



OFF-PAYROLL WORKING REFORMS FROM 6 APRIL 2021

7TH DECEMBER 2020

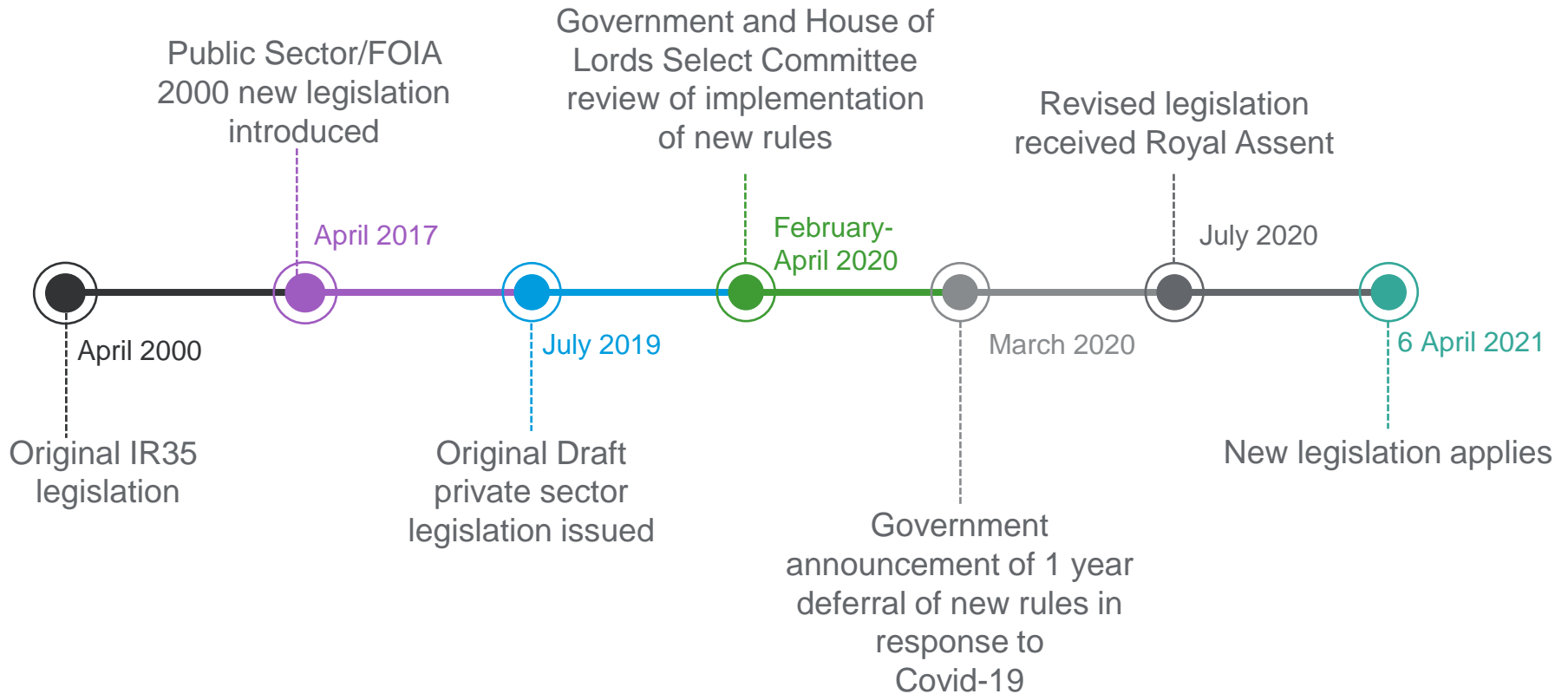
What is IR35 & off payroll working?

IR35 is legislation aimed at identifying individuals who work 'off payroll' through intermediaries such as Personal Service Companies (PSC) who are in fact **disguised employees**.

Separate obligations require businesses to determine employment status where self employed (not PSC) workers are engaged but these obligations are not part of these IR35 rules.



Off-payroll working – a brief history



Brief overview

- Step 1:** Determine whether off-payroll working rules might apply – **outsourced or labour etc?**
- Step 2:** Obtain details on **profile of the contractor entity** – PSC/LLP etc usually documented for 5%/60% rules
- Step 3:** Undertake a **Status check and issue Status Determination Statement**
- Step 4:** Make sure **tax/NIC** deducted where necessary –via payroll
- Step 5:** Process for **appeals***

Where engaging with an agency for the provision of an intermediary undertake due diligence on the agency (or any in the chain) because of the transfer of debt provisions

*Where the organisation does not reply to the written request from an agency or other third party as to whether the off-payroll rules apply within 45 days, they become responsible for the PAYE/NIC obligations as if it were a fee-payer



HM Revenue
& Customs

Off-payroll working reform

HMRC – Charities Finance Group (CFG)

7 December 2020

Off-Payroll Working Rules

The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same tax and National Insurance contributions as employees.

- The off-payroll working rules can apply if a worker provides their services through their own limited company or another type of intermediary to a client.
- An intermediary will usually be the worker's own personal service company, but could also be any of the following:
 - a partnership
 - a personal service company
 - an individual

Rules from April 2021

From 6 April 2021, all public sector and medium/large-sized organisations will have to consider whether the rules apply.

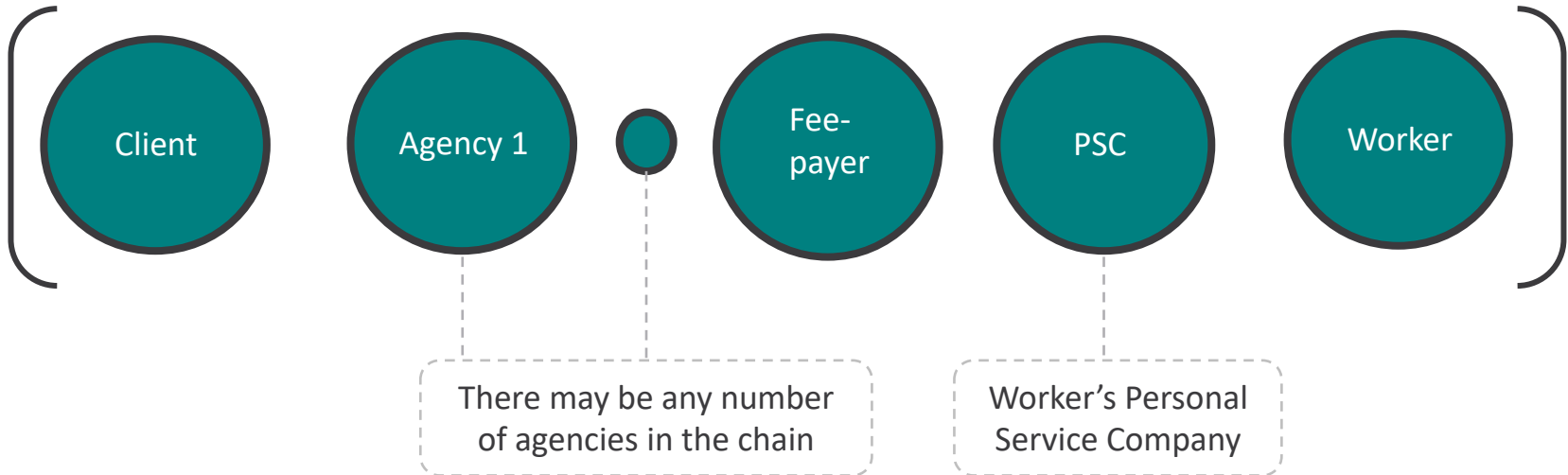
The rules will apply to all public sector clients regardless of size as well as private sector companies that meet 2 or more of the following conditions:

- you have an annual turnover of more than £10.2 million
- you have a balance sheet total of more than £5.1 million
- you have more than 50 employees

Duties of the labour supply chain

Parties in the off-payroll labour supply chain

The client, agency or fee-pay-payer may be the deemed employer depending on who the qualifying person is. The deemed employer is the party responsible for operating PAYE (if the off-payroll rules apply)



Status Determination Statement (SDS)

- From 6 April 2021, the client will be responsible for determining whether the off-payroll working rules apply to an engagement.
- The client should then communicate that decision in the form of a Status Determination Statement (SDS).
- For an SDS to be valid, the client must take reasonable care and must include the client's:
 - status conclusion
 - reasons for that conclusion

Communicating an SDS

The client must communicate the SDS:

- directly to the worker
- to any third party the client contracts with (e.g. agency)

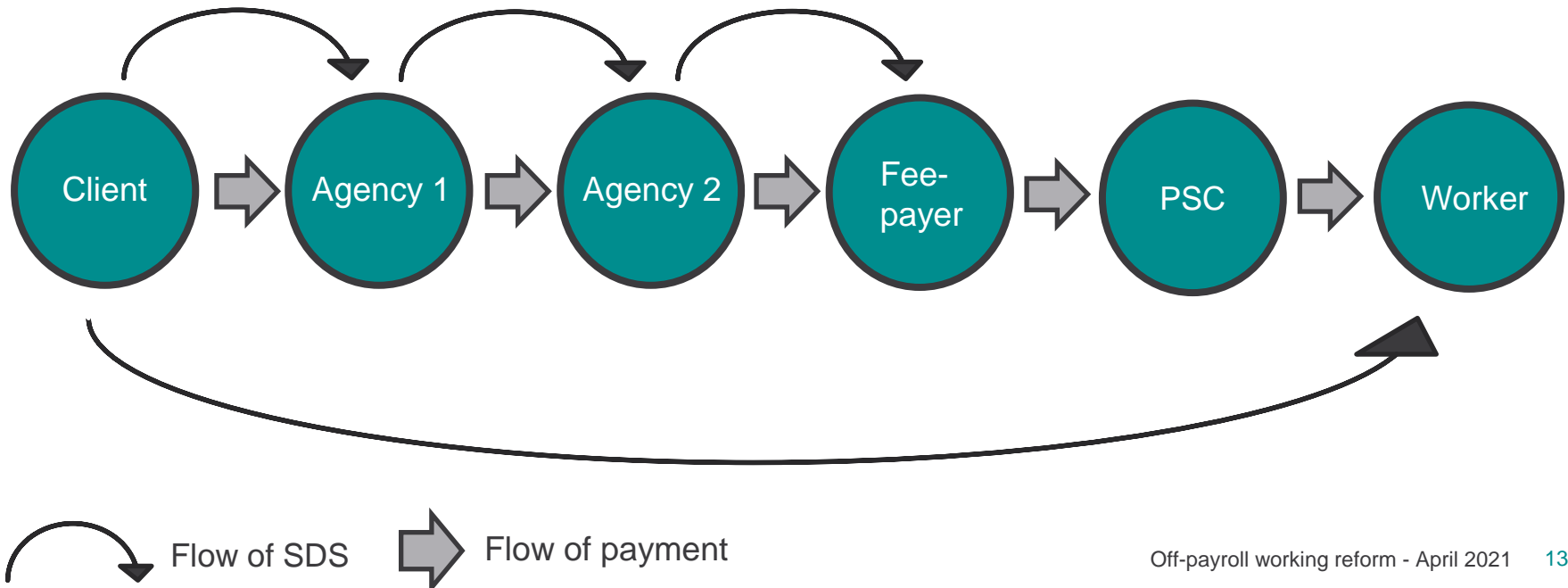
Once a client has issued an SDS to both the worker and the person they contract with (if there is a third party) and reasonable care has been taken when coming to its conclusion then the client has satisfied its duties under the rules.

Client's duty to confirm size

- If a worker or the person a client contracts with is uncertain about the size of its client, it can formally request confirmation from the client.
- Knowing the size of the client will provide the certainty workers and other parties in the contractual chain need to understand whether Chapter 10, Part 2 ITEPA 2003 may apply.
- The client has 45 days from the date of receiving the request to confirm its size.
- If the client does not respond the requestor can apply to the courts for an injunction

Labour Supply Chain: Information Flow

- The client is required to pass on the SDS to agency 1 and the worker
- The SDS should then be cascaded until it reaches the fee-payer (if it's a qualifying person)

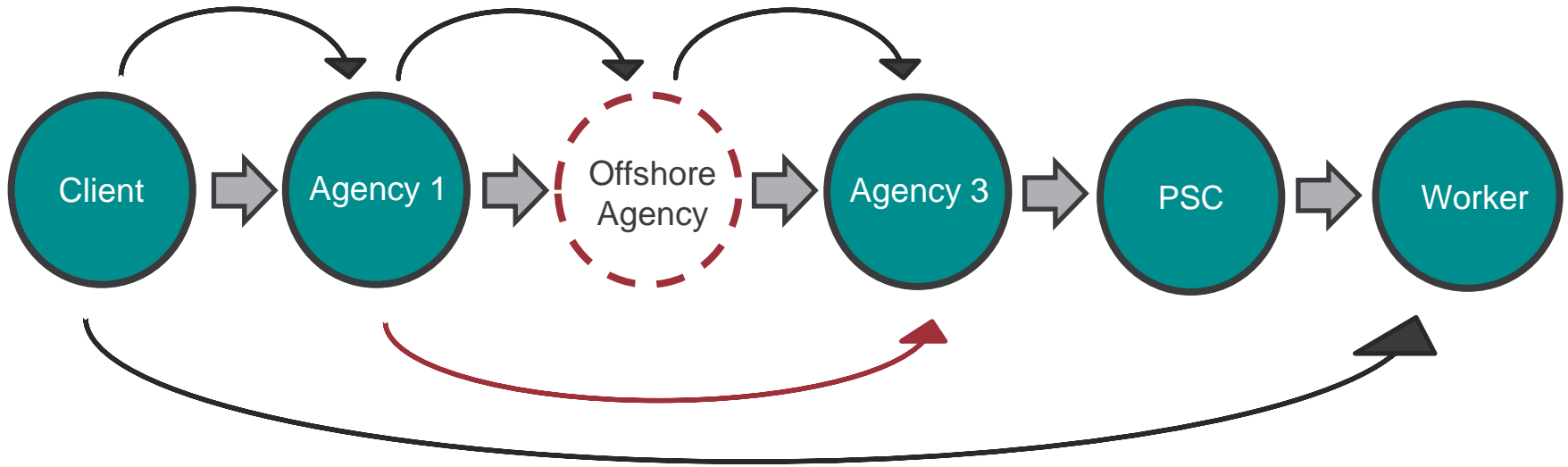


Failure to pass on an SDS

- Responsibility for tax and NICs will stay with the party that has received the SDS until they pass it to the next qualifying person in the chain.
- Once the client has passed the SDS to the worker and any third party they contract with, they will no longer hold the responsibility for the deduction of tax, NICs (if reasonable care is taken).
- Each recipient of the SDS will be responsible for forwarding on that SDS to any third party they contract with for the same worker's services, until the SDS reaches the final qualifying person in the contractual chain.

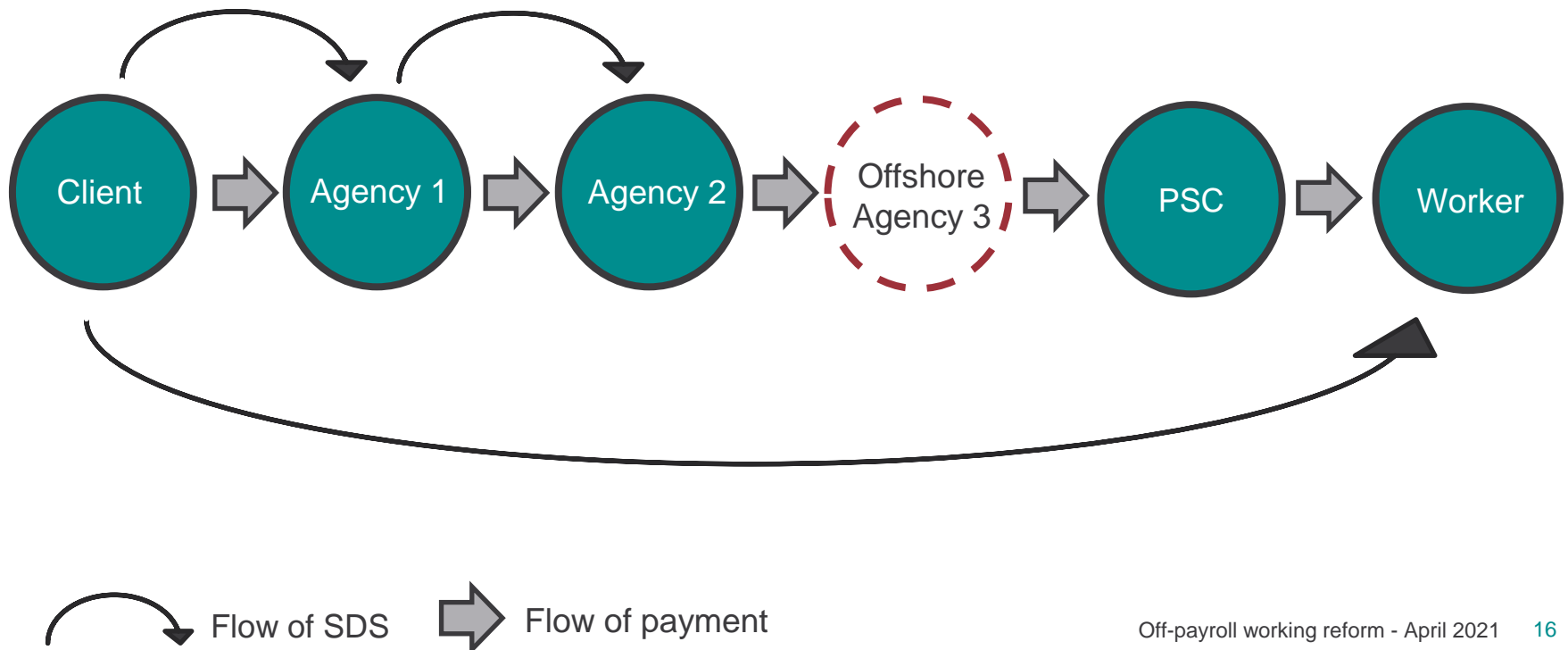
Offshore agencies (SDS)

- The offshore agency is in the middle of the supply chain so fee-payer responsibilities lie with agency 3.
- Responsibility for tax and NICs rests with agency 1 until agency 3 receives the client's SDS.



Offshore agencies (SDS)

- Offshore agency 3 is the last agency before the worker's intermediary.
- Fee-payer responsibilities lie with the first UK entity above the offshore agency, in this case agency 2.



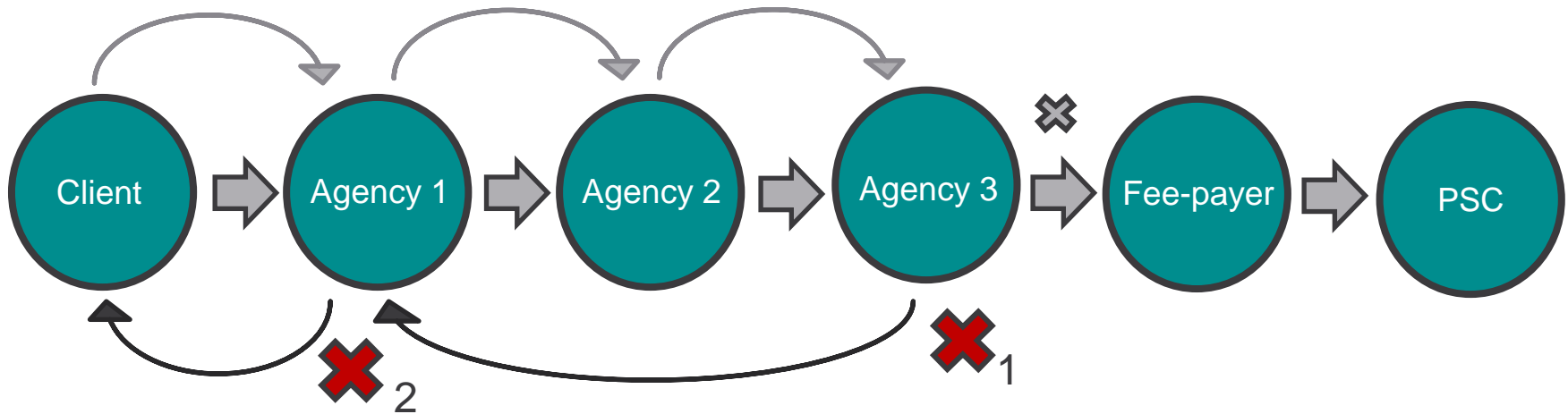
Recovery of debt provisions

- In certain situations HMRC can recover debt from either agency 1 or the client.
- HMRC will not seek to recover from agency 1 or the client where the failure to account for tax and NICs by the person who should initially have paid it (the deemed employer) is as a result of a genuine business failure on the part of that person


Recovery of debt provisions

1. The SDS is passed down the chain starting from the client

2. Agency 3 has failed to pass on the client's SDS and so responsibility for tax and NICs rests with agency 3.



1. If HMRC is unable to collect tax and NICs due from the agency 1, HMRC will seek to recover the debt from the client

 Movement of liability after failure



Failure to collect debt from agency 3



Failure to collect debt from agency 1

Taking reasonable care

- The client must take reasonable care ‘in coming’ to its status conclusion.
- Reasonable care is not statutorily defined. Case law has described it as taking steps expected of a prudent and reasonable person.
- Reasonable care applies to the client – not just the person making the status decision.
- If the client can show reasonable care was taken when making the off-payroll determinations then responsibility for PAYE rests with the deemed employer – even if the determination is wrong.
- Reasonable care does not mean the client does not need to respond to disagreements under the client led disagreement process.

Residency

- Where a worker should be subject to UK tax and NICs (based on existing domicile and residency rules), then UK domestic legislation applies to the engagement.
- This means the engagement could be subject to Chapter 10 (tax) / Part 2 (NICs) rules.
- A client does not need to consider whether Chapter 10 / Part 2 rules apply where there is no liability to tax and NICs in the UK.

Check Employment Status for Tax (CEST) tool

- HMRC's [Check Employment Status for Tax \(CEST\)](#) tool can be used to support the client's conclusion when they are deciding a worker's employment status for tax.
- HMRC will stand by CEST's results provided accurate and correct information is used.
- CEST outputs do meet the conditions to be a valid SDS.
- An enhanced version of CEST was released alongside accompanying guidance on 25 November 2019.
- Using CEST or other third party tools is not mandated.

Disagreement process

- As part of the reform clients need to have a status disagreement process in place to deal with disputes of Status Determination Statements (SDS) by workers and deemed employers.

The client should:

- Consider the worker's or deemed employers representation
- Respond within 45 calendar days of representations being received
- Inform the worker and/or the deemed employer of the outcome
- Issue a new SDS if the original conclusion is found to be wrong

Failure to respond will result in the client being liable for tax and NICs, if due.

Contracted-out services

- Where there is uncertainty as to who the true client is, consideration should be given to the nature of the relevant contracts.
- Labelling a contract as a ‘contracted out service’ or a ‘statement of work’ will not prevent the off-payroll working rules from applying – the reality of the arrangements should be considered.

Relevant factors:

- The nature of the businesses.
- The nature of the service provider’s contract.
- The relationship between the worker, the service provider and their customer.

Operation of PAYE

Deemed employers should:

- issue a starter checklist which will determine the worker's tax code
- set the RTI flag when running payroll to indicate an off-payroll engagement
- apply the apprenticeship levy to their payroll and make any payments necessary

Deemed employers can also:

- give deemed employees payslips, P45s and P60s
- add deemed employees to existing or new payroll

Additional detail

- Employment Allowance cannot be used against payments to deemed employees and the secondary NICs relating to off-payroll workers doesn't apply towards the Employment Allowance limit.
- Deemed employers should not deduct student loans

Statutory payment entitlements

- The entitlement for statutory payments does not arise with the deemed employer
- Any statutory entitlements arise through the worker's intermediary
- Payments must be made through the worker's intermediary for entitlement to arise
- Entitlements claimed through the worker's intermediary should be based on gross payments

Off-payroll guidance available for clients

- [Guidance overview](#) (landing page)
- [April 2021 changes to off-payroll working for clients](#)
- [Deemed employer responsibilities](#)
- [CEST tool](#)
- [CEST tool guidance](#)
- [Detailed off-payroll guidance](#)

Common themes and areas of difficulty

01

Impact of Covid-19



02

Outsourced service
v
Personal service



03

Debt transfer provisions

04

“Alternative” market offerings



05

Overseas considerations



06

Status determination disputes

Key practical considerations before 6 April 2021

End-users should identify whether they are small. This can be complex.

Determine the number of current workers personally providing services through their own intermediaries (whether directly or via an agency). Will this change as a result of Covid-19?

Consider how status determinations will be made (ie HMRC's CEST tool, another appropriate method, or a combination of both) and who should make them within the organisation. Consider an appropriate status disagreement process.

Assess the likely cost increases due to the employer's NIC and Apprenticeship Levy charges arising, and potential increases in workers rates, where current and new workers would be deemed to be employees.

Prepare to safeguard the organisation from risk by understanding the labour supply chain where such workers are sourced through an agency. Consider whether compliance can be enforced in the supply chain.

Design new processes and controls which will help to ensure compliance with the new rules (this could include procurement, payroll, HR, finance, IT and data management processes).

Train employees who will be responsible for operating new processes and controls to demonstrate 'reasonable care'.

Communicate changes to the off-payroll workers to support them in understanding the rules and the implications.

Thank you
for your time
and attention

Any questions?

rsmuk.com

The UK group of companies and LLPs trading as RSM is a member of the RSM network. RSM is the trading name used by the members of the RSM network. Each member of the RSM network is an independent accounting and consulting firm each of which practises in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction. The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ. The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

RSM Corporate Finance LLP, RSM Restructuring Advisory LLP, RSM Risk Assurance Services LLP, RSM Tax and Advisory Services LLP, RSM UK Audit LLP, RSM UK Consulting LLP, RSM Employer Services Limited, RSM Northern Ireland (UK) Limited and RSM UK Tax and Accounting Limited are not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services because we are members of the Institute of Chartered Accountants in England and Wales. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide. RSM Legal LLP is authorised and regulated by the Solicitors Regulation Authority, reference number 626317, to undertake reserved and non-reserved legal activities. It is not authorised under the Financial Services and Markets Act 2000 but is able in certain circumstances to offer a limited range of investment services because it is authorised and regulated by the Solicitors Regulation Authority and may provide investment services if they are an incidental part of the professional services that it has been engaged to provide. Baker Tilly Creditor Services LLP is authorised and regulated by the Financial Conduct Authority for credit-related regulated activities. RSM & Co (UK) Limited is authorised and regulated by the Financial Conduct Authority to conduct a range of investment business activities. Whilst every effort has been made to ensure accuracy, information contained in this communication may not be comprehensive and recipients should not act upon it without seeking professional advice.

© 2020 RSM UK Group LLP, all rights reserved

