

# **ENABLING THE FUTURE OF WORK**

**GUIDANCE ON IR35**

# BACKGROUND

**IR35 is properly known as the Intermediaries legislation and came into force in April 2000 as part of the Finance Act. It set out details of new legislation relating to intermediaries (including personal service companies or other companies or partnerships). Since then, IR35 has been used to determine how an individual working via a personal services company should be taxed.**

In brief, the IR35 rules apply where an individual works through an intermediary, such as a personal services company and provides their services to an end user client.

If that intermediary did not exist, but the individual looked like an employee of the client for tax purposes, then that assignment is deemed to be 'inside IR35' and the individual's pay should be subject to PAYE tax and national insurance. Employers' national insurance will also be due.

## BACKGROUND CONT.

From 6 April 2017, responsibility for assessing engagements with a Personal Services Company working in the public sector only has shifted to the public sector end-user. Consequently, where engagements between a public sector end-user and a Personal Service Company have the features of employment, the fee payer must account for tax and NIC under PAYE when paying the worker (including employer NIC & apprenticeship levy) = Extra cost for the fee payer.

Due to non-compliance, the Government changed the application of the IR35 rules in the public sector in April 2017 – these are known as the ‘off-payroll rules’. The Government believes the time is now right to extend the off-payroll rules into the private sector and has published its consultation on the detail.

That consultation closes on 28 May 2019 and draft legislation is expected in summer 2019. The off-payroll rules will then apply in the private sector from 6 April 2020.

# IR35: WHAT WE KNOW SO FAR

**The following guidelines will outline what we know so far from the Public Sector to forecast what the impact will be for the Private Sector, ahead of the draft legislation in summer 2019.**

1. The public sector end-user must provide their status determination to the party they contract with at the start of the contract
2. This must be done by the time that the contract starts or, if later, before the worker starts to provide their services
3. The party that the end-user contracts with has the right to ask for the reasons for that determination, and the end-user must provide those reasons in writing within 31 days of receiving the request

## WHAT'S BEING PROPOSED?

1. The end-user must give the determination, and if requested the reasons for reaching it, to the party they contract with and the worker
2. The determination and the reasons for reaching it must then pass down the labour supply chain, before the fee payer makes the first payment, so the fee payer can be compliant
3. Acknowledging that point two above is cumbersome for long labour supply chains, HMRC are asking for views on an alternative solution whereby the end-user can identify and give the determination directly to the fee payer

HMRC expect that the end hirer at the top of the supply chain will assure the compliance of other parties further down the labour supply chain, if they are ultimately liable for any tax/NIC loss to HMRC that arises as a result of non-compliance.

# IR35: BECOMING COMPLIANT

**In order to ensure that you and your supply chain is compliant with the new legislation, there are a number of questions that are posed below with some guidance on what action you could take to help your organisation become compliant:**

**Question: Are all current records accurate and complete?**

Action:

- Identify all current Personal Service Company and intermediary engagements throughout your supply chain and determine if those assignments are deemed to be 'inside IR35' meaning that the individual should be subject to PAYE and National Insurance

**Question: Who will review contracts and record relevant information?**

Action:

- Appoint an appropriate accountancy firm. There are many umbrella companies and intermediaries working on models to avoid compliance with IR35. These should be treated with caution and Staffline would advise engaging with reputable, independent accountants without links to umbrella or payroll intermediaries. Staffline can also assist you with this review and will continue to work with KPMG on this matter
- Consider the impact of negative publicity in the event of parties within your supply chain failing to make the appropriate stoppages and the likely transfer of debt up the supply chain to the end hirer brought by a claim from HMRC

**IR35: BECOMING COMPLIANT** CONT.

**Question: What stakeholders need to be included and what time frames will be required?**

Action:

- All sites engaging with contractors will require awareness of this change in legislation. Consideration should be given to how you validate workers as either engaged as PAYE or you, as the end hirer, are satisfied that appropriate due diligence has been taken to ensure that the correct stoppages have been deducted from weekly pay where a contractor is within IR35
- Consider process and system changes

**Question: How can increased risk exposure be managed?**

Action:

- Tax risk will no longer be managed by engaging workers via UK Personal Service Companies
- The only way to remove any risk associated to the change in IR35 is to ensure all workers are engaged as PAYE

# SUMMARY

IR35 is properly known as the Intermediaries legislation and came into force in April 2000 as part of the Finance Act. It set out details of new legislation relating to intermediaries (including Personal Service Companies or other companies or partnerships).

- IR35 identifies individuals working via intermediaries who are in fact disguised employees
- When IR35 applies it means that HMRC do not recognise the contractor in question as 'self-employed' for tax and NIC purposes
- IR35 ensures that such an individual should be treated like an employee for tax and NIC purposes
- It ensures that the correct tax and NIC is paid

The Government are consulting with organisations on the proposed changes. That consultation closes on 28 May 2019 and draft legislation is expected in summer 2019. The off-payroll rules will then apply in the private sector from 6 April 2020. In order to get every organisation ready for 6 April 2020:

- Identify all current direct Personal Supply Companies' engagements and determine if you are likely to be caught by the rules based on current assignments
- Consider impact of additional costs when renewing or entering into new contracts with clients and contractors
- Understand the labour supply chain to ensure that obligations can be met
- Consider process and system changes

Watch out for Staffline's further guidance following the confirmation of the final legislation in summer 2019.

