

Calling all contractors...

New Off Payroll Working rules from 6 April 2021

The special tax rules applying to Personal Service Companies (IR35) have been around for some time now. The rules were designed to deal with individuals who HMRC believe should be taxed as employees.

IR35 has not been as successful as HMRC predicted and so, in April 2017, the Government introduced the off payroll working rules in the public sector. From 6 April 2021, these rules will be extended to medium and large organisations in the private sector, who will become responsible for determining whether the rules should apply, and for paying the right tax and NICs.



This is a shift in responsibility, because currently it is the worker's own personal service company (or other intermediary) that is required to operate the IR35 rules.

Will the new Off Payroll Working rules affect me?

If you are providing your services to a medium or large 'end-client' via an intermediary (such as your own limited company, an agency, or an umbrella company), it is the 'end-client' who will be responsible for determining your tax employment status.

You may have a few different 'end-clients'. Small 'end-clients' are exempt from operating the new off payroll working rules. Therefore, you will retain the responsibility to operate the IR35 rules for any services provided to small 'end-clients' after 6 April 2021.

What is changing?

- Medium and large 'end-clients' will need to assess your tax employment status for any services provided after 6 April 2021.
- The 'end-client' is required to issue you and the fee payer (whoever pays your invoices) with a Status Determination Statement (SDS), setting out whether or not you are to be treated as a 'deemed employee' for tax purposes under the new rules. A deemed employee is taxed as a normal employee, but does not have employment rights.
- You can appeal the decision by raising a 'Disagreement' with the 'end-client' within the period that you continue to work for them.
- If it is determined you are a 'deemed employee', tax and NI will be deducted from your invoices, even if you raise an appeal. The deduction of tax and NI will only stop if and when the 'end-client' changes the status determination.

Action points for contractors

Step 1 – Find out the size of all your 'end-clients'

- The rules are very complex and group companies, connected companies and joint ventures need to be taken into account. It is therefore advisable to ask your 'end-clients'.
- If you ask your 'end-client' their size under the off payroll working rules, they are required to provide this information within 45 days.

Step 2 – For all the small ‘end-clients’ or overseas ‘end-clients’ that you work for

- You are responsible for operating the IR35 rules for engagements with small clients and for engagements with overseas clients (with no UK presence). The overseas rules are complicated, so please seek further advice.
- Review the contract and the way in which you provide services to the ‘end-client’, and make a determination of tax employment status.
- If you are a ‘deemed employee’, your intermediary (usually your own limited company) needs to calculate the ‘deemed employment payment’ and deduct tax and NI via the payroll on this amount – broadly the total invoiced to the ‘end-client’.
- If HMRC investigate your own limited company and determine that you should have been classified as a deemed employee of the ‘end-client’, HMRC will collect the unpaid duties from your company. This would include the employee tax, employee and employer NI, interest and penalties. HMRC can collect 6 years back tax, so the cost can be significant.

Step 3 - For all medium/large ‘end-clients’ that you work for

- Your ‘end-client’ is responsible for operating the new off payroll working rules and will consider your working relationship and make a determination of your tax employment status.
- Your client will issue you and your fee payer with a Status Determination Statement (SDS), setting out whether or not you are to be treated as a ‘deemed employee’ for tax purposes under the new rules.
- The Status Determination Statement needs to set out the reasons why they have reached the conclusion. They are not allowed to make blanket or generic decisions without giving thought to your specific working relationship, or they could be liable for the employment tax, NIC etc.
- You can appeal the decision by raising a ‘Disagreement’ with the ‘end-client’ within the period that you continue to work for them. It is too late once you have received your final payment.
- If you raise a ‘Disagreement’, the ‘end-client’ is required to review their decision (taking account of any further information you provide) and advise you of their revised assessment within 45 days.
- Consider negotiating with your client to revise the contract terms and the way in which you work together, so that it is clear that you are working in a ‘self-employed’ manner and therefore not a ‘deemed employee’ under the off payroll working rules.
- If it is determined you are a ‘deemed employee’, tax and NI will be deducted from your payments going forwards, even if you raise an appeal. The deduction of tax and NI will only stop if and when the ‘end-client’ changes the status determination.
- The ‘end-client’ is required to re-assess your tax employment status whenever there is a change in contract terms or a change in the way in which you work together.
- The ‘end-client’ may offer to take you onto their payroll as an employee; they may pay your invoices after the deduction of tax, NIC and Apprentice Levy as a ‘deemed employee’ on their payroll; or they may ask you to provide your services via an agency/umbrella company (with your pay subject to tax, NIC and the Apprentice Levy). Either way, someone has to meet the additional cost of employer’s NI and possibly agency commission, so there are likely to be negotiations over pay rates.
- HMRC say that information resulting from changes to the rules will not be used to open new investigations into personal service companies for prior tax years, unless there is reason to suspect fraud or criminal behaviour.
- ‘Deemed employees’ for tax purposes do not have employment rights such as holiday pay. The legal employment status is not determined by these tax rules. There is no obligation for the ‘end-client’ to make pension contributions or deduct student loan payments for ‘deemed employees’.

How can we help?

Contact us for more in-depth information. We can also provide assistance making tax employment status determinations and making appeals under the disagreement process.



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