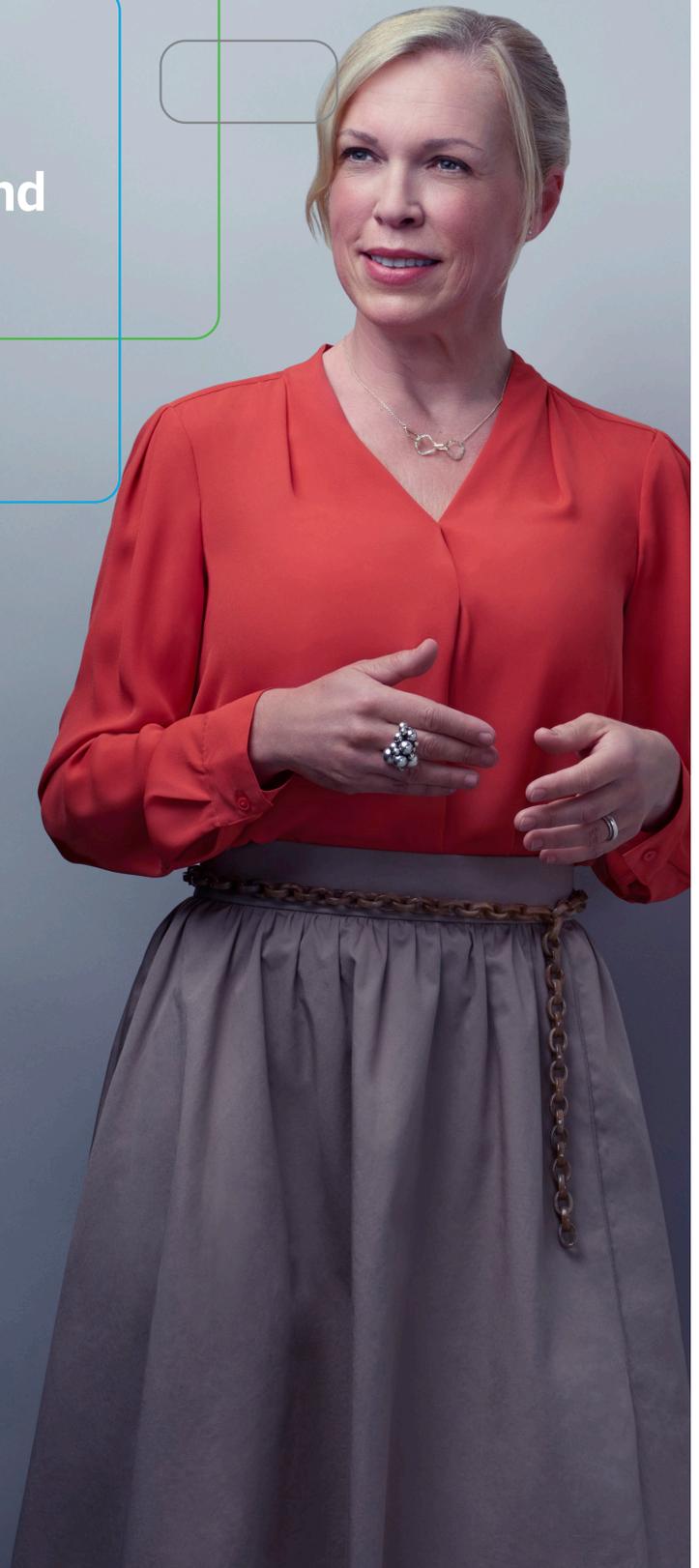


How will off-payroll working (OPW) reforms impact the real estate and construction sector?

Off-payroll working rules (commonly known as IR35) are changing from 6 April 2021.



Confirmed reforms to off-payroll working rules will place the burden for assessing whether IR35 applies onto the end user of a worker's services for all payments by medium and large businesses for services provided on or after 6 April 2021.

This will significantly impact the real estate and construction sector, where the use of arrangements potentially caught by IR35 is common, with the added complexity of dealing with the interaction with the Construction Industry Scheme (CIS).

Overview of the changes

Under the reforms, any business which is not a small company will be required to undertake an employment status assessment in respect of any of their contractors operating through their own intermediary, whether they work directly with the business or via an agency. 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 and apprenticeship levy where applicable.

The new legislation confirms that the definition in the Companies Act 2006 will be used to determine whether a business is a small company. 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; or
- 50 employees or less.

The rules can, however, be more complex than this where the business is a subsidiary, part of a group, or associated with another company. Unincorporated entities, such as partnerships, will be subject to a simplified test based on whether their turnover for a calendar year exceeds £10.2m.

The new rules apply:

- Where the worker personally performs or is under an obligation to personally perform services for a business and certain conditions of liability are met.
- To medium and large businesses (as well as the public sector), who are the end user of the worker's services.
- To fee payers if different, regardless of size (for example, a recruitment agency or small company providing labour).

Where a real estate and construction business fully outsources a whole service, and there are no provisions for a worker to personally provide services to the company outsourcing the arrangements, then the recipient of the outsourced 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.

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 contractor's intermediary. The Government has confirmed that this will be the case even if the worker is supplied via a recruitment business. In this situation, the fee payer, such as the recruitment business, will not have any additional obligations other than the existing requirement to submit a quarterly return to HMRC with details of all workers placed with clients where they do not operate PAYE.



Why has the Government made these changes?

The IR35 rules were originally introduced to ensure that individuals who operate via an intermediary pay the same tax and National Insurance contribution as an employee would. This has been ineffective as the intermediary has had to 'self-assess' whether the rules apply. The new rules are being introduced to reduce the cost of non-compliance and to make it easier for HMRC to monitor and enforce compliance in the future.

How will this change impact end users of these services in the real estate and construction sector?

Medium and large businesses in the real estate and construction sector engaging off-payroll workers who operate via intermediaries, such as personal service companies (PSCs), will face additional and often substantial challenges and costs.

Initially, it will be necessary to identify existing arrangements that are expected to continue beyond 5 April 2021 that will be caught by the legislation and determine the additional cost that may arise. For example, 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 additional resource will need to be put in place to assess engagements and provide a statutory status determination statement to the worker and any third party, for example a recruitment agency, setting out the reasons for reaching that determination.

The end user of the services will be required to set up a status disagreement process and respond to representations made by off-payroll workers or the fee payer, within 45 days of receipt. System changes will also be required to help meet IR35 compliance and PAYE/NIC withholding obligations going forward.

What should businesses be doing now?

Medium and large real estate and construction businesses 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 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 operating through PSCs sourced via intermediaries, such as recruitment agencies, as well as those engaged directly.
- Consider whether the impact of Covid-19 is likely to lead to more demand for flexibility and more off-payroll workers than originally planned.
- Undertake due diligence on the worker supply chain as transfer of debt provisions can apply in the chain under the new legislation transferring PAYE and NICs liabilities where there has been non-compliance in the chain.
- 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 and to manage status disputes. 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.
- Remember that the new off payroll rules take precedence over the CIS. You will, therefore, need to review arrangements with sub contractors operating via intermediaries, such as PSCs.
- Be particularly mindful of the potential additional costs when entering into new arrangements or when renewing existing contracts with workers that will continue beyond April 2021.

How can RSM help?

Our specialists have a detailed knowledge of the new rules and practical experience of implementing the changes.

We have a multi-disciplinary team of experts who can provide advice and help you prepare for all aspects of the changes, including:

- Designing new processes and controls, such as payroll, human resources, finance, data management and IT.

- Providing a range of software solutions to help you to meet your off-payroll working (OPW) obligations around governance, risk and compliance. **Click here for more information.**
- Workshops and bespoke training.
- Developing a tailored approach to status determinations and employment status for your business.
- Changes to your budgeting, compliance, contracts and key stakeholder communications.



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.

David Williams-Richardson

Partner, Employer Solutions

T +44 (0)1293 843112

david.williams-richardson@rsmuk.com

Susan Ball

Partner, Employer Solutions

T +44 (0)20 3201 8085

susan.ball@rsmuk.com

Lee Knight

Director, Employer Solutions

T +44 (0)20 3201 8508

lee.knight@rsmuk.com

Julie Moore

Director, Employer Solutions

T +44 (0)161 830 4055

julie.moore@rsmuk.com

For the latest information and how we can help, visit our IR35 hub at

<https://www.rsmuk.com/ir35>

rsmuk.com

The UK group of companies and LLPs trading as RSM is a member of the RSM network. RSM is the trading name used by the members of the RSM network. Each member of the RSM network is an independent accounting and consulting firm each of which practises in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction. The RSM network is administered by RSM International Limited, a company registered in England and Wales (company number 4040598) whose registered office is at 50 Cannon Street, London EC4N 6JJ. The brand and trademark RSM and other intellectual property rights used by members of the network are owned by RSM International Association, an association governed by article 60 et seq of the Civil Code of Switzerland whose seat is in Zug.

RSM Corporate Finance LLP, RSM Restructuring Advisory LLP, RSM Risk Assurance Services LLP, RSM Tax and Advisory Services LLP, RSM UK Audit LLP, RSM UK Consulting LLP, RSM Employer Services Limited, RSM Northern Ireland (UK) Limited and RSM UK Tax and Accounting Limited are not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services because we are members of the Institute of Chartered Accountants in England and Wales. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide. RSM Legal LLP is authorised and regulated by the Solicitors Regulation Authority, reference number 626317, to undertake reserved and non-reserved legal activities. It is not authorised under the Financial Services and Markets Act 2000 but is able in certain circumstances to offer a limited range of investment services because it is authorised and regulated by the Solicitors Regulation Authority and may provide investment services if they are an incidental part of the professional services that it has been engaged to provide. Baker Tilly Creditor Services LLP is authorised and regulated by the Financial Conduct Authority for credit-related regulated activities. RSM & Co (UK) Limited is authorised and regulated by the Financial Conduct Authority to conduct a range of investment business activities. Whilst every effort has been made to ensure accuracy, information contained in this communication may not be comprehensive and recipients should not act upon it without seeking professional advice.