

Text of letter from the Chief Secretary David Gauke to all Secretaries of State:

OFF-PAYROLL WORKING IN THE PUBLIC SECTOR

1. My predecessor wrote to all Secretaries of State in March to explain changes we are making to the rules governing the employment taxes paid by individuals working off-payroll in the public sector. These reforms were announced at Budget 2016, and have been consulted on over the summer. The Chancellor has now confirmed at the Autumn Statement that this reform will go ahead as planned, and I am writing to explain this change and its consequences for departments, public sector bodies, and individuals working off-payroll in the public sector.

2. These changes are an important part of our continued efforts to deliver a fairer tax system. They will help to address public concern about the increasing use of personal service companies in the public sector by individuals who would otherwise be employees, reducing the tax they pay.

3. This is not a new phenomenon; legislation was introduced in 2000 to try and tackle this issue – often referred to as the ‘IR35’ rules. These rules require individuals working through their own limited company, who would have been taxed as an employee if engaged directly by their client, to pay broadly the same tax and National Insurance as other employees. However, non-compliance with the rules is widespread and the estimated costs to the Exchequer have risen to over £400m a year.

4. Public sector bodies should be leading by example in ensuring that workers pay the correct taxes. Government departments, their arm’s length bodies, NHS Trusts and academies are already subject to HM Treasury’s off-payroll rules, but the government believes that it is necessary to go further to ensure that the right taxes are being paid by all who work in the public sector.

5. The government consulted on the changes over the summer; I’d like to thank departments for their engagement with this consultation.

Changes to the rules

6. From April 2017, where a public sector body engages an off-payroll worker through their own limited company, that body will become responsible for determining whether the rules should apply, and paying the right tax.
7. If the public sector body engages the worker through an agency or other third party, then the responsibility to pay this tax will rest with them. However, the responsibility for determining whether or not the rules apply will remain with the public sector body, who will need to inform the agency or third party of their conclusion.
8. Not all contractors working in the public sector will be affected by these rules: there will be no change for genuinely self-employed individuals. Nor will this reform stop individuals from working off-payroll in the public sector; only those who would otherwise have been employed, were it not for the company that they work through, are within the scope of the rules.

Implementation

9. During the consultation a number of stakeholders raised concerns about the difficulty of operating the new rules. To address these concerns, HMRC are developing an online tool to help determine whether or not the off-payroll rules apply to any given individual. The tool will provide a clear answer as to whether the rules apply wherever possible, and HMRC will stand by the result. HMRC are engaging key stakeholders in the development of the tool, will begin testing it from Autumn Statement, and will make it available to a wider audience from January 2017.
10. HMRC will also be providing detailed guidance on how the rules will work in practice. A draft of this guidance will be published alongside draft legislation for the change on 5 December.

Scope

11. The changes will only apply in the public sector. This means that those bodies listed under the Freedom of Information Act 2000 and the Freedom of Information Act (Scotland) 2004 will be in the scope of this reform.

12. Individuals working off-payroll in the private sector will continue to be responsible for determining themselves whether or not the rules apply and paying any necessary employment taxes.

13. However, the underlying rules that determine whether or not an individual working through their own company should be paying employment taxes still apply to the private sector. This means a worker found to be within the rules by a public sector body is likely to also be within the rules if they were to do the same job in the private sector. Therefore moving from the public sector to a similar role in the private sector will not automatically remove the obligation for an individual to pay employment taxes.

14. The current off-payroll rules issued by HM Treasury already require public bodies to report any cases to HMRC where the individual fails to provide assurance that they are paying the right taxes. I would encourage public sector bodies to continue to pass on information to HMRC wherever they become aware of individuals not paying the correct taxes.

15. On Monday 14 November I wrote to make you aware that HM Treasury had completed the 2014-15 review into compliance with HM Treasury's off-payroll rules. I can confirm that these existing rules will continue to apply and that HM Treasury will continue to review compliance annually, but the guidance will be updated in due course to reflect the new rules.

16. I would appreciate your support in ensuring this reform is implemented effectively. I would ask that you ensure your department and arm's length bodies are in a position to implement this reform from next April, and that you share this letter with any other public sector employers and workforces that fall under your remit.