

Getting IR35 Ready



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 in April 2021 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.

Next steps...

1. Clarify whether your business is exempt from 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.

2. If your business is not exempt and Off Payroll rules apply, then assess roles filled by contractors to decide whether assignments are inside IR35 or outside IR35.

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 2021, 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.

When do things change and how?

From 6th of April 2021, The 'Off Payroll Rules' will apply to medium to large sized private sector engagers along with public sector engagers, who will be required to make an assessment of employment status for tax purposes and provide a Status Determination Statement (SDS).

Small businesses within the private sector are exempt and in these instances, the PSC will remain responsible.

The new rules will apply to payments for services provided on or after 6th of April 2021.

Which businesses are exempt?

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.

Appendix 1

HMRC has made available updated industry-specific guidelines for the Film, TV and Production to help inform employment status decision-making.

It's important to note that whilst the roles within this list are wide-ranging and normally treated as self-employed, you must consider whether the specific criteria in either column A or B or both are met.

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 general status rules found under HMRC's [ESM0500](#) must be applied.

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 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.

Inside IR35 & Outside IR35	Inside IR35	Outside IR35	Useful Links
Status decision / Status Decision Statements (SDS)	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	
			Upcoming Events
			<ul style="list-style-type: none">• HMRC's employment status manual on the tax treatment of film and TV freelancers including new categories of workers who will usually be deemed self-employed, updated in December 2019.• HMRC's contractor factsheet• CEST tool supporting guidance
			<ul style="list-style-type: none">• HMRC are hosting a series of webinars on the off payroll changes, including how to make status determinations. Various dates up until April 2021, past recordings also available.

At Blueberry we are ready for the Off Payroll rules

Our Agents have undergone regular training to be conversant in applying the new rules to booking freelance editors, for those engagements which fall within the scope of IR35 and are staying abreast on developments.

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

Get in touch to discuss how the changes may affect your bookings with Freelancers.

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What we will need from you...

If your business is exempt from Off Payroll rules, please fill in an [Exemption Declaration](#)

If your business is not exempt from Off Payroll rules:

1. **When you call a job in**, let us know whether the work falls Inside IR35 or Outside IR35.
2. **Before confirming the job**, please provide us with a Status Determination Statement. You may have an internal process, or use HMRC's CEST tool, or you can [complete a Status Determination Statement here](#).

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