

IR35



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Off-Payroll Working

An Introduction to Upcoming IR35
Reforms in the Private Sector





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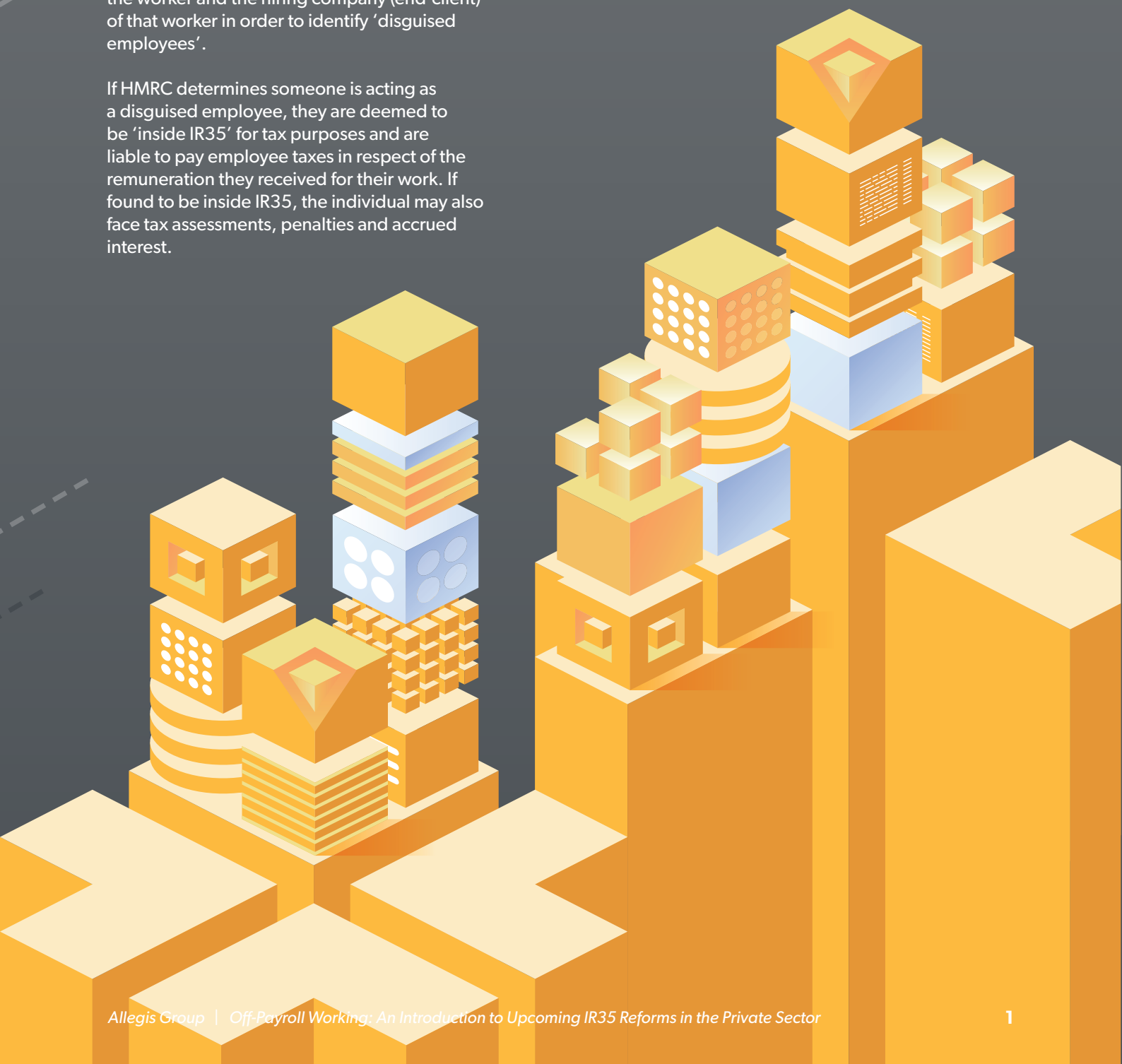
Introduction

In 2000, Intermediaries legislation, popularly known as IR35, was introduced in the United Kingdom to deal with 'disguised employees'.

These are individuals that the Government believes are using a limited company structure in order to avoid Income Tax and National Insurance (NI) that they would pay in respect of their work if they were an employee.

The IR35 rules allow HMRC to scrutinise the contractual and working arrangement between the worker and the hiring company (end-client) of that worker in order to identify 'disguised employees'.

If HMRC determines someone is acting as a disguised employee, they are deemed to be 'inside IR35' for tax purposes and are liable to pay employee taxes in respect of the remuneration they received for their work. If found to be inside IR35, the individual may also face tax assessments, penalties and accrued interest.



Background to Upcoming Reforms

When IR35 was first established, the onus was on limited company contractors (otherwise known as PSCs) to determine whether or not they were inside or outside IR35 regulations and pay the relevant taxes.

Reform of the legislation was rolled out to the public sector in April 2017 and, following a period of consultation and adjustment, will be rolled out to the private sector in April 2020. "Responsibility for operating the off-payroll working rules will move from individuals to the organisation, agency or other third party engaging the worker." ([Budget 2018](#))

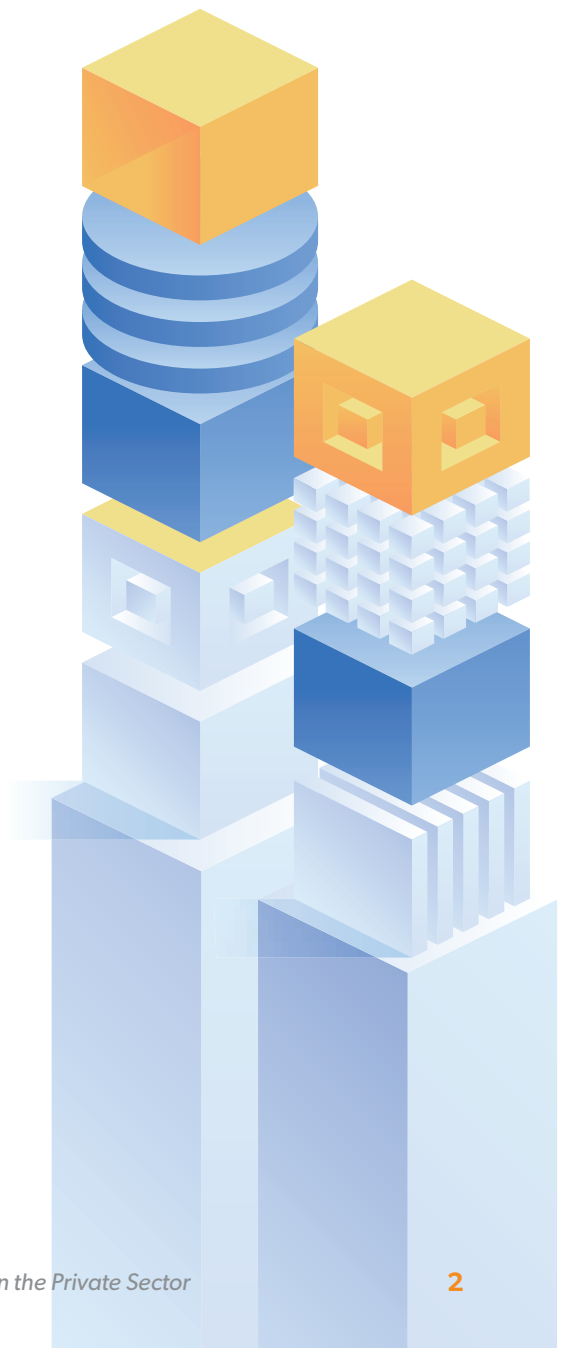
The reforms to IR35 in the public sector came after years of lack of clarity over the legislation with HMRC struggling to implement the rules effectively. Launching the public sector consultation in 2016, [Financial Secretary to the Treasury David Gauke noted](#), "The government believes public sector bodies have a duty to ensure the people working for them are paying the right tax."

However, a number of issues were experienced during the public sector reforms. These issues included:

- **Making blanket determinations** whereby IR35 status was broadly applied to a large group of off-payroll workers which is not a compliant practice.
- **Experiencing recruitment difficulties** whereby 42% of central public bodies [reported difficulties](#) filling vacancies and 37% reported an increase in contractor rates payable as a result of the new legislation.
- **Having additional administrative requirements** whereby agencies and businesses required to change how they manage their contracting workforce needed to prepare for the new responsibilities that had now shifted their way, including the need for internal resource to understand the legislation, perform assessments and communicate with relevant parties.
- **Negotiating employment rights** whereby those contractors operating within IR35 are now liable to be taxed the same as any other employee but are not liable to employment rights such as paid holidays.
- **Challenging timelines** whereby the public sector was given a very short period in which to prepare for the IR35 reform – the private sector have been encouraged to take advantage of the extra time awarded to it to prepare.

The [2018 Budget](#) set out that upcoming reforms to IR35 legislation is to "help people comply with the existing rules and bring private sector organisations in line with public sector bodies and agencies".

The reforms are due to be introduced in April 2020 to give people time to prepare. "HMRC will provide support and guidance to medium and large organisations ahead of implementation."



The private sector consultation considers options to increase tax compliance in the private sector. [HMRC says](#), “We are open to different approaches to tackling non-compliance and want to ensure we take forward a reform that is both effective and proportionate for businesses, individuals and HMRC.”

The private sector extension of the off-payroll rules will use the public sector legislation as a starting point. [According to the Association of Professional Staffing Companies \(APSCo\)](#), “This means that private sector end-clients (unless classed as a ‘small business’) will be required to make a determination of a worker’s employment status and communicate this down the supply chain.”

Under new off-payroll working rules, it is likely that:

- The IR35 status of a contract must be determined for all off-payroll payments made on or after 6 April 2020.
- Private sector businesses will be responsible for the determination.
- The fee-payer (usually the client or an agency) will be responsible for deducting the relevant tax and NI contributions at source.
- Where a contractor is deemed to be ‘inside IR35’ (i.e. employed for tax purposes), the fee-payer will also be required to pay Employer’s NI and the Apprenticeship Levy.

Check Employment Status for Tax (CEST)

HMRC developed an online IR35 status determination tool, CEST, to assist public sector bodies with determining contractor IR35 status under the reformed legislation.

However, the tool has been subject to a number of criticisms for failing to allow for individual circumstances and a lack of relevance to specific roles and industries.

HMRC are encouraging private sector bodies to use CEST too (although they are not legally obliged) and have promised that amendments to the tool to make it more relevant to the private sector will be made before the April 2020 deadline.



Determining IR35 Status

While the anti-avoidance tax law is not changing, the reforms are intended to apply in a broader manner. It also intends to allocate liability to other parties in the supply chain in order to ensure greater compliance.

Confirmation on how the reforms will be implemented and what their impact will be will only come after the consultation period is over.

However, the 2018 Budget [clearly stated](#) that, “to increase compliance with the existing off-payroll working rules in the private sector, businesses will become responsible for assessing an individual’s employment status.”

There are a number of important factors that need to be considered in order to determine whether a role falls outside IR35 and is compliant with off-payroll working reforms. These are:

1. **Control** – Will the contractor have control over where, when and how he or she performs his work?
2. **Right of substitution** – Will the contractor be able to provide a substitute for the services to be provided?

3. **Mutuality of obligation** – Does the contract specify the outcomes of the services required and does the work have an expected end-date?
4. **Exclusive service** – Will the contractor have the right to take on projects with different end-clients simultaneously?
5. **Provision of equipment** – Will the contractor be expected to provide his or her own equipment?
6. **Financial risk** – Does the financial risk for the required services lie with the contractor?
7. **Part and parcel** – Will the contractor have limited or no access to staff facilities, staff meetings and staff benefits?
8. **Notice period** – Is the contractor willing to have their assignment terminated at any time without reason and without notice?

If the end-client is able to answer ‘yes’ to most, if not all, the above questions, it is likely that the role falls outside IR35 and is indeed compliant with off-payroll working reforms.

(Please see our glossary on page 7 for a more detailed explanation of some of the above terms).

Employed or Self-Employed?

It depends on the facts of your engagement:

Example 1: Jemima would be considered an employee for this contract

The manufacturing firm needs someone to maintain and update the new website. It hires Jemima to work for three days a week, eight hours each day. The firm provides Jemima with a laptop, so she can work at its offices or at home with permission. She reports to the head of the IT department and must follow their style guide and format to update the website. The firm is responsible for providing and updating the software Jemima needs to do her work. If Jemima has to work longer than her contracted hours, she will be paid overtime. Jemima can work elsewhere on the days she is not working at the firm, with their agreement.

Example 2: Alan would be considered self-employed for this contract

Alan is taken on by a manufacturing firm to design and build a new website. Alan and the firm have agreed a price for the job and when he will deliver the new website. Alan will mainly work at home, using his own equipment to complete the task. Alan is free to work for other clients but faces a contractual penalty if he doesn’t deliver the website on time, to the agreed standard. This represents a significant financial risk to Alan if he fails to deliver the final product as agreed.

Source: [Budget 2018 – Increasing compliance with the off-payroll working rules in the private sector \(“IR35”\)](#)

Preparing for Off-Payroll Reforms

As discussed, from April 2020, workers who fall inside IR35 will be required to have Income Tax and NICs deducted at source from their income. The responsibility for this will fall to either the end-client or the agency supplying the worker, depending on the contractual chain.

Taking steps to understand the organisation's contractor workforce from an IR35 perspective is imperative to helping the end-client build a process for managing the reform once it is implemented.

1. **Act now** – the off-payroll working reforms will impact budgeting, internal processes (including any manual ones which may not be apparent), compliance, IT, internal and external communications.

The end-client should:

- Consider how this will be managed internally
- Decide how and when to involve all stakeholders
- Put in place a suitable change management programme

2. **Understand the size of the problem** – the end-client will need to do an internal review of their contractor population to understand the size of the problem:

- Number of contractors currently engaged
- How these contractors are engaged

An organisation's finance department should be able to provide a rough picture of the scale of the issues to be addressed.

3. **Review available options** – Once the end-client has done a complete review of their current contractor population they will be in a better position to understand how to proceed. Engage your talent solutions partner to understand what approaches they are currently considering to help your business negotiate the reforms.
4. **Ongoing compliance** – It is essential that everyone within the contracting community in the business (contractors, hiring managers, etc) have a fundamental understanding of IR35.

The end-client should implement clear, company-wide policies and all staff involved or impacted by IR35 should be required to understand the rules and any new policies relevant to their function. Regular checks should ensure that these are being adhered to and the organisation remains compliant.



How We Can Help

Our network of specialised businesses (Aerotek, Aston Carter and TEKsystems – including TEKsystems Global Services) provide a full suite of complementary solutions that solves nearly every workforce challenge to empower business success.

We have earned our reputation as an industry leader for our unparalleled ability to attract and retain great people who help businesses get work done — no matter if the delivery model is through contract staffing, permanent recruitment or outsourced services.

Following consideration of future-state scenarios under IR35 reforms, we are able to recommend a number of potential solutions to assist your business in navigating the reforms.

These supply models offer your business the choice of making the IR35 determination yourself or outsourcing this liability and responsibility for service delivery to us.

This paper is intended to help you consider the potential implications of the IR35 off-payroll reforms for your business. We have follow-up collateral to share with you, including how we are planning to approach the upcoming IR35 reforms.

If you would like to discuss any of the points raised above or would be interested in meeting with us to understand how we can help please contact your Allegis Group representative or email us at IR35@AllegisGroup.com.



Glossary

Your Guide to IR35 Language

CEST

Check Employment Status for Tax (CEST), a tool developed by HMRC to assist public sector bodies with determining contractor IR35 status under the reformed legislation. The tool can be found [here](#).

Control

A fundamental test for determining IR35 status, control measures true independence from the end-client a contractor has in terms of work behaviour, eg what, when, where and how he/she does the work. The more control can be illustrated, the more the engagement indicates it does not fall within IR35.

Deemed Employment Payments

Where off-payroll working rules apply to an engagement, an amount 'deemed' to be the income of the worker once deductions and employer's NIC's have been made needs to be calculated.

Determination

Otherwise referred to as *IR35 status assessment*, determination is the process of deciding whether or not an engagement falls inside or outside IR35 off-payroll working rules.

Blanket Determinations

IR35 status is broadly applied to a large group of off-payroll workers (this is not a compliant practice).

Disguised Employees

Workers who receive payments from a client via an intermediary, for example, a PSC (see Personal Services Company below), but whose relationship with their client is such that had they been paid directly they would be employees of the client.

Financial Risk

Another fundamental test for determining IR35 status, the amount of financial risk a contractor

incurs during the course of an engagement is illustrative of the self-employed status of a worker. While employment provides more certainty as to payment to a worker, a contractor runs the risk of incurring a loss to fund training, purchase assets or if a job takes longer than anticipated.

IR35

Intermediaries legislation, popularly known as IR35, is a piece of tax legislation which came into force in July 2000. The legislation is aimed at identifying disguised employees working through Personal Services Companies (or partnerships).

Inside IR35

To be considered 'inside IR35' means that for tax purposes the contractor is an employee of the end-client and therefore subject to PAYE (pay-as-you-earn).

Outside IR35

To be considered 'outside IR35' means that for tax purposes the contractor is operating a legitimate business outside of IR35 rules.

Mutuality of Obligation (MOO)

MOO exists when the end-client is obliged to provide a worker with paid work and the worker is obliged to accept and complete the work. This is typical of most employee-employer relationships. Genuine limited company contractors outside IR35 should neither expect nor receive such mutuality of obligation and neither should an employer offer it.

Off-Payroll Workers

A term coined by Government, 'off-payroll workers' are simply those workers at a business not on the PAYE payroll. The term usually refers to contractors, freelancers, and consultants as well as locums and substitute teachers.

Part and Parcel

Another fundamental test for determining IR35 status, 'part and parcel' refers to how integrated a contractor has become in the business and if, indeed, they have become 'part and parcel' of the organisation. If the contractor is provided with their own desk, stationary, computer, access to employee facilities and benefits, etc the lines between employee and contractor begin to blur and it can be argued that the contractor is operating inside IR35. The contractor needs to remain independent of permanent employees in order to be identified as such.

Personal Services Company (PSC)

While there is no clear definition of a Personal Services Company (PSC), it generally refers to the director of the limited company that the contractor is operating through, where the director owns most, if not all of its shares.

Right of Substitution

One of the most important tests for determining IR35 status, 'right of substitution' contractually enforces a limited company's right to replace its representative subject (the contractor) to undertake the work. This also shows the end-client's requirement for the contractor to provide a service and not simply supply a specific individual.

Small Business

Off-payroll working reforms will only apply to medium and large businesses, while small businesses will be exempt. According to the Government, a business qualifies as 'small' if the following conditions are met: i) turnover is not more than £10.2 million, ii) balance sheet total is not more than £5.1 million, and iii) number of employees total no more than 50 ([Companies Act 2006](#)).

About Us



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Aston Carter is a global provider of talent and project based services to companies requiring highly specialised business professionals. We have an unrivalled commitment to delivering first class service to clients and business professionals across a variety of business disciplines, including Accounting and Finance, Change and Transformation, Compliance, Management Consultancy, Operations, and Risk and Regulation. With more than 60 offices across Europe, Asia Pacific and North America, Aston Carter provides local, regional and global expertise to drive value and meet our client's unique needs.

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