

12th February 2019
Our ref: NIC-262737-T5D9R

Dear Mr. Chaplin,

Re: Information Request – Freedom of Information Act (FOIA) 2000

Thank you for your email dated 15th January 2019 requesting the following information:

“The Off-payroll legislation was introduced in Chapter 10 of the Income Tax (Earnings and Pensions) Act 2003, with the new legislation going live from April 6th 2017. This new legislation overrode, in the public sector, the existing Intermediaries Legislation (Chapter 8, ITEPA).

The new legislation is here:

<https://www.legislation.gov.uk/ukpga/2017/10/schedule/1/part/2>

Around July 2018 HMRC sent your body a letter asking for information related to “Checking compliance with the rules from April 2017”

For easy identification, a copy of the letter is as follows:

-- Letter start --

*Off Payroll Reform in the Public Sector
Section 61M Chapter 10 ITEPA 22003 and Regulation 13 Social Security (Miscellaneous Amendments No.) Regulations 2017*

Following the introduction of chapter 10 ITEPA 2003 and certain amendments to chapter 8 ITEPA 2003 (“IR35”), new rules apply in relation to off-payroll working in the public sector from 6 April 2017. Where individuals work and are paid through their own intermediary, public authorities as defined in the legislation) are now responsible for deciding whether the rules apply. Where a person is assessed as being with the new rules, the public authority agencies and third parties paying the fee for the services of the worker must operate tax, NICs and operate the Apprenticeship Levy.

I would like to check your compliance with the new legislation, including any systems you have introduced to help you decide whether the offpayroll rules should apply when engaging workers via their own intermediary (either directly or via an agency or other labour provider). Such an intermediary will often be a ‘personal service company’, but as the legislation also applies where a worker is engaged via a partnership or another person, I will use the terms ‘PSC or other intermediary’ and ‘PSC etc’ in this letter.

I have listed the information we need below and would be grateful for your response by 31 August 2018. If the amount of information I have requested will make this difficult, please contact me to discuss how this can be managed.

Checking compliance with the rules from April 2017

1. Please describe the steps you took prior to April 2017:
 - i. to review the off-payroll engagement of PSCs or other intermediaries, to decide whether the off-payroll rules would apply
 - ii. please include an explanation of any different or additional steps taken in relation to PSCs etc that you engaged via an agency or other labour provider.
2. If different from 1 above, please describe the systems / processes currently in place to decide whether the off-payroll rules apply to PSCs etc, whether you engage them directly or via an agency or other labour provider. Please provide a copy of any internal guidance / operating procedures for your staff, and comment on:
 - i. who is responsible for carrying out the checks and approving decisions
 - ii. whether the Check Employment Status for Tax tool (CEST) is used to inform decisions as to whether the rules apply, and
 - iii. how you ensure compliance where the PSC is engaged via an agency or other labour provider.
3. For the tax year 2017/2018, if you directly engaged with and paid any worker's own PSC or other intermediary, please tell us:
 - i. the total number of such PSCs etc that you engaged directly
 - ii. the number of such PSCs etc that you decided were within the scope of the legislation
 - iii. if different from (ii), the number of such PSCs etc that have been subject to deduction of tax and NIC and included in an RTI submission
 - iv. the number of such PSCs etc that you decided were outside the scope of the legislation
 - v. the names, addresses and a brief description of the worker role / nature of services provided by the PSCs etc within (iv) above.
4. For the tax year 2017/18, if you were invoiced by any agency or other labour provider for services via a worker's own PSC or other intermediary, please provide the name of each such agency or other labour provider and, or each of them, please tell us:
 - i. the total number of such PSCs etc supplied by that agency / labour provider
 - ii. the number of such PSCs etc that you decided were within the scope of the legislation
 - iii. whether you told the agency / labour provider that the rules applied for every PSC etc within (ii) above and if not, please explain why not)
 - iv. the number of such PSCs etc, that you decided were outside the scope of the legislation
 - v. the name, addresses and a brief description of the worker role / nature of services provided by the PSCs etc within iv) above.
5. Please identify any workers / PSCs etc that you decided were within the off-payroll rules, which have subsequently been engaged / paid via umbrella companies. Do you have any policy in place that encourages the use of umbrella companies for those found to be within the rules?
6. For those not working through umbrella companies, have any workers that previously worked through their own PSC etc subsequently entered into employment contracts with your group?
7. The offpayroll rules do not apply where a public authority has fully contracted out services to a third party e.g. an outsourcing company operating under a contract where the workers do not personally provide their services to the public authority. If you believe this applies to you, please provide an explanation for the affected contract(s).

More information about the check

I enclose factsheet CC/FS1c 'General information about compliance checks into certain large and complex businesses'. Please take time to read this, it gives you more information about this type of check. I also enclose factsheet CC/FS22 'Sending us electronic records'.

If you have any questions, please contact me using the details shown at the top of this letter.

-- Letter end --

Please can you provide:

1. *Confirmation as to whether you received the letter*
2. *Confirmation as to whether you responded to the letter to HMRC.*
3. *Confirmation as to whether you provided ANY or all of the information to HMRC.*
4. *A copy of your response to that letter with the following direction: Instead of the exact answers for 3(v) and 4(v) (which are likely to be confidential) please instead tell us the number of items on those lists.*

If the FOI time limit of 3.5 hours is such that not all of these records can be obtained in the time limit of 3.5 hours, then please provide as much as possible until the time limit is reached."

We have considered your request and in accordance with S.1 (1) of the Freedom of Information Act 2000 (FOIA) I can confirm that we do hold some of the information that you have requested.

1. NHS Digital has no record of having received the letter referred to from HMRC.
2. Following the reply to question 1, NHS Digital did not receive the letter and thus, has not responded to such.
3. NHS Digital has provided details of its contractors in response to an IR35 investigation by HMRC rather than in response to the letter you refer to.
4. NHS Digital does not hold this information.

In line with the Information Commissioner's directive on the disclosure of information under the Freedom of Information Act 2000 your request will form part of our disclosure log. Therefore, a version of our response which will protect your anonymity will be posted on the NHS Digital website.

I trust you are satisfied with our response to your request for information. However, if you are not satisfied, you may request a review from a suitably qualified member of staff not involved in the initial query, via the enquiries@nhsdigital.nhs.uk email address or by post at the above postal address.

Your request to NHS Digital will now be closed on our internal CRM (customer relationship management) system.

Yours sincerely,

J. Dzakpata
Information Assurance Advisor

Further information about your right to complain under the Freedom of Information Act is available from the Information Commissioner's Office, Wilmslow, Cheshire, and on The Information Commissioner's website www.ico.org.uk.

NHS Digital values customer feedback and would appreciate a moment of your time to respond to our Freedom of Information (FOI) Survey to let us know about your experience. Please access the survey through this link [here](#)