**EMPLOYMENT & INCENTIVES: Off-Payroll Working Rules**

**Process Change**

Under new rules, responsibility for determining employment status for tax purposes will shift from a PSC to the end-user or client of the PSC. Businesses will need to implement new processes which should encompass:

- A mechanism for obtaining relevant information from PSCs in advance of any contract start date;
- An assessment of employment status for tax purposes;
- Issuing a status determination to the worker;
- Offering a right of appeal or challenge if the worker does not agree with the status determination.

**Employment Status**

Businesses must determine whether the worker has deemed employment status. When conducting status determination, consider:

- Whether to use HMRC’s CEST tool. HMRC will stand by the result unless inaccurate information has been used.
- “Reasonable care” must be taken or the requirement to provide a status determination won’t be satisfied.
- Adopting a “blanket approach” either to all workers or certain groups of workers is risky and may mean the “reasonable care” obligation has not been discharged.

**Business Planning**

The change in rules has the potential to cause significant disruption to the workforce. Businesses should consider:

- **Workforce Planning:** Are there areas of the business with a large contractor population? Are any business-critical roles performed by contractors?
- **Talent Management:** Are there any future leaders who operate as contractors?
- **Status Transition:** If existing contractors are likely to have deemed employment status, how should the transition be managed?

**Risk Management**

Documenting processes and being able to demonstrate good governance in relation to the rules is vital. HMRC have the power to issue fines and penalties, as well as reclaiming unpaid taxes. In extreme cases, the corporate offence of failure to prevent facilitation of tax evasion could be engaged.

When considering how or whether to restructure contractual arrangements following a change in status for tax purposes, businesses will need to factor in their exposure to claims for employment rights including unfair dismissal.

**Changing contractual arrangements**

The off-payroll working rules have implications beyond tax. If an end-user determines that a worker has deemed employment status, this could trigger a renegotiation or the termination of the contractual arrangement. By way of example:

- The worker may seek to become an employee of the business, whether on a fixed or permanent basis.
- The worker may expect the end-user to “make good” the earnings they are losing to tax, leading to further costs to the business.
- The worker may challenge their status and ultimately bring the relationship to an end.

**Costs**

The immediate impact of the new rules will be a cost to the fee-payer of employer NICs and the apprenticeship levy. This will be a charge of 14.3% of the fees invoiced by the PSC. However, if the contractual relationship is restructured pursuant to a change in tax arrangements, there may be additional employment costs including: holiday pay; auto-enrolment pension contributions; and possibly compliance with the national minimum wage. In addition, businesses must anticipate costs involved in the project to implement the new rules.

**Off-Payroll Working Rules**

New rules will apply to the tax treatment of workers operating via personal services companies from April 2020. How should impacted businesses prepare?
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