

IR35 Off-payroll working legislation: a summary for contractors

Although the new off-payroll working legislation means the financial and reputational risk means your hirer is ultimately at risk, you'll still want to understand the new rules mean and how they impact you.



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what are the primary IR35 factors?

The decision on IR35 status has, until recently, always fallen on you - the contractor. However, due to perceived non-compliance, the government implemented reforms in the public sector in April 2017 which put the decision and risk in the hands of the end hirer and fee payer (the party that pays the PSC).

From April 2021, these reforms will also be implemented in the private sector and the end hirer will be responsible for making the IR35 status decision and not you. Determining the IR35 status can be complex and looks at both the contract and actual working practices. HMRC's CEST tool (check employment status for tax) allows hirers to check whether an assignment is outside IR35.

The hirer's IR35 decision and reasoning (status determination statement) will be passed down to the party it contracts with and you - the contractor. There will be an appeals process (to be used where an inside IR35 decision is made), but in our opinion this will have a limited effect on a hirer's decision as there is no mediator in the process or penalties on the hirer if they don't change their mind.



HMRC can challenge an outside IR35 decision and demand repayment of lost PAYE tax and national insurance plus penalties and interest for each contractor. This financial risk can be passed up the supply chain to the hirer – given how big the amount can be, most hirers may unfortunately not want to bear the risk! If outside IR35, your limited company can continue to be paid the gross amount with no deductions.

If inside IR35, it will be the responsibility of the fee payer to pay employer's NI and apprenticeship levy costs and deduct standard employee's PAYE taxes before a net payment is made to your PSC. Fee payers or hirers may insist that you work through an alternative PAYE option such as an umbrella company or an agency's own or outsourced PAYE.

You are likely to find yourself subjected to conflicting messages. It is important that you start having conversations with your agency/hirer on your IR35 status, discuss any changes that can be made to your working practices and the options available to you from April 2021.



the solutions available

If your status is confirmed as outside IR35, then you can continue as normal working through your PSC and paying yourself expenses and dividends. For those of you who find yourself inside of IR35 there are primarily three options available to you:

i. PSC inside IR35

Some agencies and fee payers may allow you to continue using your PSC if you are inside IR35. Your contract rate will reduce to enable the fee payer to pay employers NI and the apprenticeship levy. The fee payer will then deduct PAYE taxes before paying the remaining net amount into your PSC's business bank account.



ii. umbrella

An umbrella company will be the solution for the majority who are deemed inside IR35. If you join a legitimate umbrella you will become an employee with full employment rights, holiday, pay, workplace pension and access to all statutory payments such as sick pay, maternity pay etc. You may have the ability to claim business expenses and will benefit from continuous employment which not only makes it easier for you to get any kind of financial credit such as mortgages, but also makes it easier to work on a variety of assignments through different agencies and end hirers. The assignment rate does not change but all income becomes subject to employers & employees PAYE taxes.



iii. PAYE

Recruitment agencies may offer PAYE or sometimes the end hirers may put you on their own payroll. You become an employee with employment rights, holiday, pension, statutory payments. The assignment rate will need to be reduced to a lower PAYE rate to take into account statutory deductions that will need to be made but there will be no option for you to claim expenses.



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 0330 024 0946

hello@giantgroup.com
www.giantpay.co.uk

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