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Policy:

IR35 Update (April 2021) - Off Payroll Working

1. Purpose

The purpose of this document is to define Colart's policy, as regards HMRC's IR35 update (effective 6 April 2021) to Off Payroll Working Rules and refresh the policy on the use of Self-Employed Contractors.

2. Definitions

Check Employment Status for Tax – commonly referred to as “CEST”, this is an HMRC tool which can be used to make employment determinations for tax.

Existing Contractors – means contracts with an Intermediary (as defined below) which were effective before 6 April 2021.

Intermediary – there are three different types of intermediary that Workers (as defined below) can provide their services through:

1. A limited company, commonly known as a personal service company (“PSC”);
2. A partnership; or
3. An individual through a non-corporate relationship. CEST refers to this as an ‘unincorporated body’.

New Contractors – means contracts with an Intermediary which are effective from and including 6 April 2021.

Off-payroll working rules – the ‘off-payroll’ working rules can apply if a Worker provides their services through an Intermediary. These rules are sometimes known as ‘IR35’. If the rules apply, tax and National Insurance contributions must be deducted from fees and paid to HMRC. Such contracts are often referred to as being ‘within IR35’. See also Appendix 1.

PAYE – is HMRC's system to collect income tax and National Insurance from employment.

Personal Service Company – commonly referred to as “PSCs”, when engaging with contractors and off payroll workers it is common for companies to engage with so called PSCs, rather than directly with the individual on an employment basis.

Self Employed Contractor – this is a Worker who provides services to Colart without being an employee or using an Intermediary.

Status Determination Statement – commonly referred to as an “SDS”, this means the determination made by Colart as to the employment status of a Worker for tax purposes.

Worker – this is the individual providing the services to Colart on a self-employed basis or through an Intermediary, whether through an agency or otherwise.

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3. Principles

The following principles have been considered in determining this policy:

1. With effect from 6 April 2021, new tax rules are being introduced, which place the responsibility for determining the “tax employment status” of any Workers through an Intermediary on the “end user”, being Colart for our purposes. The purpose of these rules is to prevent employees obtaining a tax advantage by subjecting their salary to corporation tax rather than income tax and national insurance.
2. Under the new rules, an SDS is required to be issued in writing, by the “end user” of the Worker, before a contractual relationship commences. For our purposes, the “end user” is Colart. SDSs also apply to existing engagements with Workers.
3. An SDS declares a Worker’s “employment status” for tax and the reasons for the determination, in particular, a decision on whether the contract falls ‘within IR35’ or ‘outside IR35’.
4. There is also a requirement for Colart, (as the end user), to pass the written SDS down the supply chain (for example, to an agency), which generally passes on the IR35 duties such that the agency will be required to apply PAYE and National Insurance if Colart (as the end user) determines the services being performed by the Worker as being ‘within IR35’.
5. For SDSs ‘within IR35’, PAYE and National Insurance deductions will apply. The liability to apply PAYE and National Insurance employment taxes then falls to the entity paying the Intermediary including a PSC (“fee payer”), although the ultimate liability remains with the ‘end client’.
6. Colart will not operate ‘off payroll’ deductions.
7. A similar process already exists for Workers who operate as a Self-Employed Contractor without the use of an Intermediary. If they are found to be functionally an employee, Colart has a liability to deduct PAYE and National Insurance from their pay.

4. Policy Details

Engagements with all Existing Contractors must be reviewed by the Hiring Manager to determine whether they are ‘within IR35’. The Hiring Manager should consult with HR if they are unable to determine the Worker’s status. Where a Worker is determined to be ‘within IR35’, they will either be offered an opportunity to become an Employee on Colart’s payroll, or must move their contract with Colart under a third party agency, to whom an SDS will be issued.

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1. Engagements with all New Contractors shall be assessed using the “CEST” tool, prior to engagement. For guidance on using the CEST tool, see Appendix 2. Where the determination is that such a contract will be a deemed employment, the role must be advertised as being ‘within IR35’.
2. Where an engagement is determined to be ‘within IR35’ the Worker must either join via an employment contract, or via third party agency who will apply PAYE and National Insurance deductions when paying the Worker. Most new roles are expected to be determined to be employment contracts, for tax purposes. Accordingly, PAYE and National Insurance deductions apply.
3. Contracts with Existing Contractors which are determined to be deemed employments must be amended to be engaged via an agency (or Umbrella Company) or replaced with an employment contract at the sole discretion of Colart.

4.1 Sub Policy Details

For the engagement of all New Contractors through agencies, you should contact the HR Department:

- (i) to discuss whether it is necessary to have an indemnity in place to protect Colart from any potential risk related to the issue of an SDS; and
- (ii) to arrange receipt of a suitable confirmation issued by the agency to confirm the agency is deducting income tax and National Insurance employment taxes in accordance with the SDS issued by Colart.

5. Related Areas and Processes

The process to determine the employment status of a Worker is in Appendix 1.

Colart’s HR Department will make SDS determinations and will issue these as required.

Colart’s HR Department may make use of CEST for this purpose, but should not rely solely on this tool to make reliable determinations in all situations.

HMRC Guidance related to CEST should be followed.

Any challenges to SDS determinations will be considered by the HR Department within 45 days.

Additional reference information:

<https://www.gov.uk/guidance/understanding-off-payroll-working-ir35>

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm11000>



6. Issue management process

Any issues from the application of this policy should be raised with the HR Department in the first instance.

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Appendix 1

Process to determine employment status of a Worker:

1. Determine status via CEST (see Appendix 2):
<https://www.gov.uk/guidance/check-employment-status-for-tax>
2. Provide the resultant determination to the HR Department and confirm the approach.
3. Depending on the result:
 - a. If “self-employed” proceed as a normal contractor – i.e. pay via Accounts Payable (regardless of whether sole trader or Intermediary). No deductions necessary. This is ‘outside IR35’.
 - b. If status is ‘employed’ there are two options:
 - i. Make the Worker an employee (to be discussed with Line Manager before authorising) or
 - ii. Ask Worker to use an agency or other third party Intermediary to deduct PAYE and National Insurance.

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Appendix 2

Using the CEST Tool

The CEST tool can be found at the following web address:
<https://www.gov.uk/guidance/check-employment-status-for-tax>

The tool will issue a determination as to whether a contract with a Worker is sufficiently “employment-like” to require the deduction of PAYE and National Insurance Contributions.

The tool is suitable for assessing any Worker, whether they are Self-Employed or use an Intermediary company.

The first question in the CEST tool, “*What do you want to find out?*” is very important:

- a) If a Worker uses an Intermediary such as a limited company or agency, answer:
“*If the off-payroll working rules (IR35) apply to a contract.*”**
- b) If a worker is a Self-Employed Contractor, answer:
“*If some work is classed as employment or self-employment for tax purposes.*”**

The remaining questions are relatively self-explanatory, but if you are unsure of how to respond, please contact the HR Department.

The CEST tool will issue a determination at the end of the questionnaire. Please save a copy of this determination and provide it to HR.

The determination provided by the CEST tool may be inconclusive or conclude against expectation. In limited cases, the Tax Department, Legal Counsel, HR Department and the Hiring Manager may together make a determination of a Worker’s employment status, which will be supported in writing and retained by the HR Department.