

Amendment 10 to Clause 7 and Schedule 1: Workers' services provided to public sector through intermediaries

Summary

1. This amendment amends Paragraph 9 of Finance (No. 2) Bill 2017 Schedule 1 Part 1 to insert new subsections 3 to 6 into the new Chapter 10 paragraph 61L of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) 'Meaning of 'public authority'. Schedule 1 is amended to correct a technical error in the definition of "public authority" which unintentionally brings some private sector businesses within the scope of the off-payroll working in the public sector measure because they provide services on behalf of the National Health Service (NHS).
2. Prior to this amendment, private sector retail businesses including high street pharmacies and opticians would have inadvertently been within the scope of the off-payroll working in the public sector measure. As a result, such businesses would have been required to consider whether the new rules applied to all contractors working for them through an intermediary. This was not the intention of this policy.
3. The changes apply retrospectively and have effect from 6 April 2017.

Details of the amendment

4. Paragraph 9 of Finance (No. 2) Bill Schedule 1, Part 1 sets out new subsections 61K to 61X to Chapter 10 Part 2 of ITEPA 2003. New section 61L (Meaning of "Public Authority") of Chapter 10, part 2 of ITEPA 2003 defines what a "public authority" is for the purposes of determining when the off payroll working in the public sector measure applies. It provides that:
 - (1) "public authority" means:
 - (a) a public authority as defined by the Freedom of Information Act (FOIA) 2000,
 - (b) a Scottish public authority as defined by the Freedom of Information (Scotland) Act (FOISA) 2002,
 - (c) the Corporate Officer of the House of Commons,
 - (d) the Corporate Officer of the House of Lords,
 - (e) the National Assembly for Wales Commission, or
 - (f) the Northern Ireland Assembly Commission.
 - (2) An authority within paragraph 1(a) or (b) is a public authority for the purposes of these Regulations in relation to all its activities even if provisions

of the Act mentioned in that paragraph do not apply to all information held by the authority.

5. This amendment amends Paragraph 9 of Schedule 1 Part 1 to insert new subsections (3) to (6) into the Chapter 10 new section 61L of ITEPA 2003. The definition of “public authority” in the FOIA 2000 and the FOISA 2002 extend to the provision of pharmaceutical services and ophthalmic services for the NHS. As retail pharmacists and opticians provide NHS services the definitions would embrace them. New section 61L is amended to replace the definition of “public authority” to take these retail businesses out of the scope of these FOIA 2000 and FOISA 2002 definitions. The amendments reflect new provisions to be inserted into ITEPA 2003. The effect of this amendment is that such retail businesses will no longer be required to consider whether to apply the off-payroll working in the public sector rules to all contractors working for them through an intermediary. This is consistent with the policy intention to apply this regime to the public sector.
6. The amendment retains the need for NHS hospitals to consider whether to apply the off-payroll working in the public sector rules to all contractors working for them through an intermediary. This includes contractors, who are providing ophthalmic and pharmaceutical services, (again, where they are working through an intermediary). The definition of “public authority” continues to include general practitioner surgeries and dental practices or surgeries providing NHS medical and dental services. This means these public authorities are required to consider whether the off-payroll working in the public sector rules should be applied to contractors working for them through an intermediary.

Background note

7. New Chapter 10 in Part 2 of ITEPA 2003 has been introduced to move certain responsibilities under the intermediaries rules in Chapter 8 of Part 2 ITEPA 2003 from an individual worker’s intermediary to the public authority, and the party paying that intermediary. The measure moves responsibility for determining whether the off-payroll working rules apply to the public authority that the individual is working for where the individual is paid on or after 6 April 2017. They also make the public authority, agency or other third party that pays the individual’s company responsible for operating PAYE on those payments.
8. This amendment amends Schedule 1 to correct a technical error in the definition of “public authority” which had the effect of unintentionally bringing some private sector retail businesses within the scope of the definition of “public authority” because they provide services on behalf of the NHS.
9. The amendment ensures that the legislation will apply as intended and will limit the definition of “public authority” to exclude private sector retail businesses such as high street pharmacies and opticians, who provide services on behalf of the NHS. Prior to this amendment some private sector retail businesses would have been required to consider whether they need to apply the off-payroll working in the public

sector rules to any contractor working for them through an intermediary. This is beyond the policy intent.

10. This change does not represent a change in policy. The change will take effect retrospectively on 6 April 2017.