

IR35



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Off-Payroll Working

An Introduction to Upcoming IR35
Reforms in the Private Sector





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Disclaimer

The following information is intended for general information and guidance only. We recommend that you obtain specific and detailed independent advice from a specialist lawyer and tax adviser who has expertise in IR35.

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Introduction

In 2000, Intermediaries legislation, popularly known as IR35, was introduced in the United Kingdom to deal with 'disguised employees'.

These are individuals that the Government believes are using a limited company structure in order to avoid Income Tax and National Insurance (NI) that they would pay in respect of their work if they were an employee.

The IR35 rules allow HMRC to scrutinise the contractual and working arrangement between the worker and the hiring company (end-client) of that worker in order to identify 'disguised employees'.

If HMRC determines someone is acting as a disguised employee, they are deemed to be 'inside IR35' for tax purposes and employee taxes must be paid in respect of the remuneration they receive for their work. If found to be a 'disguised employee', tax assessments, penalties and accrued interest may also be payable.

Background to Upcoming Reforms

When IR35 was first established, the onus was on limited company contractors (otherwise known as PSCs) to determine whether they were inside or outside IR35 regulations and pay the relevant taxes.

Reform of the legislation was rolled out to the public sector in April 2017 and, was expected to be extended to the private sector in April 2020. However, on 17 March 2020, in response to the global disruption caused by COVID-19, the government announced that it was delaying the implementation of IR35 until April 2021.

The reforms to IR35 in the public sector came after years of lack of clarity over the legislation with HMRC struggling to implement the rules effectively. Launching the public sector consultation in 2016, [Financial Secretary to the Treasury David Gauke](#) noted, "The government believes public sector bodies have a duty to ensure the people working for them are paying the right tax."

However, a number of issues were experienced during the public sector reforms. These issues included:

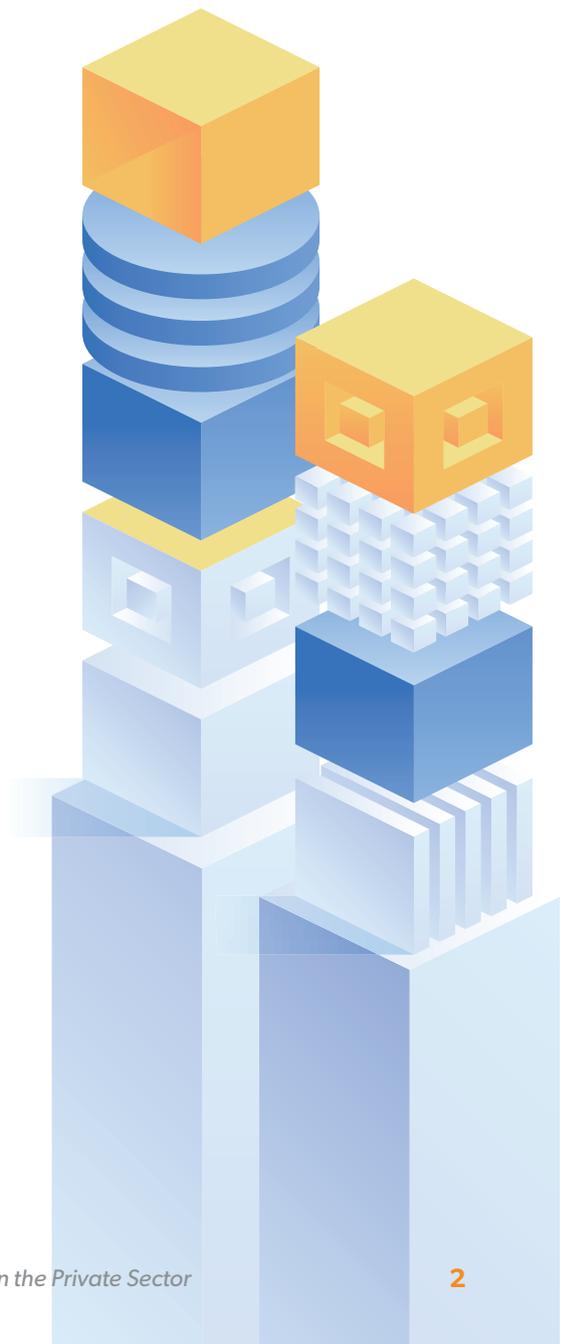
- **Making blanket determinations** whereby IR35 status was broadly applied to a large group of off-payroll workers – such determinations may not have been reached using reasonable endeavours, which is a requirement of IR35 legislation and they could pose potential risks, such as loss of talent.
- **Experiencing recruitment difficulties** whereby 42% of central public bodies [reported difficulties](#) filling vacancies and 37% reported an increase in contractor rates payable as a result of the new legislation.
- **Having additional administrative requirements** whereby agencies and businesses were required to change how they managed their contracting workforce and needed to prepare for the new responsibilities that had now shifted their way, including the need for internal resource to understand the legislation, perform assessments and communicate with relevant parties.
- **Challenging timelines** whereby the public sector was given a very short period in which to prepare for the IR35 reform – the private sector has been encouraged to take advantage of the extra time awarded to it to prepare.

The [2018 Budget](#) set out that upcoming reforms to IR35 legislation is to "help people comply with the existing rules and bring private sector organisations in line with public sector bodies and agencies".

The reforms that were originally intended to be introduced in April 2020 allowed people time to prepare, with HMRC stating that they will provide support and guidance to medium and large organisations ahead of implementation."

Check Employment Status for Tax (CEST)

HMRC developed an online IR35 status determination tool, [CEST](#), to assist public sector bodies with determining contractor IR35 status under the reformed legislation. HMRC are encouraging private sector companies to use CEST too (although they are not legally obliged).



Determining IR35 Status

While this anti-avoidance tax law is not changing in principle, the reforms are intended to apply in a broader manner. Importantly, it allocates liability to end-clients and other parties in the supply chain in order to ensure greater compliance.

The main principle is to determine whether a role falls inside or outside IR35. This is now the end-client's responsibility. There are important factors that need to be considered in order to determine whether a role falls outside IR35. These are:

1. **Control** – Will the contractor have control over where, when and how they perform their work?
2. **Mutuality of obligation** – Is there no expectation that work will be provided to the PSC and no obligation on the PSC to accept work when it is offered?
3. **Right of substitution** – Will the contractor be able to provide a substitute for the services?
4. **Financial risk** – Does the financial risk for the required services lie with the contractor?
5. **Exclusive service** – Will the contractor have the right to take on projects with different end-clients simultaneously?
6. **Part and parcel** – Will the contractor have little or no access to staff facilities, staff meetings, staff benefits, and will the contractor not be invited to attend work social events?
7. **Notice period** – Is the contractor willing to have their assignment terminated at any time without reason and without notice?
8. **Provision of equipment** – Will the contractor be expected to provide his or her own equipment?

If the end-client is able to answer 'yes' to most, if not all, the above questions (some of which will have higher weighting than others), it is likely that the role falls outside IR35.

(Please see our glossary on page 6 for a more detailed explanation of some of the above terms).

Inside or Outside IR35

It depends on the facts of your engagement:

An 'Outside IR35' IT Contractor

Osman is taken on by a manufacturing firm to design a new website for them. Osman and the firm have agreed a price for the job and when he will deliver the new website. Osman will mainly work at home, using his own equipment to complete the task. Osman is free to work for other clients but faces a contractual penalty if he doesn't deliver the website on time, to the agreed standard. This represents a significant financial risk to Osman if he fails to deliver the final product.

An 'Inside IR35' IT Contractor

Osman is taken on by a manufacturing firm to design a new website for them. He works three days a week, eight hours each day. The firm provides Osman with a laptop so he can work at their offices, or at home with their permission. Osman reports to the head of the firm's IT department and must follow their style guide and format to update the website. The firm is responsible for providing and updating the software Osman needs to do the work. If Osman has to work longer than his contracted hours, he will be paid overtime. There is no contractual penalty if he fails to deliver the work on time. Osman will be able to work elsewhere on the days he is not working at the firm if they agree to this.

Preparing for Off-Payroll Reforms

As discussed, from April 2021, workers who fall inside IR35 will be required to have Income Tax and NICs deducted at source from their income. The responsibility for this will fall to either the end-client or the agency supplying the worker, depending on the contractual chain.

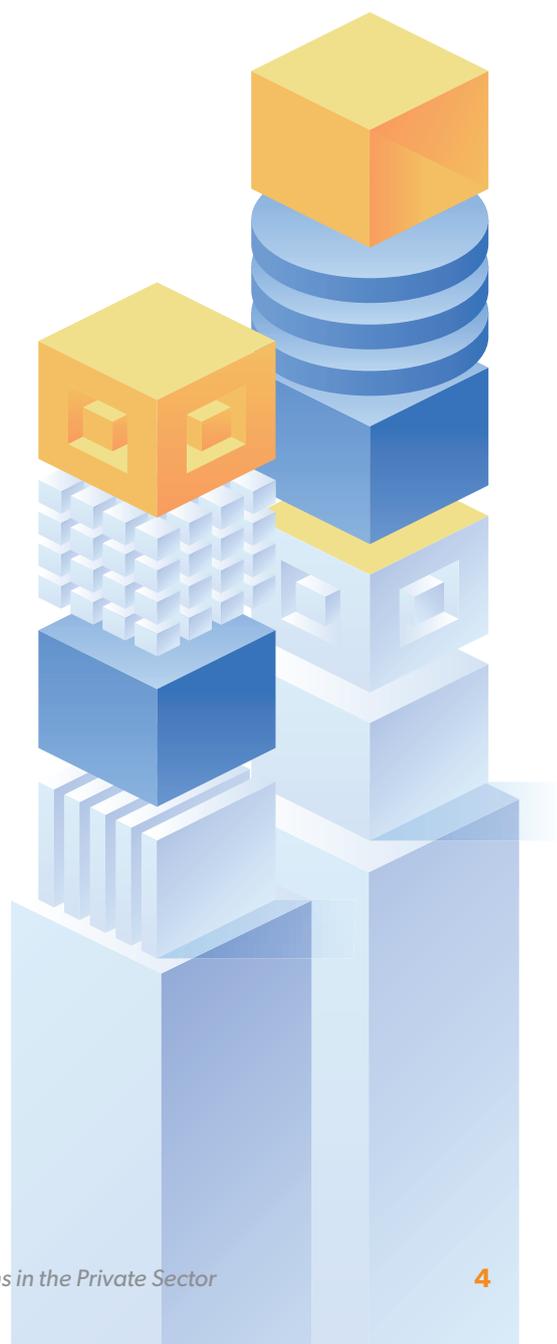
Taking steps to understand the organisation's contractor workforce from an IR35 perspective is imperative to helping the end-client build a process for managing the reform once it is implemented.

1. **Act now** –the off-payroll working reforms will impact budgeting, internal processes (including any manual ones which may not be apparent), compliance, IT, internal and external communications.

The end-client should:

- Consider how this will be managed internally
 - Decide how and when to involve all stakeholders
 - Put in place a suitable change management programme
2. **Understand the size of the problem** – the end-client will need to do an internal review of their contractor population to understand the size of the problem:
 - Number of contractors currently engaged
 - How these contractors are engaged
 3. **Review available options** – Once the end-client has done a complete review of their current contractor population they will be in a better position to understand how to proceed. Engage your talent solutions partner to understand what approaches they are currently considering to help your business navigate the reforms.
 4. **Ongoing compliance** – It is essential that everyone within the contracting community in the business (contractors, hiring managers, etc) have a fundamental understanding of IR35.

The end-client should implement clear, company-wide policies and all staff involved or impacted by IR35 should be required to understand the rules and any new policies relevant to their function. Regular checks should ensure that these are being adhered to and that the organisation remains compliant.



How We Can Help

Our network of specialised businesses (Aerotek, Aston Carter and TEKsystems – including TEKsystems Global Services) provide a full suite of complementary solutions that solves nearly every workforce challenge to empower business success.

We have earned our reputation as an industry leader for our unparalleled ability to attract and retain great people who help businesses get work done — no matter if the delivery model is through contract staffing, permanent recruitment or outsourced services. In light of the IR35 reforms, we are able to recommend a number of potential solutions to assist your business.

These supply models offer your business the choice of making the IR35 determination yourself or outsourcing this liability by giving responsibility for service delivery to us.

If you would like to discuss any of the points raised above or would be interested in meeting with us to understand how we can help please contact your Allegis Group representative or email us at IR35@AllegisGroup.com.



Glossary

Your Guide to IR35 Language

CEST

Check Employment Status for Tax (CEST), a tool developed by HMRC to assist public sector bodies with determining contractor IR35 status under the reformed legislation. The tool can be found [here](#).

Control

A fundamental test for determining IR35 status, control measures true independence from the end-client a contractor has in terms of work behaviour, e.g. what, when, where and how he/she does the work. The more control that the end-client exercises over the contractor, the more likely it is that the engagement will be deemed to be inside IR35.

Determination

Otherwise referred to as IR35 status assessment, determination is the process of deciding whether an engagement falls inside or outside IR35 off-payroll working rules.

Blanket Determinations

IR35 status is broadly applied to a large group of off-payroll workers (this is not approved by HMRC as a compliant practice).

Disguised Employees

Workers who receive payments from a client via an intermediary, for example, a PSC (see Personal Services Company below), but whose relationship with their client is such that had they been paid directly they would be employees of the client.

Financial Risk

Another fundamental test for determining IR35 status, the amount of financial risk a contractor incurs during the course of an engagement is illustrative of the self-employed status of a worker. While employment provides more certainty as to payment to a

worker, an independent contractor runs the risk of incurring a loss to fund training, purchase assets or if their work takes longer or is less successful than anticipated.

IR35

Intermediaries legislation, popularly known as IR35, is a piece of tax legislation which came into force in July 2000. The legislation is aimed at identifying disguised employees working through Personal Services Companies (or partnerships).

Inside IR35

To be considered 'inside IR35' means that for tax purposes the contractor is treated as an employee of the end-client and therefore subject to PAYE (pay-as-you-earn).

Outside IR35

To be considered 'outside IR35' means that for tax purposes the contractor is operating a legitimate business outside of IR35 rules.

Mutuality of Obligation (MOO)

MOO exists when the end-client is obliged to provide a worker with paid work and the worker is obliged to accept and complete the work. This is typical of most employee-employer relationships. Genuine limited company contractors outside IR35 should neither expect nor receive such mutuality of obligation and neither should an end-client offer it.

Off-Payroll Workers

A term coined by Government, 'off-payroll workers' are simply those workers at a business not on the PAYE payroll. The term usually refers to contractors, freelancers, and consultants as well as locums and substitute teachers.

Part and Parcel

Another fundamental test for determining IR35 status, 'part and parcel' refers to how integrated a contractor has become in the business and if, indeed, they have become 'part and parcel' of the organisation. If the contractor is provided with their own desk, stationary, computer, access to employee facilities and benefits, etc the lines between employee and contractor begin to blur and it can be argued that the contractor is operating inside IR35. The contractor needs to remain independent of permanent employees in order to be identified as such.

Personal Services Company (PSC)

While there is no clear definition of a Personal Services Company (PSC), it generally refers to a limited company where the contractor is the director and owns most, if not all, of its shares.

Right of Substitution

Another crucial test for determining IR35 status, 'right of substitution' contractually enforces a limited company's right to replace its representative subject (the contractor) to undertake the work. This also shows the end-client's requirement for the contractor to provide a service and not simply supply a specific individual.

Small Business

Off-payroll working reforms will only apply to medium and large businesses, while small businesses will be exempt. According to the Government, a business qualifies as 'small' if the following conditions are met: i) turnover is not more than £10.2 million, ii) balance sheet total is not more than £5.1 million, and iii) number of employees total no more than 50 ([Companies Act 2006](#)).

About Us



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We know that a company's success starts with its employees. We also know that an individual's success starts with the right career opportunity. Aerotek's people-focused approach yields competitive advantage for our clients and rewarding careers for our contractors. Since 1983, Aerotek has grown to become a leader in recruiting and staffing services. Aerotek operates an international network of more than 200 non-franchised offices and 2,000 recruiters to identify, screen and select top talent. Aerotek is an operating company of Allegis Group, a global talent solutions provider.

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Aston Carter is a global provider of talent and project-based services to companies requiring highly specialised business professionals. We have an unrivalled commitment to delivering first class service to clients and business professionals across a variety of business disciplines, including Accounting and Finance, Change and Transformation, Compliance, Management Consultancy, Operations, and Risk and Regulation. With more than 60 offices across Europe, Asia Pacific and North America, Aston Carter provides local, regional and global expertise to drive value and meet our client's unique needs.

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