

Interaction of Personal Service Companies with the Proposed Changes to Chapter 7 S44-47 ITEPA 2003 (The Agency Legislation)

This note sets out HMRC's view on the way the proposed changes to the agency rules interact with the intermediaries legislation (commonly known as IR35). We are publishing this note in response to concerns that have been raised during the consultation on Onshore Employment Intermediaries: False Self-Employment. We hope it will provide useful clarification alongside the consultation.

The proposed new legislation will apply, as the current Agency legislation does, where a worker is supplied by or through a third party. The third party (described in the legislation as the 'agency') is any structure interposed between the person in receipt of the worker's services (the engager) and the worker. The third party therefore includes employment businesses and personal service companies (PSC). Those working through PSCs will need to consider the Agency legislation in the same way as they do now, both where the PSC engages directly with an engager and where the PSC is engaged through other parties such as employment businesses.

For the proposed new Agency legislation to apply to a worker providing their services through a PSC, all of the following qualifying conditions need to be met:

- the worker personally provides, or is personally involved in the provision of, services to another person as a consequence of a contract between that person and a third person;
- the manner in which the worker provides the services is subject to (or to the right of) supervision, direction or control by any person.
- remuneration is received by the worker in consequence of providing the services;
and
- that remuneration does not constitute employment income apart from under the Agency legislation.

As is currently the case, the proposed Agency legislation will not generally apply where a worker is engaged via a PSC, as all the above criteria will not normally be met. This is because:

- a) As set out above, the legislation will only apply when remuneration is received by the worker as a consequence of providing the services. Therefore dividends paid to

the worker as a genuine consequence of their shareholding in the PSC will not normally fall within the new Agency legislation.¹

- b) Similarly, the Agency legislation only applies when the worker receives remuneration which is not employment income before the provisions of that legislation are applied. Any salary paid to the worker by the PSC is already employment income so the new Agency legislation would not apply to that remuneration.
- c) Loans are made by reason of the employment with the PSC. Beneficial or written off loans are chargeable to tax/NICs as earnings but do not normally arise as a consequence of the worker providing the services. As such, they would not fall within the scope of the Agency legislation.

If neither the Agency legislation nor the Managed Service Company legislation applies then anyone working through a PSC needs to consider the Intermediaries legislation, more commonly known as IR35. This will continue to be the case under the proposed new legislation. IR35 applies where the relationship between the worker and the engager would be one of employment if the PSC and any other party in the contractual chain did not exist.

¹ Genuine dividends from the PSC would not normally be considered to be remuneration for the purposes of the Agency legislation. However in cases of avoidance there may be instances where HMRC argue that these payments are remuneration either as general earnings or as remuneration for the purposes of the Agency legislation.