

## IR35 changes and how they will affect you

The IR35 'off-payroll' rules will be extended to the private sector from April 2020 onwards, directly affecting a large number of contractors. Although

the underpinning legislation has not yet been passed, and so nothing is absolutely certain, it's time to consider the proposed changes, how these will affect you as a Limited Company contractor, and what you can do about it as the changes are likely to have a significant impact on some (not all) Limited Company contractors when they come into effect on April 2020.



### What off-payroll changes have been proposed?

The changes to off-payroll in the private sector have been proposed as the Government wants to "increase compliance in the private sector" with the IR35 rules. Under the proposals, the organisations you carry out work for (agencies) would become responsible for determining whether you are inside or outside IR35. Until now, that responsibility has rested with you as the contractor, rather than your end hirer or recruitment agency.

It's important to remember that none of the criteria for determining IR35 status, (such as Control, the ability to substitute and a lack of mutuality of obligation) will be changing. If you are not inside IR35 now, you won't automatically be inside IR35 in April 2020. The proposed changes are in relation to who is responsible for determining the IR35 status and, potentially, for the underpayment of tax.

### How does this effect my contract or the work I am offered?

In some cases, agencies may provide individual IR35 assessments and be comfortable with the responsibility for determining IR35 status, in which case, provided they agree that your assignment is 'outside the scope' or 'not caught' then your current arrangements would not be impacted.

However, though agencies have been told each assessment should be done on an individual basis, they may decide it is too difficult to assess all contractors accurately, so could try and make a blanket assessment which assumes all contractors are inside IR35. The effect of this is that contractors would face the possibility of increased tax bills – being taxed at employed rates, despite properly operating as a business, and expecting to pay tax as a business too, resulting in more contractors finding themselves severely out of pocket.

### **Your IR35 status and HMRC?**

HMRC and the government recommend that the end client or agency uses the CEST (Check employment status for tax) tool and that “HMRC will stand by the result given unless a compliance check finds the information provided isn’t accurate”. Despite criticism of the accuracy of the results provided, including the lack of one of the keys Outside IR35 deciders, (lack of mutability of obligation), HMRC will push to enhance and improve the tool before April 2020. Enhancements will be tested and rolled out before the reforms are introduced in April 2020.

### **What can I do now?**

Though April 2020 may seem in the distant future, it’s important to look at your options as soon as possible. Speak with your end-hirer or agency when you agree new contracts and extensions to ensure they are able to operate in the same manner. Ask them if it’s their intention to insist that limited company contractors move to their payroll and become subject to PAYE? Or will the agency take responsibility for determining your IR35 status allowing you to continue to work via your limited company? It may be that they do not know at this stage, but at least you can find out when they will be able to address the issue with you. Other options to consider would be taking a full-time position with the end client, operation through an umbrella company or continuing to offer through your Limited Company paying tax through your end client’s PAYE scheme.

Recent draft legislation has raised several points of interest that would be worth noting at this stage:

1. A 'status determination statement' which outlines the end-client's IR35 status decision must be provided to both the contractor and the party directly engaging the contractor (often the agent). Until this is provided, then the end-client will remain responsible for collecting income tax and NICs.
2. If you don't agree with an IR35 status decision, there is a new client-led disagreement process, which obliges the end-client to review a decision and provide a reasoned response within 45 days. If they fail to do this, then the client (not the agent) will assume the IR35 liability.

Please be aware that if the agency does assess you and are happy that you are not affected by IR35, operating as a limited company contractor will remain most beneficial for you and the end client if you are outside of IR35.

When considering which option may suit you best, it's important to get detailed pay illustrations to show all the deductions and tax payable for the different ways of working, so that you know exactly what to expect.

### **Stay informed**

Now that the formal consultation on off-payroll in the private sector has closed, we expect to see the final proposals included in the Chancellor's Autumn Statement. We will keep you informed as the proposed off-payroll working rules become clearer.