

# **IR35: A Contractor's Guide**

Extension of the off-payroll  
rules into the private sector

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Discover the next steps regarding  
IR35 and staying compliant.

# to recap.

IR35, or 'off-payroll workers' legislation, was originally introduced by HM Revenue and Customs in 2000 with the objective of collecting employment status income tax and national insurance from contractor and consultant workers providing their services via their own Personal Services Company (PSC).





# what's changing.

Contractor and consultant workers are a vitally important part of the workforce in the UK, and many contractors and consultants provide their services through their own Personal Services Company. From 6 April 2020, the UK 'off-payroll workers' legislation, more commonly known as IR35, will be updated.

Under current IR35 legislation, HM Revenue and Customs requires contractor and consultant workers who provide their services through their own PSC to self-assess their employment status for UK tax purposes. This self-assessment is to determine if the IR35 off-payroll legislation applies, and, if so, to pay the appropriate employment status income tax and national insurance contributions.

The changes to off payroll working will move the responsibility for determining a worker's IR35 employment status to the end client. From 6th April 2020, the end client must determine whether the off-payroll rules apply and communicate this determination to the worker and any intermediaries, such as recruitment agencies or fee payer companies. Each end client engaging workers via a Personal Services Company must assess each worker and determine their status with regards off payroll rules. The client must then complete a Status Determination Statement (SDS) document and communicate this to the worker and all intermediaries in the contract chain.

Any worker engaged via a Personal Services Company, who the client determines to be Inside of IR35 will then be paid their fees net of income tax and national insurance deductions. The "fee payer", the company who makes the payments to the Personal Service Company, is responsible for deducting all income tax and national insurance due and the Personal Services Company is paid net.

You may be aware the same changes were made for off-payroll workers engaged in the public sector in 2017 and the private sector (excluding small businesses) is now required to follow the same path from 6th April 2020.

In preparation for these changes, VHR formed an IR35 Working Group to review the impact to our clients and contractor workers due to these legislative changes. This VHR Working Group has assessed this impact and now wishes to engage with you to ensure the appropriate response and compliance with the legislation.

# end clients.

## **What should your end client be doing next?**

VHR has asked every client to complete a Status Determination Statement for each of their contractor workers. When complete, this SDS will be shared with you to confirm the determination of your IR35 status – Inside or Outside.

## **What happens if an end client fails to comply with IR35?**

It is important that every end client complies with all the new legislative requirements of IR35. Should a client fail to comply there could be financial penalties for their business, which include being liable to pay income tax and National Insurance contributions (and associated penalties and interest) if HM Revenue and Customs find the client has not fulfilled their obligations under the new IR35 requirements, or if a Status Determination Statement is deemed by HM Revenue and Customs to be incorrect.

## **How end clients will determine the IR35 status of an off-payroll worker:**

IR35 Status Determination Statements can be manually completed by an authorised representative of the client, completed by the client online using a paid SDS application or through an external consultancy engaged by the client.

VHR has sent each client a Status Determination Statement document to enable them to reach a determination decision on the IR35 status of each worker engaged via a Personal Services Company.



# How end-clients will be determining the status of an off-payroll worker.

## Manual Determinations:

IR35 case law heard in the UK courts since IR35's inception in 2000 shows that, among others, the following factors are relevant in determining whether there is an employment type relationship between the worker and end client, and therefore could suggest a contractor is working **Inside of IR35**:

- Substitution of the contractor only with the consent of the client.
- The contractor can only be replaced by a person, or a fixed group of people, defined by the client.
- There is an obligation on the client to pay wages for all hours worked.
- The client directs and supervises the work of the contractor.
- The client gives instructions to the contractor worker with respect to (for example), how to complete tasks, supervision, representativeness, dealing with customers, working time and break times, recognisability through clothing, logos on vehicles and business cards.
- The client handles any complaints about (the work of) the contractor worker.
- The work performed by the contractor worker is an essential part of business of the client.
- The contractor does not typically work simultaneously for different clients.
- The contractor gets paid during illness and holidays.
- The contractor is not financially responsible in case of poor performance i.e. the contractor has no risk.
- The client determines the level of remuneration for the work.
- The client is liable for the damage caused by a contractor in the performance of their duties
- The contractor does not have professional liability insurance.
- The client provides tools, equipment and materials.

Disclaimer: the information included in this document is for general information only, and does not constitute legal or professional advice. Clients are required to take their own advice regarding the factors that determine employment status for tax purposes.

# How employers will be determining the status of an off-payroll worker.

## Manual Determinations:

IR35 case law heard in the UK courts since IR35's inception in 2000 shows that, among others, the following factors are relevant in determining whether there is consulting services type relationship between the worker and end client, and therefore could suggest a PSC contractor is working **Outside of IR35**:

- No obligation for client to offer and no obligation for the contractor to accept work on an ongoing basis. There is no requirement for the contractor to work only for that client during assignment.
- The contractor is not under the supervision of client. The contractor is able to determine when, how and where he/she does the work.
- The contractor has an unfettered right of substitution. There is no indication that the contractor themselves is required to personally provide their services.
- The contractor is paid on completion of milestones, tasks or projects or on a commission only basis. The contractor is not entitled to overtime or any other benefits.
- The contractor is engaged for a finite period for specific task or project and there is no payment to the contractor during holiday and illness.
- The contractor is responsible for the quality of the services he or she provides and the work he or she performs.
- The contractor has financial risks and must perform corrective work when required at no extra charge to the client.
- The contractor has appropriate business insurances in place to cover all assignments.
- The contractor has their own material, tools, software etc.
- If there are employees of the client working on the same project and who perform the same role as the contractor, if there any actual differences between the contractor and the employees in, for example, authority, autonomy, risk, supervision, direction etc

# next steps.

VHR will follow up this guide with further communication in the coming weeks.  
VHR will share with you your end client's Status Determination Statement as soon the client completes it to confirm the determination of your IR35 status.

You do not need to take any action until you receive your Status Determination Statement.  
If you have any questions regarding how IR35 will affect you or if you would like to speak with our team, please get in touch using the details below.

# get in touch.

Want to know more? Contact us now to hear how we can help your business navigate IR35.

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