



OFF-PAYROLL WORKING IR35 CHECKLIST

For Medium and Large-Sized Private Sector Companies



CONTENTS

Who The IR35 Rules Apply To	1
Compliance Obligations	3
IR35 Checklist	4
Tax Consequences	6

WHO THE IR35 RULES APPLY TO



From 6 April 2021 all public authorities and medium and large sized clients will be responsible for deciding if the IR35 rules apply.

The IR35 rules apply if a worker provides their services to a client through an **intermediary**, but would be classed as an employee if they were contracted directly.

Sole traders are not caught by the IR35 rules as they are not operating through an intermediary (Limited Company).

IR35 rules will apply to partnerships as they can be an intermediary.

What defines a medium and large sized client?

You are a **client** for the purposes of IR35 if you receive services from a worker through their intermediary.

Private sector companies will be deemed a medium sized client if they meet 2 or more of the following conditions:

- Have an annual turnover of more than £10.2 million
- Have a balance sheet total of more than £5.1 million
- Have more than 50 employees

QUALITY IS ABOUT PEOPLE
WORKING EFFICIENTLY AND
ADDING VALUE AS WELL AS
TECHNICAL ACCURACY



COMPLIANCE OBLIGATIONS



What duties you need to carry out as a client

You will need to decide the employment status of every worker who operates through their own intermediary, even if they are provided through an agency.

You should communicate your determination using a Status Determination Statement (SDS).

An SDS must:

- be passed to the worker and the person or organisation you contract with
- give your conclusion and the reasons for coming to it

Reasonable Care

You must take reasonable care when making a determination about the employment status of a worker.

Failure to do so will result in the worker's tax and National Insurance contributions becoming your responsibility.

Additional Compliance

You will also need to:

- make sure you keep detailed records of your employment status determinations, including the reasons for the determination and fees paid
- have processes in place to deal with any disagreements that arise from your determination
- confirm the size of your organisation if asked by the person or organisation you contract with, or the worker

If you are also the fee-payer and the IR35 rules apply, you will need to deduct and pay tax and National Insurance contributions to HMRC.

IR35 CHECKLIST



Factor	Not Employed	Employee
Mutuality of obligation	Under no obligation to accept additional work.	Has to carry out additional work if asked or is contracted to do so. May expect to be provided with a continuous supply of work.
Personal service	Has the ability to provide a substitute or engage helpers.	Is only able to provide their own personal services.
Control	In a typical employer/employee relationship, the employer will exercise very little control over what the worker does on a day-to-day basis.	An employer will typically tell an employee what to do, how to do it and when to do it by.
Integration	A worker who does not have for example his own desk, work computer, email, access to the business premise.	An employee will be integrated into the business of their employer. For example an employee will usually have their own desk, computer, email address, phone number.
Equipment	Someone who provides their own tools and equipment.	An employee is rarely reasonable for providing his or her own equipment.
Payment	Issues invoices at irregular intervals with different descriptions.	Someone who is paid a salary and is paid similar to actual staff.
Financial risk	Incurs costs personally to train/qualify/CPD for the role Pays for materials, overheads, will have to rectify work if not to a satisfactory standard. Quotes a fixed price for the job.	Has no financial risk and is paid regardless of the work that is carried out.
Opportunity to profit	Can profit from a fixed price job by working more efficiently for example.	Is paid the same rate and has no opportunity to profit from the work.
Business organisation	Has their own established business, completes a tax return, has their own business insurance.	Has no business organisation and does not have any insurance to cover themselves if something goes wrong.
Engagements	Performs services for a number of different businesses.	Only works for one person usually the same person and continues to work for one person.
Benefits	Not entitled to any company benefits.	Is part of the companies benefit scheme, is able to use company facilities and attends staff functions.
Skills and reputation	Engaged with for their skills and reputation.	Appointed for personal reasons such as a close friend or family friend.

Which factors are most important?

HMRC's advice is to consider all the factors that are present in, or absent from, a particular case then weigh those pointing to employment against those pointing to non-employment. Having done that, a picture will emerge from which employment status can usually be ascertained. HMRC will view each scenario on a case-by-case basis.

Alternatively, the engager can obtain an HMRC view of the employment status of a worker by using the 'Check employment status for tax' service on the HMRC website.

Provided the information provided is accurate, HMRC will stand by the result given.

TAX CONSEQUENCES



Will the company suffer additional tax?

It is important to correctly determine the status of a worker because the tax and NIC treatment of workers who are employees and workers who are not employees is different.

An incorrect classification of a worker's status will therefore mean that the amount of tax and NICs paid is incorrect and the tax and NICs are paid at the wrong time.

From 6 April 2021 If a worker is caught by the IR35 rules they are treated as an employee for tax collection purposes and will be enrolled on the engaging companies PAYE system.

The deemed employee will have to pay National Insurance and Income Tax, which the engaging company will deduct from the deemed employee's pay.

CONTACT US

For more information, please email
bridget.culverwell@moore.co.uk or visit:
www.moore-global.com to locate your
nearest firm.