

IR35 FAQ's

The Background:

What is IR35?

The Off-payroll working rules (commonly known as IR35 or 'the intermediaries' legislation') have been in place for some time, originally introduced by the UK Government in 2000. IR35 applies where an individual works through an intermediary like a Personal Service Company/Partnership/etc. providing services to an End Client and when the reality of the relationship is such that they would be ordinarily classed as an employee of that end Client if the intermediary was not in place. IR35 was brought about to ensure Contractors pay the same levels of Tax and National Insurance Contributions as an equivalent employee who is broadly doing a similar role.

For more information on understanding the Off payroll working Rules please visit:

<https://www.gov.uk/guidance/understanding-off-payroll-working-ir35> and
<https://www.gov.uk/guidance/ir35-what-to-do-if-it-applies>

When will the new rules in the Private Sector take effect from?

The Rules will take effect from 6th April 2020. This means that any services provided by a Worker working through a Personal Service Company (PSC) following that date will be subject to the new Rules.

What is changing?

The responsibility for assessing employment status is changing. It will be the end Client, not the PSC supplying their services that will need to make a determination on whether the Off-payroll rules apply to the assignment.

What is the responsibility of the Agency?

The Agency must fulfil its obligations as Fee Payer by ensuring that payment made to the Contractor is aligned to the Status Determination Statement received by the Client. If the Status Determination Statement shows a determination of Inside IR35, then the Agency is responsible for calculating the payment due to the Personal Service Company or Contractor as well as deducting any employment taxes, employee and employer National Insurance and reporting this information to HMRC.

Exemptions to the Off-payroll Rules

Are there any exemptions to the Off-payroll Rules?

Yes, if the end client is a small company.

If the end client satisfies 2 of the following criteria:

- Annual turnover of no more than £10.2m;
- balance sheet total of not more than £5.1m or
- no more than 50 employees

then the small company is exempt from the changes. Unincorporated organisations with a turnover of less than £10.2m will also be exempt.

Where companies are exempt, the existing IR35 rules apply which means it is the intermediary (PSC) that is responsible for applying the rules.

When a company becomes or ceases to become small in an accounting period, for the purposes of the off-payroll rules that change will apply from the start of the tax year following the end of the at accounting period irrespective of whether the organisation is incorporated or unincorporated.

I am working remotely in the UK via my PSC for a company based abroad. Do I need to consider the Off-Payroll Rules?

Yes, you are in scope of the Off-Payroll rules even though the Company you work for is based abroad.

Inside/ Outside IR35 terminology:

What does it mean if my role is 'inside IR35' and the off-payroll rules apply?

When a role is deemed as falling 'inside IR35' it means the Worker is deemed as an employee for tax purposes only and relevant tax and National Insurance needs to be deducted at source.

If my role is determined to be 'outside IR35' and the off-payroll rules do not apply what do I do?

If your engagement has been determined as 'outside IR35' it means that you are operating legitimately as a contractor and so the obligation for deducting PAYE Tax and National Insurance will still remain with your PSC. This means that the Agency will not make deductions to your pay for PAYE Tax and NI; you will be paid gross into your Personal Service Company as you are now.

What makes a contract Inside or Outside IR35?

There are many criteria to consider. HMRC uses a number of core tests to establish whether the relationship between a worker and an end client is one of employment or one of a business to business relationship. The tests include:

- Mutuality of obligation – is the end client obliged to keep me in work by moving me from task to task and are you obliged to take the work?
- Personal service – is it you that the end client requires to personally conduct the work or are you able to exercise a right to provide a substitute – both contractually and in working practice.
- Control – Are you supervised, directed and controlled day to day or is your business free to decide how the work will be performed, including location of work and hours worked.
- Risk – if a contractor can make a profit or loss or he is in a position to remedy mistakes at his own cost as well as investing in his business by having own equipment, tools and insurance cover.

If I can't substitute my services with an alternative representative, will this have a bearing on my determination?

Providing a substitute/ alternative is only one of the factors taken into account when a worker's assignment is determined. If a personal service is required and you cannot and have not exercised a substitute, then it would be a strong indicator of employment status.

This is because it is highly unlikely that a permanent employee would be able to send a substitute in to work to carry out their assignment if they couldn't make it in to work or decided to take on work elsewhere. It is key that supplying a substitute extends beyond the Contract Terms; you must be able to provide a substitute in practice and that substitute must be accepted by the client.

Assessment

What is a status determination statement (SDS)?

The off-payroll rules carry a requirement for a Status Determination Statement (SDS) for all engagements where the services are provided by an individual working through an intermediary such as a Personal Service Company. The SDS is a statement that confirms the status decision made on an engagement and the rationale behind that decision.

Who is the SDS shared with?

The SDS is shared with all parties in the labour supply chain. The SDS should be generated by the end Client and shared with the Contractor and the next party in the supply chain, usually the entity that placed the contractor with you and who will act as Fee Payer (the Agency).

When does the SDS need to be shared?

All current roles who already have workers deployed will be required to have an SDA if the engagement is expected to go beyond 5th April 2020. We require all SDS's to be shared with us prior to 1st March 2020 so that we can take the necessary steps to ensure that future engagements accurately align to the tax status beyond 5th April 2020.

For new engagements, an SDS should be given to the Agency and Worker at the point of a role instruction or at latest, before the assignment or supply of services commence.

In what form should the SDS be supplied?

The SDS should be in writing and should detail the role, the determination and the reasoned argument for why the end Client has arrived at the determination outcome. It should also detail the appeal process available to the Worker in the event the Worker does not agree with the de. It is also acceptable to provide a copy of the CEST determination, which can be downloaded/ printed from the CEST site and sent to the Agency and Worker.

What if an SDS is not given?

The party in the labour supply chain that does not fulfil its obligations under the Off-Payroll Rules will be the party that will carry the liability for any underpaid tax and NIC's. If the Client does not provide its status decision or the reasons for that decision, where requested and within the required timescales or if it fails to take reasonable care in making its status decision, liability to deduct tax and NIC's will move to the end Client. Similarly, if the end Client or Agency provides false information or a contrived arrangement designed to get a particular outcome from the service eg an Outside IR35 determination, HMRC would treat as evidence of deliberate non-compliance with associated higher penalties.

The End client that I work with has issued Blanket Determinations for all roles. Can they do this?

A blanket determination is the application of an IR35 status to apply across a large group of off-payroll Workers. In other words, where an End Client determines that all contractors in a particular department, series of departments or company wide are either Inside or Outside IR35. It is typically done without due consideration or assessment of the individual roles and is at odds with what the legislation is seeking to achieve. Whilst the Agency cannot control the approach the Client takes, we would not recommend this approach as there is a requirement in the legislation that obligates end Clients to take reasonable care in its assessment of engaged Workers. Reasonable care was added to the legislation before the Reform to the Public Sector rules came into play in 2017. It was to

prevent clients making blanket determinations and to guard against inaccurate assessments being provided. For an end client to show reasonable care, we would advise the following steps:

- Ensuring that all the relevant staff members, and particularly hiring managers and those making the determinations, are well versed in the Off-payroll working rules
- Ensuring a well-documented process for determining status
- Making a determination on each individual assignment
- Ensuring all relevant parties are included in the process of making a determination, e.g. Worker, Agency, Hiring Manager
- Setting up an IR35 Working Party who can answer questions and provide clarity on determination outcomes
- Ensuring an appeals process is in place

Appealing a Status Determination

What happens if I don't agree with the Client's status determination?

Under the legislation, end Clients are expected to set up a status disagreement or appeals process to help resolve disagreements about the status decision that has been reached. The Worker or the Agency will be able to make representations to the end Client if the Worker or Agency does not feel the SDS reflects reality. This could involve providing the End Client with evidence (an independent assessment for e.g.). The End Client is expected to respond to those representations within 45 days of receiving a notification. The End Client can respond in 2 ways:

- a) inform the Worker or the Agency that they have considered the representations and decided that the SDS is still correct and give reasons for that decision OR
- b) Give a new SDS containing a different conclusion that the previous SDS is withdrawn

I have received an Inside IR35 determination, but I have had my role assessed independently and it has been deemed to be 'outside IR35' – what now?

The client has a legal obligation to allow you the opportunity to appeal a decision but ultimately the determination obligation sits with the Client and they need to be comfortable that they have delivered an outcome that can stand up to in any HMRC investigation. So, whilst your appeal will absolutely be considered, the End Client's decision will be final.

Tools to assess IR35 Status

What tools will the End client use to arrive at a tax status determination?

There are various ways to arrive at a status determination. It will be the Client's choice as to what their methodology will be to assess a role. They may use a single method, or they may use a combination of methods to arrive at a determination. Assessment may be made utilising HMRC's CEST (Check Employment Status for Tax tool) and/or an independent business specialising in IR35 assessments and/or the expertise of an internal team (HR/ Procurement/ Tax/ Hiring managers).

What does the CEST tool cover?

HMRC has developed an online employment status tool (CEST) - <https://www.gov.uk/guidance/check-employment-status-for-tax>

The tool uses a range of questions including (but not limited to):

- Who is completing the tool?
- Type of intermediary the worker works through

- Whether the role is an office holder role and whether the services provided relate to that office
- Whether the Worker can send a substitute and has provided one in the past
- How much supervision, direction and control is in the role
- Whether the worker has to pay for any materials in order to provide their services
- Whether the worker is part and parcel of the organisation ie integrated in the workforce

The tool will give a determination/ outcome of:

- Worker is an employee for tax purposes, which means that PAYE tax and NICS are due
- Worker is self-employed for tax purposes, which means the intermediary remains responsible for its own tax affairs
- Inconclusive

Engagement Options

What are my engagement options if my assignment is determined to be Inside IR35?

If your role is determined to be inside IR35 you can engage using one of the following options:

PAYE – the Agency will make the necessary tax and NI and statutory deductions from your pay

Umbrella Company – the Agency will pay the Umbrella Company gross and the Umbrella company will pay you net of deductions.

PSC with deductions – we will work with a Service Provider to ensure the necessary PAYE Tax and National Insurance contributions are processed.

What is a Personal Service Company (PSC)?

Otherwise known as a Limited Company, a PSC is the vehicle employing the Representative/ Contractor providing the services to the end Client. Usually the Representative has a material interest in the Company, i.e. For a PSC this means they must own or have a beneficial interest in more than 5% of the shares of the company; For a partnership they must be entitled to 60% or more of the profits of the partnership.

What is an Umbrella Company?

An Umbrella Company acts as an employer for Contractors by collecting fees for Contractor's services from the Agency/ End Client. The Umbrella company will deduct all employment costs and a weekly management fee for running your contract. You will be paid after the normal employee's deductions of Tax, National Insurance Contributions and pension contributions. Typically, you are entitled to statutory employment benefits such as sick pay and holiday pay. Working through an umbrella company puts you outside the scope of IR35.

Can I use my own Umbrella Company if I choose to engage through that vehicle going forward?

Staffing 360 Solutions have an accredited list of market leading service providers who are contractually obliged to ensure the very highest standards of legal and tax compliance. They are as follows:

- Paystream (ph: 0161 929 6000 or new.business@paystream.co.uk)
- Brookson (ph: Richard Fahey 01925 694 521 / 01925 235 727
(richard.fahey@brookson.co.uk))

Staffing 360 Solutions have agreed a preferential rate for all workers wishing to use their services.

To find out more about why compliance is important:

<https://www.fcsa.org.uk/wp-content/uploads/2018/04/Compliant-Umbrella-firms-factsheet-2017.pdf>

If I am working as a PAYE worker now or through an Umbrella Company, will the Off-payroll working rules affect me?

No, this legislation does not affect or impact PAYE or umbrella company workers as PAYE and umbrella company workers are taxed and NI'd at source.

I have been given an option to go on a fixed term contract directly with the client. What does that mean?

A fixed term contract is an employment contract issued by an end Client. It works like a permanent role apart from the time period in that you are only engaged for a fixed amount of time e.g. a 6- or 12-month contract. A fixed term contract provides additional employment benefits that you wouldn't ordinarily get as a Contractor engaged on a Contract for Services. You are also engaged and paid directly by the end Client, not through the Agency although the Agency will be the party who manages your offer with the end Client.

Will I need a new contract if my assignment is deemed Inside IR35?

Yes, your current assignment will need to be terminated with an end date that has taken into account your current notice period. Notice will be served under your current Terms upon confirmation from the Client. A new assignment will need to be raised and aligned to your new tax status – this could be on a PAYE, PSC with deductions or on an Umbrella basis. The latest date you can work through your current PSC is 5th April 2020.

If I want to continue working outside IR35 what contract can you put me on to keep me Outside?

You should always be wary of providers who say they can 'get your assignment outside IR35'. Contrived appointments that seek to circumnavigate the Rules will be exposed in the event of an investigation by HMRC and the tax liability could be extensive. It is to this end that we will work with our Clients to ensure compliance with the Off-Payroll working Rules, which means that engagements will be aligned to the status determination communicated to us by the end Client. We are able to offer our Clients and Candidates a contract that is project/ outcomes based and which supports an Outside IR35 working arrangement.

Employment rights

Will an Inside IR35 assessment mean I will have more employment rights?

The status assessment of Inside IR35 will have no direct bearing on a worker's employment law status or legal rights. However if you change to a PAYE temporary worker either directly through the Agency or through an Umbrella Company route, you will be entitled to statutory benefits such as statutory sick pay and holiday pay and you will fall in scope of the Agency Workers Regulations which has equal treatment provisions for agency workers.

Working practices

If the working practices onsite compromise my tax status what can I do to address?

You should speak with your Agency in the first instance. It is key that you continue to operate as an independent business and as such any element of supervision, direction and control and integrating you into the workforce, could compromise your status. The working practices are key and the end

client will need to be guided on this to ensure they fully understand the possible impact this could have on your status.

Payment

If I am deemed to be Inside IR35, will my rate of pay change?

You will have various engagement options open to you if you are deemed 'Inside IR35'. There are increased costs if you work through a PAYE/ Umbrella model and the Agency will be required to engage with you or an Umbrella Company through a new contract arrangement, and possibly at a lower rate of pay. Whilst our end Clients will do their best to increase rates where viable, they are not obliged to increase your rate of pay. This will be a matter for you to discuss with the Agency Consultant.

If I am deemed Inside IR35, how will I know how much PAYE Tax will be deducted from my pay?

The amount of tax payable will be dependent on your PAYE tax code provided by HMRC and is largely dependent on your set of tax circumstances. If you are being paid PAYE via an Umbrella arrangement the Umbrella Company will provide you with an indicative calculation on your take home pay. You should expect too that if you are paid PAYE, your first few payments for services performed after 5th April may be subject to higher PAYE tax deductions.

Can I invoice through my PSC after 5th April if I am deemed to be Inside IR35?

Yes, you can submit timesheets for work completed up to and including 5th April 2020 AFTER 5th April and the Agency will pay gross into your PSC bank account. However, if you are deemed to be Inside IR35, effective 6th April any payments made for work completed from 6th April will need to be aligned to your new tax status ie Tax and National Insurance contributions deductions will apply.

If I am deemed Inside IR35, are there any expenses I will be able to claim throughout my new engagement?

Most clients will allow for some expenses to be reimbursed but this would need to be agreed at the outset of the engagement with the Agency. Currently, working through a PSC, you will have some allowable expenses that come with running your own Company. Typically, you will be entitled to a 5% tax allowance. From 6th April if your engagement has been deemed Inside IR35, you will no longer be able to take advantage of this tax allowance as you will be engaged as a PAYE worker.

New Engagements to reflect new status

What is the last possible date I can work through my Personal Service Company if I am now deemed Inside IR35 and making a switch to an Umbrella Provider?

Every Agency is different but given that the new rules take effect for work carried out from 6th April, contractors who fall within IR35 have until 5th April to work through their current Personal Service Companies.

We cannot pay Personal Service Companies gross for services performed beyond 5th April 2020 if the worker is deemed Inside IR35.

I have a current engagement in place which takes me to a date later in the year – can you terminate my agreement mid contract if my tax status is changing?

Yes. If your tax status is changing and you are currently providing services through your PSC, your engagement will need to be reflected correctly, including any potential rate changes as a result of

your tax status changing. The Agency will need to provide notice on your current engagement and re-engage you under different Terms that reflect your new tax status. For e.g. You may decide to move to an Umbrella arrangement. In this scenario, your new contract will need to reflect an engagement with the Umbrella Company.

I am worried that my new Inside engagement will compromise my current Outside IR35 tax status - could HMRC investigate me and apply retrospective charges if they feel I have underpaid tax?

HMRC will not provide assurances that there will be any pre 6th April 2020 amnesty and we simply cannot offer assurances to any candidates regarding possible HMRC investigations. We would urge you to seek advice from your Accountant should you be concerned about your previous liability before you proceed with your new engagement. As is currently the case prior to 6th April, you are responsible for your own tax status and ensuring that your business is paying the correct levels of Tax and National Insurance contributions to HMRC.

Is there a chance that the Government may not move ahead with this legislation in April?

Yes, although it would appear that aside from a few potential adjustments, there is unlikely to be a delay in the implementation date of 6th April. If anything does change, we will communicate with all our candidates and Clients, as appropriate.

What do I do with my PSC if I'm deemed Inside IR35 and I don't want to continue working through it anymore?

You should seek advice from your accountant on this. Some candidates may wish to continue working through their PSC's given that not every assignment you take on will be determined to be Inside IR35. It is a balancing act as you will need to consider whether you want the costs of keeping your company running against the potential of working on an Outside arrangement in the future.

Further Questions

I still have a few questions. Who can I speak with for further support?

All our employees have been trained on the requirements of the new legislation and are well versed to support you with your query. If your consultant is not available and you would like to speak with a member of our IR35 Project Team, please direct your query to

Allison.drake@staffing360solutions.com