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# Off-payroll working reform

HMRC – REC

22 March 2021

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- Discussion

# What you should get from today's webinar

- Which rules will need to be considered from April
- How the rules intend to operate for different parties in the chain
- How clients will need to consider a worker's status
- How you can prepare for April

# Off-payroll background and key information

# Off-Payroll Working Rules

The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same tax and National Insurance contributions as employees.

- The off-payroll working rules can apply if a worker provides their services through their own limited company or another type of intermediary to a client.
- An intermediary will usually be the worker's own personal service company, but could also be any of the following:
  - a partnership
  - a personal service company
  - an individual

# Changes from 6 April 2021

- All public authorities and medium and large-sized clients will be responsible for deciding the employment status of workers providing services through their own intermediary
- Small clients do not have to consider the off-payroll rules from April 2021 – existing rules will continue to apply
- The rules apply to all public sector clients and private sector companies that meet 2 or more of the following conditions:
  - you have an annual turnover of more than £10.2 million
  - you have a balance sheet total of more than £5.1 million
  - you have more than 50 employees

# Status Determination Statement (SDS)

- From 6 April 2021, the client will be responsible for determining whether the off-payroll working rules apply to an engagement.
- The client should then communicate that decision in the form of a Status Determination Statement (SDS).
- For an SDS to be valid, the client must take reasonable care and must include the client's:
  - status conclusion
  - reasons for that conclusion

# Communicating an SDS

## **The client must communicate the SDS:**

- directly to the worker
- to any third party the client contracts with (e.g. agency)

Once a client has issued an SDS to both the worker and the person they contract with (if there is a third party) and reasonable care has been taken when coming to its conclusion then the client has satisfied its duties under the rules.



# Failure to pass on an SDS

- Responsibility for tax and NICs will stay with the party that has received the SDS until they pass it to the next qualifying person in the chain.
- Once the client has passed the SDS to the worker and any third party they contract with, they will no longer hold the responsibility for the deduction of tax, NICs (if reasonable care is taken).
- Each recipient of the SDS will be responsible for forwarding on that SDS to any third party they contract with for the same worker's services, until the SDS reaches the final qualifying person in the contractual chain.

# Outside SDS

- Off-payroll legislation doesn't formally oblige the client to share an outside determination
- However, there is an incentive for the client to pass the SDS to the worker and any third party because it protects them from future tax liabilities if their determination is wrong.
- Issuing an outside SDS also allows the worker to manage their tax affairs.

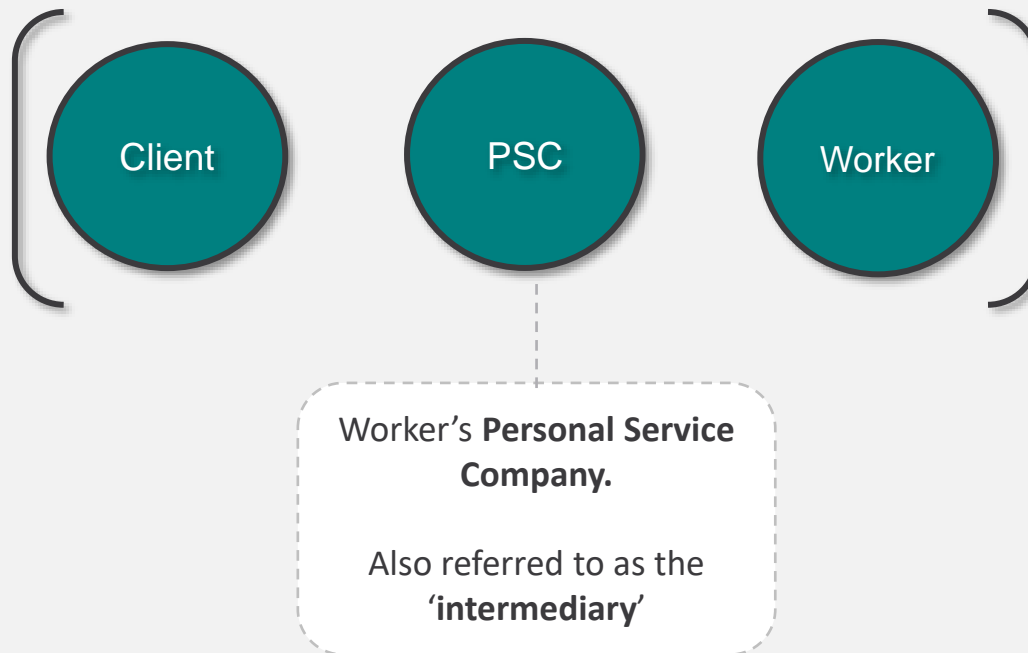
# Outsourcing SDS responsibilities

If the client subcontracts:

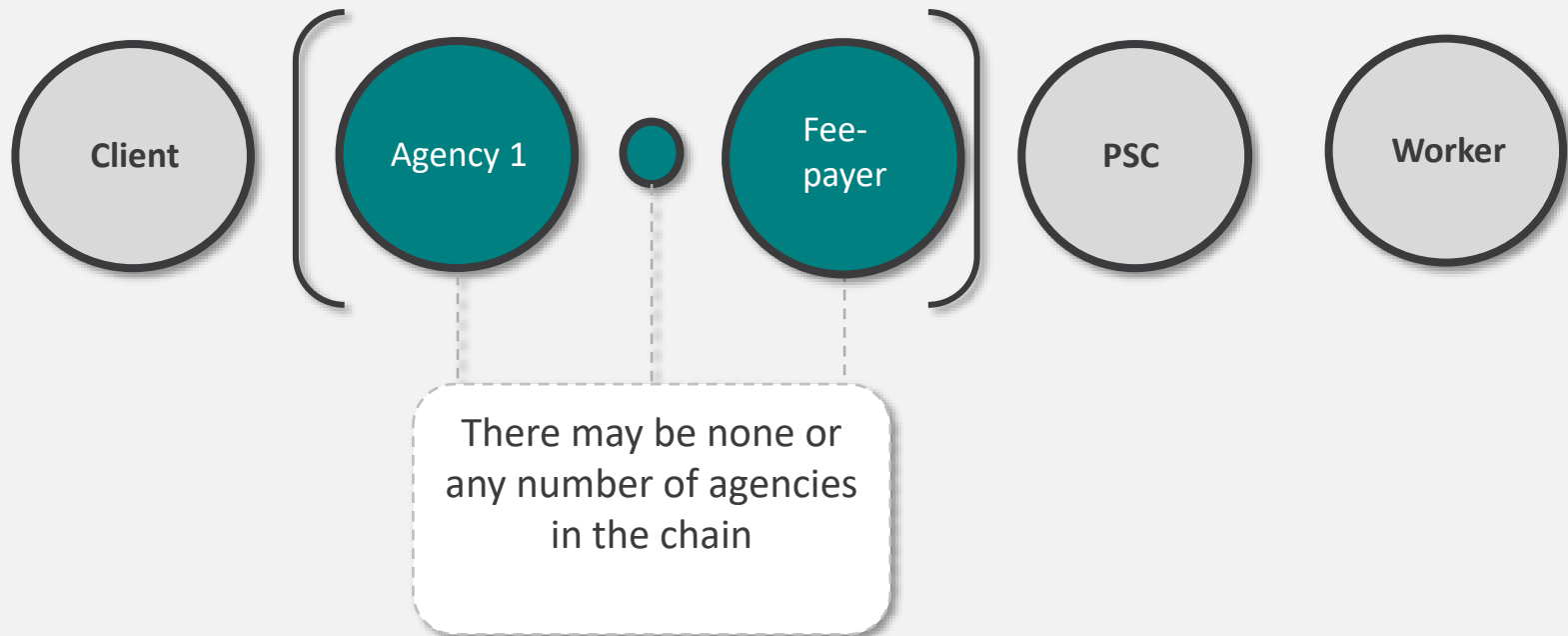
- determining the worker's status,
- or the production of the SDS

it will still remain responsible for ensuring the accuracy of the determination and ensuring that the SDS is passed to the relevant parties.

# Main parties in a labour supply chain

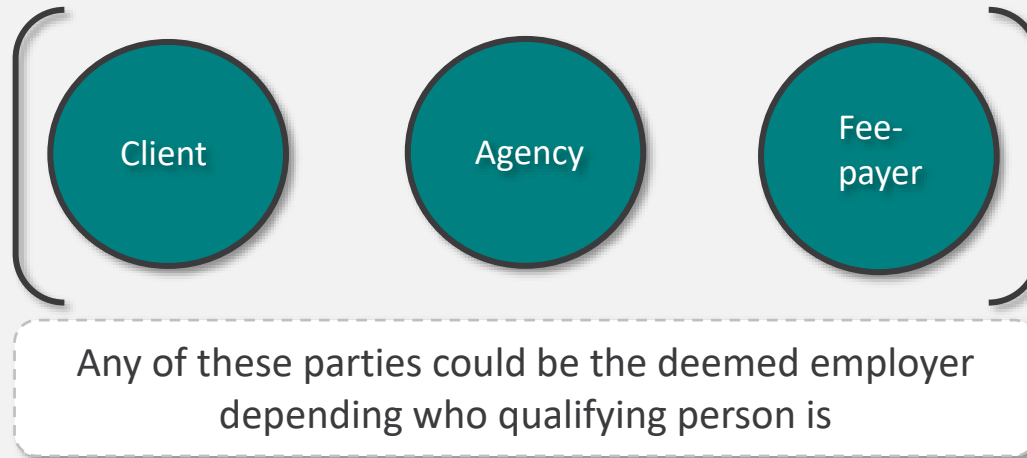


# Parties in the off-payroll labour supply chain



# Deemed employer

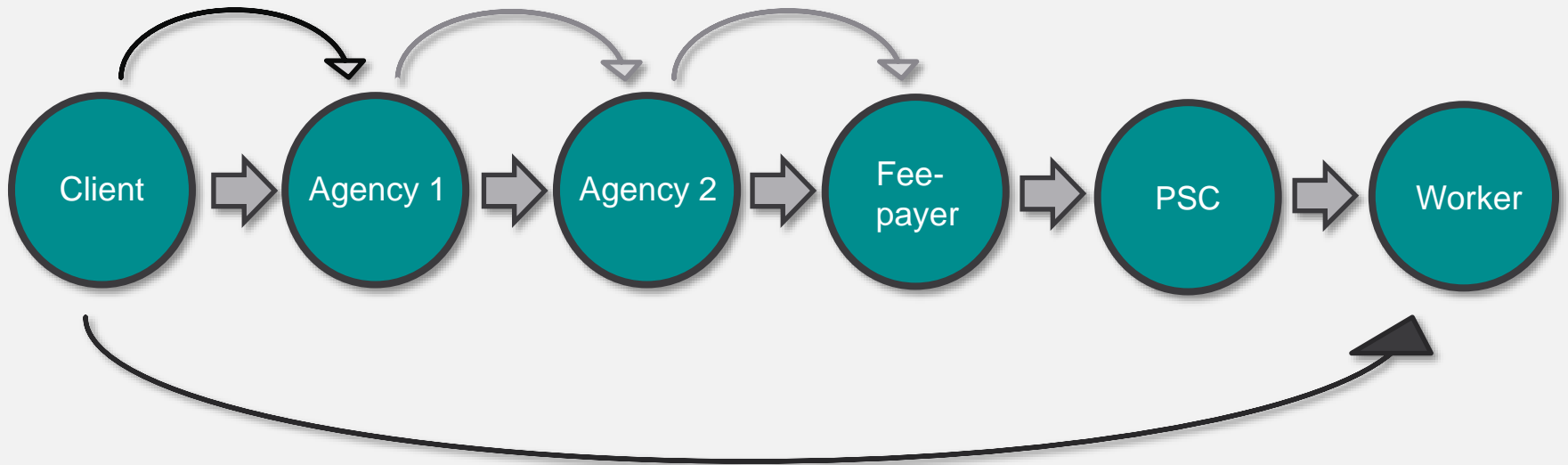
- The deemed employer is the party responsible for the deduction of tax and NICs (if the off-payroll working rules apply).
- The deemed employer is often (but not always) the fee-payer



# How information flows down the labour supply chain

# Passing the SDS to relevant parties

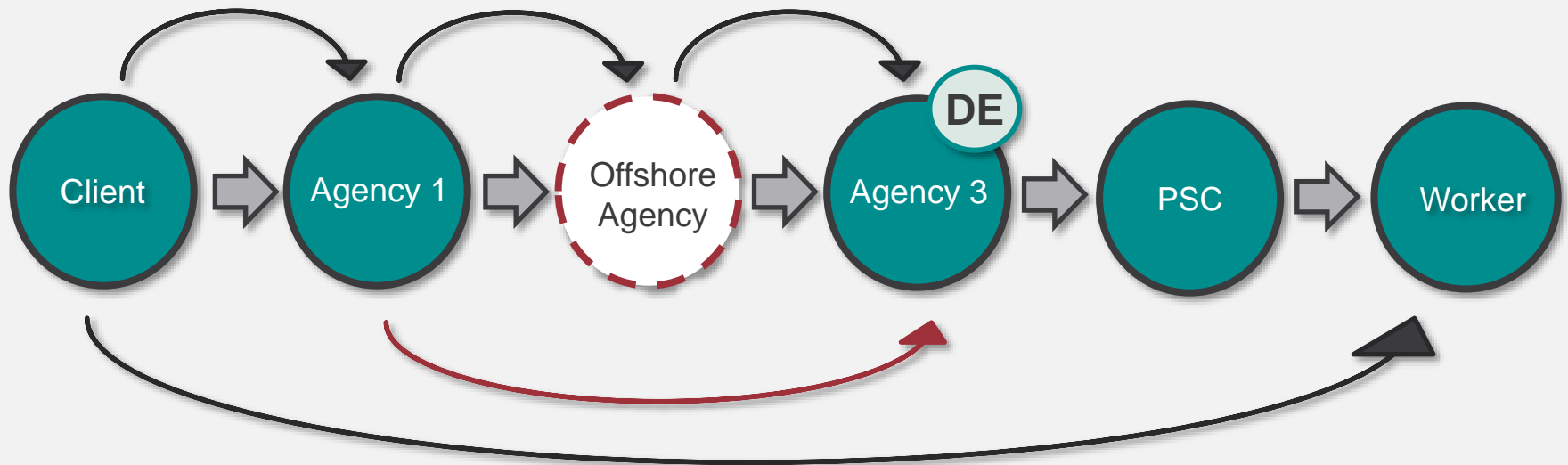
- The client is required to pass on the SDS directly to the worker and the party they contract with
- The SDS should also be cascaded down the chain





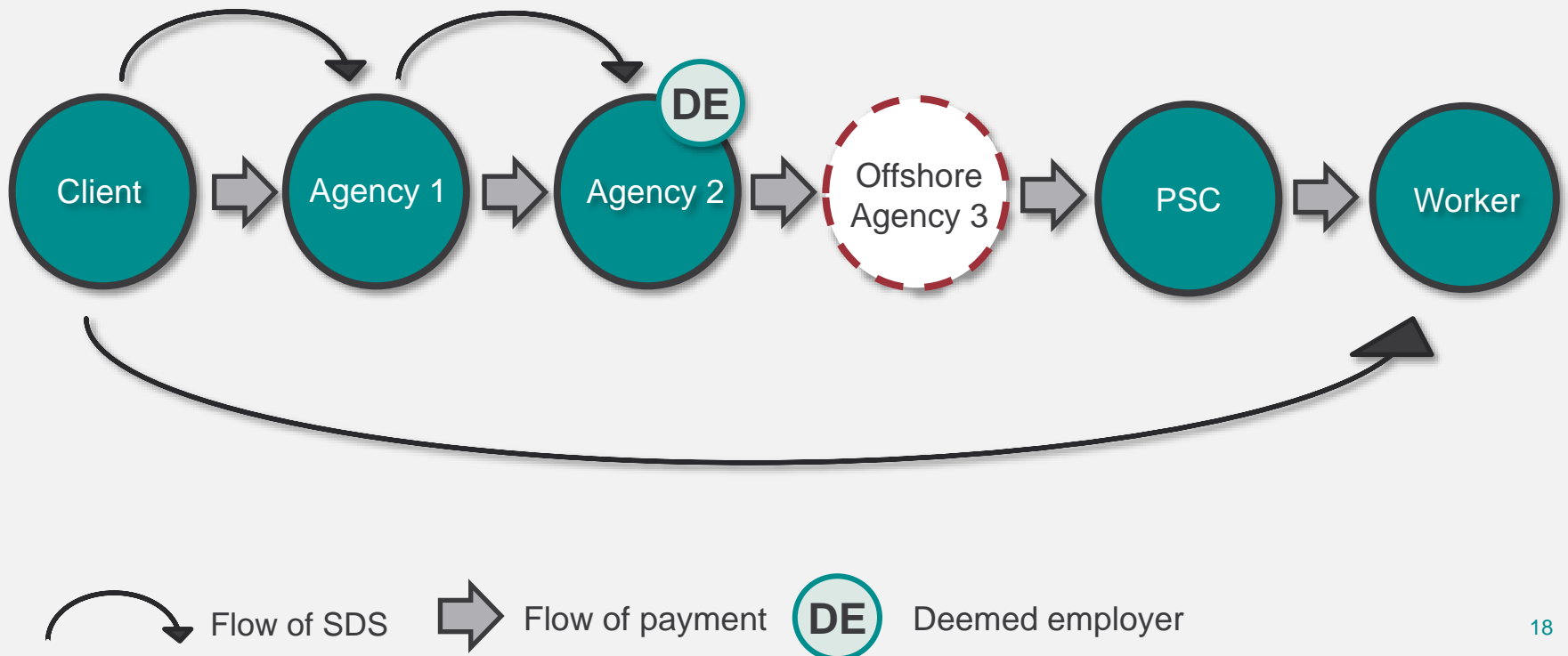
# Offshore agencies (SDS)

- The offshore agency is in the middle of the supply chain so fee-payer responsibilities lie with agency 3.
- Responsibility for tax and NICs rests with agency 1 until agency 3 receives the client's SDS.



# Offshore agencies (SDS)

- Offshore agency 3 is the last agency before the worker's intermediary.
- Deemed employer responsibilities lie with the first UK entity above the offshore agency, in this case agency 2.



# Overseas clients

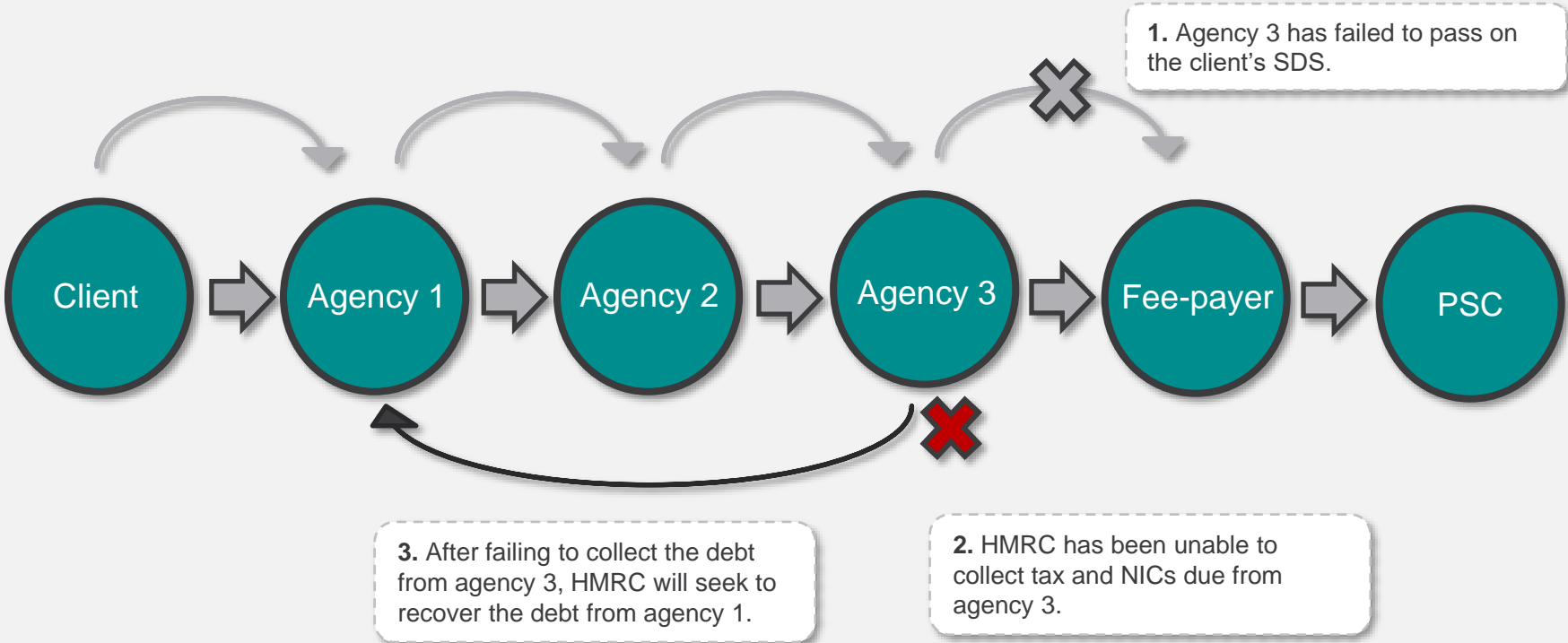
- Wholly overseas clients are excluded from the off-payroll working rules.
- A client is based wholly outside the UK if it does not have a UK connection in the form of being UK resident or having a permanent establishment.
- If the client is wholly overseas, the worker's intermediary must consider whether Chapter 8, Part 2, ITEPA 2003 applies. (current non-public sector rules)

# Recovery of debt provisions

In certain situations HMRC can recover debt from either agency 1 or the client.

HMRC will not seek to recover from agency 1 or the client where the failure to account for tax and NICs by the person who should initially have paid it (the deemed employer) is as a result of a genuine business failure on the part of that person

# Recovery of debt provisions

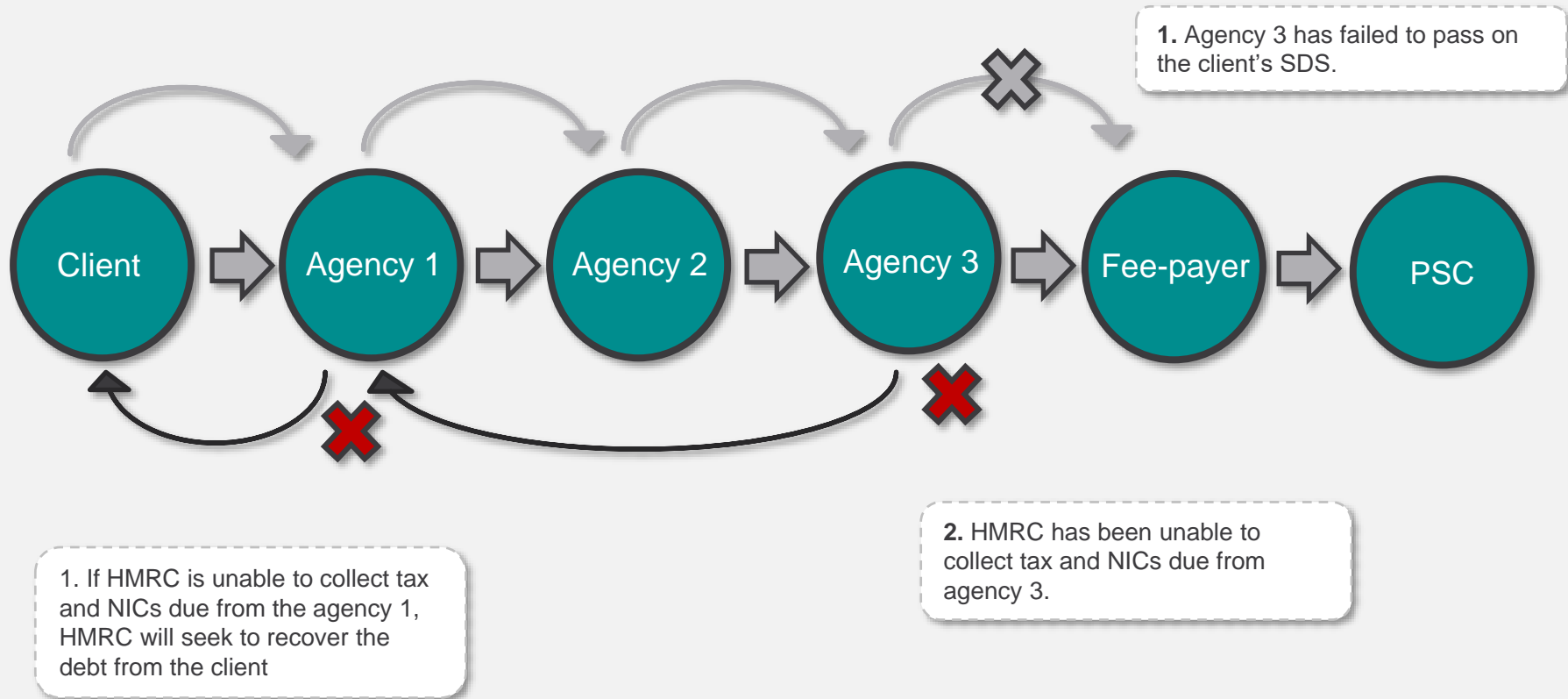



Movement of liability after failure




Failure to collect tax and NICs

# Recovery of debt provisions



 Movement of liability after failure

 Failure to collect debt

# Taking reasonable care

- The client must take reasonable care 'in coming' to its status conclusion.
- Reasonable care is not statutorily defined but case law has described it as taking steps expected of a prudent and reasonable person.
- Reasonable care applies to the client – not just the individual person making the status decision.
- If the client can show reasonable care was taken when making the off-payroll determinations then responsibility for PAYE rests with the deemed employer – even if the determination is wrong.

# Contracted-out services

- The off-payroll working rules place obligations on the worker's client. The client is the person in receipt of the worker's services and most akin to the worker's employer.
- Where there is uncertainty as to who the true client is, consideration should be given to the nature of the relevant contracts.
- Whether a contract is for a fully contracted out service is a question of fact, based upon the commercial reality of the arrangements.



# Contracted-out services

- Labelling a contract as a contracted out service or a 'statement of work' will not prevent the off-payroll working rules from applying – the reality of the arrangements should be considered.





## **Relevant factors:**

- The nature of the businesses.
- The nature of the service provider's contract.
- The relationship between the worker, the service provider and their customer.

# Disagreement process

Clients need to have process in place to deal with disputes of Status Determination Statements (SDS) by workers and deemed employers.

## The client should:

- Consider the worker's or deemed employers representation 
- Respond within 45 calendar days of representations 
- Inform the worker and/or the deemed employer of the outcome 
- Issue a new SDS if the original conclusion is found to be wrong 

Failure to respond will result in the client being liable for tax and NICs, if due.

# Further things to consider for payroll functions

# Check Employment Status for Tax (CEST) tool

- HMRC's Check Employment Status for Tax (CEST) tool can be used to support the client's conclusion when they are deciding a worker's employment status for tax.
- CEST outputs do meet the conditions to be a valid SDS but reasonable care must be taken.
- HMRC will stand by CEST's results provided accurate and correct information is used but using the tool is not mandated.

# Operation of PAYE for deemed employers

## Deemed employers should:

- issue a starter checklist which will determine the worker's tax code
- from 6 April 2021 set the RTI flag when running payroll to indicate an off-payroll engagement
- apply the apprenticeship levy to their payroll and make any payments necessary



## Deemed employers can also choose to:

- give deemed employees payslips, P45s and P60s
- add deemed employees to existing or new payroll

# Entitlements to statutory payments

- The entitlement for statutory payments does not arise with the deemed employer
- Any statutory entitlements arise through the worker's intermediary

# Taking steps to prepare for the off-payroll reform in April





## Look at your labour supply chain

- Understand where other agencies or intermediaries may be in the chain
- Identify those individuals who are supplying their services through personal service companies.



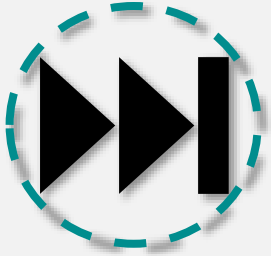
## Talk to individuals, clients and agencies you engage with

- You may need information from them on some engagements.
- Share the [contractor factsheet](#) to help your contractors understand how the changes may affect them.



**If you're the client, determine if the off-payroll rules apply for any contracts that will extend beyond April 2021.**

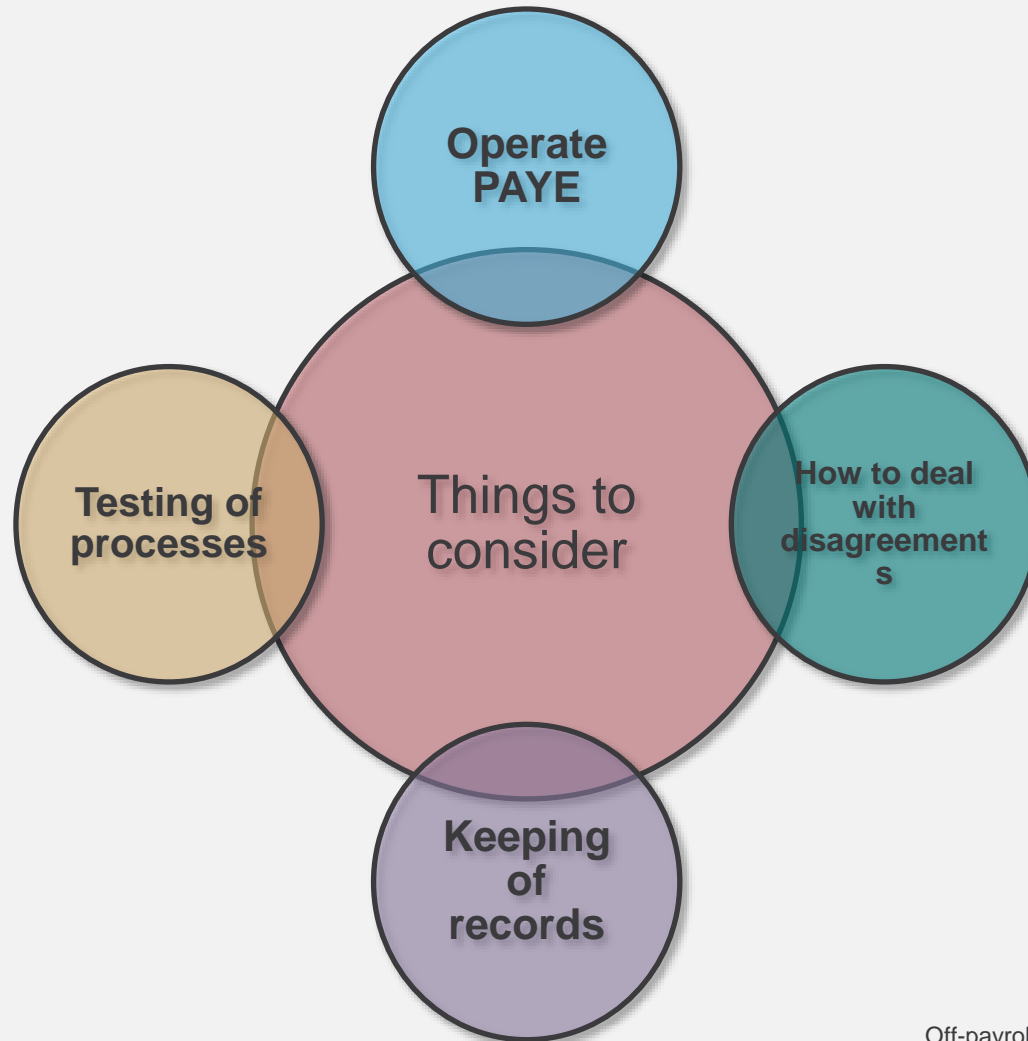
- You can use HMRC's [Check Employment Status for Tax](#) service to do this.



## After you've determined if the rules apply

- You'll need to tell the contractor and any other agency you engage with the outcome.
- Use a Status Determination Statement (SDS) to tell them.

# After you've determined if the rules apply



# Off-payroll guidance

## General guidance

- [Guidance overview \(landing page\)](#)
- [April 2021 changes to off-payroll working for clients](#)
- [Deemed employer responsibilities](#)
- [CEST tool](#)
- [CEST tool guidance](#)
- [Detailed off-payroll guidance](#)

## Information you can share with contractors

- [Factsheet for contractors](#)
- [Flowchart for contractors](#)

# Thank you

- HM Revenue & Customs