

IR35 Off-Payroll Regulations

Contractor Helpsheet and FAQ's

Overview

In April 2021 the new IR35 Off-Payroll Regulations will come into force.

It is already clear that they will have a significant impact on many PSC contractor's tax implications, impacting net take-home pay as well as causing unknown disruption to organisations who have become reliant on highly skilled contractors to deliver key projects. It is also clear that the new regulations will also impact the role of consulting firms and how they provide solutions to their clients. As yet there is no consensus about the longer-term effects of the new regulations. But there is already agreement that they will have effects on PSC contractors, the challenges and potential impacts are highlighted to the right.

This briefing document provides a practical assessment of how the ecosystem looks like changing. It does not provide a full overview of the new regulations themselves. We suspect that most contractors will by now have familiarised themselves with the regulations.

What deems my role inside / outside IR35

At its simplest, a role is deemed inside of IR35 if it considered that the services being provided by the intermediary (for example Personal Services Limited Company) would / could be provided by an employee if the intermediary was not used. Therefore, a role is deemed outside of IR35 if a genuine Business to Business relationship exists.

There are many factors that HMRC consider when determining tax status for PSCs. Contrary to popular belief, length of service at a single client is not deemed one of the major determining factors.

The 3 major factors involved in determining tax status are the following:

- **Right Of Substitution:** Would the end client accept a different worker from the Director/Owner of the Limited Company?
- **Mutuality of Obligation:** Is there a mutual agreement to both provide and offer work upon the completion of the deliverables outline in the original scope of the role?
- **Supervision, Direction & Control:** Can the worker provide the services how, when and where they choose (as long as deliverables are being met)?
- Other factors include level of financial risk, provision of client equipment, perceived integration in the client and right of dismissal.

Potential Impact

- 1 Confusion regarding the status of existing role / contract
- 2 Confusion about future engagements
- 3 Potential loss of earnings due to higher tax commitments
- 4 Potential changes to working practices
- 5 Less supply of "Outside IR35" opportunities
- 6 Increased financial risk
- 7 Increased legal risk
- 8 Changes to Client relationships

Available responses and solutions

In this document we attempt to identify available options in a practical and helpful way by employing a Q&A format that endeavours to track likely decision-making processes.



**Can I simply wait and see?
This would be very high risk.**

HMRC have made it clear that any contract engagement that is already in place on 6th April 2021 will be covered by the legislation (with its serious obligations) AND BACK-DATABLE.

So that would apply to any extensions you are considering under existing terms.

We believe that it increasingly likely that the forthcoming legislation will start to impact existing contracts before the end of 2020 and / or the next extension date (whichever is the earlier).



**What should I do in the first instance?
Speak to your line manager!**

It is the end client's responsibility to make the determination on your role. Most clients should be aware of the upcoming changes to legislation but it is important to check that your manager is aware and has a plan in place. If they are not you should raise a risk and recommend that they urgently seek advice.



**What is the first step I can take?
1) Seek assurance that your contract is outside IR35 and that you are adopting IR35 Compliant Operating Methods.**

2) Run a test yourself to ensure that you are comfortable and agree with the decision.

3) Take out IR35 insurance.

Once the above has been completed, you can continue working in your current role continuing to pay the same tax.

One critical aspect to remember is that HMRC are only interested in what is happening in reality. Therefore, just because your client has deemed your role outside of IR35, and your contract is outside IR35 – it does not necessarily mean that HMRC will agree if investigated.



**What if my role is deemed to be INSIDE IR35 but I disagree?
You can appeal to your client who then has 45 days to respond.**

Whilst there is no statutory appeals process, there will be a client-led disagreement process. This means that if you disagree with the client's decision, you can appeal to your client who will then have 45 days to respond.

Failure to respond or failing to show reasonable care in coming to the decision will shift all tax liability to the end client.



**OK, so I begrudgingly agree my role is INSIDE IR35, what are my options?
There are a number of options available to you.**

1. Quit your current role and seek alternative Outside IR35 opportunities at other clients
2. Discuss the option of converting your role to a permanent position
3. Discuss with your end client your value to the programme and explore the option of them covering your PAYE and NICs.
4. Seek to continue employment using an umbrella company
5. Agree changes to your contract and operating rhythms to shift towards an deliverable-based SoW model, hence shifting your working relationship towards a B2B arrangement with your client as opposed to a "temporary employment" relationship.

Inside IR35 Options

Advantages

Challenges

1. Quit your current role and seek alternative Outside IR35 opportunities at other clients.

- Focus attention on finding a role that is Outside IR35, hence avoiding PAYE and NIC deductions

- Expected very competitive market for roles Outside IR35
- Roles outside of IR35 are likely to involve a change in working operating rhythm

2. Seek to convert your role into a permanent position.

- All financial and legal risk removed
- Entitlement to employee benefits such as holiday, pension, private healthcare
- Job security and longevity

- Unlikely to match current overall take-home pay
- Lacks flexibility and variance that comes with contracting

3. Discuss with your end client your value to the programme and explore the option of them covering your PAYE and NICs.

- Financial and legal risk removed
- Continue to earn the same (or close to the same) total comp after tax

- Unlikely that clients are willing to cover tax and NIC deductions entirely

4. Seek to continue employment via an umbrella company.

- Clients are likely to be receptive to this approach as it has the least impact on them.
- Easier to find regular work due to expected higher volume of Inside IR35 roles
- Increases security and longevity of employment, which can aid financially (e.g. mortgage applications)
- No changes to working operating rhythm required

- Significantly reduced take home pay (likely to be over 23% for most contractors)

5. Agree changes to your contract and operating rhythms to shift towards an deliverable-based model, hence shifting your working relationship towards a B2B arrangement with your client as opposed to a “temporary employment” relationship.

- Safely remain Outside of IR35, hence maintaining current tax liabilities

- Likely to require small changes to working operating rhythm
- Possibly increased financial risk based on performance against deliverables

The new normal

It is clear from HRMC that having an “IR35 friendly” contract will be insufficient for it to treat the role as outside IR35. Actual working practices MUST match the contractual relationships established in the contract.

This will require end-user clients, consultancies and PSC specialist contractors to embrace a new relationship and operating methodologies with each other, thereby establishing an SoW model that genuinely places the role (and the PSC) outside IR35.

Accordingly, the first thing is to acknowledge the emergence of a new reality, a new normal. And this reality requires businesses along the supply chain to genuinely adopt a new mindset in respect of engaging with each other.

A new mindset

Establishing new working procedures that truly respect the letter and the spirit of the new legislation (thereby significantly minimising legal and financial risk) will require sustained commitment from end-user stakeholders and PSCs.

In this document we wish only to emphasise what we see as two essential changes in attitude that will inform the new flexible resourcing ecosystem in terms of SoW.

Old normal

PSC is viewed as an individual whose time has been purchased by the client to use as it sees fit.

Old normal

Client relationship with the PSC is essentially a Business to Person (corporate to individual) relationship.

New normal

PSC is viewed as a specialist to deliver agreed outcomes that the Client requires to achieve business goals.

New normal

Client relationship with PSC is a genuine Business to Business (corporate to corporate) relationship.

How we can help

As an organisation, McGregor Boyall can support you in your response choices:

1

Identify and introduce permanent (including fixed-term) opportunities

2

Introduce you to a selection of compliant umbrella companies

3

Full pay-rolling services

4

Low-risk, outside IR35 SoW solutions for engagements that are genuinely deliverables-based and meet acceptance criteria

We must emphasise that McGregor Boyall Associates is **NOT** a legal or accountancy firm. Accordingly, we **strongly recommend** that organisations and contractors seek professionally qualified advice on how the new regulations may impact them.