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# Employment Taxes Update

**People and Organisation**

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# Employment Taxes Update

Caroline Jones
Aidan Smith

# Agenda

Payroll changes

Expenses

Benefits in kind

PAYE Settlement Agreement (PSA)

Regulatory & legislative changes

Draft Tax Legislation Following Consultations

Payments to workers off payroll

# Payroll changes – Termination Payments

**What has changed?**

The Government has consulted on the income tax and NIC treatment of termination payments and published proposals in the summer of 2016 for changes to take effect from April 2018. Draft legislation was published on 5 December.

Changes include:

- Charging employer NIC (currently 13.8%) on termination payments in excess of £30k
- Making all Payments In Lieu of Notice (PILON) subject to tax (whether contractual or not)

**What is the impact?**

- Employers will face increased costs as a result of the additional NIC charge
- Payroll system will need to deal with payments that are subject to secondary but not primary NIC

**What should Local Authorities be doing?**

We would recommend:

- Review current termination policies and processes to identify where there may be change required
- What types of termination payments are paid?
- When is clearance sought from HMRC?
- What process is in place to ensure correct treatment for tax?
- What review takes place of all or significant payments?
- PILONS/Settlement agreements/redundancy/ex-gratia/continuing benefits

# Payroll changes – Salary Sacrifice and Flexible Benefits

### Why now?

- The Government is to limit the range of benefits in kind (BiK) which will continue to provide a tax and National Insurance Contributions (NIC) advantage under salary sacrifice arrangements
- Employer pension contributions, employer provided pension advice, employer provided childcare, the cycle to work scheme and ultra-low emission vehicles (that produce less than 75g/km CO2) will not be impacted by these changes
- Many local authorities are looking at pension salary sacrifice for shared AVCs
- Gym membership will be affected along with car parking, work related training etc
- No impact on any annual leave schemes

### What is the impact?

- Salary sacrifice arrangements implemented prior to April 2017 will be protected until April 2018. Sacrificing salary for employer provided cars, **accommodation** and school fees before April 2017 will be protected until April 2021
- For other benefits provided under salary sacrifice arrangements, **or where there is a cash alternative**, the employee will pay tax on the higher of the salary sacrificed and the cash equivalent of the benefit

### What should Local Authorities be doing?

- Reviewing all benefits arrangements in place and where these rules may have an impact
- Communications to employees
- Processes will need to be established to be able to capture data correctly for tax reporting purposes from April 2017, including any necessary software updates

# Expenses

## Travel and Subsistence

- How do you determine what is a business journey?
- Definition of a business journey:
  - home based workers
  - employees with more than 1 workplace
  - secondments
- Subsistence claims when travelling – is it subsistence, staff or business entertaining?

## Relocations

- How do you decide what amount of relocation support is provided to employees?
- Up to £8,000 relocation relief available for qualifying expenses
- Excess over £8,000 is taxable and reportable on P11D

# Benefits in kind

## Vehicles – common issues

- What vehicles are available i.e. cars/vans/minibuses/pool vehicles? How is their use controlled, monitored and reported?
- How do you establish there is no private use?
- Are fuel cards provided to employees?
- How is use of fuel cards recorded and monitored?
- Where required, how do you ensure all private fuel costs are reimbursed?
- What business mileage records are retained by the Council?

# *PAYE Settlement Agreement (PSA)*

## What has changed?

- The Government is to simplify the process for applying for and agreeing PSAs. This will apply from the 2018/19 tax year. Draft legislation was released on 5 December 2016 and changes will be legislated in the Finance Bill 2017

## What is the impact?

- The Government will legislate to simplify the process for applying for and agreeing PSAs, which should provide introduce some administrative ease from the current process
- The Government has made no comment on other suggestions for the modernisation of the PSA process, including a change to the dates of agreement and submission of the computations

## What should employers be doing?

- Consider how the changes will impact the existing end-to-end PSA process from agreeing the PSA through to the submission of the computation and payment of the liability

# Regulatory and Legislative Changes
# Apprenticeship levy

- Employers with an annual pay bill of £3 million or more will be required to pay the Apprenticeship Levy (a direct tax via the payroll) – payable at a rate of 0.5% of an employer's monthly payroll (levy calculated by reference to an employer's Class 1 NIC)
- The levy will increase employers payroll costs
- Employers will face additional payroll costs, outside of the levy, on factoring in annual increases to National Living Wage, pension auto-enrolment rates
- English employers get access to a digital account – credit can be spent on tailored training programmes.
- NI employers do not get a digital account
- There is no mechanism for Srormont to recover this funding.
- **What should Local Authorities be doing?**
- Assessing the likely financial impact of the levy – this can be done using current payroll data
  - Will the levy impact their L&D and recruitment budgets?
- Identify the current apprenticeship programmes in place and determine if they remain fit for purposes from 6 April 2017
  - How can you maximise the opportunities provided by the levy to support your business strategy and talent development?

# *Workforce – payments to workers off payroll*

## *Who are off-payroll workers?*

- Self-employed workers
- Agency workers through UK and overseas agencies
- Consultants
- Office-holders, ie trustees, governors
- Workers engaged through the Personal Service Companies
- Limited Liability Partnerships (LLP)

## *Key areas/questions*

- Policies, processes and procedures relating to such individuals
- How does the person in charge of the engagement get satisfaction that everything is correct?
- What types of payments are made? (Expenses, flat rates, hourly rates)
- When are gross payments/net payments made?
- What type of off-payroll relationships exist?
- Who decides to engage individuals outside of the payroll?
- What value of payments exists to the different types of off-payroll individuals?
- What contractual engagements exist?
- How are changes to an engagement monitored?
- What equipment is provided?
- **Changes to future tax legislation**

## *Changes to legislation - 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 his/her own limited company (a personal service company)*
- *The personal service company (PSC) is responsible for considering intermediaries legislation (IR35) and paying PAYE tax and National Insurance on deemed employment income of the worker (i.e. worker is an employee of the PSC)*
- *No responsibility falls on the engager to operate PAYE and they can therefore pay the limited company off-payroll*

# New draft legislation – consultation closed Feb 2017
# 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 Local Authority
- 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 Local Authority 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

* 60% interest

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

- Does not apply to Managed Service Companies or Umbrella Companies (where umbrella/ company employs worker directly)
- Fully contracted out services are excluded – what does this mean in practice?
- Visiting performers are excluded where deduction already applies (S966(3) or (4) (theatres?)
- Chapter 10 imposes employment status test and removes the suggested gateway tests outlined in consultation document
- HMRC have released additional guidance and the on-line Employment Status Service in BETA 2nd March 2017 to assist in making the decision as to whether the rules apply

# *New draft legislation*
# *What must Local Authorities do?*

- Where intermediary engaged via an Agency the Local Authority **MUST** advise the intermediary, agency or other third party whether the contract to provide services falls within the new rules or not. How is this going to work practically?
- If the Local Authority does not notify the status of the worker they can be required to do so if a written request is made
- The Local Authority MUST reply to written requests within 31 days or else the responsibility for accounting for PAYE/NIC will lie with the Local Authority
- The Local Authority MUST have a clear process to enable compliance with such requests so that reason for conclusion is documented
- Must issue form P45 when contract ends

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# *New draft legislation*
# *What must the worker do?*

- The worker is legally required to provide:
  - National Insurance Number
  - Tax Code
  - Identity Details
- Worker should complete part C of new starter form code BR must be applied
- There are provisions to avoid double taxation
- What if person working through PSC gives incorrect information?

# *New Draft legislation*
# *Deemed employment income – accounting for tax*

1. Local Authority has determined the worker is subject to the off-payroll rules and, if appropriate, has advised agency accordingly
2. Local Authority/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
   - Deduct allowances based on tax code or BR or OT (assume BR)
   - 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

# *Practical Issues*

- "Earnings" will be taken into account for the purposes of the Apprenticeship Levy
- Responsibility for determining status lies with Local Authority
- Tax codes to use – more detailed guidance will be issued for tax codes and information for fee-payers to supply in FPS
- Increased costs, loss of 5%, secondary NIC, process for determining status
- Systems changes – interaction between payroll and accounts payable
- HMRC advising no new employment rights inferred by these changes
- 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 in to 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 breakdowns 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 engaged in the Public Sector
- Short timescale to implement changes and alert stakeholders
- Systems changes required
- Clear process needed to determine "employment"

# *Any questions?*

***Caroline Jones***
***caroline.a.jones@pwc.com***
***0117 309 2129***

***Aidan Smith***
***Aidan.smith@pwc.com***
***028 9041 5484***