

Getting IR35 Ready

With impending changes to the off payroll working (IR35) just around the corner, we thought it useful to summarise some of the key aspects of the reform - what it means for businesses engaging with freelancers and where you can access help.

IR35 in brief...

The off-payroll rules, known as IR35, were first introduced in 2000 as part of the government's initiative to crack down on so-called 'disguised employment', where a contractor supplies their services through an intermediary such as their own limited company (often known as a personal services company or PSC) but would otherwise be regarded as an employee of the hirer.

In its initial form, it was the intermediary who was responsible for tax status decisions and any relevant deductions where IR35 applied. However, this posed a significant and impractical challenge for HMRC, who in April 2017 made it the responsibility of public sector end hirers to determine the status of any engagements. The reform this April will see the extension of these rules across the private sector with additional requirements that will apply across the board. Importantly, the tests for IR35 status are not changing but who makes IR35 status decisions and deductions are.

Draft legislation for the upcoming changes was released in July 2019 and it is anticipated that the final legislation will be released following the governments' budget announcement on 11th March.

Although there have previously been murmurs of a delay – many people are fighting for this – the general view now is that the recent commencement of a review on implementation of the changes by the government serves as confirmation that the reform will in fact go ahead as planned and all businesses are preparing for the changes to come into force on 6th April 2020.

When do things change and how?

Now and up until April 2020, public sector engagers are responsible for assessing whether any individual contracted through a PSC should be paying income tax and national insurance contributions. In other instances, PSC's are responsible for determining their own employment status for each contract.

From 6th of April 2020, medium to large sized private sector engagers along with public sector engagers will be required to make an assessment of employment status for tax purposes. Small businesses within the private sector are exempt and in these instances, the PSC will remain responsible.

As part of their review into the operation of the new off payroll rules, HMRC made a [recent announcement](#) to allow businesses more time to prepare for the changes. **The new rules will now only apply to payments for services provided on or after 6th of April 2020.** The rules were previously intended to apply to payments on or after 6th of April, potentially affecting work carried out as early as March and this has been a welcome update for businesses in the midst of their preparations.

In Brief: Inside vs Outside	Inside IR35	Outside IR35
Status decision	Engagement considered to be one of employment (for tax purposes) and thus, subject to income tax and national insurance deductions	Engagement considered to be a genuine business partnership, with no employer-employee relationship.
Tax and NIC obligations	Fee-payer deducts tax and national insurance before paying the intermediary. Employers' national insurance is also due.	Fee-payer can pay intermediary gross. Intermediary is responsible for its own tax affairs.
Reporting obligation for fee-payer (i.e. entity closest to PSC within supply chain)	Fee-payer must report this via Real Time Information	Fee-payer reports the gross payment via quarterly ITEPA reports

Adapted from Recruitment and Employment Confederation (REC) IR35 Legal Guide

Some next steps to consider...

1. Confirm whether you will be affected or exempt from the off-payroll rules

Small businesses as defined by the Companies Act 2006 are exempt from these new rules and any off payroll engagements through them will not fall within scope of the changes. If you fall under the small companies' exemption, there is no action required at the moment but you will need to monitor whether you continue to be exempt.

Bear in mind that if your company is part of a group or a joint venture, you will only be exempt if all of the group companies or joint venture partners are also small. Furthermore, if your company ceases to be small in an accounting period, you will no longer be exempt from the start of the tax year following the end of that accounting period.

If you are exempt as an end hirer, you should inform any agencies or contractors you engage with directly, explaining the basis for your exemption.

Who does the small business exemption apply to?

Companies are exempt from the new rules if they meet two or more of the following criteria:

- **Annual turnover is no more than £10.2 million**
- **Balance sheet total is no more than £5.1 million**
- **No more than 50 employees**

Where companies are exempt, current IR35 rules will apply and the PSC is responsible for determining IR35 status.

2. Assess roles filled by contractors

It's important for end hirers to understand who amongst their contractor population will be affected by these changes, considering all roles that could potentially be filled by contractors operating through PSC's.

For any existing contracts extending beyond 6th April 2020, companies will need to assess who in their workforce will fall inside or outside IR35 and renegotiate terms where necessary. You will also need to review your non-contractual working practices for the duration of any engagements as HMRC will look at this aspect in addition to the scope of a contract.

If there are several parties involved across your supply chain, a discussion on shared liabilities, financial implications and how processes will be adapted can help ensure a smoother transition for all involved. The primary cost difference for many will be employers national insurance. Take into consideration how increased employer costs (i.e. the employers national insurance) will be met while maintaining existing contractor rates and continuing to attract talent needed.

3. Establish how you will conduct your IR35 assessments

One of the key changes outlined in the reform requires end hirers to provide a formal status decision for each engagement along with detailing reasons for the decision. This is referred to as a status determination statement (SDS) in the legislation and involves reviewing any underlying arrangements you may have with freelancers to assess whether the relationship is one of employment or self-employment were it not for the existence of the limited company.

End clients must be able to demonstrate *reasonable care* in reaching IR35 decisions and evidence the basis of that decision. Any blanket approaches would not constitute reasonable care and opens up the risk of an employment tribunal or HMRC status review.

There are several tools to assist with IR35 status assessments, including the HMRC's own [Check Employment Status for Tax \(CEST\)](#) online tool. Although it is not a mandatory tool, HMRC have stated that they will stand by outcomes from the CEST tool provided that the information inputted is accurate. **If reasonable care is not taken, a company could become liable for unpaid tax and national insurance.**

Status determinations must be clarified for freelancers early on as an inside IR35 determination will significantly affect net pay.

4. Have a disagreement process in place

End hirers must resolve any disputed status determinations and respond to a challenge or query within 45 days:

- **Confirming it has considered representations made by the contractor and whether it stands by the SDS provided, giving reasons for this; or**
- **Providing a new SDS with a different conclusion and withdrawing any previous SDS**

CEST has come under fire despite a recent update (released 25th November 2019) for being too simplistic and not encompassing all aspects of an engagement. End clients may consider other assessment methods bearing in mind the requirement of taking reasonable care.

The Grades List

For production companies, there *may* be the option to use the Film, TV and Production Industry Guidance issued by HMRC and its Appendix 1 of the Grades List in determining employment status.

Whilst HMRC have recently released an updated grades list, the update seems to be more of a response to a very outdated list rather than a direct response to the changes coming into effect.

HMRC have not yet provided any formal guidance on whether engagements which meet the criteria in the grades list or workers with an LP10 letter will automatically be considered as out of scope of IR35.

As a key issue for producers, various industry groups are pushing for confirmation on this and seeking a coordinated industry response from HMRC, including whether the Grades List can be used in determining employment status rather than the CEST tool.

Useful Links

- HMRC's [new guidelines](#) on the tax treatment of film and TV freelancers including new categories of workers who will usually be deemed self-employed.
- HMRC's [contractor factsheet](#)
- CEST [supporting guidance](#)
- BECTU [Freelancer advice on IR35](#)

Upcoming Events

- PACT [Business Affairs Talks](#), with updates on IR35/employment status determination, various dates and locations (Leeds, Cardiff, Glasgow)
- The Production Guild's [IR35 Seminar hosted by Wiggin](#), various dates in March (London and other UK locations)

“We are all in it together”

At Blueberry we are getting ready for the change...

Our Agents are undergoing regular training and staying abreast of developments, to be conversant in applying the new rules to booking freelance editors, for those engagements which fall within the scope of IR35. We are also engaging our freelancers on this to ensure they are adequately informed and prepared.

We will ensure clear lines of communication and guidance on capturing status determinations for all bookings. Clients and Freelancers can rest assured of knowledge and support through the IR35 settling period.

Alongside our Agents we have an in-house Compliance Manager and Accounts team who underpin our freelance booking services with a fully compliant IR35 workflow and payroll service..

We work with fully-vetted umbrella company partners, ensuring that where end clients hold liability for income tax and national insurance contributions, this is carried out in an efficient and compliant manner.

Once the final legislation is released in March, we will update our terms of business and freelancer contracts ready for 6th April and in line with The Recruitment and Employment Confederation (REC)'s model contracts.



To achieve the best outcomes everyone involved must take on their responsibilities and work together in applying the new rules effectively.

If you want to discuss how the changes will affect your business bookings/Freelancers with us, please get in touch.

Or if you do not have an internal IR35 decision making process in place or a responsible person for establishing a system, then get in touch, we can recommend some third-party reviewers.

Compliance Manager

Marilyn Fernandes

marilyn.fernandes@blueberrycreatives.co.uk

020 7199 3850