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Organisations Engaging Contractors in the UK to Prepare for the New Off-payroll Working Legislation

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Employment and Tax

Businesses operating in the UK now have less than two months to prepare for implementation of the new off-payroll working legislation on 6 April 2020. Non-compliance could leave organisations with a significant tax liability and may jeopardise important relationships with key contractors, and risk business processes. Companies should act now to ensure they are prepared for the new regime.

What is changing?

Extension of the so-called IR35 regime will require all large and medium-sized private sector organisations to determine the employment status of their contractors and, where applicable, operate PAYE to withhold tax and National Insurance contributions ("**NICs**") from payments made to deemed employees. Organisations will also be liable for employer's NICs on such payments (and, where applicable, the apprenticeship levy), which could potentially increase the cost of engaging an individual by up to 14.3%.

The determination of employment status is by no means straightforward. HM Revenue & Customs ("**HMRC**") provides a "Check employment status for tax" (CEST) tool but, following criticism of CEST's accuracy, the tool is being updated for the introduction of the new rules. Organisations should therefore ensure they are familiar with the assessment criteria and can make an independent determination. This is particularly important because the rules require organisations to document and discuss their determination with each affected worker.

What are the recent developments?

HMRC recently announced that the new rules will now only apply to payments made for services provided on or after 6 April 2020. This is a departure from the previous position whereby the rules would have applied to any payments made on or after 6 April 2020, regardless of when the services were carried out. Although HMRC made this change to allow businesses more time to prepare, organisations will now need to review any preparations they have already made in order to avoid making unnecessary determinations.

The draft HMRC guidance on the new rules, whilst not yet in final form, affords organisations an opportunity to start familiarising with the regime. In particular, the sections discussing the Status

Determination Statement and disagreement process provide useful guidance on the processes organisations should follow when assessing the employment status of their contractors.

What are the next steps?

Organisations should now be focused on implementing the necessary assessment and compliance procedures to ensure they are compliant with the new rules from 6 April 2020. Whilst the specifics will necessarily differ according to the nature and scale of an organisation, we are beginning to see certain approaches emerge as general good practice. Where possible, organisations should begin the determination and contractor-engagement process now so as to avoid a "crunch" point in early April 2020.

We are already helping a number of clients to implement the new rules. If you would like to discuss how we could work with you to prepare your organisation for the new rules, or if you have any questions concerning the material discussed in this client alert, please contact the following members of our Employment and Tax practices or your normal contact:

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