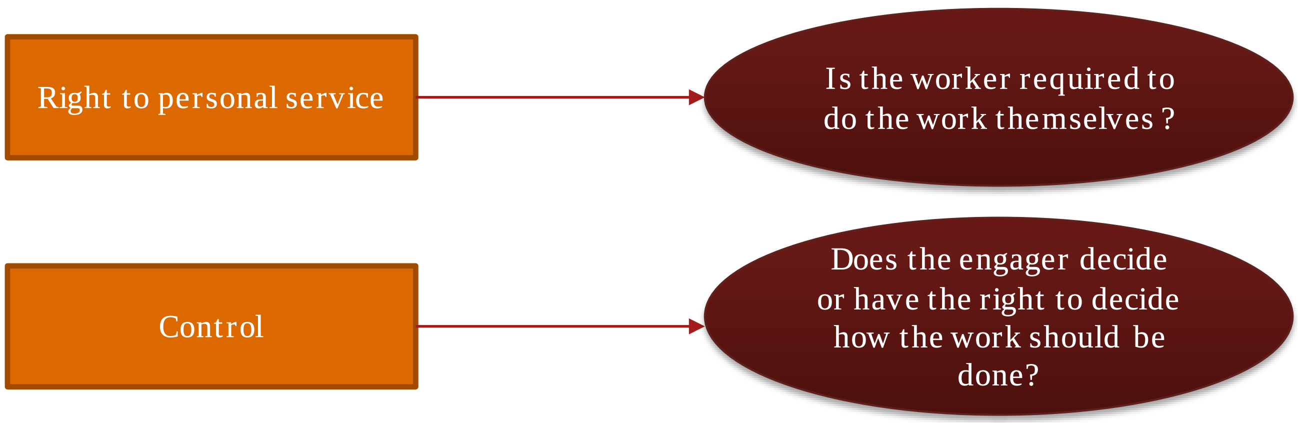
Identifying whether end-engagers need to consider the rules



Originally proposed gateway test continued

Reform of the intermediaries legislation

Identifying whether end-engagers need to consider the rules



- If the answer is “yes” to both questions, the worker is in scope for the off-payroll rules and the engager will need to account for tax and National Insurance on their payments to the worker’s PSC.
- If the engager is unable to answer ‘yes’ to the question, they will need to use the digital tool. The new digital tool will be tailored to the specific needs of engagers in determining if the off-payroll rules apply.

Employment Status Service Tool

result can be relied upon – no reference provided by HMRC

What do Public Bodies Need to do?

Identify off Payroll engagements

Work with AP to identify off payroll engagements

Consider how you procure off payroll workers in future;

Ensure you are obtaining the information you need to make a decision;

Use the Employment Status Service tool

Notify decision (31 days)

Calculate Deemed Payment

- Calculate the deemed payment
- Assign a unique worker ID
- Process through RTI to include PAYE/NIC
- Timing? On or before
- Calculate Apprenticeship Levy

Make payment

Pass payment back to AP to be made taking into account VAT

PAYE/NIC to be paid by 19th/22nd month

Issue from p45 when engagement ends

The Public Body will need to have documented processes and controls to consider the new rules. This will need to be regularly monitored to ensure still relevant.

What do Personal Service Companies Need to do?

Provide the Public Body with Information about your business

- Ensure that you provide the Public Body with all information for them to determine whether the engagement is in or out of scope of the new rules.
- Ensure you obtain a written decision from the Public Body within 31 days

Complete new starter form

- Complete the new starter form signing statement C

Payment

- Prepare and submit invoice to fee payer
- Payment will be received net of deductions
- The legislation will allow for your company to receive a deduction up to the full amount of the deemed payment to avoid double taxation
- Where these payments are already taxed they should be reported through your RTI submissions as non taxable

You will need to ensure that you keep records to enable you to submit your self assessment return, Real Time Information submissions etc.

New draft legislation
What must the worker provide

- The worker is legally required to provide information via the new starter form currently used for new employees. It includes:
    - National Insurance Number
    - Address
    - Date of birth
- No requirement for the worker to provide a form P45
- Per HMRC likely to be an employee of his own company (code BR must be applied).
- Provisions to avoid double taxation.
- What if person working through PSC gives incorrect information?

New Draft legislation
Deemed employment income – accounting for tax

1. Public Body has determined the worker is subject to the off-payroll rules and, if appropriate, has advised agency accordingly
2. Public Body/Agency calculates the deemed employment income as follows:
   - › Invoice total = £2,400 incl £400 VAT
   - › Deduct VAT = £400
   - › Deduct direct cost of materials used or to be used = £200
   - › Deduct expenses = £150 (optional)
   - › Apply BR tax code
   - › Tax due = £330
   - › National Insurance = £425.70 (£198 +£227.70) for simplicity doesn't take account of any thresholds
   - › Calculate Apprenticeship Levy (if appropriate)
   - › Account for tax, NIC Apprentice Levy via Real Time Information
   - › Make net payment to PSC after adding back expenses/materials

Practical Issues - summary

- "Earnings" will be taken into account for the purposes of the Apprenticeship Levy
- Systems' changes will be required for Public Bodies with Payroll, Finance and HR teams needing to work together;
- Responsibility for determining status lies with Public Body
- Starter declaration C should be used. Code BR should be operated (based on latest guidance)
- Increased costs, loss of 5%, secondary NIC
- HMRC advising no new employment rights. No impact on student loans – these still lie with PSC
- No statutory payments – these still lie with the PSC

Tax Clarity

What is it?

Tax clarity is a technology based solution designed to help Government and Public Sector bodies and agencies deal with the new tax rules for engagements with Personal Service Companies (“PSCs”) and in future, self employed, fixed term workers, etc….

What does it do?

Put simply- Tax Clarity

- Supports you to determine if you are entering into a contract with a PSC
- Provides a real time link to Companies House to check the company is both registered and UK based - also confirms directors
- Allows you to fix the engagement length, fix rate of pay and, where needed, issue a new contract
- Collects NI number from Director of each PSC
- Calculates the values to be withheld under the new rules, giving a breakdown of the payments owed (including VAT, PAYE, NIC
- Provides reporting by department and snapshots of the current engagements and their associated costs

Conclusion

- Major shake-up of way in which PAYE and NIC is operated for PSCs, and partnerships engaged in the Public Sector

- Short timescale to implement changes and alert stakeholders

- Systems changes required to deal with decision making and where appropriate to operate PAYE/NIC

- Changes for PSCs

Any questions?

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