



Have you considered the impact on your business of changes to the private sector IR35 rules from 6 April 2020?

The Government announced in the Budget 2018 that it intends to reform the off-payroll working rules (commonly known as IR35) from 6 April 2020.

This change will impact medium and large businesses in the private sector that engage off-payroll workers who operate via intermediaries, such as personal service companies. The impact of this change should not be underestimated, and sufficient preparation will be crucial.

Why is the Government introducing these changes?

The IR35 rules were originally introduced in 2000 with the intention of ensuring that individuals who are working like employees but who operate via an intermediary, such as a personal service company (PSC), pay broadly the same tax and National Insurance Contributions (NIC) as an employee would.

The IR35 rules have, however, been largely ineffective as the PSC has had to 'self assess' whether the rules apply. Consequently, HMRC estimate that there is widespread non-compliance which they have been unable to effectively tackle.

Due to increasing demands for flexible working and efficiency, the use of such off-payroll arrangements has grown, exacerbating the cost of non-compliance. Consequently, HMRC estimate that the cost of non-compliance with the current IR35 rules in the private sector will grow to £1.3bn by 2023/24 in the absence of any change.

Changes are, therefore, being introduced to reduce the cost of non-compliance and to make it easier for HMRC to monitor and enforce compliance in the future.

What is the proposed change?

The reform will place the burden for assessing whether IR35 applies onto the private sector end user of the worker's services for all payments by medium and large businesses from 6 April 2020. Where it is concluded by the end user that IR35 applies, the fee payer (which may be the end user themselves or a recruitment agency or other third party paying the intermediary) will become responsible for accounting for and paying the related tax and NIC, including the additional cost of employer's NIC, to HMRC.

The new rules will only apply to medium and large businesses in the private sector who are the end user of the worker's services. Where the end user of the worker's services is a small business, the responsibility for assessing the arrangements, and applying IR35, will remain with the PSC.

The Government have indicated that they intend to use 'similar criteria' to that found in the Companies Act 2006 to define a small business. Under current legislation this is broadly a business that has two or more of the following features:

- a turnover of £10.2m or less;
- a balance sheet total of £5.1m or less;
- 50 employees or less.

It has been announced that a further detailed consultation on the proposals will be published in early 2019 which will be followed by the publication of draft Finance Bill legislation.

How will this proposed change impact end users of these services in the private sector?

The reform will mean that medium and large businesses in the private sector that engage off-payroll workers who operate via intermediaries, such as personal service companies, will face additional and often substantial one-off and ongoing challenges and costs.

Initially, it will be necessary to identify existing arrangements that will be caught by the legislation from April 2020 and determine the additional cost that may arise as a consequence. For example, for businesses which decide that their off-payroll workers fall within the IR35 rules, from April 2020 there will be increases to direct costs, such as employer's NIC (currently 13.8%) and potentially the Apprenticeship Levy where applicable (0.5%)

Processes and potentially additional resource will need to be put in place to assess current and future engagements. Also, system changes will be required to help meet IR35 compliance and PAYE/NIC withholding obligations going forward.

What should businesses be doing now?

Medium and large businesses in the private sector should start to prepare for the proposed new rules now and should not underestimate the amount of work required to be sufficiently prepared for the change.

As a starting point we would suggest that businesses should:

- Assess the number of workers being used who operate via 'off-payroll' arrangements, such as PSCs, who could potentially be caught by these rules. Remember that this should include workers operating through PSCs sourced via intermediaries, such as recruitment agencies, as well as those engaged directly;
- Assess the direct and indirect financial impact of the proposed change. For example, new processes and systems will be required to determine if the rules apply to an arrangement. Where arrangements are caught, the fee payer will need to account for and pay the related tax and NIC, including the additional cost of employer NIC; and
- Be particularly mindful of the potential additional costs when entering into new arrangements or when renewing existing contracts with workers now that will continue beyond April 2020.

How can RSM help?

Our employment tax specialists have a detailed knowledge of the proposed rules and practical experience of implementing similar changes that were introduced for the Public Sector from 6 April 2017.

We can provide advice on all aspects of the proposed changes, including an audit of current arrangements to assess the potential impact of the new rules on your business.

We can also offer a facilitated workshop for businesses potentially impacted by the proposed changes, including private sector end users and recruitment businesses. The content of each workshop is tailored to individual requirements but will cover:

- A step by step guide on how the new rules are likely to operate
- The systems and processes that will be required to remain compliant
- An overview of the changing risk profile as a result of the proposed changes
- A discussion around how to determine status under the IR35 rules
- A focus on the practical considerations and suggested next steps, including an action plan

The workshop should be attended by appropriate stakeholders in the business, including heads of finance, tax and HR, payroll and procurement.

We will provide updates on the proposed changes once the further detailed consultation is published.

If you would like to discuss the content of our facilitated workshop in more detail or if you have any specific queries on the proposed rules please contact **David Williams-Richardson, Lee Knight** or **Deborah Parks-Green** or your normal RSM contact.

David Williams-Richardson
Partner, Employer Solutions

T +44 (0)1293 843112
david.williams-richardson@rsmuk.com

Lee Knight
Director, Employer Solutions

T +44 (0)20 32018508
lee.knight@rsmuk.com

Deborah Parks-Green
Director, Employer Solutions

T +44 (0)1256 486845
deborah.parks-green@rsmuk.com

rsmuk.com

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