

IR35 changes from 6 April 2021

Background

The purpose of the off-payroll working rules (IR35) is to ensure that individuals who provide services through their own limited companies, pay broadly the same income tax and national insurance contributions as other individual employees. The rules apply if/when a worker provides their services to a client through an intermediary but would be classed as an employee if they were contracted directly.

Before April 2017, workers operating through their personal service company (intermediary company) were responsible for determining whether a contract/assignment was inside or outside IR35 rules and paying any employment taxes and National Insurance Contribution (NIC) due. In 2017, these rules changed and public sector organisations such as NHS, government departments, local authorities, hospitals etc. became responsible for assessing and determining employment status of their contractors and paying any employment taxes and NIC due.

Who the new rules apply to

From 6 April 2021, the changes made in 2017 to public sector will be extended to the private sector companies and third sectors such as some charities. From 6 April 2021, medium and large sized private sector businesses will be responsible for assessing and determining the employment status of a contract/assignment and deducting any employment taxes and NICs.

Generally, if a company meets 2 or more of the following conditions, it will be regarded as a 'medium or large' sized and the new IR35 rules will be applied:

- Annual turnover £10.2 million or more
- Balance sheet total £5.1 million or more
- Number of employees 50 or more

A simplified test also applies to some businesses and considers annual turnover. A business must apply the rules if it has an annual turnover of more than £10.2 million and is not:

- a company
- a limited liability partnership
- an unregistered company
- an overseas company

In order to avoid the medium or large sized businesses setting set up arm's length companies or subsidiaries to procure services, the rules will apply to the parent company based on the aggregate amount of turnover and the aggregate amount of the balance sheet total of the connected entities. If the parent of a group is medium or large, their subsidiaries will also have to apply the IR35 rules.

If a business meets above conditions, it must start applying the rules when the changes come into force on 6 April 2021.

If a business uses the simplified test to determine the size, it must apply the rules from the start of the tax year following the end of the calendar year when it met the conditions.

If a business does not use the simplified test and does not meet the conditions as above on 6 April 2021 and it grows from a small to a medium or large sized business later, when the business then meets the conditions for 2 consecutive years, it must apply the rules from the start of the tax year following the end of the filing period for the second financial year when it met the conditions.

What you need to do as an end client company

If your company satisfies the above conditions, under the new IR35 rules, when it engages workers operating through their personal service company rather than a direct employment contract with the worker/contractor, your company will be regarded as an end-client company and you will need to assess the employment status of the workers for every contracts you agree with them and declare the workers' deemed employment status in writing. This is called a Status Determination Statement (SDS).

An SDS must then be passed to the worker and the person or organisation you contract with and you need to give your conclusion and the reasons for coming to it. You should ensure that detailed records of the employment status determinations are kept and have a formal process in place to deal with any disagreements that may arise from the SDS. It is suggested that the SDS is reviewed regularly specially where the contract or working arrangements have changed.

If a contract is within the IR35 rules, the relationship between your company and the worker/contractor (operating through the intermediary company) is employer and employee. You will need to provide a Status Determination Statement (SDS) and any employment taxes (PAYE and NIC) should be deducted under PAYE on the payments made to the workers/contractors.

The responsibility for deducting tax and National Insurance is with the end client company until it tells the worker and the person or organisation it contracts with of its determination and the reasons for it.

When deciding the employment status of a worker, there are various elements to consider such as:

- a. Can the worker send/hire someone to do his/her work in the company?
- b. Can the company reject/accept the substitute?
- c. If the company accepts the substitute, does the worker pay the substitute?
- d. Does the worker use his/her own equipment at work?
- e. Can the company move the worker from the task they originally agreed to do?
- f. Can the worker decide his/her working hours?
- g. Can the company decide where the worker does the work?
- h. How will the worker be paid such as fixed price for the project or daily/hourly/weekly or fixed amount for each piece of work completed?
- i. Is the worker responsible for the success or failure of his/her business and can make a loss or a profit?
- j. Is the worker responsible for fixing any unsatisfactory work in his/her own time?
- k. Will the worker have any management responsibilities for your client?

The list above is not exhaustive, there may be other elements to consider.

HMRC has developed the [Check Employment Status for Tax \(CEST\)](#) service to help the companies to determine whether the off payroll working rules apply. You may wish to use this service to check the worker's employment status:

[Check employment status for tax - GOV.UK \(gov.uk\)](#)

It is important that the correct information is inputted into CEST in order to get the correct result.

HMRC clearly stated that the end-client company/business must take reasonable care over the status assessment. In order to satisfy the reasonable care requirement, every individual contracts/workers must be assessed on a case -by-case basis and no blanket decisions are made by the company.

In relation to the use of Agency staff, if your company pays the agency rather than paying the staff directly, the IR35 rules may apply and the employment status of the workers will need to be reviewed.

What if the contractor/worker disagrees the SDS

As mentioned above, the end client company/business must have a formal process to consider any disagreements. A worker/contractor may disagree with the employment status determination you reached. If that happens, you should consider the reasons for disagreement given by the workers or their intermediary company and decide whether to maintain the determination if you feel it is correct and give reasons why or provide a new determination if you feel it was wrong. You will also need to confirm which date the determination is valid from. A disagreement can be raised until the last payment is made for the worker's services. A response to the disagreement must be provided to the workers or their intermediary company within 45 days of receiving the notification of disagreement. During this time, you should continue to apply the rules in line with its original determination. If the company fails to respond within 45 days, it will result in the worker's income tax and national insurance contributions becoming its responsibility.

Small business exemption

If a worker provides services through their limited company to a small sized client (end-client) in the private sector, the worker's personal service company will be responsible for deciding the worker's employment status and whether the IR35 rules apply. However, the end-client company must confirm size of its business if asked by the person or organisation it is contracting with.

If a company meets two or more of the following conditions, it will be regarded as a small company/business:

- Annual turnover is under £10.2 million
- Balance sheet total is under £5.1 million
- Under 50 employees

Overseas company

If your organisation is not UK tax resident and it is based wholly overseas, the IR35 rules do not apply. The UK resident workers/contractors will be responsible for determining if the rules apply.

If you have any queries in relation to your specific situation, please do let us know.

For a no obligation discussion, please contact:

Joanne Holland, Personal Tax Director, Beavis Morgan

T. 020 7417 0417

E. joanne.holland@beavismorgan.com

beavismorgan.com