

IR35 in the private sector - FAQs for contractors

New laws come into force on 6 April 2021 that will impact **any contractors who provide services via a limited company or personal service company (PSC)**, to any medium or large private sector company (whether directly or via an agency).

We don't yet have the detail of the legislation, it is therefore difficult for our clients to make firm decisions about how to manage the changes before we know the finer detail. We are urging our clients to take action **now** as well as offering them a range of support, services and solutions to help them achieve compliance with the new rules well in advance of April 2021.

We want to reassure you that we are very much aware of the legislation and we understand what the changes may mean for our contractors. We will be working closely with all our clients to give you relevant updates as often and as early as possible.

For those who have not yet heard about the announced changes to IR35, we have provided some FAQs below.

1. What will be different in the future?

The engager / end client becomes responsible for determining the tax status of the assignment (known as 'IR35') for any PSCs they engage (whether directly or by an agency). This is in contrast to the current rules which requires a PSC contractor to determine the tax status of any assignments.

2. What is IR35?

IR35 refers to HMRC's 'test' for self-employment for **tax purposes** when contractors work via a PSC.

The test states that a PSC contractor is not considered to be self-employed if the working arrangements of the assignment indicate that the contractor would be considered an employee for tax purposes if he/she had been engaged directly, with no PSC in the chain.

In those circumstances, the PSC contractor is determined to be 'Inside IR35' or 'caught' by the IR35 rules, and must pay income tax and National Insurance Contributions (NICs) on the entire assignment income, just as an employee would. Where the working practices of the assignment indicate a truly self-employed engagement, the assignment is considered to be 'Outside IR35' and the PSC is entitled to treat the income differently (taking the income as dividends for example).

3. How is IR35 status determined?

All PSC contractors will appreciate that IR35 is a complex, often highly subjective and case-specific test that is difficult to interpret and apply. It is a multi-faceted test with more than a dozen criteria to assess and weigh up.

4. What are the new IR35 rules?

The new rules will be broadly similar to the changes made in 2017 to public sector bodies engaging PSC contractors. We do not yet have the technical detail or draft legislation from HMRC, but this is what we know so far.

From 6 April 2021, all companies who engage PSC contractors, whether directly or through an agency, become legally responsible for assessing the IR35 status of each assignment. The liability for deciding

whether an assignment is 'Inside IR35' or 'Outside IR35' therefore moves from the contractor to the end user / engager / client.

Whoever pays the PSC must make the appropriate deductions for income tax and NI **before** making payment to the PSC.

The new IR35 rules will also take precedence over the current Construction Industry Scheme (CIS) rules.

5. What does this mean for me?

If you are a contractor being paid via PAYE or through an umbrella company on or after 6 April 2021, these changes do not affect you.

If you are working via your own PSC delivering services to the public sector, then the new rules already apply to you (as they have been in place since 2017) and the 2021 changes will not impact you unless you move to a private sector assignment.

If you are working via your own limited company providing services to a 'small' (see Question 6) private sector company on or after 6 April 2021, then these changes do not affect you and the original IR35 rules will continue to apply, even when the new rules go live.

If you are working via your own limited company and providing services to a medium or large private sector company on or after 6 April 2021, then these changes will impact you.

6. What is different for 'small' businesses?

These changes do not affect PSC contractors providing services to small businesses (not small agencies, the exemption refers to the size of the end user / engager). For PSC contractors delivering services to small businesses, the existing IR35 rules will continue to apply.

We do not yet know exactly how 'small' will be defined, but we expect it will follow similar lines to the Companies Act definition: <https://www.legislation.gov.uk/ukpga/2006/46/section/382>

7. I work via a PSC under the Construction Industry Scheme (CIS) rules; am I exempted from these changes?

The new IR35 rules will take precedence over the CIS rules. Therefore the new rules will apply to you providing your end client is not a 'small' business. The CIS rules will not apply to the assignment when the new IR35 rules go live.

8. What happens now?

For now, nothing changes. The existing IR35 rules continue to apply until 5 April 2021.

As soon as we know more about how the client you are providing services to intends to manage the changes, we will be in touch and will keep you informed regularly. If you have any questions in the meantime, please speak to your recruitment consultant.