

New Agency Rules

HMRC has been concerned for some time about the loss of tax (particularly employers' NIC) where a worker is paid via an agency without PAYE and NIC being applied. As a result legislation has now been passed which changes the long standing 'agency' rules.

One consequence of the changes is that more businesses may be affected by the agency rules.

What do the agency rules do?

The agency rules apply, for example, when an agency, such as an employment agency, sends individuals on temporary placements with their clients. If the agency does not treat the individual as their employee, the agency rules require the agency to nonetheless treat the individual as their employee if there is supervision direction and control of the individual by the end client.

So, individuals may not be employees of anyone but the agency rules deem them to be employees of the agency.

So what's the problem?

HMRC considers that businesses in certain business sectors have participated in arrangements whereby the agency rules have been avoided. How they arranged this is summarised in the appendix to this letter.

What changes have been made to the agency rules?

The key change has been that the obligation of personal service before the agency rules can apply is removed along with the concept of an agency contract. This means that the rules now potentially apply to more businesses.

From 6 April 2014, a business which makes payments to a worker must treat those payments as subject to PAYE and NIC if:

- *the worker personally provides services to a client of the business*
- *the services are provided under a contract between the business and the client*
- *the worker is subject to, or can be subject to, supervision, direction and control by someone as to the manner in which the services are provided*
- *any payments are not already taxed as employment income.*

Exclusions

There have always been some specific activities excluded from the agency rules and these are detailed in the appendix.

Points to consider

If as part of your business you arrange for individuals to perform personal services for a client, you need to consider whether the agency rules apply. This is particularly the case if your client makes specific payments to you for these services and you make payments to the individuals in respect of these services.

You will not however be affected if the individuals are already treated as your employees or the individuals provide the services through their own company.

For other individuals the two key points to consider are:

- *are the workers personally providing services to the client or is the nature of the contract you have with the client more that you are undertaking a work project for your client as part of which you use workers to progress the project?*
- *if the workers are personally providing services to the client, are the workers subject to supervision, direction and control by someone as to manner in which the services are provided?*

An example of the personal provision of services and a summary of the meaning of supervision, direction and control are provided in the appendix.

How we can help

It is not yet known how HMRC will investigate the use or non-use of the new agency rules but, clearly, it is prudent to consider now whether the rules could apply so that consideration can be given to amending the terms under which work is undertaken for clients.

This is particularly important as an intermediary, from 6 April 2014, must keep and preserve records for individual workers when they are not deducting PAYE and NIC. From 6 April 2015 a quarterly return may need to be made to HMRC.

Please contact us if you have any issues about this legislation.

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