Sackers

Key April dates and issues for your diary

Alert | 31 March 2021

Introduction

Whilst we have been living through an unprecedented year, as usual the start of April heralds a number of changes for pensions.

Key dates

- **1 April 2021:** 90 day requirement for reporting late DC contributions to TPR becomes mandatory again
- **5 April 2021:** Removal of transitional DB contracting-out employer modification power
- **6 April 2021:** Finance Bill 2021 changes

  Important changes to off-payroll working rules come into force

  Automatic enrolment earnings thresholds remain static, except for the upper limit of the qualifying earnings band which increases to £50,270

  GMP Increases Order 2021 comes into force, specifying 0.5% as the amount by which the GMP element of an individual's occupational pension entitlement must be increased for the tax year 2021/22

Off-payroll working – rule changes

Background

Off-payroll working rules, known as IR35, were introduced in 2000 with the aim of ensuring that someone working like an employee, but through an intermediary or company, pays similar taxes to other employees. They apply where an individual (a "worker") provides their services through an intermediary (typically a personal service company, or "PSC") to another person or entity ("the engaging entity or entities"). Currently, where a private sector business engages a contractor through an intermediary, the intermediary itself is liable to decide whether IR35 applies and to pay any employment taxes.

Reforms implemented from April 2017 in the public sector are now being extended to the private sector.

Initially due to come into force from 6 April 2020, in March 2020 HMT confirmed that the reforms would be delayed by 12 months "as part of the government's COVID-19 economic response package". As a result, the changes are now coming into force on **6 April 2021**.

In essence, the new rules make medium and large organisations engaging workers in the private sector responsible for deciding whether a worker providing services through an intermediary would, if engaged directly, have been regarded as an employee for income tax and NIC purposes. If so, the engaging entity is then responsible for accounting for and paying income tax and NICs under PAYE to HMRC on behalf of the worker.

The small entity exception

The new rules will not apply to small engaging entities. A trustee company will be regarded as small where two or more of the following requirements are met:

- annual turnover – not exceeding £10.2 million
- balance sheet total assets – not more than £5.1 million
- average number of employees – not more than 50.

When determining whether the small company exemption applies in a particular tax year, the above criteria will be assessed across the previous two consecutive financial years.

For unincorporated engaging entities (such as individual trustee boards), the annual turnover test alone will determine whether the small entity exemption is met.

Impact on pension schemes

Trustee boards engaging parties who provide their services through an intermediary (such as, possibly, independent and individual trustees, investment and communications advisers) should ensure they have considered the new off-payroll rules and assessed their position. Just as importantly, that assessment should be kept under review in the event of future changes in trustee board structure.

Where the small entity exemption applies to trustees as the engaging entity, we recommend that the trustees notify the relevant intermediaries that this is the case. Whilst not strictly required, the purpose here is to put the intermediary on notice that they need to continue applying the off-payroll rules. Trustees may wish to go further by future-proofing contracts in the event that the small entity exemption ceases to apply (see below).

Whilst the small entity exemption will apply to many trustee boards, it may not apply where a trustee company is part of a larger group structure (eg a subsidiary of a sponsoring employer). This is because the test must be considered across the group as a whole, so applying to aggregate turnover and asset value. Trustees in this position (who are engaging workers through PSCs or other intermediaries) need to ensure that they are on the group's payroll / tax team's radar when it comes to the new rules.

Notifications and updating contracts

Where the new off-payroll requirements might apply, trustees will need to determine whether or not a particular engagement is caught. Once an assessment has been made, both the worker and the intermediary must be notified (known as a "Status Determination Statement"). Where appropriate, contracts should also be updated as soon as possible, including to enable the trustees to make relevant payroll deductions.

DC late contributions

Early in the pandemic, TPR extended the maximum period DC trustees and providers had to report late contribution payments from 90 to 150 days, in order to give employers more time before enforcement action was taken.

From 1 January 2021, DC schemes were asked to resume reporting late contribution payments no later than 90 days after their due date, albeit on a voluntary basis at first "to ensure schemes have sufficient time to adjust systems and processes". This reporting requirement becomes mandatory again on 1 April 2021.

Finance Bill 2021

Lifetime allowance

We have been used to seeing the standard LTA rise by reference to CPI in recent tax years. However, this year's Budget confirmed that the LTA will now remain at its current level of £1,073,100 until April 2026. HMRC has now updated various pension scheme administration forms and guidance to reflect this.

Collective money purchase pension schemes

The Finance Bill will also legislate to ensure that collective money purchase pension schemes (also referred to as collective defined contribution or "CDC" schemes), which are being introduced under the Pension Schemes Act 2021, can operate as registered pension schemes for tax purposes.

Next steps

Trustees need to be alive to the changes in the off-payroll rules and reporting late DC contributions. If you have any questions on any of the above, **please speak to your usual Sackers contact**.

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