



# *Off payroll working 2020 Implementation and (some of) the tricky bits*

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## *Presenters*



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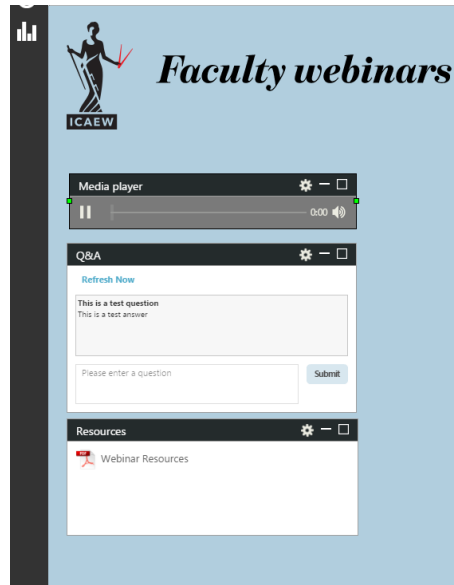


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Today's speaker  
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## *Implementation Delayed to 6 April 2021*

- *“Tonight the Government announced that the reform to the off-payroll working rules that would have applied for people contracting their services to large or medium-sized organisations outside the public sector will be delayed for one year from 6 April 2020 until 6 April 2021.*
- *This is part of additional support for businesses and individuals to deal with the economic impacts of Covid-19. This means that the different rules that exist for inside and outside the public sector will continue to apply until 6 April 2021.*
- *This announcement is a deferral of the introduction of the reforms, not a cancellation. The Government remains committed to introducing this policy to ensure that people working like employees, but through their own limited company, pay broadly the same tax as individuals who are employed directly.”*

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## ***Implementation Delayed to 6 April 2021***

- No legislation in the Finance Bill published 19 March 2020
- Draft legislation for tax expected in April and for NIC in June / July
- The following slides are based on draft guidance and draft legislation

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## ***Implementation date and cut off***

- New rules effective from 6 April 2021
- Two sets of rules for off-payroll contracts
  - Work for large and medium sized private sector engagers and all in public sector
    - Engager determines tax status
    - Engager issues Status Determination Statements (SDS) to
      1. The person with which it contracts, and
      2. The worker
    - Payments made to the worker must be under deduction of PAYE and NIC
  - Work for small engagers in the private sector
    - Existing private sector rules continue unchanged (IR35)
- Only apply to payments made for services delivered from 6 April 2021

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## *The soft landing*

- HMRC were to operate a light touch during the first 12 months
  - Will they given the year's delay?
- Emphasis will be on having discussions with engagers rather than opening inquiries
  - So HMRC will not normally be pursuing engagers for tax on money that they have already paid to the PSC or someone else

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## *How to determine size: see TAXguide 3/20*

- Size of client relevant in private sector only. Small or non-small?
- Step 1, look at the accounts for a year. Small if it meets 2 of 3 conditions

2 out of 3:	
Annual turnover	More than £10.2m
Balance sheet total	More than £5.1m
Average number of employees	More than 50

- Step 2, qualifies for small company treatment under OPW rules if it meets 2 of 3 conditions
  - It meets small size limits in current financial year
  - It met small size limits in preceding financial year
  - It qualified as a small company in the preceding financial year

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## *Illustration*

Year	Accounts for the year indicate:	Using 2 out of three conditions test, CA defines company as:
1	small	small
2	medium	small
3	small	small
4	medium	small
5	medium	medium
6	small	medium
7	medium	medium
8	small	medium
9	small	small

Impacts payments made under OPW contracts in the tax year starting after the filing date for that financial period  
e.g. year ended 31 December 2019, payments after 5 April 2021

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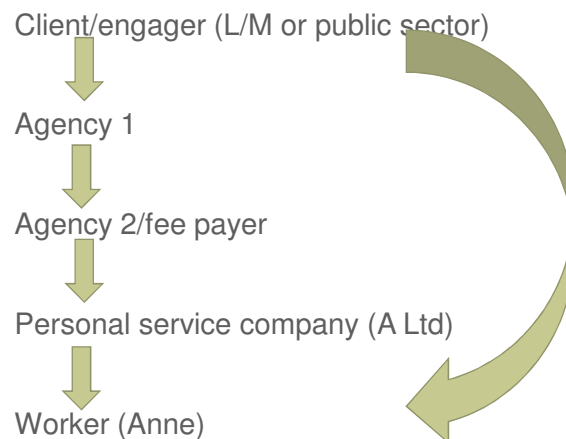
## *Obligation to declare size?*

- None
- Only obligation is to issue an SDS by L/M private or public sector client where status is that of deemed employee
- Worker is being given a new right to ask a business whether it is small
  - how is the right to be enforced
  - through the courts??

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## *The journey of the SDS*

- 2 copies of the Status Determination Statement
- Client must tell
  - the person it contracts with, and
  - the worker
- The SDS must be passed down the chain
  - The client is liable for tax and NIC until it tells the person it contracts with
  - Agencies will pass the SDS down the labour chain
    - Liability passes with the SDS
    - Fee-payer operates PAYE if necessary
- No obligation on the worker to inform the payer of need to deduct PAYE



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## *When is a Status Determination Statement required?*

- An SDS is only required to be issued by the client where
  - It is a public sector entity, or
  - L/M sized private sector entity
 AND  
 The contractor's employment status as determined by the client is that of deemed employee
- BUT best practice will be to issue an SDS regardless of status decision
  - Reduces risk of becoming liable to account for PAYE if an agency/fee payer fails to make deductions

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## ***Form and content of the Status Determination Statement***

The SDS

- Could be a document or in an email
- Must be in writing
- Must provide both the
  - status decision made by the hiring organisation
  - reasons behind the decision
- Recommend it should detail appeal process
- But does the deferral until 2021 affect the legal status of the SDS and does it matter?

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## ***Use of Check Employment Status for Tax tool***

- **HMRC's** Check Employment Status for Tax (CEST) tool is intended to help determine an individual's employment status for tax and NIC purposes
- <https://www.gov.uk/guidance/check-employment-status-for-tax>
- HMRC's view of an individual's employment status
- Based on the information input into the tool
- It is not compulsory to use CEST
- Can also be used to check if changes to the contractual or working arrangements alter the employment status

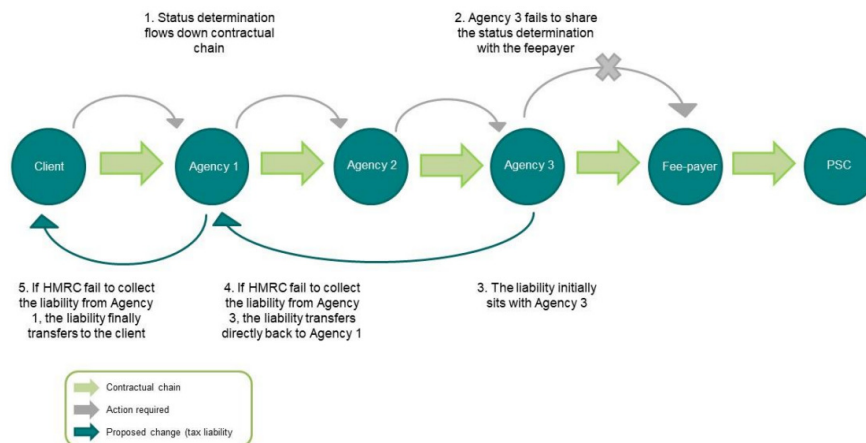
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## *Issues with CEST?*

- HMRC's view
- CEST has difficulties with
  - A worker in business on their own account
  - Mutuality of obligation
- HMRC
  - anonymous
  - will stand by the result given unless a compliance check finds the information provided isn't accurate
  - won't stand by results achieved through contrived arrangements designed to get a particular outcome from the service
    - This would be treated as evidence of deliberate non-compliance with associated higher penalties

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## *Transfer of liability*



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## *Transfer of PAYE debt*

- Liability to deduct PAYE and account for employers' NIC passes down with the SDS
- What if the agency paying the worker disappears?
  - HMRC must try to collect from the paying agency first
  - 2 year window
  - Debt must be paid within 30 days of the issue of the recovery notice
  - HMRC look back up the chain
- What if the problem was caused by an agency mid-chain not receiving the SDS?
  - E.g. Payroll person was on maternity/sick leave and the email SDS is missed
  - tough

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## *Disagreement with SDS*

- **Status challenge** possible by
  - Worker
  - Fee-payer
- Must give reasons
- Currently, no time limit for starting the challenge
  - Within the period of the continuing contract and before last payment
- Will be client led
- No involvement of HMRC
- Client has 45 days to respond

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## *Who pays the employers' NIC?*

- The employer is liable for employers' NIC
- The employer cannot recover employers' NIC from an employee

BUT

- Contracts are being renegotiated and workers are being offered differential rates

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## *The worker/personal service company*

- L/M clients
  - May receive an SDS stating OPW rules do apply
    - Payment to be made via a payroll **NET receipt**
  - May receive an SDS stating OPW rules do not apply
    - **GROSS receipt**
  - Hear nothing
    - Lost in the chain?
    - May actually be a small client now **GROSS receipt**
- Small clients
  - Old rules apply so worker takes status decision
    - **GROSS receipt** from fee-payer
    - with IR35 payment by PSC if necessary

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## *Illustration*

- Mark provides his services through Mark Ltd to Glee plc (L/M client) for a 6 month contract starting 1 June 2020. Mark Ltd invoices £5,000 plus VAT of £1,000 each month
- Mark incurs expenses of £250 per month, not rechargeable to Glee, so borne by Mark Ltd (assume would have been tax deductible if he had actually been employed by Glee plc)
- Glee plc issues SDS stating Mark's services fall within the OPW rules and tax/NIC will be deducted.

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## *Illustration – deemed direct payment for RTI?*

Chain payment, net of VAT	5,000
Less: direct costs of materials and eligible expenses	<u>(250)</u>
Deemed direct payment	<u>4,750</u>

PAYE and NICs will be calculated on the **deemed direct payment** in the usual way, say £1,400

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### ***Illustration - Double entry by Glee plc (Large co)***

		Dr	Cr
Dr	Purchases	5,000	
	VAT	1,000	
Cr	Creditors		6,000
Records receipt of invoice			
Dr	Salaries	3,600	
	PAYE & NI employment taxes	1,400	
Cr	Purchases		5,000
Recognition that deemed employee and not off payroll			
Dr	Mark Ltd (to Mark Ltd)	3,600	
	HMRC (re PAYE & NI)	1,400	
Cr	Cash		5,000
Pay everyone			

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### ***Double entry by Mark Ltd***

		Dr	Cr
Dr	Creditor	6,000	
Cr	Sales		5,000
	VAT		1,000
Records original invoice			
Dr	Expenses incurred	250	
Cr	Cash		250
Records expenses incurred by Mark Ltd			
Dr	VAT	1,000	
Cr	Cash		1,000
Records payment of VAT on the sale			
Dr	Cash	3,600	
	Tax charge in P&L	1,400	
Cr	Creditor		5,000
Records receipt of cash from Glee plc to settle invoice. £3,350 left now to be paid out to Mark as salary or dividend			

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## ***Reporting to HMRC***

- Glee plc
  - Reports a payment to its deemed employee, Mark, through its payroll
  - Probably uses a BR PAYE code (as a second employment?)
  - Mark will be credited with this in HMRC's systems
- Mark can withdraw funds from Mark Ltd
  - As remuneration or as dividends
    - Mark Ltd reports salary as non-taxable payment on the FPS
    - In Mark's own hands, this will be free of PAYE tax and NIC up to the level of the deemed direct payment
    - Mark reports it as employment income on his own SA return under Glee plc PAYE reference showing PAYE tax already suffered

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## ***Off-shore 1***

- Early HMRC Guidance stated that even if client off shore the rules applied
- Revised Draft Guidance ESM 10025 now states:

*“Where a medium or large-sized non-public sector client is based wholly overseas, so there is no UK connection in the form of being UK resident or having a permanent establishment then the rules at Chapter 10, Part 2, ITEPA 2003 do not apply (see [ESM10006](#)). The worker's intermediary should consider whether Chapter 8, Part 2, ITEPA 2003 applies for these engagements.”*

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## *Off-shore 2*

- Contractor must also have a UK liability
- HMRC draft guidance ESM 10025 states:

**“The worker must be a person who is within the UK charge to tax and/or liable for Class 1 NICs”**

Where a worker should be subject to UK tax and NICs (based on existing domicile and residency rules), then UK domestic legislation applies to the engagement. This means the engagement could be subject to Chapter 10 (tax) / Part 2 (NICs) rules. A client does not need to consider whether Chapter 10 / Part 2 rules apply where there is no liability to tax and NICs in the UK.”

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## *Right to a payslip?*

- There isn't a legal right to a payslip under PAYE legislation
  - A payslip is a requirement of the Employment Rights Act 1996
  - But these workers are not necessarily employees
  - An off-payroll worker marker is needed, with a clear explanation of what it is to do
- Ask!
- There is a right to a P60

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## *What if you get it wrong?*

- Enquiries
  - Use of RTI as a trigger?
- Offsets under the new regime
  - Fee-payer is asked by HMRC to pay PAYE and NICs, but payment was made gross
  - PSC will normally have paid Corporation Tax
  - Director will have paid Income Tax
- Can't currently claim offsets for different taxes paid and due

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## *Media industry*

- Media sector has new guidance in Employment Status Manual (see sections 4100 onwards)
- The old Appendix 1 can be accessed from a link on page 4118, or found at [http://www.hmrc.gov.uk/gds/esm/attachments/roles\\_normally\\_treated\\_as\\_self\\_employed\\_formerly\\_appendix\\_1.pdf](http://www.hmrc.gov.uk/gds/esm/attachments/roles_normally_treated_as_self_employed_formerly_appendix_1.pdf)
- Still no update on the Radio Industry Guidelines and nothing about the radio industry in the ESM. See ICAEW.com for further details <https://www.icaew.com/technical/tax/employment-taxes/ir35/ir35-articles/actors-and-other-production-workers>

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## *Other resources*

- [TAXguide 08/20: Off payroll working: payroll issues](#)
  - Practical Q&As for payroll reflecting HMRC guidance
- [TAXguide 07/20: Off payroll working: cross border issues](#)
  - Q&As on cross border issues
- [TAXguide 03/20 Off-payroll working from April 2020](#)
  - How to determine the size of a client
- [TAXguide 14/19: IR35 New tax rules](#)
  - The new off-payroll working rules beginning on 06 April 2020 and implementation
- [TAXbite: Off-payroll working from April 2020](#)
  - short overview webinar

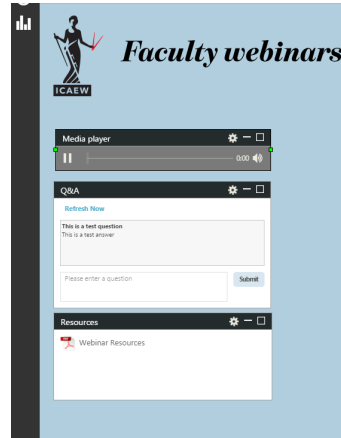
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- Tax Faculty webinars
  - 11 May 2020 – Employment taxes update

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