

# The FAQ's – What Recruiters Should be Doing Now

From 6th April 2021, many private sector companies who engage certain types of contractors, whether directly or via a recruiter, become legally responsible for determining the tax status of those contractors.

## How do the Off-Payroll rules affect Recruitment Agencies?

If an assignment for a PSC contractor that you supply is assessed by your client to be Inside IR35, then income tax, Employee's NI and Employer's NI (and the Apprenticeship Levy, if applicable) become payable on all income derived from that assignment. This means the recruiters supplying and paying the PSC (called the "fee-payer" in the legislation) must utilise a PAYE compliant model when paying the PSC.

Generally, this will mean moving the worker to recruiter PAYE or to a PAYE-compliant umbrella company, but recruitment agencies can choose to continue to make payments directly to the PSC, making deductions for taxes and NI first. Appropriate deductions for income tax and Employee's NI must be made before making payment to the PSC; those deductions are to be remitted to HMRC by the recruiter on the PSC's behalf and the payments reported via Real Time Information (RTI). The PSC is then paid the amount that is left over after income tax and Employee's NI has been deducted.

The use of the RTI system for reporting income tax deductions means that the recruiter becomes the "deemed employer" of the contractor for the purposes of Employer's NI and Apprenticeship Levy contributions. Therefore, in addition to the deductions from the PSC for income tax and Employee's NI, agencies also become responsible for making the Employer's NI payments.

Assignments that are assessed to be Outside IR35 by your client remain the same; you continue to pay the PSC without any deductions.



# The FAQ's – What Recruiters Should be Doing Now

## Don't pay the PSC Directly?

If you are a recruiter which is part of the payment chain but doesn't directly pay the PSC, then you will be obliged to pass the SDS from the client (or from whomever you have received it) to the next recruiter in the contract chain. If you fail to pass on the SDS, you will be primarily liable for all the tax and NI payable under the assignment.

## MSP or RPO provider?

If you are an MSP or RPO provider, you hold **additional risks** under separate transfer of liability provisions, which take effect if a party further down the contract chain fails to fulfil their obligations and HMRC cannot collect the tax, NI, interest and other penalties from that party (because that party ceases to exist for example).



# The FAQ's – What Recruiters Should be Doing Now

## 6 things that Recruiters can be doing now



### 1. Determine your exposure.

How many PSCs do you engage compared to other types of contractors (umbrella, PAYE, sole trader etc)? Are those PSCs supplied to lots of different clients or only a few? Understanding where your PSCs are engaged will help you determine where to focus your activities in the coming months.



### 2. Educate your staff.

Everyone in your business needs to have some understanding of the new rules – this includes sales teams and support functions. Clients and contractors will be asking lots of questions and you need to know the answers (or know who to go to for answers). You will need to put together a project team to implement changes to systems and processes, and to continually communicate with colleagues, clients and contractors.



### 3. Encourage clients to take action now.

Starting with the activities listed in Section 6 above. You can help clients by providing them with the details of the PSC workers you supply to them, to help them understand how many they are engaging. If any other agencies supply to you (and your recruitment agency then supplies onto the end client) then you need to get details of how contractors are engaged by those second-tier agencies.



### 4. Commercial considerations.

Not only do clients have limited time to make and communicate the relevant IR35 assessments, they also need to decide how to deal with contractors who will be worse off financially once the new rules go live. You need to be discussing options with your clients as soon as possible.



### 5. Understand the risks.

It is not only clients that have liabilities under the new rules. You will also have liabilities if you are the fee-payer, or where you are a managed service provider and use second-tier agencies. You need to understand your risks, not just your clients' risks, and agree how those risks will be managed and mitigated.



### 6. Changes to systems and processes.

You will need to make significant changes to the way you engage, track and manage PSC contractors in the future. You may want to engage external expertise to help with this stage.