



# New Off-Payroll Rules

## Changes to the off-payroll rules (April 2020)

### Understand and preparing for changes to the off-payroll working rules (IR35) from April 2020

The new rules apply if a worker (contractor) provides their services to a client through an intermediary such as a personal service company and has been extended to apply to the private sector from 6 April 2020.

These rules will require certain businesses and engagers, who contract an intermediary to provide a worker, to operate PAYE and NIC if they consider that the status of the worker is factually similar to that of an employee. Historically, the 'IR35' tax charge has provided for a 5% deduction which recognises the costs of running a company. There is no such deduction under the new rules.

### Before 6 April 2020

The rules changed in April 2019 so that if a worker provided their services to a public sector client (or an engager), the responsibility of deciding the employment status of the worker fell on the client. The public sector client was responsible for informing the worker of their decision.

If a worker provided their services to a client in the private sector, it was the intermediary's responsibility to decide the worker's employment status for each contract. The private sector includes third sector organisations, such as some charities.

### After 6 April 2020

From 6 April 2020 the rules are applied differently. All public authorities and medium and large sized clients in the private sector are responsible for deciding the employment status of workers.

Small-sized clients in the private sector will not have to decide the employment status of their workers. If a worker provides services to a small private sector client, then the worker's intermediary will remain responsible for deciding the worker's employment status and determine if the IR35 rules apply with the worker making declarations under Self-Assessment.

The small company exemption applies to entities which meet two or more of the following conditions: the company has less than 50 staff; or it has a balance sheet of not more than £5.1 million; or it has an annual turnover of less than £10.2m, as defined in the Companies Act 2006.

The intermediary will normally be the worker's own personal service company (PSC), but could also be a partnership, a managed service company or an individual.



The new rules shift the responsibility for determining the status of worker from the intermediary entity to the medium or large business (the end-user client) who is contracting the worker's services. Where the end-user client determines that the status of the worker is that of an employee, they will have the responsibility for notifying the intermediary by way of a status determination statement (SDS) and for applying and deducting the correct PAYE and National Insurance Contributions (NICs). The end-user client and the fee payer may not be the same organisation, for example, if the services are provided through an agency.

Where a worker is engaged by the end-user through an agency, the obligation to deduct PAYE and NICs falls on the agency or the organisation making the payment to the PSC.

These rules will only apply to services actually provided from 6 April 2020.

The new rules will not apply to end-users who are wholly located off-shore.

### **What is a Status Determination Statement (SDS)**

All medium and large companies engaging the services of a worker through a PSC will be required to undertake an IR35 status determination for every contractual arrangement where the payment for that service will be made on or after 6 April 2020. They must then notify this determination to the PSC by way of a SDS. The SDS must be prepared before the first pay date after the new rules come into force in order to ensure the correct tax treatment is applied. Where an agency is responsible for paying the PSC, the SDS must also be supplied to the agency.

If an incorrect determination is made, the tax liability resulting from an incorrect status determination will be assessed on the engager unless they can demonstrate that they have used "reasonable care" in preparing the SDS. HMRC have said that they will take a light-touch approach in the first year.

### **Employment Status Indicator (ESI)**

HMRC has created the Employment Status Indicator (ESI) tool to determine the status of a worker and they have said that they will stand by the result from this tool provided the test was found to be inaccurate. HMRC will not stand by results which are contrived to achieve a particular outcome from this service. This would be treated as evidence of deliberate non-compliance, which can attract higher associated penalties.

HMRC has said that they will not use new information arising post 6 April 2020 to raise an enquiry into pre-6 April 2020 situations unless there are cases of deliberate non-compliance or fraud.

### **How can we help**

If you are affected by these rules as a worker, intermediary or engager, then please speak with us. The SDS is not a straight forward document and you may wish to discuss the ESI questions with us. We can help medium and large engagers with the workers' employment status determination; help the worker with their employment status and IR35 obligations and small intermediaries with their accounting and reporting requirements.