



## IR35 - are you ready for the changes to off-payroll working?

HM Treasury recently announced a review into the upcoming IR35 reforms in the UK, due to come into effect on 6 April.

There have been no indications from the government that this review (the outcome of which is awaited) will result in a delay to the implementation of the new legislation. Businesses should therefore continue to prepare for the incoming changes.

In case you missed it, changes to the off-payroll working legislation, commonly known as IR35, will take effect in April for private companies in the UK (and have been in effect for the public sector since 2017).

The IR35 rules are designed to prevent perceived tax avoidance where individual workers are engaged via intermediaries – most commonly personal service companies (PSCs) – and do not pay employment taxes on any earnings from the end client.

The two key changes are that:

1. the 'end client' must formally assess whether the individual worker would be an employee/office-holder of the end client had they been directly engaged; and
2. if so, the organisation in the supply chain that pays the intermediary will be required to include the worker on their payroll, and account for income tax and national insurance contributions (NICs), including employer NICs.

Previously these obligations sat with the PSC and the end-client did not need to worry about these points.

Businesses are taking a variety of approaches in response to the new legislation. The most suitable approach is likely to depend on the existing arrangements with contractors. However, all businesses should be considering the following points in relation to their contractor populations.

### **Implement a process to assess the status of contractors**

The end-client will need to prepare a 'status determination statement' for each worker, setting out the reasons for the determination of an individual's hypothetical employment status.

This must be provided to the individual worker and the party that contracts with the end-client. Reasonable care must be taken in preparing the statement.

HMRC operates a free online CEST (check employment status for tax) tool for this purpose, which is effectively a questionnaire to determine a worker's employment status for tax and NICs purposes.

If CEST is not used, then an assessment of whether the worker would be an employee if directly engaged must be made on the usual principles of taxation law (drawing on employment law rules). This can be a complex area and decisions are often very fact specific.

### **Implement a process to deal with disputes regarding a worker's status**

Status determinations can prompt challenges by disgruntled workers, particularly where a classification as 'employed' for tax purposes represents a change in the historic approach taken by an individual's PSC (which will remain responsible for any failure to operate PAYE correctly prior to April 2020).

Individuals may be concerned that their revised classification will raise a red flag with HMRC about their previous compliance with IR35 and they may be unhappy with their status on a going-forward basis too.

The draft legislation does not specify how dispute arrangements are to work in practice, but there is a requirement to have a process in place and to respond within 45 days with the outcome of the process.

For organisations with large contractor populations, which expect to be carrying out many status assessments, careful thought should be given to how the dispute resolution process will operate.

## Review existing contractual relationships with suppliers

Identify supplier contracts that are likely to be affected as soon as possible.

It will be necessary to understand the terms of existing contractual arrangements, including the number of parties in your contractor supply chains, in order to assess the likelihood of ending up as the fee-payer and so being 'on the hook' for taxes.

Amendments to master supply contracts may be necessary in order to assist with the identification of PSCs and other intermediaries.

## Other consequences

Some organisations have decided to dispense with PSC arrangements altogether and to engage contractors as employees (with the associated benefits that employment status entails).

Others will simply assess workers as hypothetical 'employees' for tax purposes (such that payroll taxes are deducted) but otherwise maintain the status quo. For those workers, the potential financial hit of their new arrangement may cause them to demand increased fees or to look across to their employed comparators and demand equivalent employment rights (such as the right to be paid the minimum wage, holiday pay and sick pay, or the right to join a pension scheme).

Both of these structures will see an employer NICs charge arise, which will most likely be passed back to the end client.

Those who are re-engaged as employees when the new legislation takes effect may start to question why this didn't happen sooner, and argue that they have missed out on employment benefits during their period of engagement to date – opening the door to claims for back pay. Even in the absence of a valid legal claim, there is potential for strained relationships and an unsettled workforce.

Opening a dialogue early with potentially affected staff could minimise the likelihood of disruption and/or staff engaging the dispute resolution process.

For more information, please contact:



**Alice Greenwell**  
Partner  
T +44 20 7716 4729  
E [alice.greenwell@freshfields.com](mailto:alice.greenwell@freshfields.com)



**Holly Insley**  
Senior Associate  
T +44 20 7785 2237  
E [holly.insley@freshfields.com](mailto:holly.insley@freshfields.com)



**David Mendel**  
Senior Associate  
T +44 20 7716 4586  
E [david.mendel@freshfields.com](mailto:david.mendel@freshfields.com)



**Guy Huffen**  
Associate  
T +44 20 7785 2968  
E [guy.huffen@freshfields.com](mailto:guy.huffen@freshfields.com)

## freshfields.com

This material is provided by the international law firm Freshfields Bruckhaus Deringer LLP (a limited liability partnership organised under the law of England and Wales) (the UK LLP) and the offices and associated entities of the UK LLP practising under the Freshfields Bruckhaus Deringer name in a number of jurisdictions, and Freshfields Bruckhaus Deringer US LLP, together referred to in the material as 'Freshfields'. For regulatory information please refer to [www.freshfields.com/en-gb/footer/legal-notice/](http://www.freshfields.com/en-gb/footer/legal-notice/).

The UK LLP has offices or associated entities in Austria, Bahrain, Belgium, China, England, France, Germany, Hong Kong, Italy, Japan, the Netherlands, Russia, Singapore, Spain, the United Arab Emirates and Vietnam. Freshfields Bruckhaus Deringer US LLP has offices in New York City and Washington DC.

This material is for general information only and is not intended to provide legal advice.