

# Freelancer FAQs:

## Changes to Off-Payroll Working (IR35)

We've gathered a list of some of our most frequently asked questions on the off-payroll changes/IR35, including the more practical side of how the changes may affect you and your work through Blueberry. If you have other questions or would like to talk more about IR35, do 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 booking 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 a booking 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 a booking 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. Wholly overseas companies with no UK presence or permanent establishment will also be exempt.

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

## 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. So, it is not sufficient to have contractual clauses that place you outside of IR35, if the working practices do not match those clauses.

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. HMRC have stated that they will stand by these results if the information has been inputted accurately and in line with their guidance. 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.

## Q: Would amending clauses in my contract or adding a substitution clause 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: 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: My role falls within Appendix 1, does this mean that IR35 does not apply?

A: HMRC has made available updated industry-specific guidelines for Film, TV and Production to help inform employment status decision-making for behind the camera worker roles. Whilst the roles within this list are wide-ranging and normally treated as self-employed, end clients must consider whether the specific criteria in either column A or B or both are met in order for an engagement to be deemed outside IR35.

A full list of roles can be found within HMRC's employment status manual under [ESM4118](#). Where a role is not listed or criteria is not met, the end hirers would apply the general status rules (HMRC's [ESM 0500](#)).

If you are not covered on the list, you can apply for a Lorimer Letter or LP10 letter and you will need to get in touch with the Creative Industries Unit at HMRC. Contact details can be found [here](#). Do bear in mind that you will need to demonstrate that you have worked with at least 10 clients in the previous year with each engagement being less than 10 days.

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

A: Where the end client falls within the scope of the changes, you will receive a **Status Determination Statement (SDS)** on the engagement stating whether a job is 'inside IR35' or 'outside IR35', along with reasons for this. We will be requesting an initial status determination from our clients when they first make a booking request. This way we can advise you if the job falls inside or outside IR35 and clarify charge and taxation considerations in advance. Please rest assured that our agents will do their best to get this determination at the earliest opportunity for you and will communicate this as soon as they have received it. Our aim is to be able to provide this when first asking for your interest/availability for the job.

## Q: What is a status determination statement (SDS)?

A: 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 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: How do payments work for inside IR35 bookings?

A: For placements deemed to be inside IR35, it would be considered employment for tax purposes and as the 'fee payer', we would be required to deduct income tax and national insurance from the 'employment income' for this placement. Our systems are geared up to process inside IR35 payments to your limited company and you will still receive a self-billed invoice for your work. However, we may request that you also fill out a new starter checklist so that we can process the deemed employment income through our payroll.

If you are contracting through your limited company, you will continue to receive a self-billed invoice detailing your gross pay and VAT if applicable. We will take the gross rate element of your invoice (removing VAT), account for any agreed tax-deductible expenses or kit hire in order to determine the 'employment income' (also referred to as the 'deemed direct payment'), and run this figure through our payroll in order to produce your net pay rate. We will then take this net amount and add back in the tax-deductible expenses or kit hire, and any VAT before making payment to you. Any tax deductions will be reported to HMRC via Real Time Information on your behalf and alongside our usual payroll.

Below is an illustration of how this works – it is based on a £300 daily 'Gross Pay' rate (with and without a £50 daily kit hire charge) and calculated against a standard 1257L Tax Code for the tax year 2021/22.

	With Kit Hire	Without Kit Hire
Self-billed Invoice Total:	£1,750.00 (plus VAT of £350)	£1,500.00 (plus VAT of £300)
Deemed Direct Payment – <i>employment income only, not including expenses:</i>	£1,500.00	£1,500.00
Deductions from your wage required by law - <i>calculated only on the Deemed Direct Payment:</i>	PAYE Income tax £358.31 Employee national insurance £104.62	PAYE Income tax £358.31 Employee national insurance £104.62
Any other deductions or costs from your wage:	N/A	N/A
Any fees for goods or services:	N/A	N/A
Deemed Direct Payment after deductions:	£1037.07	£1037.07
Payment of Self-billed Invoice:	£1,287.07 (plus VAT of £350)	£1037.07 (plus VAT of £300)

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 as shown above. Expenses must be agreed with the client upon confirming the booking.

## Q: How will these changes affect rates?

A: Rates quoted will be pre-tax. We will be requesting an initial status determination from our clients when they first make a booking request. This way we can advise you if the job falls inside or outside IR35 and clarify charge and taxation considerations in advance i.e. when approaching you about the job. Please rest assured that our agents will do their best to get this determination at the earliest opportunity for you and will communicate this as soon as they have received it. Our aim is to be able to provide this when first asking for your interest/availability for the job. Employer's 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 employment benefits will I have if I am deemed to be inside IR35?**

A: 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: Should I continue as a limited company or become a sole trader?**

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 additional element 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.

As an agency, we are obliged due to agency-specific onshore/offshore intermediaries legislation to process payments to sole traders via our payroll or an umbrella 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 would it work if an umbrella company is involved?**

A: The umbrella company will serve as the 'fee-payer' rather than ourselves. 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 FCSA-accredited umbrella companies on our preferred supplier list, please get in touch with a member of the team or you can refer to the [FCSA's Directory of Members](#).

## **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

- **In-scope clients will assess your employment status for tax purposes** if you are engaged via PSC/limited company and you will be informed of their decision via a status determination statement (SDS).
- **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 The Blueberry.
- **If your booking falls within IR35**, the 'fee-payer' or party closed to the PSC/limited company will be responsible for deducting tax and NI.
- **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?

- All clients in the public sector regardless of size (affected by 2017 off payroll reform but facing administrative changes in April 2021)
- Medium to large clients in the private sector

## Useful links

- HMRC [contractor factsheet](#)
- HMRC webinar for contractors, [various upcoming dates](#) or [past recording](#) also available on website
- HMRC [CEST Tool](#)
- [ScreenSkills Webinar](#) on IR35 Changes
- [Appendix 1](#)
- [BECTU guide](#)

If you have further questions or would like to discuss more about how the changes may affect you and your work through Blueberry, then please get in touch with anybody on the bookings team and you can also speak with our Compliance Manager Marilyn Fernandes, we are all here to help.

020 7199 3850

[marilyn.fernandes@blueberrycreatives.co.uk](mailto:marilyn.fernandes@blueberrycreatives.co.uk)

blueberrycreatives.co.uk  
020 7199 3850  
Uniting Creative Minds

Sponsor of  
 **PMA**  
Production Managers  
Association

 **OAPSCo**  
United Kingdom

Supporter of  
 **Grierson  
DocLab**

In partnership with  
 **The Rank Foundation**  
a pebble in the pond

**NETFLIX**