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Employment Newsletter

Autumn 2019

In this edition of our newsletter we explore the upcoming IR35 tax changes which could impact hundreds of thousands of businesses and contractors.

We explain who is affected and what businesses need to do to prepare.

EMPLOYMENT LAW UPDATE

2019

[IR35: All you need to know about IR35 tax changes.](#)

Many businesses rely on contractors and freelance workers as a source of readily-available and cost-effective labour, whilst contractors enjoy the freedom that comes with being their own boss. However, such arrangements could now be at risk due to upcoming changes to the IR35 tax regime.

The reforms could affect hundreds of thousands of businesses and contractors, with businesses facing higher costs and contractors experiencing a drop in their income. There will be additional administrative burdens for both parties

What is IR35?

The IR35 rules have been in place for many years and were designed to prevent tax avoidance by contractors who were claiming to be self-employed for tax purposes, but who were actually concealing an employment relationship behind a PSC.

The IR35 regime ensures that the correct employment taxes are paid, but it does not apply if there is a genuine self-employment or a consultant relationship. At present, within the private sector, the PSC is solely responsible for assessing the contractor's employment status and deciding whether the IR35 regime applies. If it does, the PSC is responsible for ensuring that income tax and National Insurance contributions are remitted to HMRC. However, this is set to change next year (in a similar way to changes that were made in the public sector in 2017).

[Key Terms](#)

PSC: A 'personal service company' is an intermediary corporate entity that businesses engage contractors through, rather than contracting directly with the individual contractor.

Client: A business that receives the services of the contractor.

Fee Payer: The party that pays the PSC. In simple arrangements, the Client is often the Fee Payer. In more complicated structures there can be a contractual chain of companies between the Client and the Fee Payer.



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What is changing on 6 April 2020?

From 6 April 2020, the responsibility for applying the IR35 rules and determining employment status will shift from the PSC to the Client. If the IR35 regime applies, payments made by the Fee Payer to the PSC will be treated as employment income. The Fee Payer, rather than the PSC, will have responsibility for remitting income tax and National Insurance contributions to HMRC.

Who do the rules apply to?

From 6 April 2020 medium and large-sized private sector businesses will need to apply the modified IR35 regime.

The IR35 rules will apply to a company if they meet two or more of the following conditions:

- It has an annual turnover of more than £10.2 million;
- It has a balance sheet total of more than £5.1 million; or
- it employs more than 50 employees.

The modified IR35 regime also applies to connected and associated companies within a group. If a parent company qualifies as a medium or large-sized business, then its subsidiaries will also have to comply with IR35.

Those companies who do not meet the test will not need to apply the new regime and PSC companies that are engaged will continue to apply IR25 on the current basis.

When do businesses need to start applying the rules?

Clients that qualify must start applying the new rules from 6 April 2020.

If a Client does not qualify on 6 April 2020, it should continue to monitor its position in case circumstances change.

Will businesses need to pay backdated employment taxes to HMRC?

Businesses will be relieved to hear that these reforms are not retrospective. HMRC will not be investigating arrangements with PSCs pre-dating 6 April 2020. When considering their IR35 obligations, business should therefore not look into historic arrangements. Instead, they should focus on any ongoing relationships with PSCs.

What do businesses need to do if the rules apply?

Assess employment status

If the IR35 regime applies, the Client will be responsible for determining the individual contractor's employment status. This must be done for every contract the Client agrees with an agency or a PSC.

To assess the employment status of the contractor, the Client must consider the practical realities of the working relationship. There is no exhaustive list of criteria, but the following are important factors:

- **Mutuality of obligation:** in an employment relationship, there is a strict obligation on the worker to work and an equal obligation on the employer to provide work.
- **Personal service:** employees are obliged to provide their services personally. If the worker is entitled to provide a substitute to do the work, this may point away from an employment relationship.
- **Control:** an employee will be subject to a greater degree of control by the employer, such as setting when, where or how the individual works. A contractor normally determines for himself when and how he will work.
- **Integration:** unlike employees, contractors are not normally integrated into the company. They are not held out as a member of staff, are not subject to policies and procedures and do not receive employee-type benefits.



The law around employment status is complex and changeable. Each case will turn on its own facts and Clients have an obligation under the new IR35 rules to exercise reasonable care when carrying out the assessment. Therefore, advice should always be sought where there is any doubt. Our team of employment experts are experienced at advising clients on employment status issues.

Notify the relevant parties

Once employment status has been determined, the Client must notify the individual contractor and the entity it has contracted with (which may be the PSC or a different company) of the decision and its reasons.

Notice of the decision must be passed on before, or on the date, that the contract is entered. If the work starts later, notice should be given before that later date.

The decision should be passed on even if the IR35 rules are found not to apply. If the rules do apply, then the Client will be liable for income tax and National Insurance contributions until the notice has been given.

If a party in a contractual chain receives the notice but does not pass it on to the next party, they automatically become the Fee Payer and will be responsible for deducting tax and National Insurance contributions and paying these to HMRC. In contractual chains, parties should act swiftly in passing the notice down the chain until it is received by the PSC. In simpler arrangements, the Client will be giving notice directly to the PSC.

Deal with any disputes:

The contractor, the PSC and/or other companies may disagree with the decision on the contractor's employment status. The Client should have processes in place for dealing with disagreements, which should include:

- Carefully considering the points raised and the reasons for the disagreement. If insufficient information has been provided, the Client should make further enquiries of the party raising the complaint;
- Deciding whether to uphold or reverse the original decision and communicating this to all parties; and
- Maintaining a paper trail. Decisions should be communicated in writing and any disagreements recorded.

Whilst a Client considers the disagreement, it must continue to apply IR35 in line with its original decision. The Client must respond to the complainant and the contractor with a decision within 45 days or liability for tax and National Insurance contributions passes to the Client.

The Fee Payer's responsibilities

Once any disagreements have been resolved, and employment status has been determined, the Fee Payer must account to HMRC for any due payments of income tax and National Insurance contributions. This must be done on any payments made to the PSC that are deemed to be employment earnings.

The Fee Payer will not be responsible for deducting student loan repayments. The Fee Payer is also not responsible for statutory payments and other employment rights, such as holiday pay and auto enrolment in a pension, which instead arise through the individual's employment with the PSC.



What else can businesses do to prepare?

- Review your current workforce to identify PSC contractors that will be in place from 6 April 2020 onwards.
- If you have not engaged the PSC directly, consider all links in the contractual chain, so that you fully understand your role and obligations.
- To mitigate against disagreements, engage in discussion with PSCs about the new rules in advance of 6 April 2020.
- Where appropriate, seek specialist advice on employment status, which is often complex.
- Put processes in place for assessing employment status, drawing up notices and administering disagreements.
- If you are the Fee Payer, make sure your payroll systems are equipped to handle payments of tax and National Insurance contributions.

For more information on this and other employment law issues please contact our employment law specialists via email or call 0161 941 4000.

Employment Law Seminar

Join us at our free employment law seminar so that our experts can guide you through recent changes and help ensure your business is prepared for upcoming employment law developments.

Topics will include:

- Covert recordings and privacy issues in the workplace.
- What employers need to know about the latest cases on harassment.
- Upcoming legislative change on issues such as family leave developments, important changes to the operation of IR35, changes to the calculation of holiday pay, and more.

Timetable:

- 8:30 am - Arrival with breakfast & networking.
- 9:00 am - Seminar to start.
- 10:00 am - Seminar ends with time for questions.

[Book your tickets here](#)



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If you would like to know more, please contact Charlotte Gilbert on 0161 941 4000 or email charlotte.gilbert@myerson.co.uk for more information.

