

Off-Payroll Working Rules (IR35)

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RULES OF DEBIT AND CREDIT



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HM Revenue
& Customs

What is IR35?

The off-payroll working rules (IR35) is a piece of UK tax legislation forming part of the Finance Act designed to close a loophole in the system where workers could use the setup of a limited company structure in order to pay less tax. If a contract is with a limited company but in reality the relationship is more employer-employee, the worker should be taxed as an employee (known as a deemed employee).



IR35 looks to identify deemed employees to ensure they are taxed correctly, however IR35 can impact a limited company structure with a sole or majority director/shareholder who provides the services of the company (a personal service company or PSC).

Why was IR35 introduced?

The government introduced IR35 to prevent exploitation of the tax system by contractors leaving employment roles to create limited companies and return to the same role in a contracted relationship and benefitting from the tax advantages of a company setup.

Since the introduction of IR35 in 2000 contractors who are judged to be deemed employees have had to pay tax at the equivalent rate to employees, which is more than they would have had to pay if they were deemed limited companies.

What is changing?



To increase compliance with the existing IR35, from 6 April 2021 medium and large organisations outside the public sector will become responsible for assessing the employment status of contractors who work for them through their own limited company. Contractors are currently responsible for making this decision themselves.

The changes do not apply to the self-employed, nor do they stop you working through your own intermediary. They do not introduce a new tax, just change the way the tax is collected when a contractor is inside the scope of IR35 and deemed to be employed for tax purposes.

You will be affected by the changes to the off-payroll working rules if:

- You are a contractor who works through an intermediary, e.g. your own limited company; and
- You provide your services to public sector organisations or medium or large sized organisations outside of the public sector.

How the changes may affect you

The changes may affect how you pay the tax and National Insurance contributions that are due.

If you are affected, the organisation to which you provide your services will determine your employment status for tax purposes from 6 April 2021. Your hirer will give you a 'Status Determination Statement' which will set out the determination your hirer has made and the reasons behind this. You may be asked to provide the hirer with some information to help them make their determination.

- If they determine that you are employed for tax purposes, they or the agency they hire you through will pay the necessary tax and National Insurance before they pay you.
- If they determine that you are self-employed for tax purposes, you will remain responsible for meeting your tax obligations.

Depending on your own personal circumstances the terms of your contract may change. It is also possible that you will pay additional income tax and NICs if you had not previously been applying the off-payroll rules correctly. However, HMRC will not use information resulting from these changes to open a new enquiry into earlier years unless there is reason to suspect fraud or criminal behaviour.

What you need to do before April 2021

You do not need to take any action before April 2021, but if you think you may be affected you should seek a Status Determination Statement from your hirer and speak to them to help you understand what this means for you.

April 2020						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Your Rights

Where the rules apply, it is important to note that unless you have a direct employment contract, you will not be classed as a direct employee of the hiring organisation and will not be entitled to statutory payments or employment rights from them.

From 6 April 2021 if you disagree with the result of the determination you will have the right to dispute it through your hirer's status disagreement process. You will need to contact your hirer to explain why you are challenging the outcome. The hirer will then have 45 days from the date of receiving your letter to respond.

Checklists for Employment, Self-Employment and IR35

For client businesses

Checklist A For client businesses

1. Are you a business or other entity which engages staff? If so, read on. If not, see Checklist C below.
2.
 - (a) Do you have a written contract with an individual worker (an “individual”) i.e. not an incorporated entity such as a company or partnership, in which they are described as an employee/employed?
 - (b) Do you make payments to them under PAYE after deduction of tax and NI?
 - (c) Do you make payment without them invoicing you for any payment that you make to them?

If all answers are “Yes”, it is most likely that they are an “employee” for employment law and tax purposes. You need read no further.

If any of your answers is “No”, then they might still be an employee in law but in order to have a better idea as to the likely position, see paragraphs 4 and 5 of Section A of our Guidance Note. If any of your answers is “No”, there is a possibility that they are instead “self-employed” in law, so read on.

3. Does the individual work directly for you? If “Yes”, read on. If “No”, i.e. an intermediary entity is involved in any way, go to Checklist B (PSCs)
4.
 - (a) Do you have a written agreement with that individual which either does not describe your relationship with them or describes them in any way other than “employee” or “employed”?
 - (b) Do they invoice you in their own name and receive gross payments from you for the work they do for you (i.e. without deductions of tax, NI or anything else)?
 - (c) Do you allow them under the agreement, and in practice, to work wherever and whenever they choose?
 - (d) Do you allow them to substitute another person to carry out any of the work?
5. If all answers to “4” are “Yes”, they might be “self-employed” rather than an “employee” for employment law and tax purposes, but in order to have a better idea as to the likely position, see paragraphs 4 and 5 of Section A of the Guidance Note.

Client businesses engaging an individual through their PSC

Checklist B - Client dealing with a PSC

1. If your answer to number 3 in Checklist A was “No”, does the individual work for you through an intermediary? If “Yes” read on.

2. Is the intermediary an employment agency, employment business, umbrella company or managed service company? If “No”, read on. If not sure, please seek advice as to what the entity is. If “No”, read on.
3. Is there only one intermediary and if so is it the individual’s PSC (personal services company), or is there more than one intermediary which includes that PSC? A PSC is defined in Section B, paragraphs 2 and 4 of the Guidance Note.
4. If the individual does work for you through a PSC (with or without any other intermediary), do you make any gross payments to the PSC direct or via a third party. If “Yes”, read on, and you also need to consider whether the IR35 rules apply to you to render the individual a “disguised employee” under those rules: see the Guidance Note on the tests for when and how the rules apply.
5. (a) Are you in the public sector?
(b) Are you in the private sector but are “medium” or “large”? (i.e. not “small” - (See Section C, paragraph 3 of our Guidance Note as to “small”).

If “Yes” to (a) or (b), read on. If “No”, go to “7” below.

6. As from April 2020, if you are within 5(a) or (b) above, you are legally responsible for deciding whether there is “disguised employment”, i.e. whether the IR35 rules apply to require you to deduct tax and NI before paying the PSC.
7. If you are NOT within 5(a) or (b) above, the PSC is legally responsible for deciding whether there is “disguised employment”, i.e. whether IR35 rules apply to require you to deduct tax and NI before paying the PSC.

For individual workers

Checklist C - Individual workers

1. Are you an individual (an “individual”) i.e. not an incorporated entity such as a company or partnership? If so, do you provide services to a business or other entity directly or through an intermediary? If so, read on.
2. (a) Do you have a written contract with a business or other entity under which you are described as being an employee/employed?
(b) Do you receive payment under PAYE after deduction of tax and NI?
(c) Do you receive payment without your invoicing for any payment that you receive from the entity that engaged you?

If all answers are “Yes”, it is most likely that you are an “employee” for employment law and tax purposes. You need read no further.

If any of your answers is “No”, then you might still be an employee in law but in order to have a better idea as to the likely position, see paragraphs 4 and 5 of Section A of the Guidance Note. If any of your answers is “No”, there is a possibility that you are instead “self-employed” in law, so read on.

3. Do you work directly for a business or other entity? If “Yes”, read on. If “No”, i.e. an intermediary entity is involved in any way, go to Checklist D (Intermediaries)
4.
 - (a) Do you have a written agreement with that client entity which either does not describe your relationship with that entity or describes it in any way other than “employee” or “employed”?
 - (b) Do you invoice it in your own name and receive gross payments from it for the work you do for it (i.e. without deductions of tax, NI or anything else)?
 - (c) Do you only receive payments for that work from it rather than any other entity?
 - (d) Do you have any other clients for whom you work in the same period (week or month) that you work for that entity?
5. If all answers to “4” are “Yes”, you might be “self-employed” rather than an “employee” for employment law and tax purposes, but in order to have a better idea as to the likely position, see paragraphs 4 and 5 of Section A of the Guidance Note.

Individual workers working through an intermediary

Checklist D - Individuals using an intermediary

1. If your answer to number 3 in Checklist C was “No”, do you work through an intermediary? If “Yes” read on.
2. Is the intermediary an employment agency, employment business, umbrella company or managed service company? If “Yes”, check your status as a worker with that intermediary. If not sure, please seek advice as to what each of these entities is. If “No”, read on.
3. Is the intermediary a PSC (personal services company)? A PSC is defined in Section B, paragraphs 2 and 4 of the Guidance Note.
4. Do you work for a particular client through a PSC, with the PSC receiving any gross payments either from that client or via a third party. If “Yes”, read on, and you also need to consider whether the IR35 rules apply to you to render you a “disguised employee” under those rules: see the Guidance Note on the tests for when and how the rules apply.
5.
 - (a) Is your client in the public sector?

- (b) Is your client in the private sector but is “medium” or “large”? (i.e. not “small” - (See Section C, paragraph 3 of our Guidance Note as to “small”).

If “Yes” to (a) or (b), read on. If “No”, go to “7” below.

6. As from April 2020, if your client is within 5(a) or (b) above, it is legally responsible for deciding whether there is disguised employment”, i.e. whether the IR35 rules apply to require it to deduct tax and NI before paying your PSC.
7. if your client is NOT within 5(a) or (b) above, you and your PSC are legally responsible for deciding whether there is disguised employment”, i.e. whether IR35 rules apply to require it to deduct tax and NI before paying your PSC.

Useful Links

Further guidance can be found at www.gov.uk/guidance/april-2020-changes-to-off-payroll-working-for-intermediaries

It might also be helpful to use the Check Employment Status for Tax (CEST) tool at www.gov.uk/guidance/check-employment-status-for-tax

HMRC’s factsheet can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/818816/OPR_Factsheet_.pdf



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