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IR35 Information Document

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IR35

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What is IR35, Proposed changes come April & its Consequences

- IR35 is a piece of UK tax legislation.
- The legislation is an anti-avoidance measure designed to tackle tax advantages available to workers who setup and provide services via a PSC (personal service company or limited company) structure. The legislation works by assessing whether the worker would be an employee of the end client if the two parties had contracted directly rather than via the PSC structure. The intention being: if the worker works like an employee, they should be taxed like an employee despite the structure the worker has setup. This is referred to as a 'deemed employee'.
- From 6th April 2021 it's the responsibility of all clients at the top of all supply chains to carry out an IR35 SDS (Status Determination Statement) assessment of all workers who operate via a PSC structure. A copy of these assessments needs to be passed on by the client to the next party in the supply chain and to the individual worker. The liability stays with the person who has the SDS assessment until it's forwarded to the final entity that pays the PSC. Clients need to complete an individual assessment for each worker and each assignment. They need to provide this assessment to the worker. The worker can challenge an SDS assessment. Below is a workflow to explain how these assessments will work in practice and we can provide detailed guidance separately on what makes a valid assessment.
- An example of an SDS is at the bottom of the fourth page please click to review for your information

Exempt Companies

In order to reduce the admin burden of IR35 on small companies HMRC have introduced an exemption from the off-payroll rules (IR35) as per the below. We have carried out an exercise on our client list to establish who is exempt from IR35 which we will circulate on a quarterly basis.

Small business exemption to new IR35 rules

The legislation applies only to 'medium or large' businesses. There's an exemption for end-clients who are 'small businesses' as defined by the Companies Act 2006 which means meeting two or more of the following criteria:

- Annual turnover is no more than £10.2 million
- Balance sheet total is no more than £5.1 million
- No more than 50 employees

Where the end-client meets two or more of these criteria, responsibility for determining the IR35 status of a contract remains with the PSC and the changes do not apply.

The government has included clauses in the legislation to ensure medium or large businesses do not set-up arm's length companies or subsidiaries to procure services from PSCs. The legislation will apply to the parent company based on the aggregate amount of turnover and the aggregate amount of the balance sheet total of the connected entities.

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Assessment Received

Decision: Caught by IR35

Consider ongoing engagement method options:

Terminate engagement with PSC (Personal Service Company basically Limited Company and instead:

- Engage directly as PAYE individual (agency worker terms
- Engage PAYE via umbrella company (employee)

Decision: Not Caught by IR35

Carry on as before if practical

https://www.contractorcalculator.co.uk/what_ir35_status_determination_statement_sds.aspx

No Assessment Received

Option 1: carry on as you are – engage PSC.

Where no Determination is issued, client will remain the Fee Payer and liable for any PAYE in the event the legislation applies.

If client has stated – no engagement of PSCs in the supply chain

Option 1: is self-employment an option?

Carry out the Supervision Direction Control (SDC) due diligence process. In simple terms this is a test to see if any of the following three apply even if one applies then that person fails the SDC test. Supervision is someone overseeing the worker, Direction as in someone is making another person do their work in a certain way, generally by providing instructions and finally control is where you have someone dictating what work a person does and how they should go about doing that. In practice this will be done for you by an umbrella company currently.

Option 2: where self-employment is not an option or there is SDC (or a right of SDC) over the manner in which services are provided:

PAYE Employment through Coyle Personnel
PAYE Employment through an Umbrella

Please note that due to the nature of our workers, it is likely that they will change clients regularly which means a fresh assessment is needed and as per the above can lead to a number of different options PAYE, Limited company, etc. In order to help our workers it's better they use an umbrella company so they don't need to worry about this admin burden as being housed in the one umbrella will help them greatly.

Cis Option Available to Clients

In regards self-employed workers – if the workers carry out work that is Construction Operations for clients in the construction industry, CIS (Construction Industry Scheme) will apply to these workers. Workers can only be engaged on a self-employed basis if it can be shown that there is no (and no right of) Supervision Direction or Control (SDC) over the manner in which work is carried out. We will send separate guidance on this and the SDC form we will need clients to complete. The liability in regards to CIS passes down the contractual chain for each contract payment. As these workers are self-employed no IR35 assessment needs to be carried out as no limited company exists as per the above.

Construction Operations (see guidance link below)

- The Construction Industry Scheme essentially applies to Construction Operations only. Construction Operations is defined in the legislation as follows (albeit there are some exclusions):
- Construction, alteration, repair, extension, demolition or dismantling of buildings or structures (whether permanent or not), including offshore installations;
- Construction, alteration, repair, extension or demolition of any works forming, or to form, part of the land, including (in particular) walls, roadworks, power-lines, electronic communications apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;
- Installation in any building or structure of systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection;
- Internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;
- Painting or decorating the internal or external surfaces of any building or structure;
- Operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection of scaffolding, site restoration, landscaping and the provision of roadways and other access works

https://www.gov.uk/government/publications/construction-industry-scheme-cis-340/construction-industry-scheme-a-guide-for-contractors-and-subcontractors-cis-340#appc