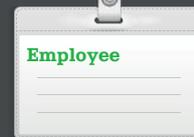


Off-payroll working/IR35

Looming extension of IR35 changes to private sector



New rules that will affect businesses using the services of contractors through personal service companies (PSCs) come into effect in April 2021.

The off-payroll working rules are designed to ensure that individuals working for a client in the same way as permanent employees, but supplying their services through their own PSC, pay broadly the same income tax and national insurance contributions (NICs) as individuals who are employed directly.

Under these rules, known as IR35, it used to be the responsibility of contractors and their PSCs to assess their own IR35 status and then to account for any tax and NICs due. However, in 2017, the balance began to change when that burden switched to the client in the public sector.

Who do the new IR35 rules apply to?

From 6 April 2021, this shift in responsibility will also apply to medium and larger businesses in the private sector (and some charities).

The new rules mean that such businesses will need to determine the employment status of contractors and then communicate this to them in a Status Determination Statement (SDS), giving the reasons for their conclusion.

Small businesses will not be covered by this new arrangement. A company is small if its annual turnover is not more than £10.2 million, its balance sheet total is less than £5.1 million and it employs fewer than 50 people. A

partnership or sole trader is small if its turnover is not more than £10.2 million.

If an individual is deemed to be operating 'inside IR35', he or she will be regarded as a client's direct employee for income tax purposes, and the client, or 'fee-payer', will have to deduct tax and NIC under PAYE and pay employer's NIC – accounting to HMRC through its own payroll.

The contractor and their PSC will be responsible for workplace pension contributions, student loan repayments and holiday pay, but the client will be responsible for any apprenticeship levy payments.

For corporation tax, the payment received from the client that represents deemed earnings is not required to be brought into account in calculating the profits of the PSC's trade.

If a contractor works through an umbrella company – a third party operating between the contractor and the client – the contractor will be paid through the PAYE system by the umbrella company.

Self-employed not affected by change

The off-payroll working rules don't apply to the self-employed – individuals who operate their own business structure and do not work in the same way as an employee. For example, those who have their own business premises,

employ other workers or work for a wide range of clients, continue to be outside the IR35 rules.

Businesses using contractors working inside IR35 should review the terms of all contracts for services affected to reflect the fact that they, as the client, will have to pay employer's NIC. They will also need to justify the deduction of the tax and employees' NIC to be accounted for on the deemed employment earnings.

This is a complex topic and HMRC offers a Check Employment Status for Tax (CEST) tool to help determine the relationship between a contractor and a client at <https://tinyurl.com/zg4ufoc>

Further guidance can be found on the gov.uk website at <https://tinyurl.com/yyx45en9> and at <https://tinyurl.com/yyzejf8d>

There's also more information at the Shipleys website at: <https://tinyurl.com/y6ezxnrd>

