

IR35 – Off Payroll Working Guidance for Intermediaries

What is changing?

- Off-payroll working rules change on 6th April 2021 and are to be applied differently. From this date, all medium and large sized clients will be responsible for deciding the employment status of workers (sometimes known as contractors).
- Small size businesses will see no change to rules, as contractors determine their own status for payments.

Who is effected?

- Large/Medium size businesses in the private sector
- The rules apply to all private sector companies that meet 2 or more of the following conditions:
 - you have an annual turnover of more than £10.2 million
 - you have a balance sheet total of more than £5.1 million
 - you have more than 50 employees

The off-payroll working rules:

- apply if a worker provides services to a client through an intermediary, but would be classed as an employee if they were contracted directly

An intermediary is a party who makes arrangements for, or pays, an individual to work for a third party. The off-payroll working rules apply to a worker's intermediary.

The 3 different types of intermediary that workers can provide their services through are:

- a limited company, usually known as a personal service company (PSC)
- a partnership
- an individual through a non-corporate relationship - also known as an 'unincorporated body'

A PSC is a type of intermediary where the worker has a 'material interest' in a company. This usually means the worker is either:

- the director of the company
- able to control more than 5% of the ordinary share capital of the company, directly or indirectly

From when?

- The rules come in to affect from the 6th April 2021.



What you will need to do

As a PSC working for a large/med size company as noted above:

You will not be required to do anything as the large/med size company will decide your employment status with them.

You will be provided with a Status Determination Statement (SDS) and you are within your rights to disagree with this by notifying the company and the company must respond to you within 45 days of your notice.

As a PSC working for a small company as noted above:

As the intermediary you will need to make an employment status determination for the worker to see if the off-payroll working rules will apply.

How to work out an employment status

Companies will take on the task of establishing employment status in different ways – using internal and/or external expertise. In all cases, they have to be able to demonstrate that reasonable care has been taken – to work out the status of each contractor.

They may use one or more of the following methods:

- Official or commercial employment status tools (including CEST – despite its limitations). www.gov.uk/guidance/check-employment-status-for-tax
- Using HMRC guidance and established employment status principles, based on case law.
- Using a professional, qualified advisor.

Importantly, a client can only make an accurate IR35 status decision by looking at the whole picture of the assignment and the way it is carried out – including contract wording and working practices.

If the rules apply you'll need to calculate a 'deemed employment payment'. This is the amount deemed to be the income of the worker, after some deductions and employer National Insurance contributions have been removed.

The off-payroll working rules are decided for each engagement your worker enters into. If during an engagement there is a change in the terms then you'll need to reconsider if the rules continue to apply.

You'll need to:

- pay the employer National Insurance contributions to HMRC
- pay any tax and the employee National Insurance contributions due, at the end of the tax year. Which our payroll bureau can set up for you as this has to be made through and FPS declaration.
- take into account the deemed employment payment when paying Corporation Tax, paying dividends or operating the Construction Industry Scheme

Your worker will need to report information about these engagements to HMRC on their Self Assessment tax return, and pay any other Income Tax and National Insurance contributions that are due.

- The rules are in place to make sure that workers pay broadly the same tax and National Insurance contributions as an employee.



For further advice or clarification on how the off payroll working rules will affect your business please contact your relationship Director. Rest assured we will work with you to ensure that your business is compliant with the new legislation from an accounting, tax and payroll perspective.

Example 1 – The contractor’s point of view

Situation

Susan is a 45-year-old web designer. She has been commissioned to design a new website for a medium-sized kitchen supplies business. She works through her own PSC, and the contract for this engagement is between the business and Susan’s PSC.

Susan is paid at agreed intervals through the 9-month project, on completion of work not on days worked. Susan is free to work for other non-competing clients during the course of the project.

Susan generally works from her own office location, visiting the client head office for meetings with the project team and key senior stakeholders.

Issue

Susan receives an email from her contact in the finance team at the business she is designing a website for about off-payroll working rules (IR35). It outlines that the business is looking at their contractor workforce to identify if these rules apply for each contract.

Actions taken

Susan researches the rules, finding out more information on GOV.UK. She understands that her client will have to decide whether or not her engagement is within the off-payroll working rules, and if her engagement is caught would need to issue her a Status Determination Statement. Susan receives an email from her client, confirming that they believe the rules do not apply, so nothing needs to change.

How the off-payroll working rules (IR35) apply

Susan is found to be outside of the scope of the off-payroll working rules for a number of reasons, including:

- Susan is paid for work completed not by the day
- she works at a location of her choosing
- she can work for multiple clients

Outcome

Susan continues to be responsible for accounting for and paying tax through Corporation Tax Self-Assessment (CTSA) and Income Tax Self-Assessment (ITSA).



Example 2 - The contractor's point of view

Situation

Adele is a 57-year-old operations analyst. She has been working for a large multinational bank for 2 years. The bank is based in England and Adele works from their largest branch in Newcastle. Adele was originally hired by the bank through an agency and she operates through her own PSC.

Issue

Adele is contacted by Tim who runs payroll for the bank from their Leeds office. Tim explains that there will soon be changes to off-payroll working rules that will affect her tax status.

Actions taken

Tim provides Adele with a Status Determination Statement that sets out that Adele's contract falls within the off-payroll working rules and the reasons why.

Adele believed that the changes would not affect her as she operates through her PSC and was hired by the bank through an agency. Tim directs her to guidance on the subject so that she can find out more about the rules.

How the off-payroll working rules (IR35) apply

Adele is affected by off-payroll working changes because:

- she provides her services to the bank
- she works in a way similar to that of an employee

For a number of reasons she is under the control of the bank in terms of the work that she delivers and how it progresses. She will remain under the control of the bank for the duration of her contract.

Avoiding tax avoidance schemes

Adele is approached about a scheme to avoid off-payroll working rules (IR35). It offers to increase her take home pay and ensure she's not affected by IR35. This sounds too good to be true, so she looks to find out more. From her research, Adele is unconvinced that the scheme is compliant with the rules and she takes note of the HMRC guidance on tax avoidance schemes aimed at contractors and agency workers. She decides not to enter the scheme as she wishes to be sure she is operating correctly within the rules.

Outcome

Adele now understands that she is deemed to be an employee for tax purposes. This means that the agency which pays her PSC will deduct income tax and National Insurance contributions (NICs) before paying her PSC for services.

The agency that pays Adele sets her up on PAYE so deducts income tax and NICs from her payment before she receives it.

Adele's PSC is still required to submit a tax return, but relief is available on the tax already paid.



Example 3 – The contractor’s point of view

Situation

Vasilis is a 38-year-old risk management consultant working for a large pharmaceutical company in Cardiff. He has been working for the same company for 9 months and has no other engagements. Vasilis operates through his PSC as he has done for numerous other companies in the pharmaceutical and healthcare industry. His contract was agreed for 7 months followed by a month by month rolling basis. He has estimated that he will need to continue working for the company for another 5 months to complete his work.

Issue

Vasilis works from one of the pharmaceutical company’s offices. He can work from home if necessary but must spend the majority of his working week in the office as well as travelling across the UK to attend company meetings and events when required. As part of his role Vasilis assesses the performance of a team of staff who work for the pharmaceutical company.

Vasilis receives an email about off-payroll working rules from the finance department of the company but does not think it applies to him. He wonders if the company would approach all contracts in a similar way and make a blanket assessment for all contractors, but finds it doesn’t work like that, that status is determined on a case-by-case basis. He is then contacted by the finance department of the company and provided with a Status Determination Statement. This explains that his employment status for tax will change due to the off-payroll working rules (IR35).

Actions taken

Vasilis researches off-payroll working rules so that he can better understand how he will be affected. He goes to GOV.UK and is directed to use the CEST tool. After answering all of the questions the result indicates that he is affected by the off-payroll working rules and considered to be an employee for tax purposes. He contacts the finance department to discuss his results and what this will mean to his contract.

How the off-payroll working rules (IR35) apply

Vasilis is affected by off-payroll working rules changes for a number of reasons, including:

- the company control where he works
- he has management responsibilities
- his contract means he is unable to take on other work alongside his role

Outcome

He is now set up on PAYE. This means the pharmaceutical company will deduct income tax and NICs before paying him, as well as paying employer’s NICs. Vasilis’s contract runs for another 5 months as planned, after which he moves on to work for another company on an extendable contract.

Vasilis’s PSC is still required to submit a tax return, but relief is available on the tax already paid.



Example 4 - The contractor's point of view

Situation

Sanjit is a 26-year-old radio presenter living and working in Manchester. He is engaged by a local radio station to present a news programme. The radio station is a medium-sized business. Sanjit has been in the role for 6 months, he works part time hours under a contract between the radio station and his own personal service company (PSC).

Issue

Sanjit is approached by another radio station to present a news discussion show. The programmes are recorded on different days and Sanjit wants to accept the second job. He checks with his current radio station first who inform him that he is not able to accept the role at the second radio station.

Actions taken

Sanjit looks further into the clauses in his contract and realises off-payroll working rules may apply to his current engagement. He goes onto GOV.UK and reads the understanding off-payroll working guide which leads him to use the online Check Employment Status for Tax (CEST) tool. Answering all of the information accurately, the result for Sanjit is that this engagement is within scope the off-payroll working rules (IR35).

How the off-payroll working rules (IR35) apply

Sanjit is deemed to be an employee for tax purposes for a number of reasons, one being that he is unable to accept other work in similar roles.

Sanjit understands that the responsibility to apply the rules lies with the client. The radio station provides Sanjit with a Status Determination Statement setting out its decision and reasons why.

Outcome

As the radio station pays Sanjit's PSC directly, it must now set Sanjit up on its payroll system and operate PAYE on payments made to him.

Sanjit's PSC is still required to submit a tax return, but relief is available on the tax already paid.

