

IR35 CHANGES

Extension of the off-payroll rules to the Private Sector: Limited Company Driver Information Sheet

Background:

- In October 2018, the Government confirmed that they would extend the off-payroll rules into the private sector from 06th 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, through the Real Time Information (RTI) system, exactly as if it were an employee.

Who is responsible for setting the tax status of a Ltd Company Driver?

Previously it was you, the Driver However, from April 2021, the client will become responsible for setting the tax status – or as it is more commonly known, IR35 – of any drivers they use.



Will the consultation lead to amendments to the rules?

This is highly unlikely 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. This applies to all Driving roles.

IR35 CHANGES

Extension of the off-payroll rules to the Private Sector: Limited Company Driver Information Sheet

What employment rights do contractors get?

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.

What do you, the Driver, need to do now?

Further consultation has been promised, so we do not yet know the final picture. However, based on the public sector's experience, anyone working for an agency through a Limited Company should be starting to plan now. IR35 will affect all medium and large private sector firms engaging temporary resource from April 2020. So, you should:

- Understand the legislation
- Engage independent expert advice to determine your options
- Decide how you will want to be paid from 5th April 2021 PAYE or maintain your Ltd Company
- Ensure that your agency has properly prepared for the legislation, and you do not end up with a huge tax bill because they did not pay you correctly.
- 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>

APRIL 2021



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.