WTT Group

CLIENTS & CONTRACTORS BASED OUTSIDE THE UK

FOUR SCENARIOS ON HOW OFF-PAYROLL RULES AFFECT YOU

FOUR SCENARIOS

HOW OFF-PAYROLL RULES AFFECT CLIENTS & CONTRACTORS BASED OUTSIDE THE UK

We know that the off-payroll rules need to be applied by all public authorities (since 2017) and all medium and large sized private sector businesses from 6th April 2021 onwards.

Most end clients will be able to identify fairly easily whether they, and their PSC contractors, are affected or not; however, some businesses who operate offshore or who use PSC contractors who are not UK residents may find it more difficult to identify whether, when and how the off-payroll rules apply.

While HMRC have not provided answers or guidance to every possible scenario, they have addressed some the more common situations, so we have put together a simplified explanation to them here. We hope this will help clients, agencies and contractors understand the parameters of the rules and the tax and NICs liabilities in relation to jurisdiction or location, but businesses should take independent advice if there is any doubt whether and how the rules apply.

The main factors that determine UK tax and NICs liabilities (which are ultimately what the off-payroll rules are concerned with) are:

- the location of the client;
- the tax residency of the individual worker (not the PSC's country of incorporation which HMRC asserts is irrelevant); and
- the location from which the services are being provided by the PSC.

It's important to note that the UK's jurisdiction extends past its landmass. If a client has any operations that are offshore, but within 12 nautical miles of the UK coastline, they are considered to be within the UK's jurisdiction. That means any services delivered by PSCs on that offshore installation would be considered to be within the UK as well.

Furthermore, there are separate and additional rules for continental shelf workers, seafarers and mariners that may take precedence over the off-payroll rules and should be considered before working through the below scenarios.

When is a worker non-resident for UK tax purposes?

In order to be exempt from UK income tax (and usually NICs as well), the individual worker must be non-resident and non-domiciled in the UK. The rules on residence and domicile are complex; these are very simplified definitions. More information can be found here.

In brief, the simple definition of where someone is domiciled is where they consider home to be. That is entirely separate to where they currently live, have leave to reside, or where they pay taxes.

An individual is automatically UK resident if either:

- you spent 183 or more days in the UK in the tax year
- your only home is in the UK, you have owned, rented or lived in it for at least 91 days in total, and you spent at least 30 days there in the tax year

An individual is automatically non-resident in the UK if either:

- you spent fewer than 16 days in the UK (or 46 days if you have not been classed as UK resident for the 3 previous tax years)
- you work abroad full-time (averaging at least 35 hours a week) and spent fewer than 91 days in the UK, of which no more than 30 were spent working

Where neither of these tests are met, then residency will be decided by the number of ties you have to the UK.

SCENARIO ONE

WHOLLY OVERSEAS CLIENT

If a client is based wholly outside the UK, that client is exempt from applying the off-payroll rules, regardless of the location of the worker or the services being delivered.

If the individual worker is subject to UK tax and the services are delivered in the UK, then the original IR35 rules apply (referred to as Chapter 8). This means the PSC decides its own tax status and makes any payments for taxes and NICs directly to HMRC. The client isn't required to determine status and the fee-payer is not required to make any deductions.

A client is deemed to be wholly overseas if it is not UK resident and does not have a permanent UK establishment. There is no statutory definition of **UK resident** for companies, but if a company is incorporated in the UK it is generally always UK resident. If the company is not incorporated in the UK, then residence of a company is determined according to where its central management and control is to be found.

Permanent establishment means the company has a fixed place of business in the UK through which it conducts part or all of its business activities, or the company has a UK agent who habitually exercises its authority, acting on the company's behalf.

A fixed place of business includes: a place of management; a branch; an office; a factory; a workshop; an installation or structure for the exploration of natural resources; a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; a building site or construction or installation project.

SCENARIO TWO

CLIENT IS A UK RESIDENT; WORKER IS NOT A UK TAXPAYER/RESIDENT; SERVICES ARE DELIVERED OUTSIDE THE UK

Even if a role is determined to be Inside IR35 by the client, no tax or national insurance is payable if the worker is not liable to pay tax and/or NICs in the UK. If the worker would not be subject to UK tax or NICs if he or she were employed by the client directly, then no deductions should be made from the worker. In this scenario, it is assumed the worker would be chargeable to tax and social security (NICs equivalent) in his/her country of residence.

It should be noted that the rules around when income tax and NICs are payable are not exactly the same. There may be scenarios where an individual worker is not subject to NICs but it subject to income tax and vice versa. It is therefore important to ascertain the individual worker's liability to income tax and NICs separately.

SCENARIO THREE

CLIENT IS A UK RESIDENT; WORKER IS NOT A UK TAXPAYER/RESIDENT; SERVICES ARE DELIVERED INSIDE THE UK

Generally any worker delivering services in the UK will be subject to UK tax, even if that worker is not a UK resident for tax purposes.

UK NICs might not be payable, however. Examples include where the worker presents a certificate of continuing liability for social security in their home country ie A1 certificate. Or where UK legislation deems there are no NICs due ie worker comes from a country that has no agreement relating to social security, NICs is not normally payable for first 52 weeks that the worker is in the UK.

Therefore, for any assignments that are deemed Inside IR35 by the client, the fee-payer should generally deduct income tax and NICs (subject to the caveats above).

SCENARIO FOUR

CLIENT IS A UK RESIDENT; WORKER IS A UK TAXPAYER/RESIDENT; SERVICES ARE DELIVERED OUTSIDE THE UK

This scenario assumes the client has a UK presence but for some reason the PSC's services are being delivered at an overseas site. If the client has no UK presence at all, Scenario 1 will apply.

In this Scenario 4, if the client deems an assignment to be inside IR35, income tax would be payable by the worker on services being delivered in any part of the world since he/she is UK tax resident. However, NICs might not be payable depending on the country in which the services are being delivered, and whether the worker is paying social security in that jurisdiction.