

IR35 CHANGES

Extension of the off-payroll rules to the private sector: Client Information Sheet

Background:

- In October 2018, the Government confirmed that they would extend the off payroll rules into the private sector from 6th April 2020.
- Due to the COVID-19 outbreak in 2020 this was delayed until 5th April 2021.
- Statutory payments and employment rights will not be affected by these changes.
- If a client decides IR35 does apply, the contractor business will be taxed at source by the recruitment agency, and will have Employers National Insurance applied through the Real Time Information (RTI) system, exactly as if they were an employee.

Who is responsible for setting the tax status of a contractor?

Previously it was the contractor, however from April 2021, every medium and large private sector business in the UK will become responsible for setting the tax status – or as it is more commonly known, IR35 – of any contract worker they use.



Will there be a consultation? And will it lead to amendments to the rules?

Although further consultation is possible it is highly unlikely that it will lead to change as this legislation has been in place and tweaked in the public sector since April 2017. This is simply an extension of the same rules in the private sector.



Who is liable for incorrectly paid tax by a contractor?

Liability will rest with the party that has failed to fulfil its obligations until it meets those obligations. Then liability will move down the supply chain as each party fulfils its obligations.

We believe that because IR35 rules are so complex, clients will not be able to tell for certain whether the job is inside IR35.

Because clients and agencies will become liable if they make the wrong determination, they are more likely to take a risk-averse approach and decide to apply IR35 if there is any doubt whatsoever – and there is usually an element of doubt. If the driver receives Supervision Direction and Control or does not have the right to substitution, they are inside IR35.

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What employment rights do contractors get for the earlier tax take?

One of the problems lies in the fact that contractors, when working inside IR35, do not receive any employment rights in return for the earlier tax take they are made to pay.



What does the future hold?

In the public sector these rules are already driving contractors out of the public sector and removing the specialist skills and expertise that they supply.

When it moves into the private sector the expectation is that these contractors will move to a PAYE payroll model that will significantly increase costs for agencies that rely on Ltd Company Drivers to supply their clients in the most cost-effective way.

What do you, the engager need to do now?

Based on the public sector's experience, any organisation in the private sector engaging temporary resource should be starting to plan now.

IR35 will affect all private sector firms engaging temporary resource from April 2021, throwing up significant administrative challenges for many. So, you should:

- Understand the legislation
- Engage independent expert advice to determine the tax status of your workers
- Ensure that you have the resource required to properly evaluate and implement what is required
- Look at any Ltd contractors that work direct for you as well as agency workers
- Consider insurance protection against any big claims
- Ensure that your agency provider has properly prepared for the legislation.
- Consult the Encore website for more information:
www.encorepersonnel.co.uk/IR35
- Or the government website:
<https://www.gov.uk/guidance/understanding-off-payroll-working-ir35>

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If you would like more information on any of the topics covered above please get in touch with your Encore Consultant in your local branch who would be happy to help you.