

Calling all medium/large organisations engaging contractors...

New Off Payroll Working rules from 6 April 2021

The special tax rules applying to Personal Service Companies (IR35) have been around for some time now. The rules were designed to deal with individuals who HMRC believe should be taxed as employees.

IR35 has not been as successful as HMRC predicted and so, in April 2017, the Government introduced the off payroll working rules in the public sector. From 6 April 2021, these rules will be extended to medium and large organisations in the private sector, who will become responsible for determining whether the rules should apply, and for paying the right tax and NICs.



Will these changes affect my organisation?

If your organisation uses the services of any workers who are not on your payroll (ie contractors, freelancers or agency workers) it is an 'end-client' for the purposes of these new rules and will be required to operate the new rules from 6 April 2021 if it is UK based and does not qualify as small.

What is changing?

From 6 April 2021, all non-small UK-based private sector end-clients engaging the services of a worker through an intermediary (such as their own limited company or agency) will need to:

- Assess the tax employment status of all off payroll workers providing services through an intermediary after 6 April 2021, on a case by case basis – blanket/generic rulings are not permitted and will make the 'end-client' liable for tax, NIC and Apprenticeship Levy.
- Issue a Status Determination Statement (SDS) to all off payroll workers, setting out whether they are to be treated as a deemed employee, or not; giving reasons for your conditions. A deemed employee is taxed as a normal employee, but does not have employment rights.
- For all 'deemed employees' deduct tax, NICs and the Apprenticeship Levy from invoices raised for work done after 6 April 2021. This can be delegated to an agency/ umbrella company.
- Set up a Disagreement Process, so SDS appeals by workers can be responded to within the 45 day time limit.

Action points for 'end-clients' engaging contractors

Step 1 – Decide if you are the 'end-client'

- The 'end-client' is the organisation in receipt of the worker's services.
- Where an organisation outsources and enters into a contract for a fully contracted out service, they will not be the 'end-client'. They will be above the 'end-client' in the contractual chain and will have no obligations under the off payroll working rules.

*If your organisation is not the 'end-client', all you need to consider is Step 7.

*If your organisation is the 'end-client', check Steps 2 to 7.

Step 2 – Is your organisation based outside the UK?

- Wholly overseas 'end-clients' are excluded from the off payroll working rules.
- A client is based wholly outside the UK if it does not have a UK connection in the form of being UK resident or having a permanent establishment (ie a UK branch of office).
- In this scenario, the worker's intermediary (usually their own limited company) bears all the liability and must consider if the IR35 rules apply.

*If your organisation is based wholly overseas, you don't have any obligations under the new rules.

*If UK based, consider Steps 3 to 7.

Step 3 - Check if your organisation is small

- The rules are complex and cannot be covered here in full.
- Partnerships and sole traders are small if their turnover is below £10.2m.
- Companies and LLP's follow the Companies Act rules and will be small unless 2 out of 3 of the below limits are exceeded for two consecutive years:
 - Turnover - £10.2m
 - Gross assets - £5.1m
 - Employees – 50
- Figures for groups, connected companies and joint ventures need to be aggregated before considering the limits.
- You will have to compare your figures to these limits each tax year to check if the rules apply.
- The limits are applied to the latest year where the accounts filing date falls before the start of the tax year (and the prior year).
- For example, for a 31 July year end, the year ended 31 July 2019 is the relevant year as the filing date of 30 April 2020 (9 months after the year end), is the last accounts filing date before 6 April 2021). The limits are applied to the year ended 31 July 2019 and 31 July 2018 to see if the small exemption is met for the tax year starting on 6 April 2021.

*If not small, you need to operate the new off payroll working rules from 6 April 2021 – consider Steps 4 to 7.

*If small, your only obligation under the new rules is to inform workers and agencies you are small if requested (within 45 days). Consider Steps 4 & 7.

Step 4 – Set up a system to check your size each tax year

- You need to review your figures before the start of each tax year, to see if you need to continue operating the off payroll working rules.
- You need to operate the off payroll working rules for the tax year after ceasing to be small; but are exempt from the following tax year, so long as you continue to be small.

Step 5 – Determine the tax employment status of workers invoicing via intermediaries by 6 April 2021

- Identify all workers not on the payroll who are invoicing via intermediaries (ie their own limited company, a partnership/LLP, agency or umbrella company).
- Assess the tax employment status of all these workers who will be providing services after 6 April 2021 – review contracts and the reality of the working relationship in consultation with the worker, consider using the HMRC online CEST tool. Consider changing the contract terms and the working relationship, to ensure not 'deemed employees' under these rules.
- Issue a Status Determination Statement (SDS) to all off payroll workers and their fee payer, with reasons for reaching the individual's tax employment status conclusion. If you fail to take reasonable care in reaching this conclusion, HMRC will make your organisation liable for unpaid tax, NIC and Apprentice Levy. Therefore you cannot make blanket or generic decisions without giving thought to the worker's specific circumstances.

- Decide how you want to engage workers who are 'deemed employees'. Tax, NIC and the Apprentice Levy will need to be deducted from their future invoices raised for work done after 6 April 2021. You can take them onto your payroll as an employee; treat them as a 'deemed employee' via your payroll and deduct tax, NIC and Apprentice Levy from their intermediary invoices; or ask them to work for you via an agency/umbrella company (of which they will be subject to tax, NIC and the Apprentice Levy). Consider who will bear the cost of the agency commission and the employer's NIC.
- Set up a Disagreement Process, so SDS appeals by workers can be responded to within the 45 day time limit.
- The tax employment status needs to be reassessed and an SDS issued every time the contract or working relationship with a worker changes.
- The tax employment status needs to be assessed for all new workers, before they are first paid.

Step 6 – Consider internal payroll, HR & IT systems & employment legal issues

- Can existing systems cope with 'deemed employees' and deducting tax and NI from company invoices?
- 'Deemed employees' for tax purposes are not necessarily workers with employment rights, but is the relationship such that there is a risk of an employee taking you to tribunal to claim holiday pay etc? Consider specialist employment legal advice.

Step 7 – Determine the tax employment status of workers invoicing in their own name

- Assess the tax employment status for any workers who invoice in their own name (rather than through an intermediary).
- This is not a specific requirement of the new rules from 6 April 2021, but it has always been and will continue to be your responsibility to do this.
- Workers who are effectively employees for tax purposes should go on your payroll, or you need to change the way they work for you to reduce the risk of a challenge.

What if I ignore my obligations?

If HMRC investigate your organisation and determine that any workers should have been classified as employees or deemed employees, HMRC will collect the unpaid duties from your organisation, not the worker. This would include the employee tax, employee and employer NI, apprentice levy, interest and penalties. HMRC can collect 6 years back tax, so the cost of non compliance can be significant.

How can we help?

Contact us for more in-depth information. We can also provide assistance making tax employment status determinations and setting up internal procedures to manage these new rules.



Louise Lane BA (Hons) FCA CTA
Senior Tax Manager
 louise.lane@wrightvigar.co.uk | 01522 531341