

# Freelancer FAQs:

## Changes to Off-Payroll Working (IR35)

We know that IR35 can seem a bit daunting and with the plethora of information out there, it can be hard to navigate your way through the upcoming changes. We've gathered a list of some of our most frequently asked questions to help, including the more practical side of how the changes may affect you and your work through Blueberry. If you have other questions or are still worried about IR35, get in touch!

### **Q: What is IR35? And what's changing?**

A: Originally introduced in 2000, the Intermediaries Legislation or IR35 is a piece of tax legislation designed to address so-called "disguised employment" and focuses on tax compliance of off-payroll working.

If you work through an intermediary such as a limited company, often known as a personal service company (PSC), you should already be applying IR35 rules, making an assessment on each engagement to ascertain whether any relationship you have with an end client is akin to one of employment or self-employment were it not for the existence of your limited company. If you are working under employee-like conditions, then you are deemed to be 'inside IR35' and your pay must be subject to PAYE tax and national insurance.

In 2017, the government announced a reform whereby public sector organisations would become responsible for determining IR35 status for contractor engagements and the upcoming changes next month mean that this responsibility will now be extended to the private sector from the 6<sup>th</sup> of April 2021.

The rules apply equally whether you are engaged via an end client directly or through an agency and the fee-payer must make tax and national insurance deductions at source for any inside IR35 engagements.

### **Q: What does it mean to be 'inside IR35' or 'outside IR35'?**

A: If an engagement is deemed to be 'inside IR35', you would be subject to income tax and class 1 NICs and are deemed as an employee of the end hirer/client for tax purposes.

If an engagement is deemed to be outside IR35, you are considered to be operating as a genuine business rather than a 'disguised employee', can continue to pay yourself through salary or dividends and are responsible for all taxes.

### **Q: Will I be affected by the changes?**

A: Not all roles and/or workers will fall within scope of the changes.

IR35 only affects those operating through intermediaries such as personal services/limited companies. Engagements on a PAYE basis are not required to be assessed.

The reform will affect PSC's engaged by medium or large size businesses, which would be any company meeting two or more of the following criteria:

- £10.2 million and above annual turnover
- £5.1 million on the balance sheet
- 50 or more employees

Some companies may be exempt from the changes if they can be classed as a small business. Importantly if a company is owned by a larger firm, the criteria test will apply at group level.

We are working with our clients to confirm who will fall under this exemption and will notify you accordingly. Where the small business exemption may apply to an end client, your limited company or PSC will be responsible for determining your own employment tax status for each engagement as is the case currently.

## Q: How will this affect bookings through Blueberry?

A: Where companies fall within the scope of the changes, you can expect to receive a Status Determination Statement (SDS) on the engagement stating whether a job is 'inside IR35' or 'outside IR35', along with reasons for this.

An SDS is essentially an assessment of employment status for tax purposes and required to be completed by the end client on an engagement-by-engagement basis. It will be based largely on their working practices. This requirement for a documented status decision will apply across the board for medium and large businesses within the private sector and public sector organisations who would have already seen off payroll reforms in 2017.

## Q: What determines whether a job is 'inside IR35' or 'outside IR35'?

A: Generally speaking, there are three main employment tests used to determine whether you are working in an employee-like manner.

These are based on case law and include:

- **Substitution** or the client being able to accept someone in your place suggesting that you aren't providing a personal service as an employee would;
- **Control** or whether the client dictates your workload and the way in which it is carried out;
- **Mutuality of obligation** or whether the client is obliged to continue to provide you with work and if you are obliged to accept it.

No single test will place you inside or outside IR35. There are also other factors such as financial risk, whether you use your own equipment etc. that come into play and any assessments need to take a holistic view of these.

It is worth noting that HMRC is known to hold proven/actual working practice in higher regard than agreements in principle and it is not sufficient to have contractual clauses that place you outside of IR35. For example, including an unrestricted substitution clause to a contract would not necessarily place an engagement outside of IR35 if all other circumstances indicate that an engagement is inside IR35.

If you have a run through the HMRC's assessment tool, it may give you a more practical sense of how the assessment is done. The [Check Employment Status for Tax \(CEST\)](#) tool is not a mandatory tool and end hirers are required to take 'reasonable care' in any chosen assessment method or process.

If you would like some additional guidance on IR35 status tests, we found the summary [here](#) to be worth a read.

## Q: Would length of contract affect my IR35 determination?

A: It is the nature of the engagement i.e. working practices rather than the amount of time or tenure with an end hirer that will influence an IR35 determination.

## **Q: What happens if I disagree with an assessment?**

A: You can get in touch with us and we will be able to advise further. End clients will have to implement a client-led disagreement process to help resolve any disagreements about status decisions. Under this provision, they are required to respond within 45 days of receiving a query on a status decision by either confirming its existing decision along with their justification or issuing a new SDS with an updated conclusion.

## **Q: What are my options for taking on jobs deemed to be inside IR35?**

A: Essentially, we would have three options available to you:

1. Off payroll: we can process an inside IR35 payment to your limited company, through calculating a so-called “deemed direct payment” due to your company and then deducting PAYE tax and NIC’s from that payment.
2. Our agency payroll: we can place you directly onto our payroll and there is no minimum length of assignment for us to do this. You will have to give us an up-to-date tax code along with your national insurance number.
3. Our FCSA-accredited umbrella partners or any others which you may choose to engage from the [ECSA’s Directory of Members](#). In this case, the umbrella company will serve as the ‘fee-payer’ rather than ourselves.

It’s possible that you could have some jobs which fall inside IR35 and some that don’t, or the odd job here and there which falls inside IR35 (or for that matter, none at all!). In any case, we will be offering you the flexibility to take on any inside IR35 roles in a manner that suits you best.

We strongly recommend that you speak to your accountant before making any decisions on how you choose to work moving forward as they are the experts when it comes to tax legislation, understand the nature of your business and your financial circumstances.

## **Q: Can I have some more detail on how payments to my limited company would work for inside IR35 engagements? Would I still be able to charge VAT?**

A: You will still be able to charge VAT. For jobs inside IR35, we as the ‘fee payer’ are required to deduct PAYE and NICs prior to paying you, as opposed to the gross advertised day rate we would normally pay. If you are contracting through your limited company, you would continue to invoice as usual for your gross rate and VAT (if applicable). We will take the gross rate element of your invoice (removing VAT) and run this through our payroll in order to produce a net rate. We will then take this net rate amount (i.e. deemed direct payment) and add back in any VAT before making payment to you. Any deductions will be reported to HMRC via Real Time Information on your behalf and alongside our usual payroll.

The off-payroll legislation will also allow you to receive a deduction up to the full amount of the deemed direct payment so you won’t be taxed twice if operating through your limited company. Your accountant should be able to advise you further on this and how this will impact your annual self-assessment tax return.

## **Q: Would I lose my ability to claim expenses?**

A: The HMRC’S ‘5% expense allowance’ for limited companies will not apply for inside IR35 jobs but any direct business costs used in the provision of an individual’s services and travel expenses (depending on the terms of the contract) are deductible from taxable earnings.

## **Q: How would it work if an umbrella company is involved?**

A: You would send your timesheets across to the umbrella service provider who would raise an invoice and send it across to us. We will process payment to the umbrella company and your payment will then be run through their payroll under terms agreed between yourselves and them. An umbrella can provide you with the benefits of having continuous employment (for example, with mortgages, loans etc.) and the flexibility of contracting if you tend to move from assignment to assignment and agency to agency. Additional perks and offerings will vary by umbrella company.

If you would like some suggestions for umbrella companies on our preferred supplier list, please get in touch with a member of the team.

## **Q: What employment benefits will I have if I am deemed to be inside IR35?**

IR35 only refers to your tax status and if you fall inside IR35, you would be a deemed employee for tax purposes only. If you were to choose agency or umbrella payroll as a payment method, statutory rights and benefits such as holiday pay, maternity/paternity, sick leave and pensions would apply.

## **Q: Is it worth me continuing on as a limited company?**

A: The thing with IR35 is that the assessment needs to be done on an engagement by engagement basis. This means you could be inside IR35 for one job and outside for another. The challenge becomes accounting for various sources of income, and we would advise you to speak with your accountant about this to evaluate your personal circumstances and your options going forward.

## **Q: Should I become a sole-trader?**

A: Again, our advice would be to seek advice from your accountant based on your personal circumstances. As an agency, we are unable to directly contract with sole traders due to agency-specific onshore/offshore legislation and you would need to go via our payroll regardless. This does not necessarily mean you have to be a limited company to secure work through Blueberry but if you are a sole-trader, we would need to put you through on a PAYE basis.

## **Q: How will these changes affect rates?**

A: Rates quoted will be pre-tax. The client will be required to advise us of the status determination of the job **when placing the job**, this way we can advise you if the job falls in or outside IR35 and clarify charge and taxation considerations in advance - i.e. when approaching you about the job. Employers national insurance contributions will be charged back to the client wherever possible.

## **Q: Will there be scope for a rate increase to offset withholding taxes and the expenses I cannot now claim?**

A: We will negotiate rates with clients where possible and are committed to working towards preserving existing rates for freelancers as much as possible and where feasible. Clients are likely to have different approaches to rate negotiations and varied perspectives on increasing them to offset any impact on rates.

## Q: What about amending clauses in my contract or adding a substitution clause to make an engagement outside IR35?

A: The nature of the engagement and working practices on the ground so-to-speak impact an IR35 determination more so than any contractual clauses. Your contract cannot keep you outside IR35, even if it does have a substitution clause, for example. Agreements in principle must correspond with what happens in practice for it to hold any weight.

## Q: Will HMRC look into my tax affairs retrospectively?

A: Although HMRC reserve the right to investigate as far back as the introduction of the IR35 legislation in 2000 for any serious cases of suspected tax evasion, they have confirmed that the reform will not apply to businesses or engagements retrospectively.

### Quick Recap on the Changes

- Ø In-scope clients will assess your employment status for tax purposes if you are engaged via PSC/limited company
- Ø You will be informed via a status determination statement ideally ahead of agreeing terms
- Ø IR35 determinations will be made by the client on a job by job basis, this will be the case whether you are working directly with the client, or via Blueberry.
- Ø If your engagement falls within IR35, the 'fee-payer' or party closed to the PSC/limited company will be responsible for deducting tax and NI.
- Ø Small businesses within the private sector are exempt from the changes and in these instances, the PSC/limited company will be responsible for IR35 status determinations and relevant deductions.

### Who falls within scope?

- Ø All clients in the public sector regardless of size (affected by 2017 off payroll reform but facing administrative changes in April 2020)
- Ø Medium to large clients in the private sector

### Next Steps

We will shortly be updating our contracts in line with REC recommendations and the final legislation. For any jobs going forward from when the reform takes effect, we will endeavour to provide you with a preliminary status from our clients for any opportunity we approach you about or inform you if a small business exemption may apply as early as possible. We are also updating our internal procedures to ensure smooth implementation of these changes on our end and clear lines of communication to confirm status decisions from our clients.

With uncertain times ahead for businesses, we are dedicated to maintaining work and support for our clients and freelancers as best as we can. We would like to reassure you of our continued support through these changes. Although the administration of off payroll work will be changing, it is important to remember that the IR35 tests are not and if you have been genuinely operating as a business, you may find that there will be minimal impact.

If you would like to discuss any of the above, specific bookings past 6<sup>th</sup> of April or have further questions, please do not hesitate to get in touch!

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