



IR35 Off-Payroll Reform Guide for Contractors & Clients

Covering how IR35 off-payroll legislation may affect your business

Helping you prosper

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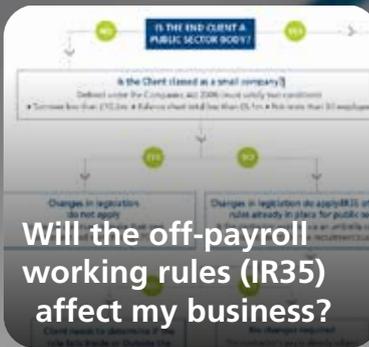
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Foreword

The IR35 off-payroll reform in the private sector is one of the biggest changes to impact contractors. Those operating in the public sector have already had to deal with the new off-payroll legislation back in 2017, but this only affected a small number of businesses and was fairly easy for the Government to control.

This guide has been compiled to educate and support contractors and those businesses who engage with contractors with the changes that were due to come into place on 6 April 2020. This has been delayed until 6 April 2021 as part of the additional support the government provided for businesses and individuals to deal with the economic impacts of coronavirus.

If you have any questions regarding IR35 and the off-payroll reform please get in touch.

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Overview of IR35 Off-Payroll Reform in the Private Sector

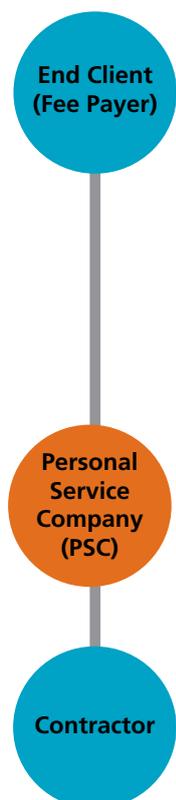
From 6 April 2021, IR35 tax legislation will be updated to the newer off-payroll working in the private sector tax rules to ensure fairness between all types of workers, and subsequently reduce tax avoidance by contractors and those hiring them. These rules have already been applied to the public sector in April 2017.

IR35 legislation is not new, and has been in place since 2000 to crack down on bogus self-employment and ensure that any professional using a personal service company and still operating as an employee was being taxed and paying National Insurance. The responsibility of making the employment status assessment which means determining whether the contractor is employed (inside) or self-employed (outside the scope of IR35) and paying the relevant tax and National Insurance was the party closest to the contractor, therefore the personal service company.

The new off-payroll rules now shifts this responsibility of employment status assessment to the organisation receiving the individual's services ("the client") and the fee payer (possibly the client or a recruitment business) is responsible for deducting the relevant taxes. This has been illustrated below:

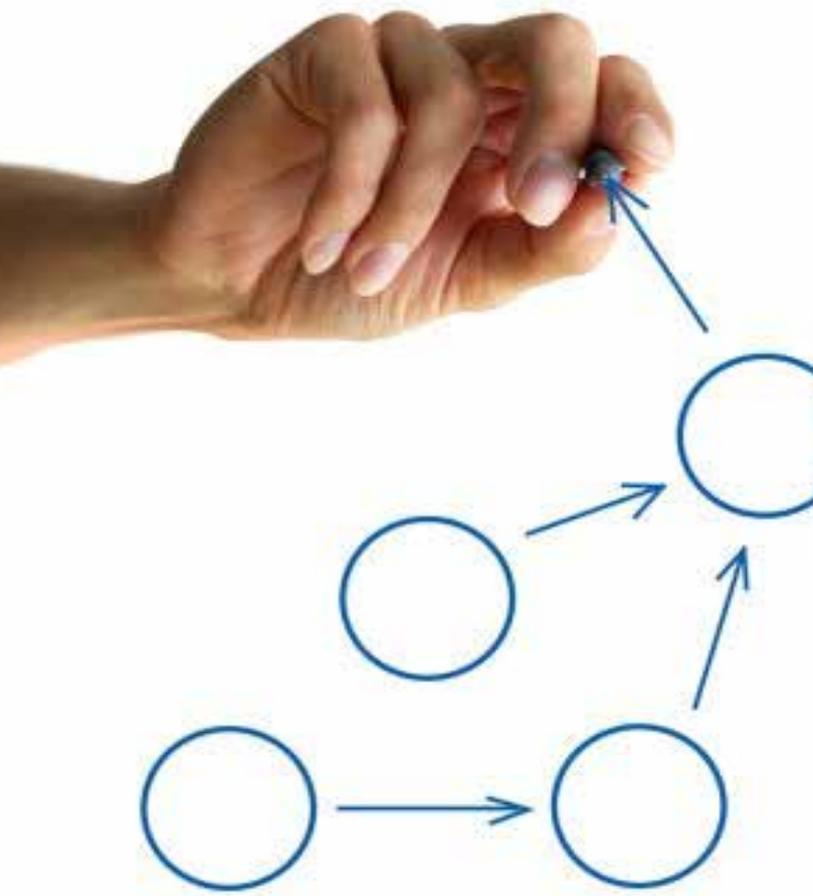
OLD RULES:
Highlighted in Orange are the parties responsible for employment status determination and paying the relevant tax and National Insurance.

BASIC CONTRACTUAL CHAIN



MORE COMPLICATED CONTRACTUAL CHAIN:





NEW OFF-PAYROLL RULES:

Highlighted in Yellow are the parties responsible for employment status determination and highlighted in red are the parties responsible for deducting the relevant tax and National Insurance.

BASIC CONTRACTUAL CHAIN



MORE COMPLICATED CONTRACTUAL CHAIN:



WILL THIS AFFECT ALL COMPANIES WHO ENGAGE WITH CONTRACTORS?

It depends whether the organisation operates in the public or private sector. If the organisation operates in the public sector then they are responsible for carrying out the employment status determination for all contractors. This change in IR35 legislation was introduced in April 2017.

With regards to the private sector, all medium and large companies will be responsible for assessing the employment status of all contractors from 6 April 2021. The criteria for assessing if a company is medium or large are defined under the Companies Act 2006. If a company meets two of the following criteria then it is classified as medium or large:

- an annual turnover of more than £10.2m;
- a balance sheet total of more than £5.1m;
- more than 50 employees.

If the organisation is a small company, therefore not meeting the above criteria, then the off-payroll rules do not apply. The personal service company of the contractor will continue to be responsible in making the assessment and deducting any relevant tax and National Insurance as per the 'old rules' diagram on page 03.

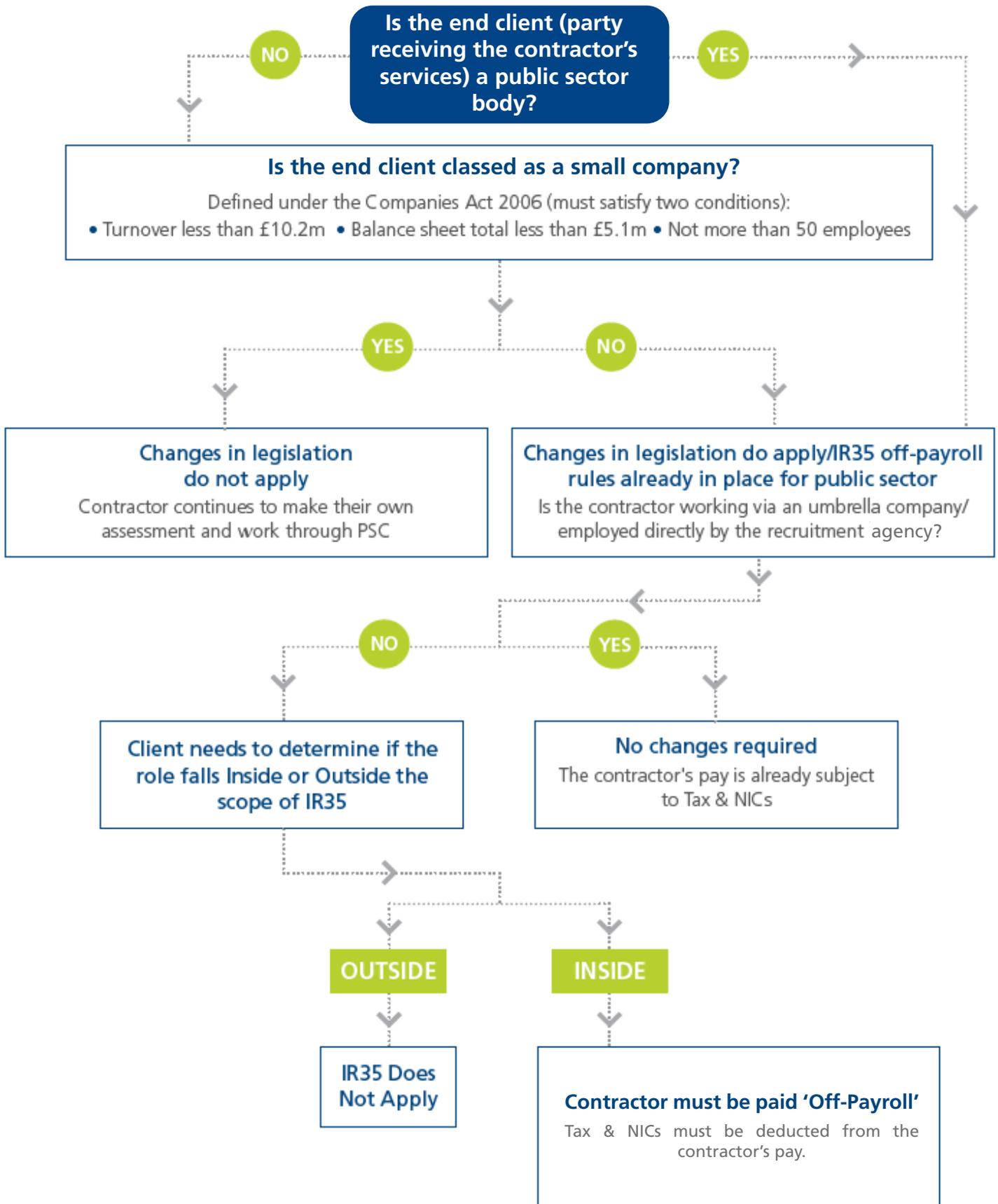
It is important that organisations who are considered small understand the new off-payroll rules as they are required to notify the next party in the contractual chain should their circumstances change. If they meet two of the criteria for two consecutive financial years, they must apply the off-payroll rules from the start of the tax year following the end of the filing period for the second financial year when the conditions were met.

The organisation who receives the services from the contractor (known as the client) needs to understand that determining the status of a contractor is not about the individual or the role - it's the assignment. If the assignment is considered to be inside the scope of IR35 then tax and National Insurance is payable on the contractor's income and this will be deducted by the party with the contract with the personal service company, so usually the client or a recruitment agency.

It's important to be aware of the changes and start planning for them now. The financial impact could be significant for your contractors and other parties within the contractual chain.



Will the off-payroll working rules (IR35) affect my business?



The employment status determination test

There are several factors that will need to be considered when making an employment status determination statement, some of which carry more weight than others. You can check whether the off-payroll working/IR35 rules will apply to your contractors by using HMRC's Check Employment Status for Tax (CEST) tool. You can also engage with IR35 specialists such as Qdos (details found on page 14), who will be able to assist you with the status determination test using their online platform. But what criteria are behind this tool, and how will your contractor's status be determined?

There are four main tests to determine whether a contractor falls within the scope of IR35:

1. CONTROL

If a client controls where, when and how the contractor performs their work, it suggests that the client is exercising the level of control that an employer may have over an employee. Typically this is more likely to occur where a contractor does not provide a specialist service.

Whilst there may be very good health and safety and security reasons for where and when work is carried out, the contractor will need to be able to demonstrate they have autonomy in how they work in order to show the client doesn't have the level of control that would make the contractor a deemed employee.

2. PERSONAL SERVICE AKA SUBSTITUTION

If the contractor is able to provide a substitute, (i.e. someone to step in to cover the work) or is able to use someone else to perform the task, then it proves that the services being provided are not exclusive to that contractor. It is, of course, a facet of employment that you're not able to send anyone else to do your job.

All 'IR35 friendly' contracts should include a substitution clause but remember, the availability of a substitute must be genuine, and the degree of client consent required may render the clause useless.

3. MUTUALITY OF OBLIGATION (MOO)

MOO applies when a client expects a worker to complete work when asked to do so, and the worker has an expectation of a constant supply of work.

If the above criteria are met, then the engagement could be seen to be one having the attributes of employment. It's worth considering this aspect where there are multiple renewals of a contract for one contractor working with one client. Those who are self-employed would expect to be hired for a specific task with no expectation of further work thereafter.

One of the main complaints about CEST tool is that it does not address this aspect of status.

Assessment of the relationship between the client and the contractor will be crucial in the run up to the changes in April 2021, especially if many fall within the realm of IR35. It should be remembered that the actual performance of a contract is more important than the written contract, so, if you complete the CEST tool, always keep a note of why you answered the questions as you did. The CEST tool will pass three possible judgements: IR35 does not apply, indeterminate or IR35 does apply.

4. RISK

Employees rarely experience financial loss from being employed. Assets are provided by an employer to enable the employees to carry out their work and if there is any failure to complete tasks correctly, employees are not obliged to rectify matters at their own cost.

If a contractor is exposed to financial risk as a result of their work, such as not getting paid by a client or getting sued for inadequate performance, this would suggest that they are in business on their own account and likely to be self-employed.

OTHER FACTORS TO CONSIDER

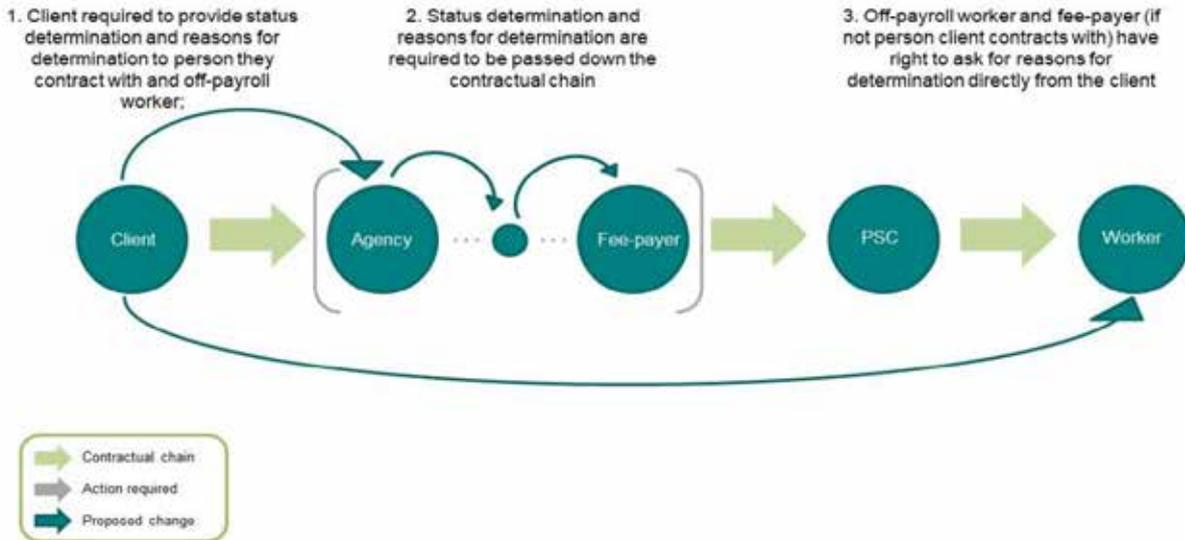
Although these could be ascertained from the above, it is worth mentioning the following specifically:

- Does the client provide equipment, as they would for employees?
- What is the basis of payment? Per hour, or day, as an employee or per project?
- Is the contractor part of the organisation in terms of management and reporting responsibilities?
- Does the contractor have access to holiday pay, fringe benefits, employer funded facilities, events etc?
- Does the contractor exclusively work for one client?
- Does the contractor have a significant notice period?



The contractual chain: Which party is liable for what?

The below diagram, taken from the [Government's Summary of Responses](#), illustrates the flow of information down the contractual chain.

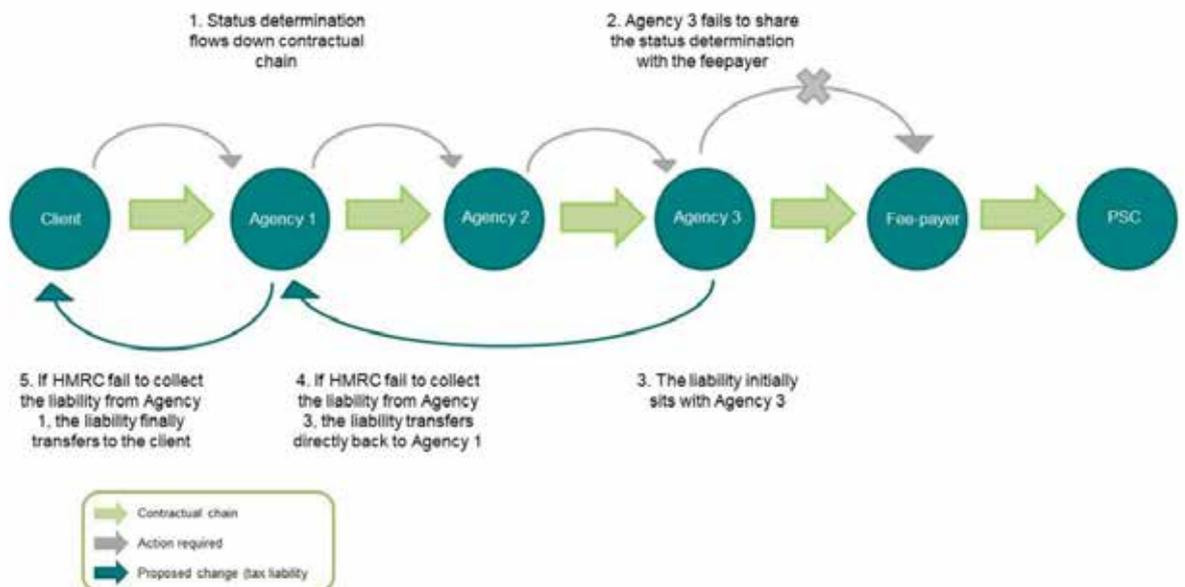


The fee-payer is responsible for applying the employment status determination and making the relevant deductions.

The liability for tax and National Insurance should a contractor fall inside the scope of IR35 moves down the contractual chain until a party does not meet its obligations. For example if the client does not pass the status determination onto the agency then the client will be liable for any relevant tax and National Insurance that were not deducted correctly.

Should the party liable for the tax and National Insurance deductions fail to settle their associated tax liabilities with HMRC, and there is no realistic prospect they ever will settle, the regulations allow HMRC to collect outstanding tax and National Insurance from other parties within the contractual supplier chain.

The below diagram illustrates where the responsibility of unpaid tax and National Insurance can transfer up the contractual chain.



It's worth noting that HMRC will not exercise the right to pursue other parties in the contractual chain for unpaid tax and National Insurance in the case of genuine business failure of the party ordinarily liable for the tax and National Insurance.

The end client's responsibilities

The client is responsible for determining the status of the contractor, and once the decision is made, a procedure must be in place to correctly pass the decision and the reasoning down the contractual chain to the agency and the contractor. The status determination has to be provided before the contract starts or before the off-payroll worker starts to provide their services.

Applying a decision to a group of off-payroll workers with the same role, terms and contractual conditions can be appropriate in some circumstances. However, reasonable care, although HMRC have not defined exactly what this means, must be taken by the client in making the assessment. Making a blanket decision that all off-payroll workers are inside or outside the scope of IR35 is not considered to be taking reasonable care, is unlawful and can result in liabilities being visited upon the client that would otherwise sit elsewhere in the contractual chain.

WHAT HAPPENS IF NOT ALL PARTIES AGREE WITH THE STATUS DETERMINATION?

The client is required to have a process in place to deal with any potential disagreements with the decided employment status. Either the contractor or the deemed employer (this could be the recruitment agency or umbrella company) will be able to make representations to the client directly.

The client must respond to these representations within 45 days of receipt with either confirmation that the matters raised have been considered but the status determination is still correct or provide a new status determination with a supporting conclusion and a statement retracting the previous employment assessment. If the client fails to respond within 45 days of receiving the representation then any liability will remain with them.

HMRC will not get involved with resolutions and, without a process in place, the client may still be liable for tax and National Insurance.

There is no detail at the time of producing this guide on how many times the off-payroll contractor or the deemed employer can disagree with the status determination.

It's also worth noting that during the time of disagreement, if the contractor has already started the assignment then the fee-payer (which could also be the client) should apply the rules in line with their original determination.

WHAT HAPPENS IF THE STATUS DETERMINATION IS INCORRECT?

The reason the client is responsible for the status determination is their close proximity to the actual assignment and the work the contractor will be undertaking. If the status determination is incorrect the client will be liable for any relevant tax or National Insurance.

The fee payer's responsibilities

The fee payer is responsible for acting on the status determination and deducting the correct taxes and National Insurance if relevant. It's worth noting that the end client and the fee payer may be the same organisation as detailed in the contractual chain on page X.

Failure to act on the status determination may result in associated tax and National Insurance liabilities. If the status determination concludes that the contractor falls inside the scope of IR35 then the fee-payer is responsible for deducting tax and National Insurance from the contractor's pay.

If the end client is not the fee payer then they are required to pass the status determination along with the reasons for the determination to the next party within the contractual chain and also to the contractor. Failure to pass this information on may result in being liable for any relevant tax and National Insurance.

Guidance on the affects the new off-payroll legislation may have on the contractor's net pay as well as how to prepare for the upcoming changes can be found further on in this guide.



Understanding the impact of engaging with contractors that fall within the scope of IR35

Before confirming any new assignments and before the new changes come into place on 6 April 2021, we recommend you consider the client and the contractor consider the impact should the assignment fall within the scope of IR35.

There are a few options to choose from:

UMBRELLA COMPANY

An umbrella company can be a simple solution. The umbrella company will become the fee-payer and therefore responsible for deducting any relevant tax and National Insurance. The majority of umbrella companies employ contractors rather than engage with their personal service companies. Further details on umbrella companies can be found on page 13.

EMPLOYMENT

The client (or even the recruitment agency) may wish to employ the contractor directly. This means the contractor will become an employee and therefore have employment rights. The responsibility for deducting tax and National Insurance falls to the fee-payer.

There are other considerations when employing a contractor and these are as follows:

- **Agency worker regulations (AWR)** – (only relevant for recruitment agencies) whereby the contractor is entitled to equal treatment to an equivalent full time employee on pay and other basic working conditions if they have worked 12 weeks in the same job.
- **Pension Auto Enrolment** – the contractor has to be enrolled in the company's pension scheme in the same way as any other employee and they will benefit from the employer's pension contributions unless they opt out.
- **Holiday Pay** – the contractor is entitled to holiday pay as an employee of the business.
- **Apprenticeship levy** – if your total taxable pay for all employees, including contractors, exceeds £3million per tax year then you are required to contribute 0.5% of the total pay into a fund which can be reinvested in apprenticeship training for the business.

These additional costs as well as Employer's National Insurance may affect the net pay of the contractor, the recruitment agency rate and/or the client's employment budgets.

CONTINUE ENGAGING WITH THE PERSONAL SERVICE COMPANY (PSC)

If the contractor wishes to continue using their limited company (aka PSC) then the fee payer will be required to make 'deemed employee' payments. This means tax and employees' National Insurance will be deducted from their pay. The fee payer will also be required to pay employer's National Insurance and apply the apprenticeship levy if relevant. Unfortunately the employment allowance cannot be used against the National Insurance payments

made for off-payroll workers.

The fee payer will need to report the pay and deductions made to HMRC using a Full Payment Submission, as they do for employees on their payroll. They should indicate this person is an off-payroll worker. For those that operate in the construction sector, the off-payroll rules will take precedent over the Construction Industry Scheme.

As the contractor is continuing to operate using their PSC, student loan repayments, holiday pay, statutory payments and pension auto-enrolment are not relevant.

It's worth noting the new rules apply to any payments made to the contractor or the contractor's intermediary (PSC) for work carried out on or after 6 April 2021.

We recommend taking your time to consider the above options and the impact this will have on your business and/or circumstances. As a contractor or fee payer, you may have a preferred option that you would like to discuss with other parties in the chain and provide guidance on how this will impact them.

Understanding the impact on the contractor's net pay should they fall within the scope of IR35

The IR35 changes are expected to impact 170,000 individuals working off-payroll through their own personal service company (PSC), who would be employed if engaged directly. The measure is targeted at individuals who are not compliant with the current rules; according to HMRC, those who already comply with the existing rules should feel little impact.

The contractor will only be affected by the changes if they operate through a PSC and will be on assignments for medium and large clients after 6 April 2021. It's important that the contractor understands the new rules and the status determination from the client. They may wish to challenge the status determination from the client, therefore they will need to know what the client-led disagreement process is.

If the contractor falls within the scope of IR35, then the fee-payer, which could be the recruitment agency, umbrella company or client, will be responsible for deducting tax and National Insurance. As detailed in the previous article there are a few options in which the client can engage with a contractor. Depending on whether the contractor continues to operate using their PSC or becomes an employee of the client, recruitment agency or umbrella company depends on how much their net pay will be affected.

If the contractor continues to operating using their PSC then the 'deemed employment payment' will be taken from their gross invoice (net of VAT), and the fee-payer will remit tax and National Insurance to HMRC. The fee-payer may wish to reduce the contractor's rate to account for employer's National Insurance.

If the contractor is employed then there are other adjustments to their pay such as holiday pay and pension (assuming they do not opt out). We have put together a net pay calculator to help understand these adjustments and compare the net pay to the contractor's original pay rate. This can be found on our website www.recruitmentaccountants.com or via the direct link included in 'Useful Resources' on page 16.

Contractors have generally been quite disgruntled by the proposed changes which will take effect on 6 April 2021. However, there are a few benefits that are easily forgotten when the focus is on the reduction in net pay.

These benefits are as follows:

- **NATIONAL INSURANCE** – the contractors will now be paying more National Insurance which may have a positive impact on their state pension allowance for when they retire.
- **REDUCED PROFESSIONAL COSTS** – if the contractor consistently carries out work that falls inside the scope of IR35 then there is little reason to operate using a PSC. Therefore, they may close their company and save on annual professional costs and any other costs in running their business.
- **PENSION** – as an employee, the contractor will benefit from the employer pension contributions of 3% (rate for tax year 2021/2022).
- **HOLIDAY PAY** – as an employee, the contractor will benefit from paid annual leave.



Umbrella Companies

In the lead-up to the IR35 off-payroll reform in the private sector, many have turned to umbrella companies to reduce the compliance burden with both tax and general financial administration.

There are a lot of umbrella companies to choose from and it's important the fee-payer chooses the right one that will reflect well on their business and look after the contractors. So how can you be sure you've made the right choice?

FIRSTLY, AN UMBRELLA COMPANY IS...

A UK limited company which acts as an employer for contractors. This third party usually has a contract with the fee payer and the contractor and provides a PAYE payroll service to its contractor employees. This means it processes all timesheets and invoices, whilst paying employees a salary after tax and other deductions.

It is seen as a 'hassle-free' way to contract but the fee payer and the contractors alike should ensure that the umbrella company is a legitimate PAYE umbrella company to avoid any 'offshore' tax avoidance schemes that can be disguised as such.

CARRY OUT DUE DILIGENCE

Appropriate due diligence should be carried out on all umbrella companies. Consider the following:

- Who are the owners, directors, shareholders?
- Is the umbrella UK owned and registered with no offshore affiliations?
- Make sure that the umbrella company does not make use of any sort of offshore tax avoidance schemes.
- Confirm that all payments made to employees are through PAYE. The umbrella should be able to provide payslips and matching Real Time Information reports (RTIs) to confirm all taxes are being paid directly to HMRC.
- Is there a qualified, registered accountant behind the scenes?

- Ask for a screen shot of their HMRC account on PAYE and VAT. Whilst these will often show outstanding balances the important point to look for is whether fines, penalties or interest has been applied as this could suggest an issue. Where this is the case clarification would need to be sought.
- Check VAT registration – ask for their VAT number and check its validity. You can do this by going to http://ec.europa.eu/taxation_customs/vies/.
- Do they have appropriate insurance cover to protect their employees?
- Review their contract of employment to ensure they offer the same rights as any other employed person, including holiday pay, pension and expenses entitlement.
- Be wary of referral fees and how they are provided – these could contravene the Bribery Act if not transparent.
- Ensure all documentation is in place, including and not limited to any opt-outs, entitlement to work in the UK, and timesheets.

OUR RECOMMENDATION

HMRC is extremely hot on non-compliant or offshore umbrella companies. We suggest minimising your risk by using umbrella companies that have had thorough checks made already. You can start with those who are FSCA accredited or Professional Passport approved.

Managing your IR35 Compliance

From 6th April 2021, IR35 reform will mean that medium to large UK businesses will take responsibility for determining the IR35 status of the contractors they engage.

For both parties, this will mean adapting to a new way of working.

Qdos are leading IR35 experts with over two decades' experience in defending IR35 enquiries and assessing status for contractors, and have assisted over 2,200 businesses to fairly and compliantly manage the off-payroll rules.

For end client businesses, we can provide a manageable, fair, and compliant service to accurately determine IR35 status (Qdos Status Review), as well as help with designing policies, reviewing your contractual terms, and reviewing your procurement processes and/or outsourced service offerings to ensure your business is compliant with the legislation.

For contractors, who will remain liable for determining their status for any engagements with overseas clients or small companies, we can provide expert contract assessments of your status, as well as insurance cover against the risks involved.

UHY clients who are contractors also benefit from **10% off** contractor review products with Qdos, helping you to ensure compliance with the IR35 legislation.



Qdos Status Review is an award-winning facility for managing IR35 reform - used by over 2,200 recruiters and end users, and has provided over 9,000 contractors with fair assessment of their status under the new rules.

The service includes:

- ✓ robust IR35 status assessments reviewed by Qdos' experienced consultants
- ✓ automatically issued status determination statements
- ✓ determinations backed by a comprehensive IR35 insurance policy protecting you as the fee-payer
- ✓ support for you, your client, and your contractors throughout the process
- ✓ management platform providing complete visibility for all parties
- ✓ additional features including role assessments, dispute resolution, and read-only access for third parties.

Unlike other services, the contractor completes the assessment reducing disputes, reviewed by an expert human consultant, with end client approval and a complete audit trail.

Qdos are a leading authority on IR35 and have been since 2000, handling over 1,600 status enquiries and saving contractors over £35m in tax. Over 2,200 recruiters and end client businesses trust Qdos' opinion on IR35 status, enabling them to continue fairly and compliantly placing contract workers under the off-payroll rules.

GET IN TOUCH TODAY

To discuss your options, please get in touch with UHY Hacker Young:

01462 687 333

letchworth@uhy-uk.com

How to prepare

So you should now be well up to speed on IR35 legislation and the off-payroll reform and how it may affect your business and/or circumstances. We recommend that you start to prepare for the proposed new rules now by doing the following:

FOR CLIENTS...

- **ASSESS** whether you meet the small company criteria (Companies Act 2006) and therefore whether the new rules apply to you.
- **REVIEW EXISTING ASSIGNMENTS** where contractors operate via Off-Payroll arrangements such as PSCs. Split these assignments into two groups being those that end before 6 April 2021 and those that end after 6 April 2021.
- **DISCUSS** the assignments that will be affected by the new changes with your contractors and/or the next party in the contractual chain. You may need to educate your team internally and devise a process to deal with off-payroll contractors.
- **EDUCATE YOUR CONTRACTORS** on the new changes and provide options for those who may fall inside the scope of IR35. They may want to understand the impact this may have on their net pay. Where there is another party between you and the contractor such as a recruitment agency, you may wish to communicate your preferred options.
- **CONSIDER THE FINANCIAL IMPACT** the new changes may have on your costs. For those contractors that fall inside the scope of IR35 there may be additional employment costs. These could be passed onto your contractors or the next party within the contractual chain.
- **REVIEW AND REVISE YOUR CURRENT PROCESSES** to take into account the new changes. Consider how 'status determination statements' will be carried out and then passed down the contractual chain, how you will handle contractor status disagreements, rate negotiations etc.

FOR CONTRACTORS...

- **ASSESS** whether your client meets the small company criteria (Companies Act 2006) and therefore whether the new rules apply.
- **REVIEW YOUR EXISTING ASSIGNMENT** and consider when the contract ends. Is this before or after 6 April 2021?
- **CARRY OUT YOUR OWN STATUS DETERMINATION** using the HMRC CEST tool. Is it clear that this assignment is inside or outside the scope of IR35.
- **OBTAIN THE STATUS DETERMINATION FROM THE CLIENT** and match this to your own assessment. Do you agree with the outcome? If not then raise your concerns with the client.
- **CONSIDER THE FINANCIAL IMPACT** of the status determination. If your assignment is inside the scope of IR35 then you may need to renegotiate your rate with the client or fee payer. You may also have to consider an umbrella company if the fee-payer will not employ you directly and whether you still need your personal service company.

Our recommendation is to use the online Qdos status determination platform. You can find out more on page 14 of this guide.

If you require any support or guidance in preparing for the off-payroll reform then please do get in touch. We can help you build a robust system to tackle this challenge, provide payroll support, status determination support and bespoke workshops and training.

Our solution and expertise

UHY Hacker Young, are a top 20 accountancy network and provide expert advice on accounting, finance, taxation and business growth. With IR35 changes around the corner we can help you build a robust system to overcome this challenge, we can provide payroll support, training and help you understand the impact of IR35 on net pay and costs.

Should you be interested, the following bespoke IR35 training & consultative solutions are available for clients:

IN-HOUSE TRAINING – We will attend your office and provide a half-day training session for your employees. This session will cover the technical aspects of the upcoming changes and how they will affect your business. We will provide basic advice on how you better structure your business and its systems to cater for the new legislation.

A short questionnaire will be provided in advance to all attendees so we may tailor the training session content.

£999* for half day session

CONSULTATION – Onsite consultation session with key management personnel and the finance team to cover the upcoming changes and how they will affect your business. Detailed systems and financial advice and support on how you better structure your business to cater for the new legislation. A conference call will be arranged beforehand to understand the needs of the business and the challenges you are facing with the upcoming changes.

£1,499* for half day session.

We can also support you with your back-office system including payroll services, holiday pay calculations, pension auto enrolment and apprenticeship levy compliance alongside bookkeeping and management accounting. Price depends on the number of clients and contractors:

If you would like to find out more please call 01462 687333 or email letchworth@uhy-uk.com

Useful Resources

OFF- PAYROLL WORKING RULES - <https://www.gov.uk/government/publications/rules-for-off-payroll-working-from-april-2020>

CONTRACTOR NET PAY CALCULATOR - <https://recruitmentaccountants.com/resources/ir35-guidance-how-to-use-our-net-pay-calculator/>

CHECKING VAT REGISTRATION NUMBERS - https://ec.europa.eu/taxation_customs/vies/

FCSA - <https://www.fcsa.org.uk/>

PROFESSIONAL PASSPORT - <https://www.professionalpassport.com/>

CLOSING DOWN YOUR PERSONAL SERVICE COMPANY (PSC)

We will help you to find the best solution, this can include preparing final accounts, tax return and dividend vouchers, liaising with HMRC and companies house, and if relevant performing strike-off application.

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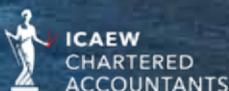
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