



## **Criminal Finances Act 2017**

From 30th September, the Criminal Finances Act 2017 introduces a new offence of 'failure to prevent the facilitation of tax evasion'. A business will be guilty if there has been tax evasion (by anyone) and this has been facilitated by a person (corporate or individual) that is associated with them. If found guilty, the business will receive a criminal conviction and an unlimited fine.

Association is very widely drawn and an associated person can be any of the following:

- An employee of the business
- An agent of the business
- Anyone performing services for the business

Agencies will therefore be at risk when either their employees or their umbrella companies are facilitating payment arrangements that depart from full operation of PAYE and National Insurance, even if current tax laws do not place any liability for unpaid PAYE/NI on them.

The only defence is that a business has put in place reasonable prevention measures or can show it was unrealistic for it to have been able to put such measures in place.

To illustrate the risk, consider the following scenarios:

### **Scenario 1 :: Gross payment made by umbrella company to public sector worker's PSC**

Certain umbrella companies have put in place arrangements to pay public sector worker's PSCs gross on the basis of an IR35 status self-declaration. This is particularly prevalent with NHS workers, despite the NHS stating that its operating practices mean that all its workers are inside IR35.

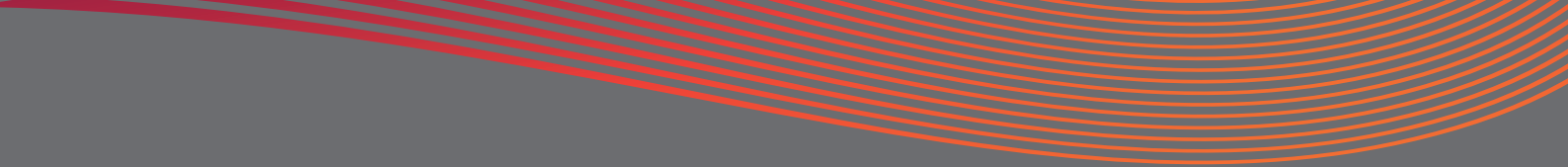
Currently, agencies are told they face no risk due to the insurance and indemnities in place. Ignoring for a moment that these are highly unlikely to offer the protection that is being claimed, the Criminal Finances Act puts the agency directly in the firing line.

All parties know that the contractor is inside IR35, as this has been confirmed by the NHS. It is the end client whose view is paramount under the legislation and self-declaration is disregarded in any assessment of the position. The umbrella company is therefore operating an arrangement that means HMRC is not paid the PAYE and NI it is due under the 'deemed payment' rules. As this is done knowingly, it is highly likely to be considered as tax evasion. The agency has been complicit in this arrangement and is therefore guilty of failing to prevent the facilitation of tax evasion. The agency therefore faces a criminal conviction and an unlimited fine.

### **Scenario 2 :: Gross payment by agency to PSC for assignment inside IR35**

For private sector work, agencies are generally happy to pay gross into contractors' PSCs on the basis that any IR35 risk sits with the contractor rather than with the agency.

Although there are some contractors who will make the correct IR35 deemed payment adjustments for these assignments, there are many who do not. These contractors are guilty of tax evasion.



The agency is therefore now at risk of failing to prevent the facilitation of tax evasion - as the agency and its employees have been facilitating this gross payment arrangement - unless it has taken reasonable measures.

Such measures would likely include confirming the working arrangements and IR35 status with the end client and compiling evidence that the correct deemed payment adjustments were being made by contractors working on 'inside IR35' assignments.

Failure to do so will put the agency at risk of a criminal conviction and unlimited fine. Agencies will therefore want to consider insisting that contractors in this position go through a reputable umbrella company operating full PAYE and NI, which will eliminate this risk.

At Generate Financial Services, we pride ourselves on offering a 100% comprehensive and compliant service, ensuring that our service offerings are in line with all government legislation at all times.

For more information on how Generate can help  
email: [info@generate-fs.co.uk](mailto:info@generate-fs.co.uk) or call us on 0207 231 0349

