

Overview	Legal Change	Action required
<p><b>An important change to the application of IR35 and the risks associated with it.</b></p> <p><b>Effective: April 6<sup>th</sup> 2021</b></p>	<p>IR35 can apply where a worker is hired as a contractor through an intermediary. This may be the worker's own personal service company (PSC) which pays the worker dividends or through an agent.</p> <p>The existing rules determine whether the worker is genuinely a self-employed contractor or is in fact deemed an employee of the Client/End-User and should be taxed as such – PAYE and National Insurance.</p> <p>Under the old system, the responsibility for deciding whether IR35 applied, and the associated tax risk of getting it wrong, sat with the PSC and the worker.</p> <p><b>This is changing for larger companies (see below).</b></p> <p><b><u>From April 6<sup>th</sup> 2021 the IR35 decision and its related risk will sit with the Client/End-User.</u></b></p>	<p>As a matter of urgency, become familiar with the new rules and ensure you know how they might apply to your business.</p>
<p><b>Who is affected?</b></p>	<p>The change will not apply to 'small' companies.</p> <p>A small company is one that satisfies at least 2 of the following:</p> <ul style="list-style-type: none"> <li>➤ An annual turnover of not more than GBP10.2M</li> <li>➤ A balance sheet total of not more than GBP5.1M</li> <li>➤ Not more than 50 employees</li> </ul> <p>If the company using the worker is part of a group, then the group parent company must, after a group aggregation of the above criteria, still qualify as 'small' to avoid the new rules applying,</p> <p>There are also related rules for joint ventures.</p> <p>In addition, the Client/End-User must have a 'UK connection' in the tax year the services were performed. A 'UK connection' means UK residency or a permanent establishment immediately before the beginning of the tax year in question.</p>	<p>Check if the change applies to your company.</p> <p>The new rules do not apply to End-Users wholly based outside the UK.</p>
<p><b>Who is Responsible for IR35 decisions and risks?</b></p>	<p>Previously, this was the responsibility of the contracting PSC and ultimately the worker.</p> <p>From this April, except for small companies, it will be the responsibility of the End User (the client actually receiving the service) to decide if IR35 applies to the worker.</p> <p>If they decide the worker is a deemed employee they</p>	<p>If you are not a small company and this applies to you carry out a risk assessment to establish:</p> <ul style="list-style-type: none"> <li>- which engagements might be caught;</li> <li>- the contract terms of those engagements and the respective positions of the parties (End-User, Fee Payer and worker);</li> </ul>



	<p>will need to deduct tax (PAYE) and NI from payments to the worker.</p> <p>If there is an intermediary between the End-User and the worker which contracts with the End-User and pays fees to the PSC (called the 'Fee Payer') the Fee Payer will be responsible for deducting PAYE and NI from payment to the worker.</p>	<p>- what workers are providing off payroll services in relation to those engagements.</p> <p>The new rules apply to any payment made on or after April 6<sup>th</sup> this year unless the worker engagement has been fully completed before then.</p>
<p><b>How to decide if the worker is caught by IR35?</b></p>	<p>The criteria for deciding whether IR35 rules apply have not changed substantially from those that have applied for some time. However there has been a change of emphasis. A good starting point for the decision is HMRC's <a href="#">CEST</a> tool although this may only provide a clear and reliable result in the most straightforward cases.</p> <p>Less straightforward cases will need individual assessment and may require specific legal analysis.</p>	<p>If you are the End-User, carry out an IR35 assessment of all your engagements/arrangements that involve or could involve off payroll workers.</p> <p>If you are an intermediary Fee Payer carry out an IR35 assessment of all your engagements/arrangements that involve or could involve off payroll workers in anticipation of the End-Users SDS.</p> <p>Where there is a genuine case for off-payroll workers to be self-employed make sure the contractor terms clearly support this and make amendments if they are not sufficiently clear.</p> <p>Where it is clear or possible that the engagement will, in whole or part, fall within IR35, you may wish to re-negotiate terms or seek other overall changes to the engagement.</p>
<p><b>Status Determination Statement ('SDS')</b></p>	<p>From April 6<sup>th</sup> 2021, the End-User should issue a SDS to determine if IR35 applies to a specific engagement. It must communicate the SDS both to the worker and any intermediary Fee-Payer. If the SDS is not communicated to the Fee-Payer, the End-User remains liable for the tax/NI.</p> <p>The SDS should be issued on or before any payment is made.</p>	<p>Having carried out the IR35 assessment, be ready to issue the SDS on relevant engagements to the worker and, if applicable, the intermediary Fee Payer.</p>
<p><b>Reasonable Excuse</b></p>	<p>The End-User must take reasonable care in making its SDS. HMRC recognise that client circumstances and arrangements can vary greatly. If the End-User can show it took reasonable care it may have a reasonable excuse if the SDS is challenged by HMRC. HMRC have</p>	<p>Establish the recommended internal policies and procedures (such as full record keeping of relevant engagements and IR35 assessments) to ensure that you</p>



	issued <a href="#">guidance</a> on what might count as reasonable care.	can demonstrate having taken reasonable care.
<b>SDS Dispute resolution/Appeals</b>	<p>The End-User must set up a dispute process that allows the worker or the intermediary Fee Payer to challenge the SDS.</p> <p>The worker or Fee Payer has the right to challenge the SDS at any time before the final payment is made. The End-User must respond to their representations within 45 days.</p> <p>HMRC has issued <a href="#">guidance</a> on the dispute process.</p> <p>If the End User fails to respond within the 45 day deadline, it will be treated as the deemed employer and the new tax liability will fall on them.</p>	Establish a dispute process in accordance with HMRC guidance.

**This is a high level general update only. Legal advice should be obtained on specific circumstances.**