



DMH Stallard

Employment law webinar

Update on IR35 and  
employment review of  
the Budget

# Impact of the 2021 Budget on Employment Issues

Rebecca Thornley-Gibson

## Overview

- Emergency lifelines to go on
- Quick fix and papering over cracks?
- Temporary extensions = temporary reprieves?
- Large tax rises for business in the future
- Been a lot of give but now a lot of take
- Highest tax burden for 50 years
- Furlough puts money back into the economy immediately
- 6.5% unemployment predicted as opposed to forecasted 10% but December 19 unemployment was 3.8%
- Expansion of youth training programmes
- Support with upskilling

## Furlough : The Star Attraction

- Extended until 30 September 2021
- Employees will receive the same 80% / £2,500 benefit
- Employers to contribute 10% in July and 20% in August and September
- Employees employed on 2 March 2021 and have had earnings reported to HMRC under RTI between 20 March 2020 and 2 March 2021 are now able to be furloughed and claimed for with effect from May 2021
- HMRC Taxpayer Protection Taskforce to investigate Furlough Fraud
- Too late for many but a current lifeline for some – but not a forever lifeline
- 11m been on furlough with 8.9m at any one time

## Self Employed Income Support Scheme : SEISS

- Fourth and Fifth grants announced
- Eligibility now covers self employed who submitted a self assessment tax return by midnight on 2 March 21
- Extends to c 600k more individuals but many still not covered e.g. short term contracts
- Targeted support so where turnover has not dropped by more than 30% the fifth grant will be capped at 30% of profits with a maximum of £2,850
- Fourth grant can be claimed from late April / fifth grant from late July

## Skills - Help to Grow : Management

- 12 week Executive Development programme delivered by business schools across the UK. Practical curriculum, with 1:1 support from a business mentor, peer-learning sessions and an alumni network
- Designed to be manageable alongside full-time work, supports small business leaders to develop their strategic skills with modules covering financial management, innovation and digital adoption. *“By the end of the programme participants will develop a tailored business growth plan to lead their business to its full potential.”*
- 30,000 places available over three years. The programme is 90% subsidised by government – participants will be charged £750
- UK businesses from any sector that have been operating for more than one year, with between five to 249 employees are eligible
- The participant should be a decision maker or member of the senior management team within the business e.g. Chief Executive, Finance Director etc

## Skills - Help to Grow : Digital

- Advice on how technology can boost performance through a new online platform
- Eligible businesses can receive a discount of up to 50% on the costs of approved software, worth up to £5,000. Vouchers are initially expected to be available for software that helps businesses to build customer relationships and increase sales; make the most of online selling and manage accounts and finance digitally
- All businesses will be able to benefit from free online advice on the platform
- The voucher is expected to be available to UK business that:
  - employ between five and 249 employees and are registered at Companies House
  - have been trading for more than 12 months
  - are purchasing the discounted software for the first time
- Full details on the businesses and software eligible for the voucher will be published this summer and support to be available from Autumn

## Traineeships and Apprentices

- An additional £126 million for high quality work placements and training for 16 to 24 year olds in the 2021/22 academic year. Employers who provide trainees with work experience will continue to be funded at a rate of £1,000 per trainee
- Payments made to employers who hire new apprentices will be extended and increased. Employers who hire a new apprentice between 1 April 2021 and 30 September 2021 will receive £3,000 per new hire, compared with £1,500 (or £2,000 for those aged 24 and under) under the previous scheme
- This is in addition to the existing £1,000 payment the government provides for all new 16 to 18 year-old apprentices and those aged under 25 with an Education, Health and Care Plan, where that applies
- A £7 million fund from July 2021 to help employers set up and expand portable apprenticeships. This will enable people who need to work across multiple projects with different employers to benefit from the high-quality, long-term training that an apprenticeship provides (Portable Apprentices)



## Other

- National Living Wage (23 and over) increased to £8.91 from April 21
- Personal tax thresholds frozen post 2022 until at least 2026
- By March 2022 introduce an elite points-based visa within which there will be a "scale-up" stream, enabling those with a job offer from a recognised UK scale-up to qualify for a fast-track visa
- Reform the Global Talent visa, including allowing holders of international prizes and winners of scholarships and programmes for early promise to automatically qualify
- Review the Innovator visa to make it easier for those with the skills and experience to start an innovative business to obtain a visa
- Launch the new Global Business Mobility visa by spring 2022 for overseas businesses to establish a presence or transfer staff to the UK
- Government call for evidence to hear industry views on how the EMI scheme can be extended/improved to better incentivise employees

# IR35: Off-payroll working in the private sector

**Stephen ten Hove**  
**Will Walsh**



## A little history

- April 2000 IR35 (intermediaries legislation) introduced
- Widespread non compliance with IR35
- April 2017 Off-Payroll Working Rules (“OPWR”) in the public sector introduced
- May 2018 First consultation for OPWR in private sector
- March 2019 Confirmation OPWR will be applied to the private sector from 6 April 2020
- March 2020 Announced that OPWR will be postponed to 6 April 2021

## What are the new rules about?

- From 6 April 2021 the payments that businesses make to Workers who provide their services through a Personal Service Company (“PSC”) will be subject to a new tax regime
- Unless the business is small it must determine whether the Worker providing the services on behalf of the PSC, but for the PSC, is operating as an employee
- If the Worker is not operating as an employee nothing changes
- If the Worker is operating as an employee then everything changes: before paying the PSC, the business must pay the PSC net of PAYE deduction and it also incurs employer’s NI (13.8%) and apprenticeship levy (0.5%). The cost of the Worker has therefore increased by 14.3%
- Note no employment rights are created

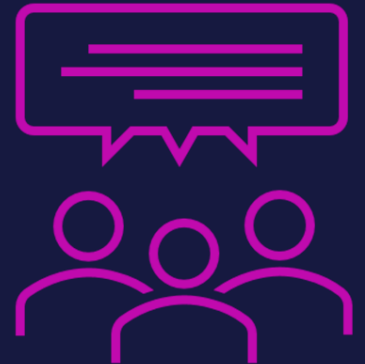


## Small company exemption

- You are exempt from the OPWR if you are a small company, ie: you satisfy two of the three conditions below:
  - Annual turnover not more than £10.2 million
  - Balance sheet total not more than £5.1 million
  - Number of employees not more than 50
- Based on last set of accounts before year end
- How long will the small company exemption be around?

Have you already  
considered whether your  
PSC suppliers fall within the  
OPWR?

Poll





## Is the Worker operating as a deemed employee?

- The test of employment status for the purpose of Employment Law is similar to, but not the same as the test for the purposes of taxation, including the OPWR
- In Employment Law we first ask whether there is contract at all between the alleged employer and the Worker
- If so:
  - Does the alleged employer control the Worker to a “sufficient” degree
  - Is the Worker obliged to provide personal service to the alleged employer (or can they substitute)
  - Is the alleged employer obliged to offer work and is the Worker obliged to accept it
- If any one of the above is not present the contract is not a Contract of Employment. If they are present it may be a Contract of Employment depending on other factors including:

## Is the Worker operating as a deemed employee? 2

- Does the Worker take any financial risk?
  - Is the Worker part of the alleged employer's organisation?
  - Is the Worker in business on their own account?
  - Does the Worker provide their own equipment (and insurance?)
- 
- The main difference with assessing status for tax purposes is that Tax Tribunals may ignore the contractual and structural arrangements between the parties entirely and construct a "hypothetical contract". For example, the fact that a Worker works through their own PSC is normally fatal to their claim that they are an employee in Employment cases. But this factor is of no concern to HMRC – the OPWR are an example of this

## Is the Worker operating as a deemed employee? 3

- Who decides? The business to whom the Worker supplies the services decides
- If there is a contractual “chain” the user of the services hands their status determination to the next person in the chain
- You may decide for yourself whether someone is employed for the purpose of the OPWR
- Alternatively, you may wish to use HMRC’s online CEST Tool first launched in 2017 and revised in December 2019 in anticipation of the April 2020 roll out

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About you and the work

## What do you want to find out?

- If the off-payroll working rules (IR35) apply to a contract
- If some work is classed as employment or self-employment for tax purposes

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## Substitutes and helpers

# Has the worker ever sent a substitute to do this work?

A substitute is someone the worker sends in their place to do their role.

- Yes, you accepted them
- Yes, but you did not accept them
- No, it has not happened

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# Off-payroll working rules (IR35) do not apply

## Why you are getting this result

Your answers told us:

- you have accepted, or would accept, a substitute
- you do not have control over this work
- the worker or their business will have to fund costs before you pay them

This suggests the worker is working on a business to business basis.

What does this mean for you?

## Is the Worker operating as a deemed employee? 4

- The advantage of using the CEST Tool, apart from its speed, is that, used honestly, HMRC will respect the result
- But note there remain a small percentage of cases that CEST is unable to determine. You will then have to use the factors set out above to make the determination
- Some relief: 12 month penalty holiday if you get assessment wrong but have used “reasonable care”

## Some IR35 cases

- *Paya Limited & Others v HMRC* (2019)
- *Novasoft v Revenue & Customs Commissioners* (2010)
- *Christa Ackroyd Media Limited v Revenue & Customs Commissioners* (2018)



## Disputes

- If the Worker disagrees with the Client's status determination, they have the right to dispute it
- The Worker should provide the Client with details as to why they disagree with the status determination and the Client is obliged to respond to the Worker within 45 days of receiving their notice of disagreement
- If the Client does not respond in 45 days it will be deemed to be the fee payer and assume potential liability

## If I am a Client what should I do?

- Assess whether you are a small company and thus exempt
- If not:
  - Be prepared for the contractors you use switching to smaller businesses
  - Look at your workforce and identify the PSCs. Should you engage them as employees instead?
  - Run any PSCs who work for you through the CEST Tool now. If the CEST Tool concludes that the OPWR apply, can you change the way you deal with them so they fall outside the rules?
- The CEST Tool concludes the PSCs you engage fall within the rules. Do you pay 14.3% more for their service or do they bear the cost?
- Start to think about your status determination dispute process, who will deal with this?

# Questions

## Speakers



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