

**IR35:**

**Your questions answered**

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After last year's delay, IR35 (or off-payroll) rules will apply to most private sector companies from 6th April 2021. This means most businesses that engage a contractor via a Personal Service Company (PSC) – typically, a limited company that has been set up to cover the services of a single contractor – become responsible for determining the contractor's employment status.

## **Why was IR35 postponed?**

IR35 rules have been in force for the public sector since 2017, and were due to be rolled out to the private sector in April 2020. Then along came COVID-19 and the government had no choice but to delay the rollout until April 2021.



IR35 rules create additional admin for companies that hire PSC contractors, and taking on this burden during a pandemic is hardly ideal. The government relented to give companies more time to prepare for their new responsibilities.

### ***But we're still in the middle of a pandemic. Will IR35 be delayed again?***

The government certainly appears to be holding firm on its plan. That said, last year's IR35 delay happened relatively last-minute. Chancellor Rishi Sunak confirmed the IR35 changes in his March 2020 budget, then, less than a week later (and just a few weeks before the intended rollout date), the government announced the one-year delay.

It's unlikely the government will delay IR35 again, though. From their perspective, companies have had an extra year to prepare, so there shouldn't be any need to delay further, despite the ongoing business challenges associated with COVID-19.

## **So what exactly is coming into force?**

If you're not sure what IR35 means, here's a quick refresher. IR35 is designed to crack down on off-payroll employment (essentially, employment dressed up in the guise of a contractor agreement). The rules prevent employees disguised as contractors from paying less tax and National Insurance than regular employees.

Currently, contractors are responsible for confirming their own employment status, but as of 6th April 2021, the onus shifts to the company hiring them. This means it is the hiring company's responsibility to assess whether a freelance PSC contractor is truly freelance, or is an off-payroll employee (in which case they fall inside IR35).

Where a contractor is deemed to be 'inside IR35', tax and National Insurance contributions must be deducted from the contractor's fee and paid to HMRC.

## ***Is my organisation affected by this?***

The majority of private sector companies that hire PSC contractors will have to determine the employment status of their contractors.

Only small businesses are exempt. For the purposes of IR35, a business is defined as 'small' if it meets two or more of the following criteria:

- Annual turnover not exceeding £10.2m
- Balance sheet total not more than £5.1m
- Average of no more than 50 employees for the financial year

An estimated 1.5 million companies meet this small business criteria. Meanwhile, medium-to-large firms need to start preparing for IR35 now.

## ***What if we hire PSC contractors through a recruitment agency?***

Your organisation will still be responsible for determining the contractor's employment status, and telling the contractor (and agency) what you have determined. If you determine that the off-payroll rules apply, then either you or the agency will have to deduct tax and National Insurance (depending on whether you pay the contractor directly, or whether the agency pays them).

The advantage of working with an employment agency is they'll be able to help your firm navigate these complexities more easily, and stay on the right side of the law.

## ***What if we just stop hiring contractors?***

To avoid an IR35 headache, some organisations have introduced a blanket ban on hiring PSC contractors. But this drastic approach isn't widespread. Restricting your talent pool in what is already a chaotic and uncertain time for most businesses isn't a great idea. Providing you put the right processes in place to check the employment status of contractors, there's no reason why you can't continue to benefit from flexible talent.

## ***So what should we do next?***

We've partnered with Kingsbridge to provide our clients with an advanced IR35 Status Determination tool, allying a custom-designed automated process with in-house expert consultancy to provide the quickest most accurate IR35 status result available. The tool generates an instant determination, a comprehensive report that pulls through the notable positives or negatives of a given engagement, as well as an official Status Determination Statement (SDS) that you can supply to the contractor and the supply chain.

If you'd like a demo of our IR35 Status tool, or have any questions, please get in touch by emailing [offpayroll@roc-search.com](mailto:offpayroll@roc-search.com) or calling **0118 900 6750**.

