

Understanding off-payroll working (IR35)

New rules coming into force on 6th April 21

The government is introducing changes to IR35 legislation in April 2021, a year later than originally planned due to the COVID-19 emergency.

The latest IR35 rules as of 6th April 2021 are designed to further tighten a loophole in the tax system where workers (ex-employees, contractors or agency workers) set up a limited company often via a UK personal services company with a sole or majority director/shareholder who provides the contracting services of the company. This enabled them to pay themselves in the form of dividends at a lower rate compared to employee income tax.

The Government believe this 'disguised employment' for contractors, particularly those on assignments sourced through a recruitment agency in which they are individually responsible for delivery with no credible substitute resource to deliver the services from the company they have set up, remains a significant loophole.

Who needs to consider IR35?

Medium and large private sector businesses based in the UK will be responsible for checking the status of any contract worker that works through an intermediary. That business will have to place the contractor on their own payroll and deduct the tax and national insurance due if the rules apply.

A business must identify those freelancers who require assessing under the IR35 rules and evaluate the workforce and group together freelancers with similar working practices or contracts. Adopting a good off-payroll compliance solution is crucial, as this will help identify engagements that pose an IR35 risk.

The new off-payroll rules will not apply to small businesses. The government will use similar criteria to define "small businesses" as found in the Companies Act 2006, i.e., a company which

meets at least two of the following tests:

1. annual turnover of not more than £10.2m
2. balance sheet total of no more than £5.1m
3. average number of employees of no more than 50

How do the off-payroll working rules apply?

When the business is deciding if the off-payroll working rules apply to a contract or engagement, they must work out the employment status of the person providing their services. The off-payroll working rules will apply if the person providing their services would be classed as an employee if there were no intermediary.

A business needs to assess each engagement by considering what the relationship between them and the worker would be if there was not an intermediary involved.

This must be done for each individual contract or engagement, and the business must consider this again when the contract is renewed or changed.

So, are your contractors inside or outside IR35?

From an end user client point of view, it is important to recognise who might class a contractor as being inside IR35 and therefore caught by the regulations. Your first port of call should be [HMRC](#), which has a number of helpful guides and tools for checking the employment status of workers and guidance on the new rules.

The three main factors when considered together will determine

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if a contractor is classed as inside or outside IR35. They are:

Substitution: if the contractor has the right or ability to send a substitute to perform the work, this may be one of the factors that determines the contract is outside IR35.

Supervision, Direction and Control: if you or your superior has the right to exert a significant amount of supervision or control over the work that a contractor is doing, this suggests they may be classed an employee and may fall inside IR35.

Mutuality of Obligation (MOO): an obligation on one party to offer work and, if work is offered, an obligation on the other party to accept it suggests it may be an employer-employee relationship and may fall inside IR35.

There are also other factors you can consider such as the financial risk a contractor is taking, whether they are part and parcel of the organisation, whether they provide their own equipment and whether they work exclusively for you.

If those previously described as 'outside IR35' (self-employed) that are in fact 'inside IR35' (deemed an employee for tax purposes but not employment rights), HMRC can investigate up to six years back to calculate missing tax, interest and any penalties.

What do you need to provide to the contractor?

Once the decision has been made to determine if the contract lies inside or outside IR35, a 'Status Determination Statement' must be supplied to the contractor. The statement must include the status decision made on the engagement and the reasons which led to that decision.

This statement must then be shared with both the contractor and the next party in the supply chain from the client. In most cases, this would be the fee-payer which can be the recruitment agency placing the contractor.

The person who is liable for the IR35 tax, referred to as the 'deemed employer', must deduct PAYE tax and employee's NIC from the payments they make to the next person in the supply chain as if the worker were on their payroll.

The new rules allow either the contractor or the deemed

employer to challenge the Status Determination Statement and make representations to the engager who issued the Statement. If the engager does not comply, the IR35 tax liability shifts back to the engager.

Further information available

- Read the "Understanding off-payroll working (IR35) Guidance" from the gov.uk website [here](#).
- Get help on the off-payroll working rules (IR35) with online webinars, workshops and educational calls from [HMRC](#).
- If you are a client receiving services from a worker through their intermediary, [click here](#).



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