



Business Tax

CHANGES TO OFF PAYROLL WORKING

HMRC have updated the **IR35 rules** as of 6th April 2021. To help businesses and individuals, they had already delayed the original implementation date on the 6th April 2020 by a year due to the Covid-19 pandemic but have chosen to not further extend this postponement.

IR35 are the rules concerning “off-payroll workers” working via an intermediary. This would typically encompass partnerships and individuals who work for a company via their own “personal service company” (PSCs).

The update now puts the onus of the SDS (Status Determination Statement) on medium or large companies using contractors. Companies which HMRC defines as a small company (definition below) will not have to complete the SDS.

STATUS DETERMINATION STATEMENT

The legislation requires the engager to make a status determination and provide a status determination statement (SDS) to the worker before payment for services provided on or after 6 April 2021 is made.

The engager should give a copy of the SDS to the person in the chain with whom the client has directly contracted. To be valid the SDS must either state:

- that the client has concluded the engagement falls within IR35 so that hypothetical employment would apply and give reasons for that conclusion; or
- that the client has concluded the engagement does not fall within IR35 so that hypothetical employment status does not apply and give reasons for that conclusion;

Engagers will need to ensure they have the appropriate processes in place to make and pass on the SDS to the worker and any third party with whom they are directly contracted. If either of these obligations is not met, then the engager is treated as being the fee-payer and is consequently liable for the operation of PAYE and NICs.

WHAT DOES BEING INSIDE OR OUTSIDE IR35 MEAN?

Inside IR35 is the HMRC term for individuals registered as limited companies that act like employees and are affected by this regulation.

Outside IR35 are companies that do not violate IR35 and won't face any additional fees or penalties. These companies tend to operate independently from their clients and choose when, where and how they work.

Large and medium companies will now have to assess if contractors providing services through PSCs would



be employees if they were engaged directly. Should they be engaged directly, the fee payer of the services will have to deduct PAYE, employee and employer National Insurance on the payments made to the PSCs.

HOW WILL HMRC DETERMINE YOUR STATUS?

HMRC can examine any contractor's tax status at any time. When evaluating if someone is inside or outside IR35, HMRC will initially ignore the "written contract" and instead evaluate the contractor and business' relationship to create a "notional contract".

HMRC will consider the three following factors:

1. How much control does the business have over what, how, when and where the contractor completes the assignment? The more control, the more likely the contractor is inside IR35.
2. Can anyone complete the assignment or is it contractor and person-specific? If it is the latter you are more likely to be inside IR35.
3. If the business is obligated to provide work and if must the contractor accept the work offered. If the answer is yes to either of those then you're most likely operating inside IR35.

However HMRC will also consider the type of contract currently in place, any financial risks for the contractor, their role in the organisation, and whether the company provides the equipment for the contractor.

If you need a tool to check employment status, HMRC provide this service here: [Employment status for Tax](#). However please make additional checks alongside using this tool as the conclusion given by this tool may not be entirely accurate.

WHO WILL BE AFFECTED BY THESE LAWS?

- Medium and large sized companies who engage with contractors via PSCs
- Contractors who provide a service through PSCs
- Agencies and organisations who recommend personal operating via PSCs

Please be aware IR35 doesn't strictly cover those engaged with a business as sole traders or on a self-employed basis. Determining the status of these individuals has, irrespective of business size, always been the responsibility of the engager who should retain evidence to support the fact that the individual is not classed as an employee.

WHEN WILL THEY NOT APPLY?

The changes to the rules will not apply to you if the company does not have a permanent UK office or establishment meaning its entirely overseas. The changes will also not apply if the engaging organisation is classed as a "small company" and meets two of the following criteria;

1. £10.2m turnover or less
2. £5.1m gross assets or less
3. 50 employees or less

If your company is exempt as a small company, ensure that you have evidence of this in case you are asked for proof.

The rules slightly change if the business is part of a group, associated with another company or a subsidiary.

WHAT ARE THE PURPOSES OF THESE CHANGES?

- HMRC is driving to get more contractors onto payroll (Fair employment)
- Putting the onus onto businesses which engage contract workers to determine tax status

WHAT SHOULD I OR MY COMPANY BE AWARE OF?

- If a contractor is working for your company under CIS ([Construction Industry Scheme](#)) through a PSC then IR35 will take precedence
- Consider alternatives e.g. agencies, employment, umbrella companies
- Be aware of financial penalties for non-compliance as well as the appeals process
- Increases to potential costs such as employer's NIC and **Apprenticeship Levy** when renewing or entering contracts beyond April 6th 2021

WHAT SHOULD I OR MY COMPANY BE DOING?

- Contacting PSCs to discuss what these changes mean and conducting status assessments and tests to determine where contractors lie.
- Look at current contracts and working practices to see if being inside or outside the IR35 governance is best for you and if there are any compliant changes you could make
- Put processes in place to determine statuses for beyond 6th April 2021
- Make all key stakeholders aware of potential changes
- If your company is exempt as a small company, ensure that you have evidence of this

If you are a contractor you can use HMRC's flowchart for contractors to determine if you are affected by the changes to off-payroll working rules: [Flowchart for contractors](#).

ABOUT US

We have a team of Real Estate & Construction sector experts across the UK already assisting businesses with this transition. Please contact Moore East Midlands to help conclude on any IR35 position or to help you get up to speed and comply with HMRC's changes to IR35.



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