

Off-Payroll Working (IR35)

Rules extending into the private sector April 2021



IR35

A large, light blue circle containing the text "IR35" in a bold, white, sans-serif font. This circle is part of a network diagram with lines connecting it to other circular icons: a pound sterling symbol (£), a checkmark in a box, a double-headed arrow, a person presenting at a bar chart, and a globe.

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WHAT ARE THE OFF-PAYROLL REGULATIONS?

IR35 is a piece of tax legislation that was designed to combat tax avoidance by workers supplying their services to clients via an intermediary, such as a limited company, but who would be an employee if the limited company was not used. This is referred to as “disguised employment”.

The off-payroll working (IR35) reform was introduced into the Public sector in April 2017.

The Private sector consultation was issued in March 2019, confirmed in the Draft Finance Bill in July, with the changes scheduled to be made in the Private sector by April 2021. There will also be amendments to be made to the Public Sector at the same time.



WHAT DOES THIS MEAN TO END CLIENTS IN THE PRIVATE SECTOR?

From April 2021 the off-payroll regulations will apply to companies engaging individuals (on a contractual or freelance basis) through personal service companies (PSCs). The responsibility of determining the status (whether IR35 applies) will move to the organisation receiving the individuals service (End Client) or the business that Vox Network Consultants is supporting with recruitment, payroll, and on-boarding services. Of course we, Vox Network Consultants, will carry out assessments and advise accordingly to our clients where needed.

If a worker is deemed to be operating as an employee, then the rules will apply. If the rules apply, the End Client will then need to deduct the relevant PAYE and National Insurance contributions before making a payment to the PSC.

If the End Client deems that the worker is not operating as an employee on that specific contract, then a gross payment may still be made to the PSC.

HOW IS THE STATUS DETERMINATION REACHED?

Previously the responsibility of whether IR35 applied was down to the worker. That responsibility has now shifted to the End Client under the Public Sector, to be rolled out to the Private Sector in April. There are three main principles to determine employment status (and in some instances it may not be clear cut);

- **Control**
- **Substitution**
- **Mutuality of Obligation (ongoing obligation of the End Client to provide work and ongoing obligation of the worker to complete the work)**

Other factors include whether the worker is taking any financial risk, nature of the job, nature of the contract, whether they are part of the engagers organisation, being in business on their own accord and provision of equipment. It is a case of reviewing the characteristics, working arrangements and practices as a whole, and deciding whether or not the worker is operating as an employee.

Determination of the status is the legal obligation of the End Client, and should be done prior to the commencement of each new contract and prior to first payment. The Status Determination and reasons for the determination must be sent to the worker.

The government intends to legislate that the determination is “cascaded to all parties within the labour supply chain”, including to all recruitment agencies. This is why the team at Vox will always ensure the right checks have been carried out at various stages;

- **Prior to signing terms to supply personnel to the client**
- **At the time when our client raises new personnel requirements or requires our on-boarding / payroll services**
- **On securing and confirming new workers**
- **Prior to completion of payroll/payrun for temporary workers**

CHECK EMPLOYMENT STATUS FOR TAX (CEST) TEST

HMRC developed an online tool called Check Employment Status for Tax (CEST) in 2017 to assist in determining the individuals employment status.

You can access this here:

<https://www.tax.service.gov.uk/check-employment-status-for-tax>

To date, HMRC has said that it will stand by the results of the test, provided that the answers given are to the best of your knowledge, accurate and pertaining to that individual on that particular assignment. You should reassess if there are any changes to the role or the way in which the work is delivered.

As per the website: “HMRC won’t stand by results achieved through contrived arrangements designed to get a particular outcome from the service.

This would be treated as evidence of deliberate non-compliance with associated higher penalties.” There has been much criticism of the accuracy of the CEST tool and there have been requests for further improvements ahead of any reforms (it does not factor in all the criteria established by case law and assumes Mutuality of Obligation).





WHAT HAPPENS IF THE WORKER DISAGREES WITH THE DETERMINATION OF STATUS?

The worker has the right to request and receive the determination and the reasons behind that determination. In the event of a disagreement, the Government believes that the End Client should implement a process to allow for determinations to be challenged, by including the consideration of evidence put forward by the worker and the reasons for the outcome.

This should be factored into an End Clients HR or Procurement process.

If a worker still disagrees, the PSC can attempt to reclaim the tax and National Insurance back via their end of year processes.

IS THERE AN EXEMPTION?

Yes. If the End Client is considered to be “small” it will have an exemption from these regulations. In order for the company to be considered small, in the financial year for your business which ends before each tax year, they must have two or more of the following:

- **An Annual Turnover of not more than £10.2m**
- **No more than 50 employees**
- **A “Balance sheet total” not more than £5.1m**

“WE USE RECRUITMENT AGENCIES AND SO THE CONTRACTORS ARE NOT DIRECTLY EMPLOYED BY US - DOES THIS STILL APPLY?”

Yes. If the End Client uses an Agency to engage with the contractor, the End Client will still be legally obliged to determine whether the worker providing their services is operating as an employee or not. The Status Determination and reasons for the determination is then passed to both the Recruitment Agency and the worker.

The End Client would then pay the Recruitment Agency a gross payment. Depending on the status determination, the Recruitment Agency would either make a gross payment to the PSC or make deductions for tax and National Insurance under PAYE.

Here at Vox we ensure the correct checks are carried out and can offer a range of pay status to ensure IR35 changes are adhered to correctly, but also to facilitate the client's requirements in a timely and efficient manner.

WHAT QUESTIONS COULD THE WORKERS HAVE?

- Is my contract outside of IR35?
- How do I get my contract outside of IR35? In the event that this is not possible, he/she may want to negotiate an increase in his/her pay rate.
- Can the worker survive the reduced net payment should their contract fall within IR35?
- Can I move to a smaller End Client to take advantage of the Small Company Exemption? (This is likely to be a short term solution).
- What other options are available should my PSC no longer be a feasible payment option?



WHAT CAN BUSINESSES DO TO PREPARE?

Identify how many PSCs you engage with and which areas of the business are engaging PSCs. Once this is done, you can do a risk assessment of your exposure to IR35 and whether changes are necessary to your HR processes when engaging contractors through PSCs. If you have a large number of PSCs, you may even want to get an advisor on board to assist with the determinations.

You may want to check the contractual arrangements that you have with your PSCs to ensure that you have the ability to make deductions for tax and NI where necessary.

Check that the payroll software that you are using allows you to deal with Off-payroll workers, or whether an upgrade is needed. Similarly for the Determination dispute resolution.

Analyse whether you are able to bear an increase in the cost of your workers should they be within IR35.

Communicate with those workers that will be affected

Finally consider all other options available to you;

- **Umbrella companies**
- **PAYE options**

For more pay structure assistance contact the Vox team on **+44(0) 208 138 4125** or email **info@voxconsultants.com**

WHAT HAVE WE LEARNED FROM THE REFORMS IN THE PUBLIC SECTOR?

We have seen some agencies allow their contractors to use schemes that facilitate high net returns on their wages (often 90%), believing that they cannot be held accountable if they did not recommend a scheme that is sourced and chosen by a particular contractor.

This is simply not true as the Criminal Finance Act is clear that Recruitment Agencies need to do their due diligence on every provider used by their contractors, to ensure that it is compliant and that they are not party to tax avoidance. It would be insufficient to state you were unaware of the non-compliance of a company.

Agencies may face criminal charges under the Criminal Finance Act. The only defence would be that an Agency had taken positive steps in order to prevent the facilitation of the tax avoidance.

Read more about the Criminal Finances Act here: [The Criminal Finances Act – Are you ready? | ESCG](#)

Some agencies used a “Blanket assessment” approach, meaning that they deemed a group of contractors all caught by IR35 without looking at each individual and their contractual arrangement.

Vox, and the wider Pertemps Network Group, carry out stringent checks as a duty of care to all parties but to also further ensure contractors are not unfairly treated or left exposed to greater tax implications / avoidance measures.



Vox understands that these are challenging and uncertain times for all businesses employing contractors; both pre and post legislative change.

We have successfully helped our business partners navigate through these times and would be more than happy to assist you.



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