

Major Changes to IR35

In April 2020, major changes will be made to the off-payroll working rules (commonly known as “IR35”). All businesses that engage individuals (usually referred to as “contractors”) through personal service companies should start preparing for these changes, as they are likely to create additional costs, administrative burdens and potentially tax liabilities.

IR35 applies where an individual personally performs services for a client through an intermediary (often a “personal service company” or “PSC”) and the circumstances are such that if the arrangements had been made directly between the individual and the client, the individual would have been regarded as “employed” by the client.

Where the arrangements fall “within IR35”, the intermediary is treated as being the individual’s employer and is required to account to HMRC for income tax and employee’s National Insurance contributions on the fee paid by the client (less a 5% allowance) and also to account for employer’s National Insurance contributions (at 13.8%).

Currently, responsibility for the application of these rules and the decision as to whether the arrangements fall within or outside IR35 – and so the requirement to account for income tax and National Insurance contributions - lies with the intermediary, which means that the client is effectively insulated from the risks of the rules being misapplied such as liability for unpaid income tax, National Insurance contributions, fines, interest and penalties and also the practical concern of becoming of interest to HMRC.

However, from April 2020, it will be the duty of the **client** to examine its consultancy arrangements and determine whether IR35 applies. If it does, then the **client** will have to deduct income tax and employee’s National Insurance contributions through PAYE on the total fee it pays to the individual (excluding VAT). It will also have to pay employer’s National Insurance contributions on the whole fee.

Importantly, it will be the client that is responsible if the rules are not applied correctly. This is a very significant change (and mirrors the change that has already happened with

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public sector arrangements).

The new rules apply to medium and large-sized private sector employers, meaning those with:

1. an annual turnover of more than £10.2 million;
2. a balance sheet total of more than £5.1 million; or
3. more than 50 employees.

Such employers should review their existing off-payroll engagements and make status determinations in order to assess if and how they will be impacted. They may then need to budget for additional costs (e.g. of employer National Insurance contributions at 13.8% and the additional administrative burden) and put in place arrangements for accounting to HMRC for the income tax and National Insurance contributions.

The impact of these changes could be very significant – indeed, some businesses may decide that the new rules mean that it is no longer worth working with contractors under such arrangements and change to, say, employing the relevant individuals directly (although this has other ramifications).

Assessing whether a particular arrangement falls within IR35 can be difficult in practice, since there is not a definitive checklist to determine which side of the line a contractual arrangement falls and each case turns on its own particular facts. We will be able to give guidance on any arrangements you may be concerned about, and given the potential issues and liabilities, it will be prudent to prepare well in advance of the changes.

For further information, please contact [Bob Cordran](#) or [Michael Cashman](#).