

Bird & Bird & IR35



Remind me – what is IR35 and what is changing?

IR35 is a tax law introduced to tackle the problem of "disguised employment" where organisations engage off-payroll contractors on a self-employed basis through an intermediary (often, but not always, a personal services company (PSC)), rather than on an employment contract, so they become disguised employees.

From 6 April 2021 private sector organisations will have a statutory obligation to assess the deemed employment status of all contractors engaged through an intermediary (taking reasonable care in doing so) and, if the result of that assessment is that they are deemed employees, they will need to operate PAYE (income tax and NICs) on any remuneration payable to the contractor for its services. They will also need to issue a status determination statement to the contractor setting out the conclusions of that assessment.

For more complex arrangements involving a supply chain, each party in the supply chain will have an obligation to pass on the determination and other information to parties further down the chain. All such communications must take place at, or before, the time of the first payment under the contract after 6 April 2021.

Public sector organisations have been required to make these assessments since April 2017, although there are some changes to the rules they have to comply with as well.

I'm a small company, am I obliged to comply?

Companies which satisfy two or more of the following requirements: (a) annual turnover of not more than £10.2 million; (b) balance sheet total of not more than £5.1 million; and (c) number of employees of not more than 50, will be deemed to

be "small" and outside the scope. However, even small businesses may need to give warranties or other protections if they are providing staff to an affected business.

What should I be doing now?

With six months until the new rules come into effect, you have plenty of time to prepare. We would recommend the following steps:

- appoint key stakeholders within various business units (e.g. legal, procurement, HR, tax, line management) to assist with agreeing the policy for PSC contractors
- review current workforce (including those engaged through agencies and other intermediaries) to identify those individuals who are supplying their services through PSCs
- determine if the new off-payroll rules will apply for any contracts that will extend beyond April 2021 – this should be a substantive assessment of both the contractual and practical day to day working arrangements
- communicate with any affected contractors about the changes
- ensure all new contractor arrangements (and any extensions of existing contracts) are consistent with the new rules. Consider also whether contracts can be improved, for example, by introducing or enhancing indemnity protection, and introducing a mechanism to permit the business to withhold amounts in respect of income tax and NICs if necessary
- put in place new on-boarding processes for future engagements.

Even if you completed a full assessment of your workforce in time for the April 2020 deadline, it would be prudent to check whether any new PSC contractors have been engaged or whether the deemed employment status of any existing PSC contractors has changed.

What can we do for you?

We can:

- assess the employment status of your current contractor workforce
- provide an online platform which records all the assessments of those contractors, the reasons for those assessments, and produces a status determination statement for each contractor
- review your contractual terms to ensure the business has all the protection required
- assist with drafting communications with contractors and their line managers
- help to develop new on-boarding processes

If you require further information and advice on this important change, please do not hesitate to contact us.

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