



Sellick Partnership
Recruitment Specialists

Sellick Partnership

Candidate guidance to the IR35 off-payroll reform in the private sector



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The aim of this guidance is to help you as the contractor engaged through a Personal Service Company (PSC) get ready for the April 2021 changes to the IR35 off-payroll rules.

Background

As part of the Budget on Monday 19 October 2018, the chancellor announced that the government would reform the off-payroll working rules (known as IR35) for an intermediary's PSC working in the private sector. This was due to commence on 6 April 2020 following consultation and the introduction of reform in the public sector in April 2017. However, the implementation was delayed until April 2021 due to the spread of the coronavirus (COVID-19). The delay was to help businesses and individuals deal with the economic impact of COVID-19 pandemic.

The Government have in the interim, incorporated the new rules in the Finance Act 2020, which received royal assent in July 2020. Due to the current pandemic, this could be subject to further change and in this instance, we would update this guidance should it occur.

The purpose of the reform is to make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same tax and National Insurance contributions as employees.

Public Sector 2017

In April 2017, HMRC introduced the off-payroll working rules in the public sector. The off-payroll legislation imposed an obligation on the public sector body ("PSB") to inform Sellick Partnership of the status of a contractor and whether or not the contractor would be regarded as an employee or office holder of the client were it not for the contractor's PSC being in the contractual supply chain (i.e. "inside IR35").

Private Sector

The private sector definition includes all organisations that are not subject to the Freedom of Information Act. Prior to April 2021 in the private sector, the person providing services through their own PSC are responsible for deciding if IR35 applies and thus if the assignment is "inside" or "outside" IR35. However, from April 2021 the responsibility for determining the IR35 status of the role will move from individual contractors to the end-client organisation receiving the contractor service, and the responsibility to deduct the PAYE tax and NIC will fall to the organisation making payment to the PSC. This is usually the recruitment business such as Sellick Partnership — referred to in the legislation as the "fee-payer".

N.B. Small organisations are exempt so this change will only affect medium and large private sector organisations defined under section 382 of Companies Act 2006. However, there is an obligation on end-user clients to confirm to the fee payer whether they are exempt due to their classification as a small.

Impact of an "inside IR35" assessment

Currently, if Sellick Partnership are paying you through your PSC, you will have almost certainly determined that the role falls "outside of IR35". This allows you as the contractor the option to remunerate yourself through dividend payments. In general, dividends attract lower personal tax rates than a standard PAYE scheme.

If the client determines your role actually falls "inside IR35", they will need to communicate their determination to you using a Status Determination Statement (SDS) which must give their conclusion plus the reasons for arriving at it. Sellick Partnership will also receive a copy of their determination



and as a result will no longer be able to make payments to your PSC. We would need to ensure full PAYE and NIC deductions are taken which will almost certainly lead to a reduction in take home pay for you.

Determining if inside IR35

HMRC have developed a tool in order to check the employment status for tax (CEST) which can be used by the client in order to determine the role. Other factors to take into consideration are:

- **Substitution** — a genuine right of substitution has long been deemed to be a very important factor when demonstrating that a contractor's assignment falls "outside IR35". For a substitution to be considered valid, the right to supply a substitute must be a genuine one. This means that the client must agree to it in practice and be satisfied that the substitute has the skills and if necessary pass any security processes. The contractor must pay for the substitute, and it should be an unfettered right.
- **Control and direction** — a contractor must be able to demonstrate a certain amount of autonomy in the way they undertake a project where professional services are provided. Both the working practices and written contract must show that the client has no influence over how the contractor performs his/her services provided that they meet client-specific targets or project completion dates. Control factors that may point towards an "inside IR35" status include if they are being supervised, have break time or staff benefits such as sick pay or holiday pay.
- **Financial risk** — the contractor may take on a level of financial risk in undertaking the engagement. Contractors who don't take any financial risk, for example don't have to rectify poor quality services at their own cost, are more likely to be "deemed employees" for tax purposes. Contractors taking financial risk would also be expected to maintain appropriate insurances.
- **Mutuality obligation** — this refers to the obligation of an employer to provide work and pay for it, together with the obligation of the employee to personally do the work. According to HMRC, having a contract agreeing to provide services, mutuality is established but most experts consider the legal picture to be more complex. It is likely there will be more clarity on this in the coming months factoring into it notice periods, termination agreements, provision of equipment, continuity of the engagement, absence procedures and even if the contractor has become "part and parcel" of the organisation.

Examples of roles inside and outside IR35

HMRC produced a technical note in 2017, which contained several illustrative scenarios. Below are two obvious examples:

1. Off-payroll working rules apply – "Inside IR35"
 - Nic works through his own PSC as an IT product designer at a large blue-chip PLC
 - Nic will be working in their IT development centre
 - He is not required to supply his own equipment
 - Nic will work under the direction of a senior manager
 - Flexible working hours are available, but Nic will need to agree time off with his Manager.
2. Off-payroll working rules do not apply – "Outside IR35"
 - Jasmine is a Website Designer, contracted to a medium private company through a PSC to design and build a website. She will:
 - Deliver the website to an agreed standard by the agreed date
 - Visit the company's offices for meetings, but mainly work from own office
 - Provide her own equipment needed to do the job in hand
 - Employ her own staff to help deliver the contract if she needs to
 - Cover her own costs and expenses



- She is not filling a role, but rather providing a whole service, the fee for which covers her equipment, time and staff costs (should she want/need to engage others to assist on the project).

Disagreement in the determination of the role

If you don't agree with the client's assessment of the role, we will work with you and the client to reach a resolution. During this time, we must continue to apply the rules in line with their original determination and the client must respond to a request to review the status determination statement within 45 days. The final decision however will be with the client.

Impact if found to be inside IR35

The IR35 reforms will only apply to services provided on or after Tuesday 6 April 2021. If the services are provided in full before Tuesday 6 April 2021 but payment is made on or after this date, the new rules will not apply to the payment for that period worked and we can pay your PSC a gross payment. For any work completed on or after Tuesday 6 April 2021, Sellick Partnership will no longer be able to pay your PSC and must ensure that the appropriate taxes are deducted from the gross payment. Where services have started before Tuesday 6 April 2021, but have not yet been completed, the rules will only apply to the portion of the payment that relates to services falling after Tuesday 6 April 2021.

In order ensure that the appropriate taxes are deducted and paid to HMRC, we recommend that contractors sign up to an Umbrella company. The way an umbrella company works is pretty simple. You as the contractor become an employee of the umbrella company. This means that Sellick Partnership will pay the umbrella company and the umbrella company deducts the necessary PAYE and national insurance contributions and pays your salary.

An umbrella company will employ you under a contract of employment so whether you carry out one assignment or 100 you will be employed under the same contract, giving you a record of continuous employment, which helps with mortgage or loan applications. It also helps to ensure that you're on the correct tax code whilst providing you with just one pension pot. You also get access to statutory benefits such as maternity and sick pay but with the added benefit of an inclusive insurance package.

Choosing an Umbrella company

Sellick Partnership requires the very highest standards when it comes to compliance — this is to protect both ourselves and our contractors. Here at Sellick Partnership, we believe in assisting our contractors wherever we can and as such we have undertaken a review of umbrella companies. Please find below the details of Sellick Partnership's list of approved providers. Please note the below companies do charge for their services.

DANBRO

Tel: 0800 731 3178

Email: enquiries@danbro.co.uk

Website: <https://www.danbro.co.uk/>



Tel: 0844 324 7700

Email: welcometeam@giantgroup.com

Website: <https://info.giantgroup.com/daslfasqa>



parasol

Tel: 0800 464 0519
Email: bestadvice@parasolgroup.co.uk
Website: <https://parasolgroup.co.uk/>

PayStream*

Tel: 0800 197 6516
Email: new.business@paystream.co.uk
Website: <https://www.paystream.co.uk/>

workr

Tel: 0208 106 0000
Email: customercare@workr.com
Website: www.workr.com

For further advice on choosing an umbrella company, please look at our Finance Director's blog which may be found at:

<https://www.sellickpartnership.co.uk/blog/2019/03/how-do-i-choose-my-umbrella-company>

Additional Notes

Should there be any changes to the engagement or the way the work is done, the role must be re-assessed, gaining more information on the working practices and redo any assessment.

What next?

HMRC have said that they will provide support and guidance to help businesses implement the off-payroll working rules and ensure the guidance is appropriate to the larger and more diverse private sector. HMRC outlined the likely timescale, following the normal fiscal event timetable:

1. Organisations that forward plan and get compliance practices in place will minimise their risk and disruption to the workforce. This is particularly important in terms of contracts and extensions written now which will or may continue beyond Tuesday 6 April 2021.
2. Contractors on long-term contracts with clients, which they are currently treating as "outside IR35" will be reviewing their position. HMRC has indicated that it does not intend to investigate such placements retrospectively, but nonetheless expect that some contractors will be considering whether it is preferable to convert to a permanent role or source another contract role.
3. In the new calendar year, Sellick Partnership will require an assessment of all current workers expected to be in contract beyond March 2021.

Further advice on IR35:

<https://www.gov.uk/guidance/ir35-what-to-do-if-it-applies>
<https://www.gov.uk/guidance/april-2020-changes-to-off-payroll-working-for-intermediaries>
<https://www.gov.uk/guidance/understanding-off-payroll-working-ir35>
<https://www.gov.uk/guidance/ir35-what-to-do-if-it-applies>

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