
Small Company Exemption

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On 27 February 2020, HMRC issued new guidance on dealing with the small company exemption. It has put in place measures so the PSC or agency can find out what size the client is and whether Chapter 10 or Chapter 8 applies. This also applies to 'wholly overseas' clients.

There is a 'Small Business Confirmation Request' form at the end of this briefing which you can use to send to clients.

Qualifying as a small company

The reforms apply only to medium and large sized companies in the private sector who are the 'client'. This does not apply to the size of the agency. Although there is no definition of client in the legislation, it is thought to mean the person who is in receipt of the labour from the services, that is not a contracted-out service. So, if the client qualifies as 'small' then the reforms will not apply, instead the existing rules in Chapter 8, will apply. It will then be for the Personal Service Company to continue to assess their own status.

Companies Act definition of "qualifying as small"

The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements:

- | | | |
|---|---------------------|-----------------------------|
| 1 | Annual Turnover | Not more than £10.2 million |
| 2 | Balance sheet total | Not more than £5.1 million |
| 3 | Number of employees | Not more than 50 |

If the company is in a group of companies and the company is small, the parent company would also have to be small for them to qualify as small. It is important also, when considering the size the company, to look at any group companies, including joint ventures and connected persons.

Wholly overseas client

Wholly overseas clients are excluded from the off payroll working rules. In this scenario the engagement would be not be within the scope of Chapter 10. The PSC must consider whether Chapter 8, Part 2, ITEPA 2003 applies.

A client is based wholly outside the UK if it does not have a UK connection in the form of being UK resident or having a permanent establishment. Neither does the client need to consider the group rules if the client has no UK connection.

HMRC Guidance – issued on 27 February 2020

DRAFT off-payroll working legislation: Chapter 10, ITEPA 2003 (from 6 April 2020): basic principles: duty for client to confirm its size upon request

This is a draft and may be subject to change

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 request should make it clear to the client that you are making the request for it to confirm its size under the off-payroll working rules in Chapters 8 and 10. The client's response should confirm its size, and be made in accordance with the size criteria within the off-payroll working rules.

The client has 45 days from the date of receiving the request to confirm its size.

If the client confirms they are medium or large and so the engagement is within the scope of Chapter 10:

- The worker will know they do not have to operate Chapter 8, Part 2, ITEPA 2003.
- If the client confirms they are small and so the engagement is not within scope of Chapter 10:
- The worker will know they must consider Chapter 8, Part 2, ITEPA 2003;
- If the client does not respond confirming its size within 45 days of receipt, the requestor can apply to the courts for an order requiring the client to provide the information which will come with consequences if not adhered to.

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SMALL BUSINESS CONFIRMATION REQUEST
Chapter 8 & 10 ITEPA 2003 (IR35)
Duty for the client to confirm its size upon request

Formal request for confirmation

This is a formal request to establish what size of company you are in accordance with the off payroll working rules in Chapter 8 & Chapter 10, Part 2, ITEPA 2003. Also, whether you are a 'wholly overseas' company [see notes on page 2].

You have 45 days to respond to this request from the date that the request is received. For business efficacy it is highly recommended that you return the form immediately or at least within 7 working days.

Date of Request:	
Client name:	
Company:	Small (delete as appropriate)
	Medium / Large (delete as appropriate)
	Wholly overseas (delete as appropriate)

I certify that the information I have provided is correct and that I will inform the relevant parties in the event that the company moves from small to medium or medium back to small.

Signed for and on behalf of:
[Insert Company Name]

Signature: _____ Date: _____

Print Name: _____

Notes

Qualifying as a small company

The off-payroll reforms apply only to medium and large sized companies in the private sector who are the 'client'. This does not apply to the size of the agency. If the client qualifies as 'small' then the reforms in Chapter 10 will not apply and instead the rules in Chapter 8, will remain. It will then be for the Personal Service Company (PSC) to continue to assess their status.

Companies Act definition of "qualifying as small"

As a general guide, the qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements:

1. Annual Turnover Not more than £10.2 million
2. Balance sheet total Not more than £5.1 million
3. Number of employees Not more than 50

Note: It is important also, when considering the size of the company, to look at any group companies, including joint ventures and connected persons. If in doubt, follow HMRC guidance or ask you accountant or auditor.

Wholly overseas clients

Wholly overseas clients are excluded from the off-payroll working rules. In this scenario the engagement would be not be within the scope of Chapter 10. The PSC must consider whether Chapter 8, Part 2, ITEPA 2003 applies.

A client is based wholly outside the UK if it does not have a UK connection in the form of being UK resident or having a permanent establishment.