HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Lord Bridges of Headley
Chair, House of Lords Economics Affairs Finance Bill Sub-Committee
House of Lords
London
SW1A 0PW

9 March 2021

Dear George,

Following my letter of 10 February 2021, I wanted to write to you and the Committee regarding the technical changes to the off-payroll working rules that are being introduced in the upcoming Finance Bill.

In the Budget, as previously announced, the Government provided further details regarding the technical change to the definition of an intermediary. The Government also announced two further minor related technical changes, which were requested by stakeholders to ensure the rules operate effectively.

Technical changes to the off-payroll working legislation

The reform of the off-payroll working rules was introduced in the Finance Act 2020 and will come into effect on 6 April 2021. As you will be aware, however, following Royal Assent, the Government became aware of an unintended consequence in the legislation, which broadened the scope of the policy so as potentially to include some workers, such as umbrella company workers, who would already have been taxed like employees.

Officials at HMRC have worked closely with stakeholders in order to understand the issue quickly and design the best solution to address it. This solution has been tested with a wide range of stakeholders, who have agreed that it addresses the unintended consequence.

The solution replaces the previous provision and introduces a new condition in circumstances where an intermediary is a company. The company will meet the new condition where the worker has a less than material interest in the company, but the payment the worker receives is not wholly treated as employment income.

This change ensures that engagements that were not intended to be in scope of the rules are removed from its scope, whilst preventing the specific avoidance opportunity that might arise if workers chose to dilute their shareholdings. This change will not have any additional impacts on businesses and individuals already intended to be in scope of the rules and will not affect their preparations for the 6 April 2021 implementation.

Targeted Anti-Avoidance Rule (TAAR)

The above change addresses the unintended consequence and prevents a potential avoidance opportunity, but some stakeholders have raised further concerns that dishonest actors in the labour market may explore other ways to circumvent the conditions for an intermediary.

Having listened to these concerns, the Government announced at Budget that it is also introducing a Targeted Anti-Avoidance Rule (TAAR) as an additional deterrent against such attempts. This will apply to any arrangements where the main purposes, or one of the main purposes, is to secure a tax advantage by circumventing the conditions for an intermediary.

Where the TAAR is triggered, the tax liability will rest with the party in the labour supply chain which has entered into the avoidance arrangement, rather than falling to the client or deemed employer. Where more than one party in the chain has entered the avoidance, the liability will rest with the highest party in the chain from which HMRC are able to recover the liability. The liability may rest with the worker if there are no parties above them in the chain with whom the liability may rest.

The TAAR is designed so that no-one can enter an avoidance arrangement without the risk of facing the subsequent liability. However, the Government has also ensured that the appropriate taxpayer safeguards are in place, through a right of appeal for taxpayers against an assessment made under the TAAR. Furthermore, HMRC will ensure consistency in the rule’s application is reflected through their governance processes.

Minor related technical changes

Two minor related technical changes were also identified in response to feedback from stakeholders. These would clearly improve the operation of the rules, and the Government announced at Budget that it would take the opportunity to make these changes in the Finance Bill 2021.

These changes are related to the introduction of the new condition where an intermediary is a company, set out above, and concern the provision of information to confirm whether the conditions for an intermediary apply, and the consequences of providing fraudulent information.

The first change relates to provisions that currently require the individual worker to confirm whether their intermediary meets the conditions set out in the legislation. If the individual fails to do this – for example, in more complex structures where they may not have access to this information – the client organisation must treat the intermediary as if one of the conditions is met and consider whether the off-payroll working rules apply.

The Government will change the requirement to allow the intermediary in the labour supply chain to provide this information to the client organisation, where the worker has not done so. This will make it easier for client organisations to ascertain whether or not they need to consider the rules.

Linked to this change, the Government is amending the provisions which set out the consequences of providing fraudulent information. This section currently states that the tax liability will rest with the individual worker if they or someone connected to them, provides fraudulent information.

This will be extended to put the liability onto any UK-based party in the labour supply chain which provides fraudulent information, not just the worker. This amendment ensures that, should someone in the labour supply chain provide fraudulent information that leads to the engagement being treated as outside of the rules, the liability rests with the party who provided the fraudulent documentation. This protects the client organisation or deemed employer from being liable where they have acted in good faith but relied on fraudulent information.

These changes have been welcomed by stakeholders, who agree that they will improve the operation of the rules and ensure the changes being made to address the unintended consequence of the definition of an intermediary are as effective as possible. These changes will not create any new burdens on businesses already preparing for the rules.

These changes will take effect from 6 April 2021, alongside the overall reform of the off-payroll working rules. This is given effect by a Provisional Collection of Taxes Act (PCTA) resolution. Equivalent changes will also be made to the National Insurance contributions (NICs) Regulations, which will also have effect from 6 April 2021.

The Government seeks to ensure that this reform is implemented as smoothly as possible. Having been made aware of the issue in the legislation, it has worked closely with stakeholders to design an effective solution which restores the original policy intent, as well as listening to further stakeholder feedback. The Government has welcomed the Committee's engagement and interest on this issue, which has helped to improve the delivery of the reform.

As ever,

RT HON JESSE NORMAN MP