

## **Off Payroll working (IR35) calculation of PAYE liability in cases of non-compliance.**

**APSCo UK and OutSource Response: 20<sup>th</sup> June 2023**

### **About APSCo**

The Association of Professional Staffing Companies (Global) Ltd (APSCo) is an international trade body offering global services with local delivery to the international professional recruitment sector through its offices in Australia, Germany, Southeast Asia and the UK.

APSCo helps differentiate the professional recruitment market by raising standards and delivering expert support and market intelligence to members of APSCo around the world.

APSCo Global comprises APSCo Asia, APSCo Australia, APSCo Deutschland and APSCo United Kingdom as well as APSCo OutSource, the trade body for the RPO and MSP sectors.

APSCo and OutSource members range from SMEs to the largest global, listed recruiters and outsourcers. Members recruit professionals into permanent and contract roles across STEM, accountancy, legal, finance, marketing and media in addition to highly regulated sectors such as qualified social work, teaching and clinical healthcare.

Should you wish to discuss this response in further detail please contact Tania Bowers, APSCo's Global Public Policy Director – [tania.bowers@apsco.org](mailto:tania.bowers@apsco.org)

We consider the set off proposals to be positive and the result of extensive engagement through the Employment and Intermediaries Forum with APSCo UK and other members.

### **1. Do you agree with the taxes that would be included in and excluded from a set-off? If you do not agree, please explain why.**

As HMRC appreciates the tax treatment of the income from the off-payroll working engagement is complex, particularly if there is more than one employee, director or shareholder within the worker's intermediary. Our members are concerned by HMRC's intention to exclude tax and NICS paid on any salary and dividends received by any other employee, director or shareholder. They consider this may result in a residual element of double taxation.

HMRC already must make an estimate of the tax paid on dividends received by the worker where the dividends are paid out of income from the off-payroll working engagement. Could it be possible to estimate the proportion of other parties' dividends paid out of the relevant working engagement?

This issue may be resolved if Government adopts an option in the current Umbrella regulation consultation to define a Personal Service Company as a company with one worker only supplying his own services through that entity.

### **2. Are there any adverse impacts on the deemed employer, the worker or their intermediary as a result of HMRC estimating the amount of the set off that would be given? If so, please provide details of these impacts.**

The worker or their intermediary is only affected by these proposals in so far that they will no longer be able to claim a refund for the taxes paid. Given that; (i) the tax is already paid, and (ii) it is fair and proportionate that they pay some taxes on the income received from an off payroll working engagement, and have already benefited from lower taxes/NICs, then overall this is not an adverse impact.

The deemed employer may suffer the adverse impact of paying more tax than it should if HMRC adapts a policy of over erring on the side of caution when making assumptions and using best judgements to estimate the amount of tax paid by a worker and their intermediary on the off payroll working income. The criteria applied to make these assumptions and judgements need to be sensible, justifiable under tax law, transparent and easy for the deemed employer to understand when given an explanation.

**3. Would giving a set-off have any impacts on other parts of the tax system for either the deemed employer, worker or their intermediary?**

**Member /Trusted Partner comment?**

No specific comment.

**4. Do these grounds for appeal provide sufficient safeguards for deemed employers, workers and their intermediaries where they disagree with the direction to set off amounts already paid against their deemed employer's PAYE liability?**

The worker and the intermediary could delay the set off process by filing appeals without proper grounds. For example, HMRC's estimation of the amount to be set off will be complex and may be hard for the worker to understand. If an appeal ground is that the worker thinks "the amount of the tax and NICs to be set off is incorrect" then this could lead to many appeals unless the ground is tightly worded. Given that the worker and intermediary do not suffer detriment because of this change we think they should only be able to delay or stop the set off process in limited circumstances.

Members are concerned that they have no right to appeal HMRC's calculation of the set off. However, if this is within scope of an appeal under a Regulation 80 determination, then this concern may be mitigated. Clarity is needed.

**5A What information do you, as the client, routinely gather as part of your hiring practices for off-payroll workers?**

**5B Please provide your views on how easily a client would be able to obtain the above information and provide this to HMRC if requested.**

We represent outsourcing and recruitment companies in the supply chain. If a recruitment company is in the supply chain the Client is unlikely to collect directly any of the information required, although the worker's name and the Intermediary's name is usually in a contractual assignment schedule and may be on their database (though not always on outside IR35 assignments) and may have been on any Curriculum Vitae supplied.

Some, but usually not all of this required information will be collected by a recruiter for the purposes of the quarterly intermediaries' reporting and for pay and bill purposes. For

example, either the worker's date of birth or the worker's NINO would be collected, but not both.

Members consider the data in the Intermediaries' reporting to be underutilised by HMRC. If the data required in the report is expanded by HMRC in order to collate the data required for set off, and is used as the primary source, then this would be relatively easy for recruiters as they have a statutory obligation to collect the data and pass up the chain to the outsourcing partner if applicable.

If there is no statutory obligation to collect then many workers will be disinclined to supply this confidential personal data, effectively preventing HMRC from applying the set off. An outsourcing member stated that unless government legislates to mandate collection then staffing companies (second tier suppliers) may be reluctant to pass up the chain due to fears of candidate poaching – a temp to temp or temp to perm mechanism.

If HMRC still intend to retain the refund mechanism for non "set off" situations then this is an incentive for workers to refuse to supply information to recruiters, particularly long after the assignment has finished. In any event, recruiters may no longer have current contact details for the worker/intermediary, or the intermediary may no longer exist.

Data collection is fundamental to the success of the "set off" determination. To work in practice, either the client, the outsourcer or recruiter should have a statutory obligation to collect this data prior to the start of an engagement, e.g. alongside determining the SDS.

**6. Would allowing a set-off create any adverse incentives or changes in behaviour amongst clients, or other parties in the labour supply chain, when determining whether the off-payroll working rules should apply?**

Members think it should have the positive impact of reminding clients of the importance of making the correct determination and then ensuring the SDS remains valid during an engagement. This is because the set off proposal highlights the risk of reassessment and the resulting determination of unpaid tax, NICs, penalties and interest. Members consider an extensive communication plan with end hirers is essential, particularly those SME clients that don't engage via recruiters/outsourcers.

The "set off" process is sufficiently uncertain that members do not think anyone will view it as a risk reduction, although it is welcomed as fair and the right thing to do to prevent double taxation.

**7. Do you agree with how the government intends to apply this policy?**

Broadly members agree. However, we do have a concern about compliance checks opened now (after the publication of HMRC's intentions) which HMRC close before 6 April 2024.

Members could be unfairly deprived of a set off simply due to timing.

**8. Costs a business will incur familiarising itself with the legislation?**

There will be costs incurred in the finance and compliance teams, but largely we estimate these will be relatively one off as internal processes adapt to the new regime.

**9. Would asking for further information about the worker and their intermediary result in a additional ongoing costs to your business?**

For the reasons given in our answers to 5A and B members think collecting further information, long after an engagement ends, will be very problematic. For the client they will seek this information from their supply chain so ultimately it is for the client (if they are deemed employer and fee payer), outsourcer or the recruiter to collect the data.

Members consider the requirement must be statutory in order to give recruiters the ability to require workers/intermediaries to comply – simple contractual obligation is often not enough to encourage workers to disclose what they consider to be sensitive and confidential data. These problems with data collection could create significant extra work in member compliance teams, as they pursue workers for data and manage client requests. Managing and potentially defending Schedule 80 appeals will incur management time and external professional fees.

**10. Any other specific impacts on groups or businesses that we have not considered above?**

No further comment.

Members will be keen to discuss with you how an extension of intermediaries' reporting requirements could be implemented in practice. Should you want to discuss this, or any other issues raised in this response with us or our members please contact [tania.bowers@apsco.org](mailto:tania.bowers@apsco.org).