

# IR35: A Contractor's Guide

Extension of the off-payroll rules into the private sector

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Discover the next steps regarding  
IR35 and staying compliant.

# to recap.

The intermediaries legislation, commonly known as IR35, was originally introduced in 2000 by HM Revenue and Customs. Its aim was to ensure the collection of appropriate income tax and national insurance contributions where individuals working via a Personal Services Company (PSC) should be classed as employees (for tax purposes only).

Currently, contractors working via a PSC are (until 6th April 2021) required to assess their own employment status (for tax purposes) on an assignment-by-assignment basis. Where a contractor believes they are genuinely self-employed (Outside IR35), then no employment-related taxes are payable for that assignment income. Where a contractor believes they are employed for tax purposes (Inside IR35), the PSC is required to make payments to HM Revenue and Customs for the appropriate income tax and national insurance for all income received for that assignment.

Due to perceived non-compliance with the legislation, the original IR35 rules were amended for any PSC engagements in the public sector from April 2017 onwards. These new provisions are known as the 'Off-Payroll Working Rules.'



# what's changing.

Contractor and consultant workers are a vitally important part of the workforce in the UK, and many contractors and consultants provide their services through their own PSC. However, from 6 April 2021, the Off-Payroll Working Rules will be extended to cover PSC engagements in the private sector (as well as the public sector).

These new rules **do not** affect contractors working via a compliant PAYE umbrella, or who are engaged directly by an agency on a PAYE basis. The Off-Payroll Working Rules only apply to contractors who work via a PSC.

The Off-Payroll Working Rules move the responsibility for determining a worker's employment status for tax purposes away from individual contractors. Instead the end client must determine the tax status for any current or new assignments where the contractor works as a PSC. The end client must determine whether the contractor is employed (Inside IR35) or self-employed (Outside IR35) for tax purposes for each engagement and communicate their decision in a Status Determination Statement (SDS) which is given to the worker and any intermediaries in the supply chain, such as recruitment agencies.

Where the client determines an assignment to be Inside IR35, the PSC must be taxed at source, meaning that the recruitment agency supplying the PSC (known as the 'fee-payer') must make appropriate deductions for income tax and national insurance contributions before making payment to the PSC.

End clients who are classified as 'small' or are based 'wholly overseas' are exempt from applying the Off-Payroll Working Rules, and the original IR35 legislation will apply (meaning that individual contractors will monitor their own tax status and make any deductions for taxes where appropriate). For more information on these exemptions, please see:

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10006>.

In preparation for these changes, VHR formed an IR35 Working Group to review the impact to our clients and PSC contractors due to these legislative changes. This VHR Working Group has assessed this impact and now wishes to engage with you to ensure the appropriate response and compliance with the legislation.

# end clients.

## **What should your end client be doing next?**

VHR has asked every client to complete a Status Determination Statement for each of their contractor workers. When complete, this SDS will be shared with you to confirm the determination of your IR35 status – Inside or Outside.

## **What happens if an end client fails to comply with IR35?**

Providing they are not exempt by virtue of being small or based wholly overseas, it is important that every end client complies with all the new legislative requirements of the Off-Payroll Working Rules. Should a client fail to comply, there could be financial penalties for their business, which include being liable to pay income tax and National Insurance contributions (and associated penalties and interest).

## **How end clients will determine the IR35 status of an off-payroll worker:**

Clients can make an assessment of a contractor's tax status using a variety of methods. There are online and web-based tools as well as law firms & consultancy companies who specialise in IR35 assessments. The client may also decide to use existing in-house resources to assess tax status. VHR has recommended to its clients some of the most robust IR35 assessment options in the market at the moment, but it is ultimately the client's decision how to properly assess the tax status of its contractors.



# How end-clients will be determining the status of an off-payroll worker.

## Manual Determinations:

IR35 case law heard in the UK courts since IR35's inception in 2000 shows that, among others, the following factors are relevant in determining whether there is an employment type relationship between the worker and end client, and therefore could suggest a contractor is working **Inside of IR35**:

- Substitution of the contractor only with the consent of the client.
- The contractor can only be replaced by a person, or a fixed group of people, defined by the client.
- There is an obligation on the client to pay wages for all hours worked.
- The client directs and supervises the work of the contractor.
- The client gives instructions to the contractor worker with respect to (for example), how to complete tasks, supervision, representativeness, dealing with customers, working time and break times, recognisability through clothing, logos on vehicles and business cards.
- The client handles any complaints about (the work of) the contractor worker.
- The work performed by the contractor worker is an essential part of business of the client.
- The contractor does not typically work simultaneously for different clients.
- The contractor gets paid during illness and holidays.
- The contractor is not financially responsible in case of poor performance i.e. the contractor has no risk.
- The client determines the level of remuneration for the work.
- The client is liable for the damage caused by a contractor in the performance of their duties
- The contractor does not have professional liability insurance.
- The client provides tools, equipment and materials.

Disclaimer: the information included in this document is for general information only, and does not constitute legal or professional advice. Clients are required to take their own advice regarding the factors that determine employment status for tax purposes.

# How employers will be determining the status of an off-payroll worker.

## Manual Determinations:

IR35 case law heard in the UK courts since IR35's inception in 2000 shows that, among others, the following factors are relevant in determining whether there is consulting services type relationship between the worker and end client, and therefore could suggest a PSC contractor is working **Outside of IR35**:

- No obligation for client to offer and no obligation for the contractor to accept work on an ongoing basis. There is no requirement for the contractor to work only for that client during assignment.
- The contractor is not under the supervision of client. The contractor is able to determine when, how and where he/she does the work.
- The contractor has an unfettered right of substitution. There is no indication that the contractor themselves is required to personally provide their services.
- The contractor is paid on completion of milestones, tasks or projects or on a commission only basis. The contractor is not entitled to overtime or any other benefits.
- The contractor is engaged for a finite period for specific task or project and there is no payment to the contractor during holiday and illness.
- The contractor is responsible for the quality of the services he or she provides and the work he or she performs.
- The contractor has financial risks and must perform corrective work when required at no extra charge to the client.
- The contractor has appropriate business insurances in place to cover all assignments.
- The contractor has their own material, tools, software etc.
- If there are employees of the client working on the same project and who perform the same role as the contractor, if there any actual differences between the contractor and the employees in, for example, authority, autonomy, risk, supervision, direction etc

# next steps.

VHR will follow up this guide with further communication in the coming weeks.  
VHR will share with you your end client's Status Determination Statement as soon the client completes it to confirm the determination of your IR35 status.

You do not need to take any action until you receive your Status Determination Statement.  
If you have any questions regarding how IR35 will affect you or if you would like to speak with our team, please get in touch using the details below.

# get in touch.

Want to know more? Contact us now to hear how we can help your business navigate IR35.

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