

IR35 – Off Payroll Working Guidance for Large/Medium Size Businesses

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).

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
- There are also rules which cover connected and associated companies. If the parent of a group is medium or large, their subsidiaries will also have to apply the off-payroll working rules.

From when?

- The rules come in to affect from the 6th April 2021.
- If you meet the simplified test conditions you must start applying the rules when the changes come into force on 6 April 2021.
- If you use the simplified test to determine your size, you must apply the rules from the start of the tax year following the end of the calendar year when you met the conditions.
- If you do not use the simplified test and do not meet the conditions on 6 April 2021, your circumstances may later change. If you then meet the conditions for 2 consecutive years, the date you need to apply the rules will be different. You must apply the rules from the start of the tax year following the end of the filing period for the second financial year when you met the conditions.

What you will need to do

You'll need to decide the employment status of:

- every worker you engage through their intermediary
- every worker you engage through an agency

You should communicate your determination using a Status Determination Statement (SDS).



How to work out an employment status for the SDS:

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.

An SDS must:

- be passed to the worker and the person or organisation you contract with
- give your conclusion and the reasons for coming to it

You must take reasonable care when making a determination. You can issue an SDS before 6 April 2021 if the rules apply.

You'll also need to:

- make sure you keep detailed records of your employment status determinations, including the reasons for the determination and fees paid
- have processes in place to deal with any disagreements that arise from your determination
- confirm the size of your organisation if asked by the person or organisation you contract with, or the worker

If you are also the fee-payer and the off-payroll working rules apply, you will need to deduct and pay tax and National Insurance contributions to HMRC.

What to do if a worker or deemed employer disagrees with your determination

A worker or deemed employer may disagree with the employment status determination you reached.

If this happens you will need to:

- consider the reasons for disagreeing given to you by the worker or agency paying their intermediary
- decide whether to maintain the determination if you feel it is correct and give reasons why – or provide a new determination because you feel it was wrong
- keep a record of your determinations and the reasons for them, as well as records of representations made to you
- confirm which date your determination is valid from



A disagreement can be raised with you until the last payment is made for the worker's services.

You must provide a response within 45 days of receiving notification that the worker or deemed employer disagrees with your employment status determination. During this time you should continue to apply the rules in line with your original determination.

From when?

The fee-payer is the party paying the worker, limited company or other intermediary. The fee-payer will also be the organisation directly above the worker's limited company in the labour supply chain. This could be the client or an agency.

If the off-payroll working rules apply, the fee-payer is usually responsible for:

- deducting Income Tax (PAYE) and National Insurance contributions and apprenticeship levy
- paying HMRC

When you receive the worker's employment status determination and the off-payroll working rules apply, you must:

- calculate the deemed direct payment to account for employment taxes and National Insurance contributions associated with the contract
- deduct those taxes and employee National Insurance contributions from the payment to a worker's intermediary
- pay employer National Insurance contributions
- report to HMRC through Real Time Information the taxes and National Insurance contributions deducted
- apply the apprenticeship levy and make any payments necessary

Employment allowance cannot be used against payments to deemed employees.

How to calculate the deemed direct payments

The deemed direct payment is the amount paid to the worker's intermediary that should be treated as earnings for the purposes of the off-payroll rules.

1. Work out the value of the payment to the worker's intermediary, having deducted any VAT.
2. Deduct the direct costs of materials that have, or will be, used in providing their services.
3. Deduct expenses met by the intermediary that would have been deductible from taxable earnings if the worker was employed.
4. The resulting amount is the deemed direct payment. If it is nil or negative there is no deemed direct payment.

You then need to deduct tax and employee National Insurance contributions as appropriate from the deemed direct payment. You also need to pay employer National Insurance contributions.



You'll need to report the pay and deductions you make to HMRC using a Full Payment Submission, as you do for workers on your payroll. You should indicate that this person is an off-payroll worker.

You do not have to add these workers to your existing payroll, but you can do this if you wish. If the payments are not reported under your existing PAYE scheme, then you'll have to open a new one.

You should keep records of any payments as well as amounts of Income Tax and National Insurance contributions deducted.

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.

How much tax and national insurance must be paid?

You should give the worker a new starter checklist. This will decide the worker's tax code. The tax code will often be code "BR", as the worker will have a primary employment with their own intermediary.

You must use the normal National Insurance rates and thresholds on the value of the deemed payment.

To work out how much tax and National Insurance contributions need to be paid on the deemed employment payment, you are required to use your payroll software.

This means that when you pay the worker they do not need to pay tax and National Insurance contributions again on those fees.

You can do this by either paying it as:

- a salary through your payroll – but do not deduct tax or National Insurance contributions
- dividends – these do not need to be recorded on your worker's Self Assessment

As the amounts have already been treated as employment income doing it this way will avoid any double payment of tax or National Insurance contributions.

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.

