

Back in May 2016 the government published its proposal for reform of the off-payroll rules (IR35 or intermediaries legislation) and the Autumn statement confirmed the Government's plan to press ahead with these changes despite nationwide opposition.

The new IR35 assessment rules are targeting contractors operating in the public sector and the changing regulations and responsibilities will have a significant impact on public sector bodies. It is essential for those involved to have a strong grasp of the new IR35 rules to prepare themselves and effectively manage the inevitable impacts it will have on those affected.

### What will be happening from April 2017?

Where it was once the requirement of the individual contractor's limited company (or personal service company 'PSC') for ensuring that IR35 is correctly applied, responsibility will be shifting to the 'fee payer' (generally the recruitment agency) and the public sector body and any associated liability would fall to them.

Where a contract is found to fall within IR35, the 'fee payer' will be responsible for calculating and making deductions of tax and NICs from the payments of invoices.

### When will this take effect and who will this effect?

Changes will apply to all payments made on or after 6th April 2017. It's important to be aware that this means all payments, even if the work was undertaken before 6th April or the contract was agreed prior to that date.

These changes will affect all organisations (including wholly owned subsidiaries) listed as a public authority under the Freedom of Information Act 2000. Where, in the absence of a PSC, the contractor would have been regarded as an employee of the public sector authority (under IR35 rules), the public sector body or the agency will be required to treat payments made to the PSC as if

they were earnings paid to the contractor from employment with the public body ('deemed employment payments').

As of April 6th 2017, where the contractor is working in the public sector, the responsibility for determining the IR35 status of the contract will shift to the Public Sector body and it is the 'fee payer' who will be responsible for calculating PAYE and National Insurance Contributions on that contract and to HMRC.

### Responsibilities:

It is the responsibility of the end client (the public sector body) for confirming the IR35 status of the contract to the fee payer.

The end client will have 31 days to inform the fee payer if the contract falls inside or outside IR35 and if they fail to do so will be deemed the "fee payer" under IR35.

## Chain of supply:

The draft legislation recognises the 'chain of supply' and it is important to interrogate this contractual chain to establish with whom the workers are engaged. The chain of supply structures the worker's intermediary at the bottom and the end client at the top, defining the parties between in terms of whether they are higher or lower than one another. This is important in terms of determining if MSC legislation could apply and debt transfer.

## The online tool:

Public sector bodies, and all those responsible for determining the employment status of a PSC, will be provided with an online tool by HMRC. The idea behind the tool is to determine the IR35 status, calculating whether someone is legitimately self-employed or should be subject to PAYE and NICs like any other employee.

Currently in Beta, the digital tool will be released to the public for testing at the start of March and will play a big part in the decision making process, essentially giving HMRC's view on the IR35 status of a particular engagement, and assuming that all details inputted into the tool are accurate, and a result of 'outside IR35' is given, HMRC have pledged to stand by that judgement.

If the tool declares an engagement inside the IR35 status, employment taxes will be deducted by the employer and if the tool classifies it as outside the IR35 status, the PSC will be paid at gross and account for tax like a business, as it has always done.

## How will this affect PSCs?

For contractors caught within IR35, the Fee Payer will deduct Income Tax and Primary National Insurance from the payments made to their limited company less any deductions for additional liabilities. Contracts will need to be re-issued taking into account that Employers NI will also need to be paid by the fee payer to HMRC and they will need the contractor to provide personal tax details.

Very rough figures show that contractors could earn 15-20% less with these changes.

## Useful Links

A complete listing of organisations classified as 'public sector' can be found at:

<http://www.legislation.gov.uk/ukpga/2000/36/schedule/1>

Access the online tool here:

<https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>