

Have you considered
the impact on the
social housing sector
of changes to the IR35
rules from April 2021?



From 6 April 2021, confirmed reforms to off-payroll working rules (commonly known as IR35) will impact medium and large businesses. This includes Housing Associations and organisations with charitable status that engage off-payroll workers who operate via intermediaries, such as personal service companies. The impact of these changes should not be underestimated and sufficient preparation will be crucial.

For many Housing Associations, the use of arrangements potentially caught by IR35 is common. There is an added layer of complexity due to the need to consider the interaction between the new IR35 rules and the Construction Industry Scheme (CIS).

Why is the Government introducing these changes?

The IR35 rules were originally introduced to ensure that individuals who operate via an intermediary pay the same tax and National Insurance contributions as an employee would. This has been ineffective as the intermediary has had to 'self-assess' whether the rules apply. 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 are the main changes?

The reform, based on the existing public sector IR35 rules, will place the burden for assessing whether IR35 applies onto the end user of the worker's services for all payments by medium and large businesses, including those with charitable status, from 6 April 2021. 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 the employer's NIC, to HMRC.

In the private and charitable sector, the new rules will only apply to medium and large businesses that are the end user of the worker's services and to the fee payer, if different, for example a recruitment agency. 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 intermediary.

The Government has confirmed it will use the Companies Act 2006 to define a small business for these purposes. 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; and/or
- 50 employees or less.

Non-corporate end users will need to consider a simplified test based on turnover only to determine whether they are a small business for the purposes of this legislation.

Where a Housing Association fully outsources a whole service, for example in relation to a new build project, and there are no provisions for a worker to personally provide services to the Association outsourcing the arrangements, then the recipient of that service will not have any obligations under the new rules. In this situation, the company taking on the outsourcing contract may be the end user for the purposes of this legislation.

How will this change impact end users of these services in the social housing sector?

The reform will mean that medium and large businesses in the social housing sector and public sector bodies that engage off-payroll workers who operate via intermediaries, such as PSCs, will have a number of new obligations.

They will need to determine whether or not the IR35 rules apply to an engagement, including arrangements with CIS subcontractors who provide their services through intermediaries, such as PSCs. They will then need to issue a formal status determination statement, notifying the party that they contract with (for example a recruitment agency) and the off-payroll worker directly of their determination and the reasons for it.

Where it is determined that the rules do apply, the fee payer ultimately paying the intermediary will need to apply PAYE withholding and incur additional costs, such as employers NIC (currently 13.8 per cent) and the Apprenticeship Levy (0.5 per cent) where appropriate. This is already the case for public sector end users.

Importantly, the Government has introduced new rules to determine when the PAYE liability can be transferred to another party in the case of default at some stage in the labour supply chain. Where HMRC cannot collect the liability from the party paying the intermediary, (for example an agency), in particular circumstances it will ultimately be able to seek payment from the business that is the end user of the worker's services.

What should Housing Associations be doing now?

Medium and large businesses in the social housing sector including those with charitable status, should start to prepare for the 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 Housing Associations should:

- assess the number of workers currently being used (who are expected to continue beyond 5 April 2021) who operate via 'off-payroll' arrangements, such as PSCs who could potentially be caught by these rules. Remember that this should include workers currently paid through the Construction Industry Scheme (CIS) operating through intermediaries such as PSCs. The rules will equally apply to those workers sourced via secondary intermediaries, such as recruitment agencies, as well as those engaged directly;
- where 'off-payroll' workers are sourced via a secondary intermediary such as an agency, obtain details of the supply chain and be mindful of the proposed debt transfer provisions in cases of default down the labour supply chain;
- discuss internally what impact Covid-19 will have on resource requirements and if the demand for the flexibility of off payroll workers will be greater than was originally envisaged.
- assess the direct and indirect financial impact of the proposed change. For example, new processes and systems may be required to determine if the rules apply to an arrangement and to create a compliant status disagreement process. 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 where appropriate, the apprenticeship levy; and
- be particularly mindful of potential additional costs when entering into new arrangements or when renewing existing contracts with workers or agencies now that will continue beyond April 2021.

How can RSM help?

Our social housing employment tax specialists have a detailed knowledge of the proposed rules and practical experience of implementing similar changes.

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

We can also offer a facilitated workshop for Housing Associations potentially impacted by the proposed changes. The content of each workshop is tailored to individual requirements but will cover:

- a step by step guide on how the new rules will operate including the interaction with the CIS;
- 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; and
- a focus on the practical considerations and suggested next steps, including an action plan.

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



For the latest information and how we can help, visit our IR35 hub at <https://www.rsmuk.com/ir35>



If you would like to discuss how RSM can help or if you have any specific queries, please contact one of our specialists below or your usual contact.

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