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Working through intermediaries

IR35 update

1 March 2022

About this document

This document relates to Her Majesty's Revenue and Customs' (HMRC) rules surrounding off-payroll working, commonly known as IR35. The rules were previously updated by HMRC in April 2017. This document has been updated to reflect changes that came into force on 6 April 2021.

Background

IR35 applies to individuals who provide services through an intermediary, such as a personal service company. The purpose of these HMRC rules is to ensure that individuals who provide these services are paying the correct amount of tax, and in particular that individuals who are employed, as distinct from self-employed, are taxed appropriately.

NHS England and NHS Improvement has sought to support NHS providers by offering advice to ensure that everyone working throughout the service pays the correct amount of tax to reflect their individual status, and address where tax is being incorrectly paid.

The IR35 rule change from 6 April 2017

From 6 April 2017, tax rules changed so that the task of determining whether or not IR35 applies shifted from the intermediary to 'public authorities' (which includes all NHS providers). As 'fee payers' under the rules, public authorities are required to deduct tax and national insurance at source where IR35 applies.

NHS providers should note that this rule change does not alter the substantive question of whether IR35 applies to an individual.

The off-payroll working rules changed on 6 April 2021 and are applied differently. From this date all public authorities, and medium or large-sized clients, will be responsible for deciding the employment status of workers (sometimes known as

contractors). Previously an intermediary such as a contractor or an agency could do this on behalf of the public authority.

Updated guidance to NHS providers

The introduction of the rules has made it clear that an assessment of whether or not IR35 applies should be carried out in a fact-specific way; that is, it should be applied on a case-by-case basis, rather than by a broader classification of roles. Therefore, NHS providers, and all others categorised as public authorities, will need to consider whether an individual in their particular situation is self-employed when they determine the application of the IR35 rules in that case. This consideration must be conducted fairly, accurately, and consider all relevant factors, including representations which may be provided by the individual.

HMRC has provided a tool to help determine whether an individual should be considered employed for tax purposes. The tool does not negate the necessity for careful case-by-case scrutiny. The link to the tool is: www.gov.uk/guidance/check-employment-status-for-tax.

We recognise this rule change has substantial administrative implications for providers. It is expected that all providers comply in full with their obligations by ensuring that all locum, agency, and bank staff are taxed appropriately following a proper analysis of the individual's circumstances.

Failure to comply with the updated legislation in relation to IR35, and failure to correctly assess the worker contract and/or notify the third-party agency of determination, could result in providers being liable to pay the equivalent PAYE deductions to HMRC. In addition, inaccurate assessments of individual circumstances could lead to unnecessary cost, time, and expense. With regards to personal service companies, NHS England and NHS Improvement recognises that NHS providers may contract with individuals through such entities.

Finally, NHS England and NHS Improvement cannot provide advice on individual cases and providers should seek independent advice where they consider this necessary and/or appropriate to resolve issues that may arise on consideration of specific cases.

Further reading:

[Business tax: Off-payroll working \(IR35\) - detailed information - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

[Off-payroll working rules \(IR35\) - flowchart for client organisations \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

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