

What the new off-payroll rules mean for businesses



In April 2020 new legislation, known as the 'Off-Payroll Tax' will be introduced to determine IR35 status. It is intended that these new tax rules will make it easier for businesses to distinguish between a genuine contractor and someone who could be deemed an employee.

IR35 has not been seen as a success and has been blamed for causing unnecessary costs and inconvenience for those who are genuinely self-employed and/or providing services through their own business vehicle. IR35 will not change, but rather the responsibility for determining IR35 status will move from the individual to the business employing their services.

What is IR35?

The tax known as IR35 covers two pieces of legislation, introduced by the government in April 2000 and April 2017. It was intended to combat tax avoidance by companies who engaged individuals through personal service companies (PSCs), instead of as regular employees subject to normal tax and National Insurance Contributions (NICs).

In April 2020, the original IR35 legislation will be replaced with a new Off-Payroll Tax (already introduced into the public sector in 2017). This new legislation will move the responsibility from the individual to the organisation, to decide if the off-payroll working rules apply to that particular arrangement.

Why wasn't IR35 working?

While IR35 was intended to defend workers from unscrupulous employers and the Exchequer from lost tax, HMRC was concerned that individuals were receiving tax advantages by setting themselves up as a limited company, where otherwise they would be considered as an employee according to employment law.

At the same time, firms hiring these individuals were happy to do so on this basis to avoid the requirement to pay NICs. Additionally, the organisation did not have to offer any employment right or benefits.

The legislation was introduced so that it would be possible to distinguish between a genuine contractor and a 'deemed employee', and it was the individual's responsibility to determine whether or not they were in or out of the scope of the IR35 legislation. This involved completing complex employment status tests.

What are the off-payroll rules?

Off-payroll working has been standard in the public sector since April 2017 and has ensured that service companies are compliant with IR35. From April 2020, these rules will apply to private sector organisations which engage workers via a PSC, or similar, when it will be up to the organisation to determine whether the worker should be treated as an employee, or as self-employed for tax purposes.

Tests will determine the relationship between the organisation and the PSC. If the PSC is seen to work in a way that could be identified as employment, i.e. the contract falls within IR35, then it will be the organisation's responsibility to operate PAYE and NICs on payments made to the PSC.

What is the impact on self-employed individuals?

From April 2020, the self-employed and those who operate through a PSC will no longer determine their own IR35 status. This will be identified by the prospective employer, who will need to inform them of their status before they start work.

It is hoped that by making the prospective employer responsible for determining the correct status of its workers, HMRC will improve compliance and ensure that those inside IR35 are paying the correct amount of tax and National Insurance.

How should organisations prepare for the new tax?

Organisations will need to identify which individuals it employs through PSCs and check if their contracts will extend beyond April 2020. If so, they will need to determine whether or not off-payroll rules apply to any new contract.

Where can I go for further information?

For further help or advice please contact Maria Gallucci at Woodfines Solicitors, on mgallucci@woodfines.co.uk or [01908 202150](tel:01908202150).