

IR35

Are you ready for the landmark
changes to off-payroll working?



INTRODUCTION

The landmark update to off-payroll working rules, commonly known as IR35, has substantial ramifications for the private sector – and now it's only a matter of weeks before the changes come into effect on 6 April 2021.

Whilst the UK Government's decision to delay the proposed changes in light of the pandemic has given contractors and employers an additional year to prepare, those that have left it late must act quickly to review their working relationships and ensure compliance with the new rules.

HMRC's recent admission that cases of accidental non-compliance within the first 12 months will not face immediate penalties must also be taken with a pinch of salt. This is no excuse for companies or contractors to cut corners as they will still need to demonstrate that reasonable care has been taken to stay compliant to avoid investigation and fines.

A big part of the challenge in dealing with IR35 is dealing with the complexity of the updated legislation and making sure every base is covered throughout the

supply chain. This is reflected in the data, particularly a [national study](#) led by management consultancy Sullivan & Stanley which revealed just over half (52%) of businesses found the changes to IR35 legislation to be 'contradictory or confusing'.

At Gerald Edelman, we're often asked by clients to help explain IR35 in plain terms and ensure they stay compliant with new tax law. That's why we've put together this short guide to cover the key points that both companies and contractors need to know. We hope it proves valuable for your planning.



Isaac Agbley

ASSISTANT TAX MANAGER

☎ +44 (0)20 8492 5650

✉ iagbley@geraldedelman.com



GERALD
EDELMAN





How is IR35 changing?

You'd be forgiven for thinking that IR35 is a new tax law; in fact, it was first introduced in 2000 to help combat tax avoidance by off-payroll workers.

Up until now, it has been the responsibility of contractors working within the private sector to determine their own employment status. However, from 6 April 2021 onwards it will be the responsibility of medium and large-sized employers in the private sector to determine whether a contractor assignment is inside or outside of IR35.

The reform is designed as an extra measure to prevent contractors from concealing their true employment status through an agency, public service company (PSC) or other intermediary – and ensure they pay any income tax and NICs due as a result. The end client must complete a Status Determination Statement (SDS) before an assignment begins, which details the reasoning and evidence behind their determination.

This brings private sector requirements in line with the public sector, where an almost identical update was introduced in April 2017 to clarify the employment status of PSC workers.

Do the new rules apply to you?

The IR35 rule changes will only apply to businesses in the private sector that meet at least two of the three following criteria:

- ▶ Annual turnover is more than £10.2 million
- ▶ Balance sheet total is more than £5.1 million
- ▶ Employ more than 50 staff

Any contractors working via an umbrella company should be exempt from the rule changes if they already pay income tax and NICs through the PAYE system. It's unlikely that sole traders or small businesses will be affected by the update, though if you have any doubts it's worth double-checking your status with an IR35 tax specialist.

The reform is designed as an extra measure to prevent contractors from concealing their true employment status



End clients – How to stay compliant

HMRC has issued three primary criteria that medium and large-sized companies should follow when determining the employment status of their contracted workers...

Control, autonomy and supervision

End clients must look closely at the nature of work completed by the contractor and whether they have control to decide how, when and where the work is carried out. If these factors are dictated by the end client instead then it's likely the worker does not have sufficient autonomy to be classed as an off-payroll contractor.

Personal service and substitution

Contractors must reserve the right to substitute personnel whenever they deem it necessary, whether that's to delegate work to a colleague or to outsource the work to a third party. This differs from a normal employment relationship whereby an employee provides a personal service to their employer and must carry out work themselves.

Mutuality of obligation

Mutuality of obligation (MOO) is a key test carried out by tax tribunals to determine whether or not a contractor falls within IR35. To qualify as a contractor in the eyes of HMRC, the worker must not be obliged to accept paid work on an ongoing basis, nor must the end client be obliged to offer ongoing work to the contractor.

Beyond these three primary criteria, end clients must evaluate the following factors when preparing a Status Determination Statement:

Non-exclusivity – Is the contractor free to take on assignments from other clients simultaneously?

Equipment – Does the contractor supply their own equipment, or is this supplied by the end client?

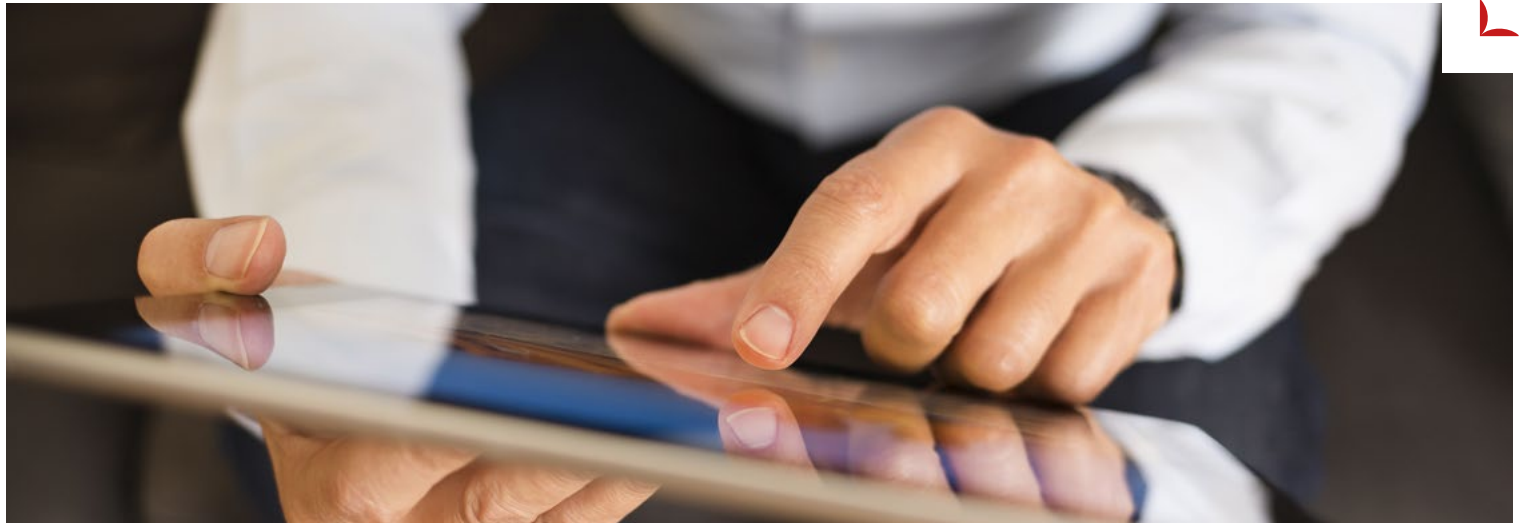
Length of engagement – Has the contractor been working with you exclusively for a long time?

Method of payment – Is the contractor paid when work is completed or at specific milestones, rather than at regular intervals like a salary?

Part and parcel – Do other employees within your organisation report directly to the contractor?

Intention of parties – Does the contract state that the contractor is a supplier of services, rather than an employee?

Termination – Does the contract state when the project is expected to finish?



Contractors – How to stay compliant

Any contractor that suspects one or more of their working arrangements might fall within IR35 must confirm their employment status as soon as possible. Here are a few initial questions you'll need to answer...

What size of companies do you work with?

The IR35 update only affects workers that are contracted to work for medium and large-sized organisations. If you only work with small businesses then it's likely the new rules don't apply to you.

How many clients do you work with?

Although working predominantly with one client over a long period may indicate full employment, HMRC has stated that this alone is not enough to determine IR35 status. However, contractors wishing to stay outside of IR35 must be able to work with other clients if they choose and cannot be tied to any form of exclusivity clause.

Have you checked your work contracts?

Contractors should review and update all existing and new work contracts to ensure they cover the main clauses relating to personal service, substitution, control and mutuality of obligation etc.

Do you receive any statutory benefits?

Off-payroll workers are not entitled to receive sick pay or annual leave benefits. Those that do receive statutory benefits will likely be classed as an employee of the company they work for.

Will you receive Status Determination Statements (SDS) from clients?

As per the new rules, contracted workers will need a SDS from every client. The end client should already be aware of their responsibility to complete these statements, though it's a good idea to double-check with them directly.

N.B.

This is not an exhaustive list of requirements. If you are unsure about your personal employment status or have any further questions then make sure to get in touch with a specialist in IR35 tax law.



Useful tools

Here's a selection of free resources that you might find useful when determining IR35 status.

[Check Employment Status for Tax \(CEST\) >>](#)

This Government tool has been designed to help contractors and end clients to determine a worker's employment status. However, some debate remains regarding the accuracy of the tool due to discrepancies in criteria and key status tests.

[FIND OUT MORE](#)

[Take Home Pay Calculator >>](#)

This tool created by UK Tax Calculators allows contractors to see the differences in take home pay when operating through an umbrella company, a limited company outside IR35 and a limited company inside IR35.

[FIND OUT MORE](#)

[IR35 Calculator >>](#)

Available on the Contractor Calculator website, this tool helps contractors to assess the impact that IR35 may have on their net income.

[FIND OUT MORE](#)

[HMRC Guidance on IR35 >>](#)

It's worth checking the latest guidelines published by HMRC on the .GOV website from time to time as these are regularly updated.

[FIND OUT MORE](#)



Do you need support managing IR35?


As a specialist tax advisor, Gerald Edelman often works closely with companies, contractors and PSCs looking to stay compliant with the new IR35 rules.

Our IR35 accountants are here to help weigh up your options and pinpoint a tax-efficient solution with your best interests in mind. We also help medium and large-sized companies conduct in-depth reviews of contractor arrangements across each and every step of their supply chain.

If you need more advice on the upcoming IR35 rule changes, or would like to discuss your own tax status as a contractor or end client, feel free to get in touch with Isaac Agbley at iagbley@geraldedelman.com to arrange a free consultation.



Isaac Agbley
ASSISTANT TAX MANAGER

+44 (0)20 8492 5650
iagbley@geraldedelman.com 

MEET ISAAC



