

Business Tax

IR35 - CHANGES TO THE RULES CONCERNING 'OFF- PAYROLL WORKERS'



From 6 April 2021, important changes to the IR35 rules will begin to apply to medium and large private sector organisations.

IR35 are the rules concerning “off-payroll workers” – i.e. individuals who work for a company via their own ‘personal service company’.

IR35 legislation was designed to ensure that individuals who work like employees but who provide their services via a company, pay the same amount of tax and National Insurance as an employee employed directly by the engaging party.

If an individual provides their services via a company, the income they earn can be subject to PAYE and National Insurance if the nature of the engagement is that of employment and consequently caught by the IR35 rules.

When IR35 was first introduced back in 2000, it was the contractor who determined whether they fell within the rules or not and operated the appropriate tax treatment on the income they received.

From April 2017, this position changed. Public sector companies who engaged workers in this scenario then became responsible for deciding whether the contractors they used fell within the IR35 off-payroll working rules. If they were judged to be within IR35, the employer was to apply PAYE and NI accordingly to the payments made.



From April 2021 these rules are being extended to medium and large private sector organisations too. Smaller organisations (and HMRC estimates there are around 1.5m of these) will not be expected to determine whether IR35 applies to the contractors they use – in these scenarios the responsibility remains with the contractor themselves.

IR35 provisions in the Finance Act 2020 stipulates that a small organisation is defined along the same lines as the Companies Act, i.e. as having two out of the three of:

- Turnover of less than £10.2m,
- Balance sheet total of less than £5.1m
- Less than 50 employees

The engager (i.e. the company employing the contractor) will have to issue a “Status Determination Statement” (SDS) that details the conclusions of their assessment of their engagement with each contractor used. Therefore, there cannot be any blanket assessments of all their contractors one way or the other.

If the contractor disagrees with the verdict of an SDS, there is a client-led status disagreement process to allow individuals to challenge an organisation's determination of their worker status. The engager will have 45 days to review their assessment and confirm the position back to the contractor.

HMRC do have a Check Employment Status Tool (CEST) on their website to act as a guide in assessing the status of a particular engagement and this is planned to be enhanced ahead of the rule changes. However, we recommend that you don't rely solely on this because it can result in more engagements being treated as within IR35 than ought to be.

HMRC have confirmed that where engagements are caught by the new rules from April 2021, they will not use this to “retrospectively assess” and will not automatically raise enquiries into earlier years.

Where engagements with medium and large organisations are treated as being within IR35 from April 2021, the 5% deductions allowance that was previously permitted to be offset against income from that engagement will no longer be available.

RECOMMENDATIONS

For engagements with medium and larger organisations, individuals using a personal service company to conduct their work should review their existing contracts carefully to understand the nature of the relationship with the engager and the obligations arising on each party. Ideally this should be conducted with an expert such as Moore (South) to help conclude on any IR35 position and be on hand to assist in ensuring the appropriate treatment is applied to their income post April 2021.

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