

Taxation of off-payroll working – how to prepare for the step change ahead



Businesses who employ contractors and consultants will be familiar with the 'IR 35' rules, introduced in 2000 with the aim of counteracting the perceived tax advantages achieved by those supplying their services through intermediaries (including personal service companies).

The rules currently in place require the contractor to consider whether or not, in the absence of the intermediary, the relationship between the client and the contractor would be one of employment, and where it is, operate PAYE on the deemed remuneration.

In 2017 new "off payroll" rules were introduced for contractors working for public sector organisations, and from April 2020, the rules will be extended to cover most private sector businesses.

What is the effect of the new rules?

The responsibility for compliance with the 'IR35' rules and the determination of whether there is a hypothetical employment relationship will shift from the contractor to the client. Having made a determination, the client may have to decide whether to operate PAYE on the payment to the intermediary.

The final form of the rules is under consultation but with less than a year to go we recommend those businesses and contractors affected start to put in train processes to ensure compliance at April 2020.



Who will need to take action?

Businesses which engage contractors through intermediaries will need to comply – only small businesses are exempt.

What is a small business?

One that satisfies two or more of the following criteria:-

- turnover not more than £10.2m
- balance sheet assets no more than £5.1m
- 50 or fewer employees.

What actions to we recommend?

- Determine whether you are within the small business exemption (for holding companies the thresholds apply to the group).
- If you are not, make sure you understand the new rules and the type of contract and type of intermediary to which they will apply. Compile a list of contracts that may potentially give rise to tax and compliance obligations for you.
- Review each contract to assess whether the hypothetical direct contract would be one of employment. Make sure in so doing that you look at the reality of the engagement as it operates in practice as well as how it is defined in any written contract.
- Apply HMRC's employment status tool (CEST) to assist you in your determination but remember that it is not necessarily conclusive. Employment status is determined by case law not HMRC!
- Inform any contractors likely to be affected of your anticipated determination and enable dialogue.
- Seek professional advice on any contracts which do not fall clearly one side of the line or the other; or where it is necessary to resolve a dispute with a contractor on the status of an engagement.
- Consider in appropriate cases whether the terms of any contract can be amended, or consider employing contractors directly.
- Consider what protections (such a right to pay on net terms and/or a PAYE tax indemnity) to put in your contractor agreements to ensure the business is protected.

What if I am a contractor?

- Make yourself aware of the new rules and whether your clients will be responsible for determining your status.
- Open communication with your clients in good time.
- Consider the commercial implications to your business of any proposed changes to the contract with your client and/or the implications of being employed by the business (if this is offered).

How we can help

Our employment solicitors advise both employers and employees on a variety of different employment matters. To find out how we may be able to assist you, please contact our [employment law team](#).

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