

Extended IR35 legislation: will it be a happy contracting new year in the private sector?

What is IR35?

The Intermediaries legislation commonly referred to as IR35 was introduced in 2000 to combat the perceived tax avoidance of workers using an intermediary (typically their own Personal Service Company (PSC)) to engage with the client rather than being engaged directly.

Prior to the IR35 legislation, where an individual was engaged 'off-payroll' and through a PSC, he or she could achieve employment taxes savings, while the engaging business also saved by not having to pay employers National Insurance Contributions ('NIC'), currently at 13.8% or the Apprenticeship Levy of 0.5%, if applicable.

IR35 legislation was introduced to address this issue by ensuring that where a contractor is providing their services on a similar basis to an employee should pay broadly the same income tax and NIC as an employee regardless of the structure in place. The responsibility for reviewing the individual's employment status and operating PAYE, if applicable, sat with the intermediary and not the fee payer.

Why the change?

HMRC considered that there was widespread non-compliance by PSC's, up to 90% and it has estimated that the non-compliance will cost more than £1.3bn a year by 2023/24 if the issue was not addressed.

Changes from 6 April 2021

Off payroll working rules were introduced in the public sector in April 2017 and have since been extended to the private sector from 6 April 2021. The changes apply to all medium and large private sector end client businesses. There is an exemption for a small company end client. To be considered a 'small company' it needs to satisfy two of the following conditions:

- Annual turnover of no more than £10.2 million
- Balance sheet total of no more than £5.1 million (the total amounts shown as assets in the company's balance sheet before deducting any liabilities)
- No more than 50 employees

The key features of the extended IR35 legislation include:

- The end client is required to review the deemed employment status of the worker.
- The engager (i.e. the feepayer) is responsible for accounting and paying the income tax and NIC via PAYE if the contract is inside IR35.
- The end client must provide a Status Determination Statement (SDS) to the worker and the intermediary, setting out its conclusions for the decision and that it has taken reasonable care in reaching that decision.
- Unless and until the SDS has been given to all relevant parties in accordance with the statutory requirements, the end client rather than the fee payer remains liable for any income tax and NIC liabilities.
- There is an appeal process should the worker or the fee payer not agree with the end client's decision.
- The end client then has 45 days to address the appeal and notify the worker and/or the fee payer.
- HMRC can recover unpaid tax and NIC from any 'relevant person', including anyone in the payment chain above the fee-payer. Consequently, everyone in the labour supply chain has compliance responsibility.

Impact on businesses and contractors HMRC estimate that:

- 60,000 private sector end client businesses will be in scope of IR35 rules;
- Up to 20,000 agencies who provide workers to medium or large businesses would also be affected; as well as
- Around 170,000 individuals supplying their services through a PSC who would be considered an employee if it were not for the presence of a PSC.

HMRC Policing

We have already seen HMRC send letters to businesses in certain sectors asking about their contractor population, employment status processes etc. Although HMRC has confirmed that it will take a 'softly, softly' approach for the first year focusing on helping employers get it right, we expect HMRC to increase their compliance activity in the new tax year.

Additionally, HMRC has just launched a series of campaigns "Don't get caught out" aimed at workers who are sole traders or working through umbrella companies, which by association will include any potential IR35 arrangements.

Why should I be concerned?

All off-payroll worker arrangements, including employment status is one of the top 3 risks identified by HMRC. If you have off payroll workers who you engage either via an intermediary such as a PSC, agency, or an umbrella then IR35 may be in point.

Furthermore, non-compliance will not only affect the need to consider the operation of PAYE and NIC in respect of off-payroll worker arrangements, but this will have other cost implications such as the apprenticeship levy, employer NIC and payroll costs. The employer NIC will increase by 1.25 to 15.05% from 6 April 2022 due to the introduction of the Health and Social Levy.

How can haysmacintyre help?

It is imperative that you have robust controls, processes, and governance in place to demonstrate to HMRC that reasonable care has been taken in any employment status review of a contractor. Equally important is the education of all relevant stakeholders in the organisation, so the employment status review of the contractor population is undertaken correctly and all IR35 compliance requirements are met. We can provide the following services:

- We can undertake an Employment Status review of your contractor population to identify your IR35 risks. If you engage directly with the contractor then you may have historical risk since IR35 rules are not in point.
- We can provide bespoke IR35 training for all company stakeholders engaged in the contractors recruitment and payment either onsite or via teams/zoom facility.
- We can draft bespoke a suite of documents which can be used when engaging with intermediaries such as PSC, agency, and umbrella companies.
- The suite also contains all the documents that you will need to demonstrate to HMRC that you have undertaken the employment status review of the contractor and taken reasonable care in reaching that decision.
- Provide technical support particularly in contentious areas or where there is any dispute relating to the deemed employment status of a worker.

If you have any questions or are interested in any of our above IR35 service offerings, please contact Nick Bustin or Dinesh Pancholi from our Employment taxes team.

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