

# Bird & Bird & IR35: Upcoming reform in 2020



*This note will help you understand the proposed changes to the IR35 'off-payroll' rules that are expected in 2020, and what your business can do to prepare for them.*

## What changes to the IR35 rules are envisaged?

From 6 April 2020, private sector businesses will become responsible for assessing the employment status of the off-payroll contractors they engage. These changes are intended to increase compliance with the IR35 'off-payroll' rules that have been in place since 2000. Organisations in the public sector have been required to comply with these changes since April 2017.

Medium and large businesses in the private sector that contract with intermediaries (often, but not always, a personal services company (PSC)) for the provision of an individual's services, will have to account for tax and national insurance through PAYE if, ignoring the intermediary, the underlying relationship between the end user and the individual would be one of employment.

## Which businesses are affected?

The government has decided that the smallest businesses will not be affected by this reform and will not need to determine the status of the off-payroll workers they engage. The government intends to use the existing Companies Act 2006 statutory definition to determine whether or not a company is "small". This means that where a company satisfies 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,

they will be deemed to be "small" and outside the scope of this reform. Where a company is part of a group, the whole group is taken into account wherever located. Unincorporated entities will be deemed to be "small" only where their annual turnover does not exceed £10.2 million.

## The new rules

In essence, from April next year, new rules will require an end user client to make a determination on the employment status of an individual supplied via an intermediary and communicate its determination and written reasons directly to:

- a the party that it directly contracts with; and
- b the individual themselves.

If the end user client determines that, but for the intermediary, the individual would be an 'employee' of the end user for tax purposes, the end user will need to account to HMRC for Income Tax and National Insurance contributions (NICs) (both employer and employee) on any fees it pays to the intermediary (excluding VAT). At present, the responsibility lies with the intermediary, so this represents a significant shift.

In addition, 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. A failure by a party in a supply chain could result in that party becoming liable for non-compliance with the legislation.

The government recognises there will be situations where the individual providing the services disagrees with the client's determination and has therefore introduced a client-led status disagreement process to resolve any disputes. Failure by the client to comply with the new process will result in the client being treated as the fee-payer (and therefore liable to account to HMRC for income tax and NICs on any deemed employment income from the engagement). There is also a measure aimed at preventing clients making blanket determinations.

## What your business can do to prepare

The draft legislation has now been published. Businesses which depend on individuals engaged through intermediaries should consider how these proposed changes will affect their engagement models, on-boarding processes and payroll systems, and – possibly – their ability to retain talented individuals in flexible roles.

The government has recommended that end users:

- look at their 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 2020;
- start talking to contractors about the changes; and
- put processes in place to determine if the off-payroll rules apply to future engagements.
- Additionally we would recommend that you:
  - appoint key stakeholders within various business units (e.g. legal, procurement, HR, tax, line management) to assist with determining status;
  - ensure all new contractor agreements (and any extensions of existing contracts) are consistent with the new rules. Consider also whether contracts can be 'beefed up', for example, by introducing (or enhancing) indemnity protection and introducing a mechanism to enable employment taxes and NICs to be withheld, if necessary; and
  - assess the likely cost of employers' NIC charges arising under IR35; potential increases in contractors' rates; impact on profitability, cash flow, and supply chain; and the potential for terminating non-compliant arrangements=

## What does it mean in practice?

Where arrangements are inside IR35 the extra costs going forward may be significant due to the employers NIC and less generous expenses rules. In addition, if an end user client determines that the relationship is one of employment it could result in significant historic exposure for the contractor's PSC. HMRC has the ability to recover PAYE and NICs for the last six years (and further back in certain circumstances). The consequences are likely to be disruptive so this cannot be left until April 2020.

We would advise you undertake a review of your existing contracts now.

The review should identify which contracts are clearly inside or outside IR 35 and which contracts require some modifications to be outside.

- For contracts that are clearly outside IR35:
  - contact everyone in the contractor supply chain to ensure that all parties are in agreement that this is the correct position; and
  - if applicable, negotiate any IR35 specific changes to the contractual terms.
- For contracts that require modifications to be treated as outside IR35:
  - contact the contractors to agree the modifications, any changed working arrangements and any other IR35 specific contractual terms;
  - contact everyone in the contractor supply chain to ensure that all parties are in agreement the modified arrangements can be treated as outside IR35.
- For contracts within IR35 we suggest you contact the contractors to discuss the position, the outcome may involve:
  - revised arrangements which can be treated as outside IR35;
  - contractors becoming employees;
  - continuing with the existing arrangements but with revised fees and suitable IR35 specific terms;
  - the contractor terminating the arrangements altogether.

Once the above is completed, you will be in a better position to prepare templates and guidance for future contractor arrangements.

Our IR35 team can assist you in each stage of the above process.

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

**Elizabeth Lang**  
Partner, Employment

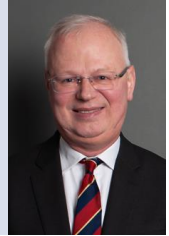
Tel: +442074156027  
elizabeth.lang@twobirds.com



**Colin Kendon**

Partner, Employee Incentives & Benefits

Tel: +442079056312  
colin.kendon@twobirds.com



**Alison Dixon**  
Partner, Employment

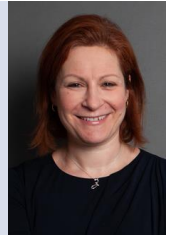
Tel: +442079056375  
alison.dixon@twobirds.com



**Zoe Feller**

Partner, Tax

Tel: +442030176950  
zoe.feller@twobirds.com



**Tom Mintern**  
Associate, Employment

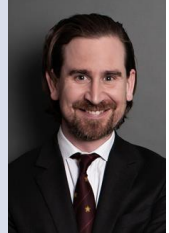
Tel: +442079826519  
tom.mintern@twobirds.com



**Julian Balson**

Partner, Tax

Tel: +442079056285  
julian.balson@twobirds.com



Do you use  
contractors?



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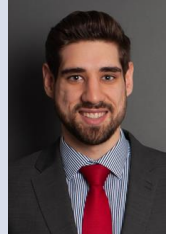
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**Andrew Rink**

Associate, Tax

Tel: +442030176946  
andrew.rink@twobirds.com



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