Off-payroll working rules: Simmons & Simmons response to consultation

Simmons & Simmons response to the "Off-payroll working rules from April 2020" policy paper and consultation document published on 05 March 2019 by HMRC.

Simmons & Simmons response provides general observations on the “Off-payroll working rules from April 2020” policy paper and consultation document published on 05 March 2019, focussing on two particular areas of concern in relation to the proposed changes. These relate to the responsibilities of parties within labour supply chains and status determination disagreements.

In relation to the former, we note that if HMRC is unable to collect the tax due from a party in a supply chain that has failed to fulfil its obligations, it is proposed that the liability transfers back to the first agency in the chain and ultimately back to the client if HMRC is unable to collect the tax due from that agency. Our response highlights the harshness of this result where the client has made and passed on a status determination and paid the fees to that first agency without deduction of tax relying on the fact that the fee payer is obliged to deduct any income tax and national insurance contributions due. We would not expect clients to bear the risk of non-compliance in these circumstances.

In relation to the latter, we welcome the introduction of a process for workers to raise concerns about their status determination directly with the client. However, it is clear that clients will err on the side of caution and, in cases of uncertainty, classify workers as employees, whilst workers on the other hand will err towards being classified as self-employed in cases of uncertainty. Additional guidance will be required from HMRC to bridge this gap, including the promised enhancement to the CEST tool to address the 15% of cases where the CEST tool does not currently provide a clear response. It is these scenarios where clients are likely to face the biggest issues in providing status determinations.

You can read our response in full here.

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