Off-Payroll rules: Beware the disguised remuneration operators

The April 2021 introduction of the Off-Payroll legislation to the private sector will see many hirers become responsible for determining the IR35 status of their contractors. As a result, many contractors face being deemed ‘inside IR35’ and taxed accordingly, often resulting in diminished take-home pay.

Faced with this prospect, some contractors have been approached by payroll companies offering an engagement model promising higher take-home pay. These schemes operate by paying a small portion of an individual’s earnings via PAYE and disguising the remaining larger part of the income as something else, often in the form of a loan.

Though they may sound tempting, contractors are warned that these schemes are illegal and anybody signing up to a disguised remuneration scheme is putting themselves at significant personal financial risk.

Disguised remuneration schemes are difficult to spot

The providers of disguised remuneration schemes mask themselves very well. In a recent IR35 Shield survey, 74% of contractors claimed they were unable to distinguish between a compliant umbrella company and a tax avoidance scheme.

Meanwhile, 60% of respondents said they regularly receive marketing material from companies offering take-home pay of circa 85%. While this figure helps underline the prevalence of tax avoidance schemes, it still doesn’t tell the full story, as many scheme providers will promise more realistic take-home pay rates in a bid to attract more cautious contractors.

These are worrying statistics that strongly suggest that HMRC should be working more proactively to target these schemes. However, despite holding the information needed to accurately pinpoint and shut down these schemes, the taxman is yet to take any significant action.

How to identify a disguised remuneration scheme

If a contractor is receiving significantly higher post-tax earnings from one provider than the general returns being offered by the market, it should be obvious that they have signed up to a disguised remuneration scheme.

However, it can be far more difficult for contractors to detect what is going on when the returns provided by scheme operators don’t differ significantly from the typical market rate.

Regardless of their earnings, contractors need to exercise caution. To help them do so, Crawford Temple, CEO and founder of Professional Passport, the largest independent assessor of payment intermediary compliance, outlines five steps to keep contractors safe:

Step 1: Contact HMRC for a personal tax account

The first step is straightforward. Sign up for a personal tax account with HMRC. This is a simple online process which, once complete, means contractors can check that the earnings reported on their payslips are the same as those reported to HMRC, as the information is regularly updated following Real Time Information (RTI) submissions.

Step 2: Check payslip information

Contractors are also advised to monitor their payslips, which will detail the income that the umbrella has received from the agency, specifically:

> - The number of units worked (either hours or days depending on the rate)
> - The rate paid for each of these units
> - The total received

This should align with the timesheet that has been authorised and which the contractor is aware of. So, for example, if a contractor has worked five days and the umbrella receives £250 per day as the agreed rate, then the total received should be £1,250.

Step 3: Assess the umbrella company deductions

Having ensured that the umbrella company has received the correct amount from the agency, contractors are well placed to assess any company deductions made by the umbrella. If anything seems strange or too high, have it checked. If there is a line for a loan or advance deduction, alarm bells should begin to ring.

Step 4: Check the bottom line

The next step is to check the bottom line. The total received, less the company deductions, should flow down to be the total gross taxable income on the payslip element of the report.

Contractors should have their own tax and National Insurance Contributions (NICs) deducted, and possibly any pension contributions being made. Subject to these deductions, the payslip will detail the take-home pay that should be paid into the assigned bank account.

If the amount received into the contractor's account is different - usually more than that shown on the payslip - it is likely that the contractor is signed up to a disguised remuneration scheme.

Step 5: Request a paper payslip

Finally, contractors are encouraged to request a paper payslip. Professional Passport is witnessing increasing instances where companies are sending workers text notifications outlining what they will be paid as an alternative to providing payslips. Presumably undertaken in a bid to avoid creating a paper trail, this practice alone should arouse suspicion.

A text message is not a payslip, neither does it replace the requirement for a payslip. It is illegal and could be concealing the income being reported. A personal tax account will highlight any discrepancies.

If the text messages refer to loans, advances or other terms not generally associated with employee payments, and the amount shown on the payslip is different to the amount received, it is likely that a contractor is in a disguised remuneration scheme.

How to take action against a suspected scheme

If a contractor thinks they are signed up to a scheme:

> - Make an initial enquiry through Professional Passport's Report a Concern form providing as much background information as possible
> - Check out HMRC's Spotlight documents - the relevant documents can be found in Professional Passport's Hot Topics section
> - HMRC's current campaign, Tax avoidance: Don't get caught out, details how to report bad practice

Ignorance is no defence

Disguised remuneration schemes have been well documented and publicised and HMRC is likely to use all its powers to penalise those individuals found to be engaged in this manner. Once caught, offenders will end up paying more than if they had paid the correct tax in the first place.

Currently, many schemes charge higher fees on the basis that the worker is still taking home more money. However, when HMRC catches up with these schemes, the providers are often nowhere to be found, leaving those who signed up facing a substantial tax bill all by themselves.

The message is clear. If you suspect something is not right: challenge it, get out of it, report it.

Published: 12 March 2021