Off payroll working in the private sector: Whitepaper

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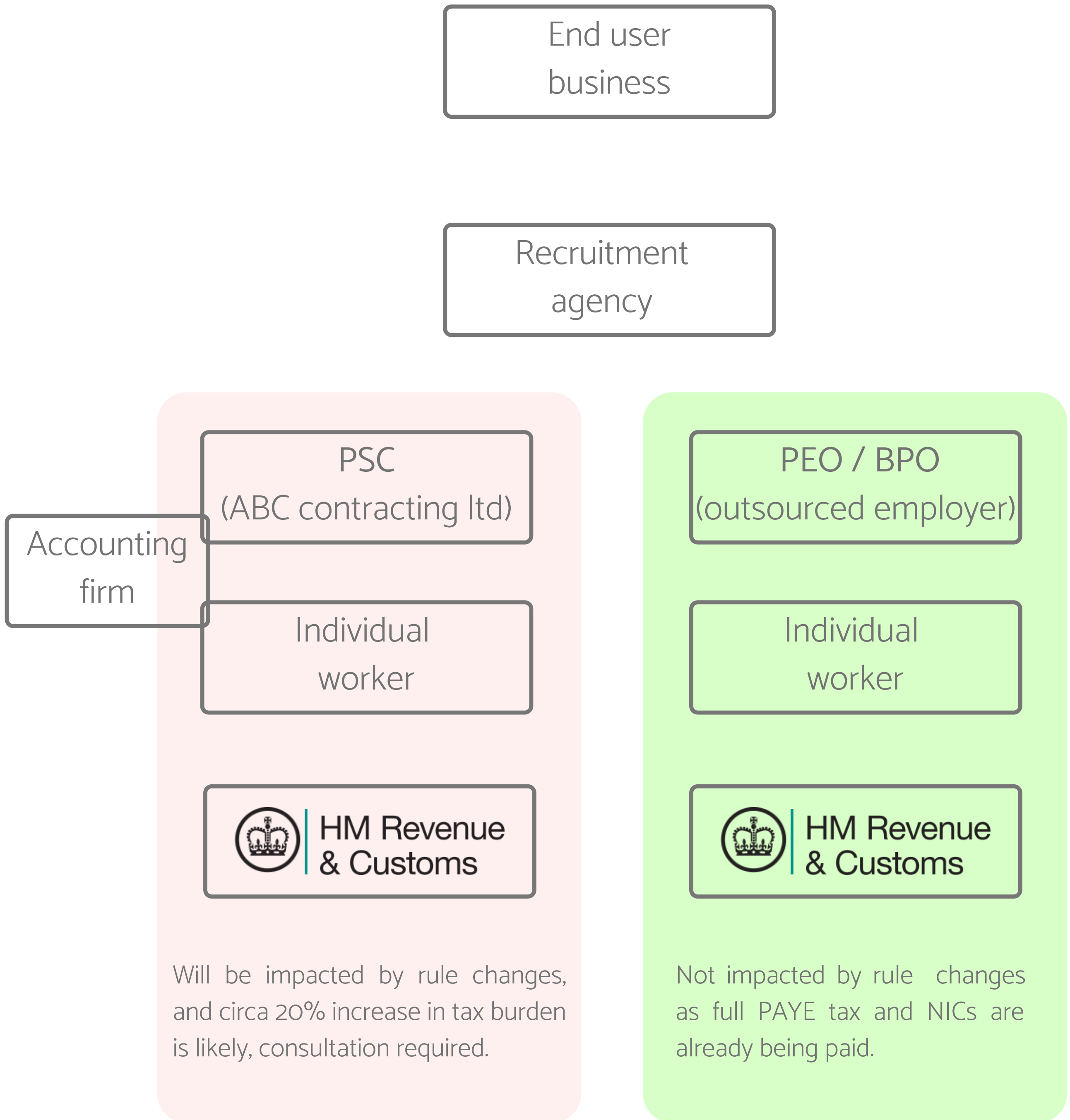
PSCs, IR35 and off-payroll working in the private sector - what does it mean for my business?

What's a PSC?

PSC stands for Personal Service Company. They're also commonly referred to as a limited company. If you engage contractors, temps, agency workers, or interims - basically anyone who's not on your payroll - you'll want to establish how the new rules affect you, so read on.

Supply chain examples

Not a complete list of all possibilities, but these are two common methods by which workers are engaged and paid, and their taxes calculated.



What changes are coming up?

The laws are changing around PSCs and how they're engaged. This is a direction of travel that HMRC has been pursuing for decades. The government has macro-economic concerns, rising costs to meet, and uncertainty to deal with. Whatever our view on the politics behind it, ultimately it all leads to the government seeking to increase tax income. HMRC are turning to contractors, and particularly PSCs to achieve this.

The government has a lucrative incentive for targeting PSCs. The same reforms implemented in the public sector netted an additional £550 million in tax revenue in year 1. HMRC expects that by applying the same rules to the private sector, they'll net an additional £3.1 billion in the first 4 years.

£550 million

The amount raised in a year by doing this in the public sector

230,000

Private sector PSCs next in line.

20,000

Agencies affected

60,000

End-user businesses affected

£21 million

cost to HMRC over the coming 4 years to implement the changes.

HM Revenue & Customs

£3.1 billion

HMRC's expected tax haul over the coming 4 years.

NB: all figures used are provided in HMRC's consultation documents.

When is this happening?
The new rules take effect on April 6th 2020, and HMRC has confirmed that the new rules won't be applied retrospectively.

What do the changes mean in reality for my business?
Businesses engaging contractors via PSCs will become responsible for:

1 - making a judgement, and determining the contractor's tax status (ie: inside or outside IR35)
2 - delivering that status determination to the PSC contractor
3 - ensuring that all the relevant taxes and NICs are paid by the PSC and the contractor

Who do the new rules apply to?
All engagers of PSC contractors. HMRC has confirmed that small businesses are exempt from these changes. A small business has a turnover under £10.2 million, a balance sheet total under £5.1 million, and under 50 employees. For small businesses, the existing IR35 rules still apply.

Who's liable if tax and NICs aren't paid?
The entity which pays the PSC (called the "Fee Payer" in the draft legislation) will be held liable first. However, the draft legislation has introduced the ability for HMRC to chase that debt up the supply chain. This means whichever entity didn't follow the rules will be held liable. Possible failure-points include:

1 - making the IR35 status determination statement (known as an "SDS" in the draft legislation)
2 - making the SDS correctly
3 - passing the SDS down the supply chain
4 - making the correct tax payment

Simply put: even if the end user does everything right, but its supply chain fails to pay the correct tax and NICs, liability will transfer up the chain to the end user.

Any other complications for me as an end user business?
Yes, there's a process that follows making the SDS. The end user businesses must pass their SDS to the PSC worker as well as the agency.

The worker (and the agency) then has the right to challenge that status assessment.

If the end user's SDS is challenged, the worker or agency can require an explanation/new determination. There's no obvious recourse in the draft legislation if the appeal procedure doesn't provide the outcome they want - so this is an area we're monitoring and will provide updates on.

HMRC's direction of travel on contractor tax

2000 — IR35 introduced to tackle 'disguised employment'.

2006 — Managed service companies legislation introduced to tackle composite companies and associated tax avoidance. The first introduction of debt transfer provisions.

2008 — BN66 targets tax avoidance via offshore trusts – also controversially, the introduction of retrospective application of new rules.

2011 — The National Minimum Wage rules were amended to prevent travel expenses paid under salary sacrifice schemes counting towards the National Minimum Wage.

AWR introduced to give agency workers equal rights to their perm counterparts.

2013 — The government announced rules to tackle the use of offshore intermediaries to avoid employer's NI.

The government announced rules to deal with onshore intermediaries used to facilitate false self employment.

General, and targeted anti-avoidance rules (GAAR and TAAR) introduced.

2015 — The finance act changes the salary sacrifice rules to ensure tax relief is more difficult to obtain at source.

2016 — The Secretary of State for Business, Innovation and Skills announced an internal review of employment status.

SDC (Supervision, Direction and Control) introduced as the test for determining what expenses can be claimed, by who, and how.

Travel and subsistence restricted for temporary workers under SDC.

Director's liabilities introduced to enforce the new rules. Umbrella / intermediary directors made personally liable for company tax debts.

2017 — Off payroll working rules introduced in the public sector, effectively curtailing the use of PSCs and netting HMRC an additional £550 million in the first year of operation.

The emergence of the true PEO (professional employment outsourcing) business model – seen for decades in the USA, Australia and other areas around the world, where minimising tax is **not** the primary focus of the supply chain.

2020 — Off payroll working rules extended to the private sector...

Your next steps

1 - Assess the numbers involved
Produce a list of your 'off payroll' workforce. How many PSCs are there, and any other related categories like sole traders / self employed?

2 - Compile year end dates
If a PSC has its year end in January, and is likely to be closed down in April, there's little point for the worker to keep that PSC open (and likely pay a full year's accounting fee) for the sake of using it for just 2 - 3 months. Segment your list by year end date.

3 - Complete the vitality rating
This is a way of establishing how vital any given contractor is to your business. This will impact how their ongoing situation is managed, and how we respond to the new landscape in 2020.

An easy-to-use template is attached to manage this three stage reporting process.

And then...

Contact us
This is volume one, of two whitepapers on the subject. As well as the draft legislation, the consultation documents and various other factors, current political changes are being taken into account and weighed by our team of expert advisers.

The reality is that this is still an evolving landscape and the rules can be altered right up until April 5th, 2020. There will no doubt be some hurdles yet to be revealed, but the direction of travel is clear, and the legislation is already published in draft form.

To protect your business from risk, we're at the forefront of discussions with HMRC and a diverse group of policy advisers. As soon as there are any further developments, we'll be the first to inform you, but for now, please work with us to complete the attached template - we're happy to help.

The second whitepaper will contain definitive solutions and a bespoke plan for your business, based on the information gathered during the above reporting phase. As soon as you've completed the attached template, or if we can help with it, let us know.