

## CORPORATE &amp; BUSINESS TAX

## IR35 or the “off payroll working rules” - FAQ



***IR35, or the “off-payroll working rules”, was designed to deal with people who choose to change their employment status to avoid paying certain employment related taxes, namely Pay As You Earn (PAYE) and National Insurance Contributions (NICs). This type of approach is also referred to as ‘disguised’ employment. New rules were due to come into effect on 6 April 2020, but they have been delayed until April 2021 because of the coronavirus pandemic. They have not been cancelled.***

IR35 works by taxing people so that they pay broadly the same higher rate amount as if they were employed. However, they do not receive the same employment rights as employees.

Those people potentially affected often provide their services to businesses via an intermediary. For example, a limited company, a partnership, an unincorporated association or even another person.

**What is a ‘personal services company’?**

Sometimes a person will set up their own limited company through which he or she will provide their services. This type of company is known as a personal services company and it will sign a contract with the end client.

**What is an umbrella company?**

Alternatively, the people, “contractors”, may be engaged by an umbrella company. An umbrella company is one which is run by a third party who in turn ‘employs’ a number of contractors. Instead of the contractor signing a contract with the end client, the umbrella company will do this as well as providing a payroll service to the employees. Recruitment companies frequently adopt this approach.

**How do I know if I’m affected by IR35?**

HM Revenue & Customs have developed an online tool “Check Employment Status for Tax” or CEST for short. It asks users a series of questions about the nature of their employment and will make an assessment based on the information provided. HMRC have said that CEST would provide an IR35 status determination in 85% of cases and therefore some care is required when using it.

Here is a link: <https://www.gov.uk/guidance/check-employment-status-for-tax>

However, from our own experience CEST oversimplifies several key aspects of IR35 legislation including the decisions of the courts, so is more likely to assume that the person is caught especially where the facts do not easily fit into their pre-set model answers.

Those workers who are unsure should seek advice from their tax adviser or if they prefer they can use the HMRC’s IR35 help facility: <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/ir35-enquiries>

You can email them, call them or write to them.

## Are things changing and who is affected?

### Public sector

In April 2017 changes to IR35 were introduced for the public sector. The public sector broadly encompasses those undertaking work for a public authority such as the NHS, the BBC, authorities such as the police or the fire brigade etc.

From this date, it is the responsibility of public sector organisations to determine the IR35 status of their contractors. If a contractor is deemed to have IR35 status then the public sector organisation which has hired him or her is obliged to deduct PAYE and National Insurance Contributions as they would for employees.

### Private sector

From April 2021, these changes are being extended to private sector contractors of medium and large companies. From this time, the engaging business, also known as the end-client, will have responsibility for determining the employment tax status and whether the contractor falls into the IR35 regime or not. If they do, then the responsibility and liability to deduct the appropriate amount of PAYE and National Insurance Contributions is that of the fee payer or in other words, the entity which ultimately pays the contractor's personal services company. But, if the fee payer fails to do this, the liability moves back to the end-client. In a number of cases the fee-payer may be a recruitment company.

### Small entities' responsibility

However, small businesses are not affected and contractors working for them will continue to determine their own IR35 status.

But, care still needs to be applied when considering if your business is small or not. For unincorporated businesses the test of size to see if they can be classified as small, and therefore exempt from the April 2021 changes, will be their turnover for the calendar year which cannot exceed £10.2 million. However, these businesses won't be able to use their accounts unless they have a 31 December year end and will therefore need to manually calculate their turnover for the 12 months to 31 December before the start of each new tax year.

For a company the definition of small looks at their accounting period and relates this to the tax year that starts after the Companies House filing deadline for those particular accounts. So, for example, a company with an October 2020 year end (which would therefore have had an accounting filing deadline of 31 July 2021 at Companies House) would need to use those figures for the tax year 2022/23 in April 2022.

## What happens if I do fall into IR35?

If you are a contractor working for a medium or large company they will determine your IR35 status. The "fee payer", which might be the agency you contracted with, which makes payment to you will be responsible for paying the tax and National Insurance Contributions.

If you are working for a small company, you will need to determine your own IR35 status as well as account for and pay the tax and NICs that you owe.

## Will having IR35 status affect what I am paid?

If you are ultimately working for a small company nothing has changed so the IR35 burden remains with you.

If you are ultimately working for a medium or large company, then they will assess your IR35 status and may therefore want to alter the amounts that they pay you. We advise that you speak to your customer to establish whether they plan to pass on any additional cost they suffer.

Here are some further details on the deemed employment payment: <https://www.gov.uk/guidance/how-to-calculate-the-deemed-employment-payment>

## Are there penalties if I get it wrong?

Yes, there are penalties for non-compliance with the rules and they are high.

From April 2021 the large and medium sized engaging business (the end client) will be liable for determining the employment status of contractors for tax including whether they fall into IR35. If a contractor does fall into IR35, the fee payer, ie the entity which pays the contractor's personal services company, will be obliged to deduct PAYE and employers' National Insurance Contributions. If this doesn't happen, then the liability for these taxes will be those of the end client.

**What should I do next?**

If you are a contractor you will need assess whether the company you are providing your services to is classified as small or not using the Companies Act definition. If it is, then it is your responsibility to determine your IR35 status and to make the deemed employment payment.

As for businesses which use contractors they should start to prepare themselves for the changes by carrying out a review of their overall exposure to the new IR35 legislation and by looking at the following in particular:

- whether or not their company is classified as medium or large
- assessing how many contractors it engages
- establishing a process to assess and determine contractors' employment status
- reviewing the company's policy on engaging and working with contractors
- assessing internal systems, for example the company's HR function, and payroll systems and payroll staff and their ability to adjust to the new obligations

**We can help!**

If you would like to have a chat about what the IR35 changes mean for you and get some guidance on how to approach it, feel free to get in touch.

*Updated on 25 June 2020*