

IR35: OVERHAULING THE OFF-PAYROLL RULES



The rules relating to off-payroll workers, commonly known as IR35, are due to change from 6 April 2021. The changes revolve around tax and employment status, and who makes the decision on that status. The change applies to those off-payroll workers who provide personal services to clients in the private sector through an 'intermediary'.

This factsheet considers the impact of next year's changes on off-payroll workers, analyses how status will be determined and examines workers' rights and the consequent tax issues.

The most common type of intermediary is a worker's own 'personal service' company (PSC), and PSCs. But please note that an intermediary can also be an individual, partnership or unincorporated association, and all intermediaries are potentially impacted by the change.

Whatever the type of off-payroll worker you are, we can help you with the new process.

DETERMINING EMPLOYMENT STATUS

The IR35 rules were brought in because of government concern about loss of tax revenue, particularly national insurance contributions (NICs), arising through the use of intermediaries in the labour chain. The government believes widespread misclassification of off-payroll workers who should really be treated as employees is to blame.

It's therefore moving responsibility for making the decision on employment status on each contract away from contractors and PSCs and on to the client receiving their services. This has already been done in the public sector.

From 6 April 2021, you are no longer responsible for deciding your employment status if you are working for a 'medium' or 'large' client in the private sector. It becomes the client's responsibility instead. The change also has consequences for tax and NICs.

Companies and LLPs are considered large or medium if they meet two of these conditions for two consecutive years:

- annual turnover is more than £10.2 million
- balance sheet total (assets) is more than £5.1 million
- they have an average of more than 50 employees.

Note: for unincorporated businesses, only the turnover test applies.

If your client doesn't meet these conditions, it will be considered 'small'.

Overseas clients: the new procedures don't apply if your client is based wholly overseas. Your PSC will still determine the employment status.

Small clients: there's no change if you contract with a small client. Even after the changes are introduced from 6 April 2021, you remain responsible for deciding if IR35 rules apply to contracts in such cases.



THE KEY QUESTIONS

The employment status determination question is this: would you be an employee if any intervening entities, like the PSC, didn't exist, so you were engaged directly by the client? In many cases, the question is easier to ask than answer, and the factors to weigh up are frequently complex. HMRC's online status checker tool (CEST) can be used to make a determination.

CEST: the tool has come in for criticism over the years, and has been refreshed to support the new regime: <https://bit.ly/2ECbM1M>. Despite this, many commentators remain sceptical about its ability to determine status in all cases.

CEST can be used anonymously, by you or your client, for a decision on whether you should be treated as employed or self-employed for tax purposes on a particular contract. You can input your details to get an opinion, regardless of whether your client does so. The type of questions asked include:

- whether you have a right to use a substitute to do your work
- how much control your client has over how and where you work
- about your financial risk: whether you buy your own equipment, and how you are paid, for example
- how involved you are in the client's business, for instance in its management
- whether you have done similar self-employed work for other clients in the last 12 months.

HMRC pledges to stand by the results produced if CEST is 'used in accordance with its guidance and the information provided, and remains accurate'.

The Status Determination Statement

The SDS is a new part of the status determination process. When your client decides your engagement is within the scope of the new rules, they will provide you with an SDS. This will give you the reasons underpinning the decision, including details of the supply chain, the engagement with the client, and the next entity it deals with in the chain as required by law.

YOUR CLIENT

Your client's status determination process is a key part of making the new rules work for professional services. It's an individual contract.

HMRC asks for a reasonable amount of information to help it make a tax and NICs decision.

You have a right to see the process to determine the status of the SDS. You should review the record of professional services you have done so; if you agree with confirmation, you can then can you reveal the processes. You have a right during your engagement to see the final payment for the

If you now fall within IR35 for a contract, you should not to use this information to reveal your status for the next 12 years. This is subject to there being no criminal behaviour.

TAX MATTERS

Where a medium or large client decides your contract is within scope of the IR35 rules, it (or the agency paying you, if the labour supply chain is longer) will then:

- calculate a 'deemed direct payment', based on the fees charged by your PSC
- deduct PAYE and employee NICs from your fees, reporting and paying these to HMRC
- pay employer NICs based on the deemed payment.



This effectively means the end of the tax advantage of receiving income via a PSC, with its traditional profit extraction strategy of low salary plus dividend payments. If your contract falls within IR35, you are essentially treated as an employee of the party paying your PSC for tax purposes. You won't be taxed twice, and you can still choose to extract a salary and dividends from your PSC, though the historic

client, you are on their payroll, and you should receive PAYE and NICs on a monthly basis. If your invoice includes VAT, or you are an employee, you should receive VAT on your payments should not be charged. If you are a P45, showing PAYE and NICs. You should get a P60, then show employment

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from the employment

for information intend to do – as HMRC warnings legally.

or to contract ment

in some cases it will be worth operating via a PSC is still optimal term. Please do contact us to discuss the impact of the new legislation on your business.

This information is intended for general guidance only, and professional advice should always be obtained.

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