

Off-payroll working – small company

(Lecture B1182 – 7.15 minutes)

This session considers the criteria that affect the categorisation of a company as small or non-small for the purpose of whether it needs to consider the new 'off-payroll working in the private sector' from 6 April 2020.

The definition of a small company in draft s60A and s60C (ITEPA 2003) as set out in the Draft Finance Bill 2020 makes reference to the definitions used in the Companies Act 2006 (s382 and s383 CA 2006 to be precise).

Two out of three criteria need to be met.

- Turnover not exceeding £10.2 million;
- Balance sheet total (assets) not exceeding £5.1 million;
- Not more than 50 employees.

A company retains any previous small status unless it breaches these limits for two consecutive years. Having become non-small, it can only become small again if it meets the limits again for two consecutive years.

Draft s60C ITEPA 2003 indicates that a company that is a subsidiary cannot qualify as small if the undertaking that is the parent undertaking does not qualify as small (for which s383 CA 2006 requires it to consider if it is small by looking at its group as a whole).

Example

A parent and subsidiary company in the UK when taken together are just below the audit threshold and therefore do not breach the limits at Section 382 of Companies Act 2006.

However, above the parent company in the UK there is an LLC resident in the US with many very large group companies.

Are the UK parent and its subsidiary small companies for the purpose of whether it has to operate the off-payroll working rules?

Analysis

A subsidiary can be a small company in its own right for its own accounts preparation and filing purposes without reference to the wider group.

But for this specific tax purpose, s60C forces us to look at the wider group.

As set out above, draft s60C ITEPA 2003 indicates that a company that is a subsidiary cannot qualify as small if the undertaking that is the parent undertaking does not qualify as small.

S.383 CA 2006 requires the parent undertaking (here the US LLC) to consider if it is small by looking at its group as a whole.

This makes sense, otherwise the group could just create multiple service procurement subsidiaries ensuring each is small and avoid the new rules.

So the UK parent and its subsidiary in the above example must apply the new rules on off-payroll working in the private sector from 6 April 2020.

Contributed by Malcolm Greenbaum