PRISM

Tax Newsletter 1st Quarter 2020

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Australia

Disclosure of Business tax debts

On 22 October 2019, the Government passed law allowing the Australian Taxation Office (ATO) to disclose tax debt information of businesses to registered credit reporting bureaus (CRBs).

The ATO can only disclose tax debt information under certain rules. The legislation was registered 23 December 2019 commencing 21 February 2020. The Commissioner is not obligated to disclose tax debt information, will apply administrative safeguards exceeding the legislative safeguards in the legislative instrument, before reporting tax debt information of a business.

Businesses engaged with the ATO regarding their tax debts will not have their tax debt information reported to CRBs.

披露企业信贷情况

澳大利亚政府在2019年10月22日立法通过允许澳大利亚税务局(ATO)可向已注册之信用报告机构(CRBs)披露企业之税务债务信息。

ATO只能在某些条件下披露企业之信贷记录。该立法文件于2019年12月23日发布，于2020年2月21日起开始实施。ATO税务专员没有义务披露税务债务信息，并会在披露企业之税务债务信息前采取在立法文书中立法保障之外的行政保障。

与ATO处理其税务债务的企业将不会被上报其税务债务信息给CRBs。

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Cyprus

Cyprus signs off a new Double Taxation Avoidance Agreement (DTAA) with Egypt – October 2019

On 8 October 2019 Cyprus and Egypt have concluded and signed a new Double Taxation Avoidance Agreement (DTAA), which replaces the existing tax treaty between the countries and was published in the official Gazette on 25 October 2019.

2019年10月8日，塞浦路斯和埃及签署了新的避免双重征税协定(DTAA)，以代替原有的协定。协定于2019年10月25日在官方宪报刊登。

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Italy

Highlights on the 2020 Italian Budget Law

In December 2019, Italian Parliament approved the Budget Law for 2020,published in the Official Gazette on 30 December 2019; the Law will come into force on 1 January 2020.The 2020 Budget Law introduces a new Web Tax, as well as several tax measures which will affect both individuals and companies.

This article briefly describes some of the most relevant tax measures:

1. Tax Incentives For Attracting Human Capital
2. The New Web Tax
3. Revamping of a special regime to step up Italian participations
4. Tax credit for the purchase of new assets
5. Tax credit for Research and Development (R&D)
6. New VAT rules applicable in 2020

2019年12月，意大利议会通过了《2020年预算法案》，该法案於2019年12月30日在官方宪报刊登，並于2020年1月1日开始生效。《2020年预算法》引入了新的网络税，以及将影响个人和公司的若干税收措施。

本文简要介绍几项最相关的税收措施:

1. 吸引人力资本的税收优惠
2. 新网络税
3. 意大利参股特殊制度的调整
4. 新购入资产的税收抵免
5. 研发税收抵免
6. 2020年新增值税规定

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Malaysia

2020 Economic Stimulus Package

The 2020 Economic Stimulus Package with the theme "Bolstering Confidence, Stimulating Growth & Protecting Jobs" was delivered on 27 February 2020 by our Prime Minister of Malaysia.

马来西亚首相于2020年2月27日发布了"巩固信心、刺激增长、保住工作"为主题的2020年经济振兴配套。

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Nepal

Three Tax Points For Foreigner Investors Investing in Nepal

This article is a summary of the three tax points for foreign investors investing in Nepal, including:

1. Tax rate for Non-Resident Natural Person
2. Tax implication on Foreign Permanent Establishment
3. Foreign Tax Credit

本文摘要了外国投资者在尼泊尔投资的三个税务要点，包括：

1. 非居民自然人之税率
2. 对外国常设机构的税收影响
3. 外国税收抵免

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Pakistan

Tax Laws (Second Amendment) Ordinance, 2019

On 26 December 2019, the President of Pakistan promulgated Tax Laws (Second Amendment) Ordinance 2019. The government has complied with FATF requirement for sharing of information between income tax authorities and Financial Monitoring Unit of State Bank of Pakistan. Traders have been incentivized by way of reduction in rate of minimum tax. The government also simplified the tax regime for non-resident companies in order to encourage investment in the local debt market.

巴基斯坦总统于2019年12月26日颁布了《2019年税法(第二修正案)条例》。通过这项条例，政府遵从FATF规定要求所得税当局与巴基斯坦国家银行金融监察组共享资料。同时，政府通过降低最低税率和简化非居民公司税收制度，以鼓励贸易以及吸引投资者投资本地债务市场。

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UK

Off-payroll (IR35) Responsibilities on End Clients and Agencies

The introduction of the off-payroll working rules to the private sector is considered one of the most significant changes to how both contractors and the clients/agencies that engage them interact and will have a considerable impact on UK businesses. These rules are an extension to the off-payroll working rules brought in for the public sector in April 2017 which replaced the original anti-avoidance legislation commonly known as IR35.

The new rules, coming into force from April 2020 affect medium/large UK companies and passes the responsibility of both determining the employment status of "contractors" and taxing of payments under the contract to either the company receiving the service or, where the entity paying the fee is different, the agency paying the fee.

对私营企业引入工资外收入服务规则(the off-payroll working rules)被认为是对工人(worker)与雇用他们的客户或代理机构如何相互影响且对英国商业产生重大影响的最重大变化之一，这些规则是对2017年4月为公共部门替代最初的反避税法规(通常称为IR35)而引入的工资外收入规则(the off-payroll working rules)的扩展。

将于2020年4月生效的新规则会对英国的中型/大型公司产生影响，并将工人雇佣状态以及雇佣合同下纳税支付主体确定的责任转给接受服务的公司、雇主或代理机构。

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Australia

Disclosure of Business tax debts

The purpose of allowing the ATO to report the tax debt information of a business to CRBs is to:

- encourage businesses to engage with the ATO to manage their tax debts and, where an business is unable to pay a tax debt in full by the due date, enter a sustainable payment plan that is agreed between the ATO and the business
- support more informed decision making within the business community by making large overdue tax debts more visible, and
- reduce the unfair advantage obtained by businesses that do not pay their tax on time and do not engage with the ATO in managing their tax debts.

The ATO will only disclose tax debt information of a business to a CRB if the business meets all of the following criteria:

- it has an Australian business number (ABN), and is not an excluded entity
- it has one or more tax debts, of which at least $100,000 is overdue by more than 90 days
- it is not effectively engaging with the ATO to manage its tax debt, and
- the Inspector-General of Taxation is not considering an ongoing complaint about the proposed reporting of the entity's tax debt information.

The ATO will notify a business in writing if they meet the reporting criteria and give them 28 days to engage with the ATO and take action to avoid having its tax debt information reported.

The ATO will only provide information to CRBs if they are registered with the ATO and have entered into an agreement detailing the terms of the reporting.

Consultation on how the ATO intends to administer the measure closed on 6 September 2019.

Reference

ATO Website – Disclosure of business tax debts

Cyprus

Cyprus signs off a new Double Taxation Avoidance Agreement (DTAA) with Egypt – October 2019

On 8 October 2019 Cyprus and Egypt have concluded and signed a new Double Taxation Avoidance Agreement (DTAA), which replaces the existing tax treaty between the countries and was published in the official Gazette on 25 October 2019.

The DTAA will be applicable as soon as it has been ratified by both states and any tax provisions will be effective from the 1st of January following the year in which the DTAA becomes applicable.

The treaty is based on the OECD Model Tax Convention.

Dividends

The withholding tax rate on dividends is set at 5%, as long as the recipient is a company which holds directly at least 20% of the capital of the paying company for a period of minimum 365 days including the dividend's payment day. In any other case the withholding tax rate on dividends is set at 10%.

Interest

The withholding tax rate on interest is set at 10%, as long as the recipient of the interest is the beneficial owner of the income.

Royalties

The withholding tax rate on royalties is set at 10%, as long as the recipient of the royalties is the beneficial owner of the income.

Capital gains

The general rule is that gains derived by a resident of a contracting state from the alienation of immovable property may be taxed in the seller's state of residence.

Gains derived from the alienation of shares in capital of a non-listed company which more than 50% of its value derives, any time during the 365 days before the disposal, directly or indirectly from immovable property located in the other contracting state, maybe taxed in that other state.

Gains derived from the alienation of shares, securities or rights in capital of a non-listed company resident in the other contracting state and the seller, any time during the 365 before the disposal, held directly or indirectly at least 20% of that company, maybe taxed in that other state.

Italy

Highlights on the 2020 Italian Budget Law

1. Tax incentives to attract human capital

In order to encourage human capital to Italy, the Italian Government has amended the special tax regime, in respect of foreign workers who transfer their tax residence in Italy, starting from 2020.

The new regime increases the exemption for Italian personal income tax from 50% to 70%, only 30% of income is liable to income tax. The exemption is 90% if inbound workers move their residency to one of the southern Italian regions.

The new incentives is effective for five years. It can be extended for another five years with a 50% income exemption on conditions that a residential property is purchased in Italy during the year of the transfer or the previous year, or there is a minor or dependent child.

Starting from 2020, the enhanced provisions will apply to anyone who:

- has not been tax resident in Italy for the previous two years,
- maintains an Italian residence at least for the following two years,
- works more than 183 days each tax period in Italy.

2. The New Web Tax- Digital Services Tax (DST)

With the Budget Law 2020, the new Italian web tax has been given the definite green-light to enter into force on 1 January 2020. The DST would apply at 3% rate to companies meeting contemporarily two revenue thresholds: worldwide revenue at least Euro 750 million, of which at least Euro 5.5 million from Italian-sourced qualifying digital services.

The DST shall apply to revenues derived from the provision of qualified digital services which are divided into three categories:

a) advertisement placed on a digital interface targeted at users of the interface;

b) digital platforms for users to interact and possibly facilitate the direct supply of goods and services;

c) transmission of data collected from users and generated from the use of digital interfaces.

It's important to note that the DST would be repealed or amended when, and if, the internationally agreed provisions on digital economy taxation became applicable in the future.

3. Revamping of a special regime to step up Italian participations

The Budget Law 2020 opens a new window, for resident individuals and nonresident entities, to step up the tax basis of participations in unlisted Italian companies held as of 1 January 2020.

The basis of substitute tax is calculated on the fair market value of the participation as of 1 January 2020, which needs to obtain a sworn appraisal, no later than June 30, 2020. Eligible taxpayers shall pay a 11% substitute tax on such appraised value. The substitute tax can either be paid entirely by 30 June 2020,or through three annual installments, due on June 2020, 2021 and 2022, the second and third installment are subject to an annual 3% interest charge.

4. Tax credit for the purchase of new assets

The law replaces the "super depreciation" and "hyper depreciation" incentives with a new tax credit for investments in new capital assets acquired and used in business activities, purchase from 1 January to 31 December 2020, or up to 30 June 2021 if the order is accepted by the seller on or before 31 December 2020 and the buyer has paid at least 20% of total price.

As from 1 January 2020, the tax credit is calculated as follows:

- For new industry 4.0 tangible assets (e.g. new high-tech assets), 40% tax credit for investments up to Euro 2.5 million and 20% tax credit for investments between Euro 2.5 million and 10 million.
- For new Industry 4.0 intangible assets (e.g. new software, information technology systems, platforms, etc.), the tax credit is equal to 15% of the purchase cost for investments up to Euro 700,000.
- For general capital expenditure, the tax credit amounts to 6% of the purchase cost of new assets with a maximum investment amount of Euro 2 million.

The new legislation excludes some assets for the tax credit, including real estate, vehicles and assets with an annual depreciation rate lower than 6.5%, buildings or construction, etc.

5. Tax credit for Research and Development (R&D)

The R&D tax credit has been modified and extended to apply to the expenses in certain innovation and design activities. Unlike the previous version of the tax credit which was based on the incremental expenditure compared to the average R&D expenditure incurred during 2012-2014, the extended R& D tax credit directly applies to the qualifying expenditure incurred in the relevant FY. Moreover, the minimum cost threshold (which previously set at Euro 30,000) is no longer required.

The new R&D credit is computed as follows:

- For R&D activities in fundamental research, Industrial research and experimental development, the tax credit is equal to 12% of the eligible expenses with a maximum annual amount of Euro 3 million.
- For activities related to the development of

technological innovation, the tax credit amounts to 6% of the eligible expenses, increased to 10% for development activities related to ecological transition or Industry 4.0 digital innovation, up to an annual amount of Euro 1.5 million.

- For design activities related to new products and samples, carried out by companies in specific sectors, the tax credit amounts to 6% eligible expenses.

6. New VAT rules applicable in 2020

Some changes and simplifications regarding letters of intent (LOIs) issued by habitual exporters are introduced, came into force as from 1 January 2020.

Habitual exporters are no longer required to provide their supplier or the Customs Authorities with the LOI and the Revenue Agency receipt, nor special ledger for the LOI.

Suppliers must check the reference number of LOI issued by Revenue Agency to verify the effective electronic filing still remains in force. However, suppliers no longer have to include in their annual VAT return details of the LOIs received.

The suppliers have to check the correct filing of the LOI, failure to do so will be liable to a penalty ranging from 100% to 200% instead of the fixed penalty ranging from Euro 250 to Euro 2,000.

Reference

Sole24ore newspaper

Malaysia

2020 Economic Stimulus Package

The 2020 Economic Stimulus Package with the theme "Bolstering Confidence, Stimulating Growth & Protecting Jobs" was delivered on 27 February 2020 by our Prime Minister of Malaysia.

The stimulus package valued at RM20 billion is anchored on three strategies as follows:

Strategy I: Mitigating impact of COVID-19

- To allow deferment of monthly income tax instalment payments for businesses in the tourism sector
- Companies affected by the COVID-19 to be allowed to revise their profit estimates for 2020 with respect to monthly income tax instalment payments without penalty
- To provide 15% discount in monthly electricity bills to hotels, travel agencies, airlines, shopping malls, conventions and exhibition centres
- To exempt Human Resource Department Fund (HRDF) levies for hotels and travel related companies
- To exempt 6% service tax for hotels
- Bank Negara Malaysia (BNM) will provide a Special Relief facility worth RM2 billion, particularly in the form of working capital for Small Medium Enterprises (SMEs) at an interest rate of 3.75%
- Bank Simpanan Nasional (BSN) will allocate a RM200 million in microcredit facility offering an interest rate of 4% to affected business
- All banks are required to provide financial relief in the form of payment moratorium comprising restructuring and rescheduling loans for affected businesses and individuals
- The Government calls on industry players to play their part – for hotels to offer discounts and shopping malls to reduce rentals to their tenants
- Malaysia Airport Holdings Berhad (MAHB) will provide rebates on rental for premises at the airport as well as landing and parking charges
- The Government will give a one-off payment of RM600 each to taxi drivers, tourist bus drivers, tourist guides and registered trishaw drivers
- Government staff directly involved in the containment efforts will be eligible for a special monthly critical allowance of RM400 for medical doctors and other medical personnel, as well as RM200 for immigration and related front line staff
- The government will provide double deduction on expenses incurred for approved tourism-related training
- The government will provide up to RM100 million on a matching grant basis to HRDF to fund an additional 40,000 employees from the tourism and other affected sectors
- The government will provide RM50 million to subsidise short courses in digital skills and highly skilled courses
- Personal income tax relief of up to RM1,000 on expenditure related to domestic tourism
- Malaysian will be eligible to digital vouchers for domestic tourism of up to RM100 per person for domestic flights, rails and hotel accommodations for all Malaysians
- An allocation of RM500 million is provided for the vouchers and tourism promotion

Strategy II: Catalysing rakyat (people) centric economic growth

- The minimum Employees Provident Fund (EPF) contribution by employees will be reduced by 4% from 11% to 7%, with effect from 1 April 2020 to 31 December 2020
- Agrofood facility of RM1 billion will be provided by Bank Negara Malaysia at an interest cost of 3.75% to promote food production activities to meet domestic and export demand
- RM10 million allocation to Federal Agricultural Marketing Authority (FAMA) to provide food storage facilities to help reduce food prices
- Grants of RM1,000 to 10,000 local entrepreneurs to promote sale of their products on e-commerce platforms
- Allocation of RM20 million to Malaysian Digital Economy Corporation (MDEC) for Perkhidmatan e-Dagang Setempat (PeDAS) programme to transform Pusat Internet Desa into e-commerce hubs
- The Government will allocate an additional RM2 billion for the immediate implementation of small infrastructure repair and upgrading projects nationwide especially in rural areas

Strategy III: Promoting quality investments

- Ministry of Energy, Science, Technology, Environment and Climate Change (MESTECC) will open for bids quota of 1,400MW for solar power generation which is expected to involve RM5 billion private investments and generate 25,000 jobs
- Malaysian Communications and Multimedia Commission (MCMC) will implement up to RM3 billion on works related to the National Fiberisation and Connectivity Plan (NFCP)
- GLCs will invest RM13 billion in 2020, including accelerating projects such as LED street lights, transmission lines and rooftop solar installations
- A Co-Investment fund of RM500 million to be co-invested and matched by private investors on a ratio of at least 1 to 3 which will make the total funds amount to RM2 billion for investment in early-stage and growth-stage Malaysian companies
- Waiving the listing fees by Securities Commission and Bursa Malaysia for one year, for companies seeking listing on Leading Entrepreneur Accelerator Platform (LEAP) or Access, Certainty, Efficiency (ACE) markets, as well as companies with market capitalisation of less than RM500 million seeking listing on the Main Market
- Bank Negara Malaysia will provide an SME Automation & Digitalization Facility of RM300 million at an interest cost of 3.75%
- The Government will provide accelerated capital allowances over a two-year period on expenses incurred on machinery and equipment including ICT
- The government will provide a tax deduction of up to RM300,000 on renovation and refurbishment cost
- Import duty and sales tax exemption on importation or local purchase of machinery and equipment used in port operations for 3 years commencing 1 April 2020

We hope, with the cooperation, persistent effort and solid identity, our beloved nation will become more prosperous and resilient.

Reference

Official Portal of The Ministry of Finance Malaysia www.treasury.gov.my

Nepal

Three Tax Points For Foreign Investors Investing in Nepal

1. Tax rate for Non-Resident Natural Person

- Under Schedule 1 to Section 4 of Income Tax Act 2002, tax shall be imposed at the flat rate of 25% on the taxable income in an Income Year of a Non-Resident Natural person.
- Pursuant to Section 92, payments made to non-resident person that are subject to withholding tax under Sections 87, 88, 88(a) or 89 shall be final tax. For payments that are derived from source in Nepal and on which withholding tax has not been deducted are included in taxable income of the non-resident person.

2. Tax implication on Foreign Permanent Establishment

- Under Section 68 of the act and Directive 4.7, a foreign permanent establishment is taxed as if it were a resident person. If the after-tax income is repatriated to parent company in foreign country, such amount is treated as dividend and subject to 5% withholding tax.
- Generally, tax rate for entities is 25%. However, an entity engaged in businesses mentioned in Section11 of the act enjoys exemptions &

concessions. The same tax treatment applies to foreign permanent establishment.

- Pursuant to Section 70 and Schedule 1 of the act:

  a) A non-resident person providing water transport, charter service or air transport service, is taxed on the following taxable income:

  - Transportation of passengers departing from Nepal, and
  - Transportation of mails, livestock or goods dispatched from Nepal.

  b) A non-resident person operating a cable, radio, optical fiber or earth-satellite communication business from the transmission of news or information through equipment installed in Nepal, irrespective of whether or not the news or information has originated from Nepal, is taxed on the amount received from such business.

  The tax rate is 5%, provided that, in the case of non-resident person providing telecommunication, air transport or water transport service, which does not so depart from Nepal or where the equipment is not installed in Nepal, the tax rate is 2%.

3. Foreign Tax Credit

- If foreign income is included in taxable income of a resident person, the resident person is entitled to foreign tax credit for tax paid in foreign country in respect of that foreign income. Tax credit can be claimed as follows:

  a) The foreign tax paid can be deducted as expense in calculating taxable income; or

  b) The foreign tax paid can be adjusted against tax liability in Nepal. However, no claim for foreign tax credit may be made in respect of an assessable foreign income at a rate higher than the average rate of tax of that person in Nepal. The unutilised tax credit may be carried forward to the following.

- Assessable foreign income from each country must be calculated separately.

Reference

Income Tax Act, 2002 and Income Tax Directives of Nepal

Pakistan

Tax Laws (Second Amendment) Ordinance, 2019

Income Tax Ordinance, 2001

- In the Finance Supplementary (Second) Amendment Act, 2019, green field industrial undertaking are exempt on profit and gains. However, green field industrial undertaking were not defined in Income Tax Ordinance, 2001. In the Tax Laws (Second Amendment) Ordinance 2019, definition of Green Field Industrial undertaking has been introduced.
- Capital gain on disposal of debt instrument and government securities including treasury bills and Pakistan Investment Bonds though SCRA account by non-resident company having no permanent establishment in Pakistan shall be subject to withholding tax at the rate of ten percent which the withholding tax is final tax.
- Due to increase in compliance structure of international taxes, an amendment has been made in section 216 of the Income Tax Ordinance, 2001 enabling sharing of information between income tax authorities and Financial Monitoring Unit of State Bank of Pakistan.
- Traders have been incentivized by way of reduction in rate of minimum tax at the rate of 0.5% for turnover not exceeding Rs. 100 million. These traders are excluded from definition of prescribed person for withholding under section 153 of the Income Tax Ordinance, 2001. Traders are defined as person engaged in business of buying and selling goods in same state as a retailer or wholesaler but does not include distributor.
- Procedure for exemption certificate under Section 148 read with Clause 72B of Part-IV of Second Schedule to the Income Tax Ordinance, 2001 has been simplified through amendment. The automatic process of such certificate has been introduced after expiry of prescribed time.
- The mechanism of procedure for appointment of judicial members of Appellate Tribunal Inland Revenue has been amended
- Tax payable on capital gain on sale of immovable property has been reduced by seventy five percent if holding period of the property is more than three years by ex-service men and serving personnel of armed forced on originally allotted property by Federal or Provincial Government.

Sales Tax Act, 1990

- There was no specific penalty clause for tier 1 retailers in case of non-integration of POS with FBR, now the penalty of Rs. 1 Million has been imposed for non-integration. If default continue for six months after imposition of penalty, the unit shall be sealed and embargo shall be placed on its sales.

- A penalty has been prescribed for integrated unit conducts any act to avoid monitoring, tracking, reporting or recording of transactions.
- The importer (commercial) of edible oil has been excluded from exemption from sales tax under the Sixth Schedule to the Sales Tax Act, 1990, now the supply by importer of edible oil to un-registered person shall be subject to 3% Further Tax.
- The supply by manufacturer to un-registered person has been restricted to the extent of Rs. 10 Million in a month and Rs. 100 Million in financial year.
- Plant and machinery imported by manufacturer for in house installation has been made out of purview of value addition tax under twelfth schedule to the Sales Tax Act, 1990
- Supplies of goods from tax exempt areas has been made to certain restrictions and conditions.

Customs Act, 1969

- The penalty has been imposed to smuggle foreign currency amount exceeding US$ 10,000.

UK

Off-payroll (IR35) Responsibilities on End Clients and Agencies

IR35 is an anti-avoidance legislation imposed by the UK tax authorities over the past 20 years where a worker creates a false self-employed status by working through an intermediary, i.e. personal service company (PSC). A PSC is a company where there is only one employee or officeholder, which supplies that individual's services to a business.

HM Revenue & Customs (HMRC) claim that operating under these arrangements offers contractors, and those that engage their services, with several distinct advantages – not only the potential tax savings, i.e. Corporation Tax at 19% after deduction of allowable expenses and flexibility of withdrawing money as dividends with tax rates of 7.5% - 38.1%, instead of being taxed as an employee with IT at rates of 20% - 45%.

Under the original IR35 rules, the worker's PSC was responsible for determining the employment status of the worker and, where contracts fell within IR35, the PSC was responsible for calculating deemed employment income and deducting both PAYE and NIC.

HM Revenue & Customs (HMRC), UK's tax authority, brought in additional measures to tighten the regime and catch workers who were not applying the correct treatment of the IR35 rules. The additional measures, known as the off-payroll working rules, transfers the responsibility for determining the employment status to the entity in receipt of the services of those contractors providing services through a PSC.

However, HMRC have introduced the new measures in stages, with the first stage in the public sector, already in operation. The first stage was introduced in April 2017 where workers provide services to a public body/ authority.

From April 2020, contracts in the private sector are caught but only where the end-client is a medium or large company. This is likely to include both companies with UK resident status or companies with a place of business in the UK.

It is intended that those who are genuinely self-employed should not be affected by the off-payroll working rules and for contracts where the end client is a small company, the original IR35 rules will remain in place.

This of course has a major impact on UK corporate bodies and the UK business environment. Many businesses had previously been encouraging workers to use PSCs as they provide increased flexibility for both parties and reduce payroll costs to them.

The new regime increases costs to the end client due to the additional cost of Employers NI (13.8% of deemed salary) and payroll administration costs. These costs are expected to be passed to contractors by reducing their day rate/contract fee.

Due to the risks imposed on them, many businesses such as banks including Barclays, RBS, Lloyds and HSBC are announcing that they are taking a blanket approach and no longer engaging with any contractors to avoid dealing with the off-payroll working rules and, instead, they will only have employment contracts.

By doing so, many contractors are expected to receive a salary lower than the fees previously received by, not only the cost of Employers NI, but the cost of the employer's pension contributions, holiday pay etc. With the reduced payment for service, inflexibility of employment contracts and higher tax rates at 20% - 45%, this is creating frustration within industries who require the flexibility of contractors.

As mentioned before, the new rules also affect the fee-payer, which includes recruitment and freelance agencies, some of which are following the actions of the larger corporate banks. Where they continue to engage with contractors through a PSC, the fee-payer must deduct PAYE and NICs as payroll on the net amount of the PSC's invoice for services provided.

The government has, in recent months, been lobbied to delay and revise the introduction of rules to the private sector and, on 7 January this year, they delivered a pre-election promise to launch a review of the changes. Many are expecting the review to conclude by mid-late February which this does not give much time for the smaller agencies to put in place procedural changes.

Determining Employment Status

Businesses and agencies will be able to use the HMRC's Check Employment Status for Tax (CEST) service, which is available to help businesses determine whether the off-payroll working rules apply.

It is essential to not base decisions solely on the contents of the written contract but to also look at the characteristic of the relationship between the worker and the end-client. We recommend that end clients should take a cautious approach when applying the rules and take time to identify each contract on an individual basis to prevent legal action being taken against them.

Contractors who feel they should not be deemed an off-payroll worker can appeal a decision with the end client, but the ultimate decision whether to accept or dismiss an appeal lies with the end client.

Businesses must not wait until April 2020 to respond to this legislation, as HMRC has said it begin robustly reviewing compliance as soon as the new rules become law.

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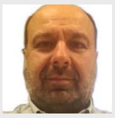
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