

**HM Revenue & Customs (HMRC)
Rules for off-payroll working from April 2020 – draft legislation
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome this opportunity to comment on the draft legislation. We do so as tax specialists with particular interest and expertise in the tax and related welfare problems of the lowest paid employees and small employers, for example care and support employers.¹
- 1.2 The main concern we had regarding the off-payroll legislation was that business-to-consumer arrangements should be placed outside of the scope of the new rules. It appears that such a carve out has been drafted, which we welcome, although this would only appear to be from the requirements of section 61N to 61R rather than from the scope of Chapter 10 altogether.
- 1.3 We are not clear why the exemption is framed as it is – we assume that HMRC consider there are no unintended consequences here, however for complete certainty, we suggest that this is a point that is clarified.

¹ That is, those that have taken on a personal assistant (carer) to help them live independently and thus become responsible for complying with administrative requirements associated with being an employer

- 1.4 Obviously, adequate guidance needs to be given to those left outside of the scope of Part 2, Chapter 10 to ensure that they understand this, but also to reiterate what is expected of them under the Part 2, Chapter 8 rules.
- 1.5 As well as the draft legislation, the government also published a summary of responses to the 5 March 2019 consultation.¹
- 1.6 In our response to the 5 March consultation² we highlighted our concerns that those shifting away from Personal Service Companies (PSCs) would instead be caught up in new (non-compliant) models of engagement, post April 2020 (as loan charge arrangements did to many of the workers affected by the public sector changes). This obviously has worrying implications for the Exchequer but also for the individuals concerned.
- 1.7 For those in PSCs only at the behest of their engager (who have no idea about limited company administration), there is a risk that their PSC will not be closed down correctly. This could leave the worker with messy compliance issues that they do not understand. In our response, we urged HMRC to work with Companies House to come up with a way of making it as easy as possible for such taxpayers to close down PSCs themselves, perhaps in conjunction with an amnesty for any accrued penalties.
- 1.8 The government response to the 5 March consultation did not address either of these points, which we think is a severe oversight and risks not only undermining the purpose of the legislation but also TaxAid, the tax charity, becoming overwhelmed with messy PSC cases. We have recently had an initial discussion with HMRC, which was helpful, nonetheless we would welcome a firm commitment from HMRC that they will properly consider the points made in our consultation response prior to 6 April 2020 and take any necessary steps to tackle these issues.

2 About Us

- 2.1 LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

¹ <https://www.gov.uk/government/publications/rules-for-off-payroll-working-from-april-2020>

² <https://www.litrg.org.uk/sites/default/files/190528-LITRG-response-off-payroll-FINAL.pdf>

- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Draft legislation

- 3.1 We welcome the opportunity to review the draft legislation, which amends Part 2, Chapter 8 and 10 of ITEPA 2003.
- 3.2 As this is an extremely significant development in the law, and both the existing and amending legislation is quite long and complex, it would have been useful if a keeling schedule were produced alongside the draft legislation (to show how the existing legislation will read if the proposed amendments are adopted). This would help stakeholders provide meaningful comments as to whether amendments to existing legislation will achieve their intended policy effect while guarding against any unintended consequences.
- 3.3 The main concern we had regarding the legislation was that business-to-consumer arrangements were left outside of the new rules, for instance where a carer provides services to a disabled individual/private householder via a PSC. Other examples would include where individuals have regular arrangements with gardeners, nannies or other traders who operate through a company.
- 3.4 Technically, it seems that business-to-consumer arrangements are still within scope of Part 2, Chapter 10 (by virtue of the amendments to section 61K). These set out that Chapter 10 applies to clients who are 'medium and large', which are defined as those not being 'small' (as determined in accordance with new sections 60A to 60G). It does not seem to us that individual consumers fall under sections 60A to 60G. In particular, we note that section 60F – When other persons qualify as small for a tax year – refers to 'turnover' which an individual consumer would not have.
- 3.5 However individual consumers using PSC workers *do* seem to be excepted from the consequent requirements of the off payroll rules outlined in 61N to 61R by the insertion of new subsection 61M(1A), which specifically excludes engagements with a client who is an individual and the services are not performed in connection with that individual's trade or business.
- 3.6 We assume that HMRC consider this exception from the requirements in 61N to 61R, as opposed to Chapter 10 in its entirety, adequate to achieve the intended carve out, however for complete certainty, we suggest that this is a point that is clarified.
- 3.7 PSCs who provide services to individuals where the services are not performed in connection with that individual's business, are retained in Chapter 8, or the old IR35 regime, via the amendments to section 50 – 'Worker treated as receiving earnings from employment'.
- 3.8 Legislation should be certain, unambiguous and have a simple and logical structure. In our view, including the retaining provision in section 48 (Scope of this Chapter) and/or section 49

(Engagements to which this Chapter applies) would make it clearer that business to consumer arrangements are within the scope of Chapter 8 of Part 2 of ITEPA 2003 (along with those where the client is not a public authority and is 'small').

- 3.9 It goes without saying that adequate guidance needs to be given to those left outside of the scope of Chapter 10 to ensure that they understand this but also to reiterate what is expected of them under Chapter 8 rules. Without this, many of the PSC carer/gardener types concerned (who likely fall within our constituency) may be worried and confused about what the new rules mean for them/their clients in practice. The fact that they retain the risk and responsibility of operating IR35 themselves may also completely pass them by. Indeed, it seems to us that this would be a good opportunity for HMRC to revisit the IR35 guidance to make sure it is adequate for those left trying to use and apply it.

4 Other comments

- 4.1 There are likely to be a large number of low-paid workers in PSCs caught up in these changes due to there being less open, more complex supply chains, perhaps with less due diligence in the private sector than in the public sector.
- 4.2 These tend to be individuals, working on a temporary basis, with little power or influence as far as their relationship with the engager goes. Such workers are probably not in a PSC out of choice, but at the behest of an agency or other intermediary, who can then save on employer National Insurance contributions (NIC) and can also charge an ongoing fee for 'accountancy' services to help the worker run the PSC.¹
- 4.3 The government response to the 5 March consultation² did not address the concerns we raised in our consultation response. We therefore take the opportunity to reiterate in brief, the two main observations we made about low-paid workers currently in PSCs.
- 4.4 We are aware that there are umbrella companies waiting in the wings to scoop up ex-PSC workers, post April 2020. The problem here is not with umbrella companies per se, but the fact that that some operators use non-compliant models (which HMRC, hitherto, have not got a firm grip on), such as the elective deductions model and the mini umbrella company model. Such models can mean further, different problems later down the line for both the worker and Exchequer alike.

¹ In addition, it should be remembered that the changes from 6 April 2016 to the travel and subsistence rules meant that some umbrella companies encouraged their lower paid workers to incorporate. If they then claimed that their assignments were outside IR35, they could still continue to claim home to-work travel and subsistence relief (despite anti-avoidance provisions).

² <https://www.litrg.org.uk/sites/default/files/190528-LITRG-response-off-payroll-FINAL.pdf>

- 4.5 It should be remembered that one of the outcomes of the public sector changes,¹ was a mass shift of contractors into highly aggressive umbrella models (often unwittingly) – including ones based on loan arrangements. The fact that many of those same individuals are now having to deal with the hugely controversial loan charge, means that HMRC should properly consider the points made in our consultation response prior to 6 April 2020 and take any necessary steps to tackle these issues.²
- 4.6 The second thing to say is that HMRC need to be aware that there are potentially very messy compliance issues stemming from the mass abandonment of PSCs. It is very cheap and easy to open a PSC, even when using a formation agent. Closing down a PSC, can definitely be trickier.
- 4.7 It seems unlikely that the accountancy ‘service’ provider will be prepared to deal with the winding up of the company as part of their normal fee. This will therefore present a further opportunity to make money out of low-income workers in PSCs.
- 4.8 For those workers that cannot or will not pay (the majority we suggest), huge difficulties await. Those at the low-income end of the spectrum who are forced to use PSCs have very little understanding of how such vehicles operate. They often cannot separate out their own affairs from the PSCs, and stand very little chance of closing down the PSC’s tax affairs correctly, let alone deal with the Companies House requirements.
- 4.9 In our response, we urged HMRC to work with Companies House to come up with a way of making it as easy as possible for such taxpayers to close down PSCs themselves, perhaps in conjunction with an amnesty for any accrued penalties. Failure to put in place support like this for people shutting down PSCs who cannot afford advice is likely to mean that further burdens will be placed on the voluntary sector. The most likely place that workers will turn for help is to TaxAid³ which may not have the resources to support all of those in need.
- 4.10 In summary, despite the draft legislation now being upon us, little thought seems to have been given to what impact the changes in the private sector might have on low-income workers in PSCs and what the reaction of the temporary worker market will be. This risks leading to serious problems down the line which could potentially be avoided if dealt with now. We therefore urge HMRC to address these two issues prior to 6 April 2020. We have recently had an initial discussion with HMRC, which we appreciate. We stand by willing to discuss our concerns in more depth and to assist HMRC in whatever way we can.

LITRG

5 September 2019

¹ https://www.contractorcalculator.co.uk/nurses_agencies_umbrella_loan_schemes_538610_news.aspx

² Indeed, it is worth noting that the website post that follows the one above is entitled ‘Make sure your umbrella company isn’t a loan scheme in disguise’.

³ www.taxaid.org.uk