



IR35: A Client's Guide

Extension of the off-payroll
rules into the private sector

Discover the next steps regarding
IR35 and staying compliant.

to recap

From 6 April 2021, the UK 'Off-Payroll Working Rules', more commonly known as IR35, will be updated. Under current legislation, HMRC requires workers who operate through their own Personal Services Company, to self-assess their employment status for UK tax purposes and to pay the appropriate taxes.

The IR35 changes will move the responsibility for determining the worker's employment status to you, the end client. A formal IR35 status determination statement (SDS) must be communicated to the worker and any intermediaries, including recruitment agencies and payroll companies, to ensure the appropriate tax is applied and paid at source to the HMRC for those determined as inside IR35 i.e. employees for tax purposes. You may be aware the same changes were made for off-payroll workers engaged in the public sector in 2017 and the private sector (excluding small businesses) is now required to follow the same path from 6th April 2021.

In preparation for these changes, VHR formed an IR35 working group to review the impact to our clients of 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 this legislation.

What happens if you fail to comply with IR35?

It is important that as a business you ensure you comply with all legislative requirements. Should you fail to comply there could be financial penalties for your business, which include being liable to pay income tax and National Insurance contributions (and associated penalties and interest).

what to do next.

- 1) Determine whether your company is exempt from applying the Off-Payroll Working Rules. You may be exempt if you are a small company (please see page 4) or if your business is wholly based outside the UK and you have no UK presence (please see Page 5). If you are a small company or based wholly overseas, please complete and sign the relevant declaration and return it to VHR. If you meet either of these exemptions, then there is no need for you to complete an SDS for any contractors supplied to you.
- 2) If your company is not small and has a UK presence, then you must assess your off-payroll workers and provide a Statement Determination Statement (SDS) to VHR for each off-payroll worker on or before 27th March 2021. VHR has provided an excel sheet with this email detailing all your workers and whether they are off-payroll or not.
- 3) Assess if you have any off-payroll workers directly contracted to your organization or through other agencies / intermediaries and provide them an SDS ideally before 27th March 2021. VHR can offer PAYE and Umbrella payroll services to ensure compliance with off-payroll workers who are determined by you to be employed for tax purposes (inside IR35). For further assistance please contact IR35@v-hr.com or your VHR account manager.



small companies exemption

Small companies will be exempt from applying the Off-Payroll Working Rules. A small company is one which meets two or more of the following criteria;

- (a) annual turnover of not more than £10.2 million,
- (b) balance sheet total of not more than £5.1 million or
- (c) no more than 50 employees.

Companies in groups and joint ventures will be exempt provided all of the group companies or joint venture partners are small. Unincorporated organisations with a turnover of less than £10.2 million will also be exempt.

Where organisations are exempt, the existing IR35 rules (where the contractor's PSC is responsible for applying the rules) will continue to apply. When an organisation becomes or ceases to be small in an accounting period, for the purposes of the off-payroll rules that change will apply from the start of the tax year following the end of that accounting period, irrespective of whether the organisation is incorporated or unincorporated. There will be anti-avoidance rules to prevent organisations restructuring so as to avoid the rules.

Here is a link to HMRC's employment status manual which will help clients to better understand the small company exemption:

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



overseas companies exemption

Companies based wholly overseas with no UK presence will be exempt from having to consider the Off-Payroll Working Rules.

Where organisations are exempt, the existing IR35 rules (where the contractor's PSC is responsible for applying the rules) will continue to apply. If your circumstances change and your company establishes any UK presence (and you are not considered a small company) you must start applying the Off-Payroll Working Rules and issue an SDS for all current and new contractors who work via a Personal Services Company. There will be anti-avoidance rules to prevent organisations restructuring so as to avoid the rules.

Here is a link to HMRC's employment status manual which will help clients to better understand the wholly overseas company exemption:

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



How to determine the status of an off-payroll worker

IR35 Status Determination Statements (SDS) can be manually completed by an authorized representative of your organization, completed online using a paid SDS application or through an external consultancy.

Outside Consultancy / Online Tool:

There are many tools and consultancies in the market that will provide assessments on the status of an off-payroll worker. If you are considering using these tools or organisations it would be wise to research their pedigree and history with IR 35 determinations. Below are example reputable organisations that can assist you with status determinations, but there are others on the market so please undertake your own research.

Brookson Legal Services (www.brooksonlegal.co.uk) have been determining IR35 status' since 2000 when the legislation was first introduced.

IR35 Shield (www.ir35shield.co.uk) is an online tool that can deliver IR35 status determinations quickly.

Link to HMRC's Employment Status Manual about what constitutes a valid Status Determination Status:

<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10013>



How to determine 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 are 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.

How to determine the status of an off-payroll worker

Manual Determinations:

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- 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



get in touch.

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

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