



A QUICK AND COMPREHENSIVE GUIDE TO IR35 FOR EMPLOYERS

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Introduction to IR35

IR35 is a piece of Government tax legislation designed to deal with a form of tax avoidance known as disguised remuneration, where individuals attempt to avoid paying the full rate of Income Tax and National Insurance Contributions (NICs), by providing their services through an intermediary, such as a Personal Service Company (PSC).

Under the initial rules of IR35, the intermediary was required to determine the status and tax status of the person providing the service. However, this person is typically the sole director of the PSC.

The off-payroll working rules

There are changes taking place from 6 April 2021 which affect medium and large companies who engage contractors through an intermediary, such as a PSC.

These changes to IR35 legislation, known as the off-payroll working rules, represent one of the most significant changes to contractors' relationships with their clients and it is essential that businesses that engage their services are ready and compliant with the changes.

Are you affected?

The new off-payroll working rules only apply to medium and large-sized private sector clients from 6 April 2021. The rules will apply to your company if **two or more** of the following conditions are met:

- Your company has turnover of more than £10.2 million.
- Your company has a balance sheet total (asset before liabilities) of more than £5.1 million.
- Your company has more than 50 employees.

If the above conditions are **not** met, your company will be a "small company" and, therefore, fall under the small company exemption.

However, where a business is in a group structure, the small business test will need to be applied to the group as a whole and will apply to the aggregate turnover and balance sheet total of all connected entities or persons.

Your responsibility

If your company is receiving services from individuals via an intermediary, such as a PSC, LLP or even a partnership, these changes will apply on the basis that your company is medium or large-sized.

The new changes mean that, as the end client, you will need to determine the employment status of each contractor providing services under an intermediary and effectively determine if they fall inside or outside the off-payroll working rules. You will need to carry out this exercise for each contract agreed with an agency or worker.

The Status Determination Statement should clearly outline the decision on whether the off-payroll working rules apply and the reasons for the decision will need to be provided to the contractor or agency you have contracted with.

It will be your responsibility, as the end client, to hold detailed records of all employment status determinations and processes will need to be in place to deal with any disagreements.

Determining status

Businesses and agencies will be able to use the Government's Check Employment Status for Tax (CEST) service, which is available to help businesses determine whether the off-payroll working rules apply.

- When considering the status of an employee you should consider:
- What are the worker's responsibilities?
- Who controls the individual (i.e. when, where and how do they work)?
- How they are paid?
- Are they directly in receipt of any benefit or expense?

Evidence suggests that some large employers in the public sector have taken a blanket approach to include all contractors under the rules to avoid a penalty or reputational damage.

However, employers should take a cautious approach when applying the rules and take time to identify each person's status on an individual basis to prevent legal action being taken against them.

Payments to workers

If you decide that the employee is inside the off-payroll rules and you are the fee-payer then you will need to determine the deemed employment income and deduct PAYE and National Insurance Contributions (NIC) through payroll and pay it over to HMRC as you would do for a normal employee.

Where you are the end client and you are not the fee-payer, i.e. the entity paying the individuals intermediary, but you make payments through an agency, you remain responsible for determining employment status and providing the agency with a copy of the determination.

If the agency is the fee-payer, they will be responsible for determining the deemed employment income and deducting tax and NI accordingly.

You should keep records of any payments as well as amounts of Income Tax and National Insurance contributions deducted.

You are not responsible for deducting student loan repayments for workers engaged through their own companies. Also, as the worker is not one of your employees they are not entitled to the following:

- Statutory payments.
- Be automatically enrolled into a pension.

The worker's entitlement to statutory payments comes through their employment with their intermediary. They can also contribute to a pension as an employee of their intermediary. Workers providing services through intermediaries are also not entitled to employment rights, such as holiday pay.

Right to appeal

The original IR35 rules and the new off-payroll working rules do not apply to sole traders but where an end client engages with an individual directly, you should be confident that they are not carrying out duties of employment as the responsibility here would lie with the company receiving the services.

If a worker believes that they are not bound by the rules they have the right to challenge an SDS and it is your responsibility to have a process in place for dealing with this.

As the end-client you will have 45 days to respond and must provide reasons for the original SDS. You will be required to either confirm or change your decision and, if necessary, provide a new SDS.

Take reasonable care

Your company as the end-client must ensure that you take reasonable care when you make an SDS about the employment status of the worker, as failure to do this could result in the worker's tax and national insurance becoming your responsibility.

This would mean that the payment to the client would be determined as the net payment and therefore it would need to be grossed up for the tax and NIC due which could put a greater burden on yourself as your company would be liable for this amount and not the worker.

How we can help

Businesses should not wait until April 2021 to respond to this legislation, as HMRC has said it will begin robustly reviewing compliance as soon as the new rules become law.

In the first instance, a business needs to identify how many PSCs it engages and in what part of the business they operate.

Once a business has identified its PSC population, it needs to undertake a comprehensive risk assessment to establish its exposure to the off-payroll working rules and to review whether changes need to be made to their PAYE procedures.

If you are struggling to get to grips with the off-payroll working rules and need assistance it is important that you speak to our team.



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