



OFF-PAYROLL WORKING IN THE PUBLIC SECTOR – ACCOUNTING FOR THE NEW RULES

Issued 23 March 2018

TEXT OF LETTER SENT ON 23 MARCH 2018 TO HMRC BY ICAEW TAX FACULTY

Internationally recognised as a source of expertise, ICAEW Tax Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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Following our meeting on 15 February 2018 to discuss the accounting treatment of IR35 I set out below the current position.

Following the introduction in Finance Act 2017 of new rules for taxing workers' services provided to public sector bodies through intermediaries, the responsibility for deducting and paying PAYE and class 1 primary national insurance contributions (NIC) and paying class 1 secondary NIC, now rests with the public sector body (PSB), provided the contract for work is deemed to be within the IR35 regime. This change in policy has resulted in questions arising over the accounting treatment of the contract fee in the personal service company (PSC)'s accounts.

Corporation tax relief is only available in the PSC for the amount of deemed payment. However, under accounting rules it appears that the gross payment should be recorded, thereby resulting in a notional 'profit' arising in the PSC on which corporation tax would be due. Assuming the PSC has paid cash out to the individual of the after tax and NIC amount received from the client, there will be no cash in the company with which to pay this corporation tax. We believe that the legislation needs to be amended to allow a corporation tax offset for the full amount recorded as turnover.

The VAT treatment of the contract fee also needs to be resolved. The PSC will be liable for VAT on the gross figure reported in turnover despite only the net amount being received. The PSB will be claiming input VAT on the gross figure as this represents its cost. As a result many small businesses will be left with a VAT underpayment on their VAT account due to an anomaly in the tax and accounting rules.

We believe that these matters needs urgent attention, not least because PSCs with 5 April year ends will soon begin the process of preparing their accounts. We are also aware that the government will be consulting imminently on the possible extension of these rules to the private sector where the population affected will be increased significantly.

I understand that you have engaged with the Financial Reporting Council on this matter and look forward to receiving an update on the correct accounting and tax treatment in due course.

APPENDIX 1

ICAEW Tax Faculty's ten tenets for a better tax system

The tax system should be:

- Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
- Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
- Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
- Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
- Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
- Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
- Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
- Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
- Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
- Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).