

Off-payroll working (IR35) changes

6th April 2021 - Guidance for Contractors



Introduction

This document is designed to help contractors working with Driver Hire Nationwide to understand the upcoming changes to the legislation surrounding off-payroll working, known as IR35. This legislation applies to contractors who work via their own personal service company (PSC).

What is IR35 (the “Off-Payroll Working Rules”)?

The purpose of IR35 is to act as a “charging provision”. This is where a worker who would normally be paid as an employee provides their services via a PSC. This can lead to situations where HMRC would consider that some contractors are not making the correct tax and National Insurance contributions and as a result, raise a tax charge.

In a situation where the relationship could be considered similar in nature to that of Employer and Employee, the payments made to the PSC should have PAYE and National Insurance deductions applied to them. In many instances PSCs have incorrectly classified themselves, determined that the Off-Payroll Working rules do not apply to their situation, and therefore paid themselves via dividends and claimed expenses that would not be permitted under PAYE.

HMRC considers that 90% of PSCs have not fully complied with IR35. Changes were therefore introduced in the public sector in 2017 and, after a one-year delay due to the Coronavirus pandemic, this is now being extended to the private sector.

What is changing?

Historically, the PSC has been responsible for determining if IR35 applies to work being undertaken, and they have also been responsible for making the relevant deductions. This is now changing.

End User Responsibility: From 6th April 2021, responsibility for determining whether work is caught by IR35 will sit with the organisation that the PSC is working for – known as the **End User**.

The End User must pass their determination on to all organisations in the supply chain, including the PSC.

Fee Payer Responsibility: Responsibility for making the PAYE & NI deductions will usually sit with the organisation making the payment to the PSC, irrespective of the number of entities in the supply chain. This organisation is known as the **Fee Payer**.

If a PSC supplies their services directly to the organisation that pays them, that organisation will be both the End User *and* the Fee Payer.

How will IR35 status be determined?

Each individual assignment can be determined to be either “Inside” IR35 (also called “caught”) or “Outside” (also called “not-caught”). If an assignment is determined to be **inside** IR35, the Off-Payroll Working rules will apply, and PAYE and National Insurance contributions must be deducted up-front from any payment made. This is akin to the normal arrangements for an employed worker.

A key point is that it is each assignment that may be inside or outside, not the PSC entity itself, as some accountants have historically implied. Equally, it is clear that some End Users will take a ‘blanket’ view to this issue, and stipulate that all assignments they place must adopt a PAYE approach.

The End User is required to carry out a number of tests to make their determination. The Government have created an assessment tool ‘Check Employment Status for Tax’ tool (also known as CEST). This can be found here: <https://www.gov.uk/guidance/check-employment-status-for-tax>. CEST determinations are advisory only and are not binding on HMRC.

Key Tests

CEST helps End Users to make a comprehensive determination on whether an assignment is inside or outside IR35. For illustration purposes, some key questions are outlined below:

1. Right of Substitution

If you are unable or unwilling to carry out the work, can you send an alternative worker?

If there is no right of substitution, it is almost certain that the provision of services to an End User is **inside** IR35.

2. Supervision, Direction and Control (SDC)

This test helps to define whether a relationship is one of employment or not. Does the End User oversee your work or direct how you complete your assignment? Could they move you from one task to another?

If it is considered that Supervision, Direction or Control does apply, it is highly likely that an assignment would be considered to fall **inside** IR35.

3. Financial Risk

Is the PSC genuinely operating as a business? For example, do you invest in your own equipment to carry out the work? Would you have to rectify unsatisfactory work in your own time and at your own cost? Are you paid hourly/daily or do you provide a quote for completion of a job?

If the financial risk test is not met, the assignment would be **inside** IR35.

What happens if IR35 applies?

In the event that the assignments that you are undertaking are deemed to fall inside IR35, there are two likely options, though these may vary according to circumstances:

1. The payments made to your PSC could be made net of employment costs (PAYE & NI); or
2. Instead of working through your PSC you might be paid personally (on a PAYE & NI basis) by one of the options available to you

Examples

HMRC have helpfully provided some examples of assignments that they would consider falling both **inside** and **outside** of IR35, along with their determinations as to why they would come to this decision. Here are two of their examples:

Example A – Inside IR35

Rebecca works through her own PSC as an IT product designer at the Ministry

- Rebecca will be working at the Ministry's IT development centre
- She is not required to supply her own equipment
- She will be working under the direction of a senior manager
- Flexible working hours are available, but Rebecca will need to agree time off with her manager

Since Rebecca's assignment falls **inside** IR35, Off-Payroll Working rules **do** apply.

Example B – Outside IR35

Jeremy is a website designer contracted to a large local authority through a PSC to design and build a website. He will:

- Deliver the website to an agreed standard by the agreed date
- Visit the council's offices for meetings but mainly work from his own office
- Provide his own equipment to do the job in hand
- Employ his own staff to help deliver the contract if he needs to
- Cover his own costs and expenses

Since Jeremy's assignment falls **outside** IR35, Off-Payroll Working rules **do not** apply.

Frequently Asked Questions

If I work as a subcontractor for multiple companies, will I be affected?

The roles undertaken for each End User will be assessed individually by each and every End User. It may be possible that one role is determined to be inside and the other deemed outside of IR35.

If my work is deemed to be inside of IR35 can I change from Limited Company to a sole trader?

This will not be possible as Driver Hire Nationwide does not engage with sole traders, however we would be happy to engage with you on a PAYE basis

How will IR35 affect my tax payments and wages?

If your PSC is deemed to be within scope and you wish to continue to offer services through your limited company, then a new contract of engagement will be issued to you with a rate that will be subject to both tax and National Insurance deductions.

Your accountant will be able to advise you on exactly what this will mean for you. HMRC have stated that they do not intend to recover any PAYE tax retrospectively, however we cannot say for certain that they will not adopt a different stance.

Can I set up a shared PSC to demonstrate the right to substitution?

This could be viewed as direct attempt to avoid the changes in legislation and is not supported by the industry.