

EMPLOYMENT UPDATE

Tax Liability Changes for Engaging Consultants

From April 2020, the tax rules are changing for businesses that contract with individuals who provide consultancy services through an intermediary company (i.e. the consultant's own company or an agency).

What's changing?

- The current framework – Businesses do not (generally) need to consider whether they are required to deduct income tax and employee national insurance contributions ('NIC') from payments made to a consultant's intermediary company or agency. The intermediary company or agency is liable to HMRC for any tax or NIC due following receipt of payment.
- Changes from April 2020 – Businesses will need to determine whether a consultant should be classed as an employee for tax purposes and, if necessary, deduct the applicable income tax and NIC from payments. Businesses, rather than the consultant's intermediary company or agency, will be liable to HMRC for any underpayment.

Who's affected?

The changes apply to all businesses that engage consultants through intermediary companies apart from those that come under the 'small' business exemption. Small businesses are those that meet at least two of the following criteria:

1. Annual turnover does not exceed £10.2 million
2. Balance sheet total does not exceed £5.1 million
3. Have no more than 50 employees

What's the exposure?

- Typically, HMRC can recover unpaid tax and NIC from a business for up to four years after the relevant tax year. In cases of "carelessness" this can be increased to six years, and further to twenty years in cases of "deliberate behaviour" (i.e. fraud).
- HMRC can charge interest on any unpaid income tax or NIC.
- HMRC can charge penalties as high as 100% of the income tax and NIC due.

What should you do before April 2020?

If your business is not a 'small' business and you engage consultants through intermediary companies, you should start preparing for the changes as soon as possible. We recommend that this includes:

1. Reviewing existing contracts and relationships to determine if any of your consultants could be deemed employees of your business for tax purposes.
2. Communicating with your consultants to manage the impact of the upcoming changes.
3. Ensuring that all new consultants are engaged on contracts that accurately reflect the correct employment status to minimise the risk and exposure to the business.
4. Considering the wider impact of the upcoming changes to your business. For example, the financial and logistical implications of transferring consultants onto the payroll.

If you would like any further advice on the upcoming changes and guidance as to how to start preparing for April 2020, please contact our Employment Lawyer, Jamie Feldman (Jamie.Feldman@northridgelaw.com)