

FOUR SIMPLE STEPS TO PREPARE FOR IR35

Date: 29 January 2021

UK Employment Alert

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With everything else going on, it is important not to forget that changes to the off-payroll working rules (commonly known as IR35) are due to come into effect on 6 April 2021, imposing new legal obligations on businesses that engage contractors via personal service companies.

In order to mitigate business disruption and exposure to liability, there are four simple steps that businesses should be taking now to get ready for the new rules.

STEP 1: REVIEW YOUR WORKFORCE

It is crucial that all organisations review their current workforce as soon as possible, in order to identify individuals that are potentially within scope of IR35 (i.e., all contractors who provide their services via a personal service company).

STEP 2: MAKE STATUS DETERMINATIONS FOR IN-SCOPE CONTRACTORS

The company that engages those contractors (known as the end-user) must then determine whether the arrangements are “deemed employment” for tax purposes under IR35. This determination must be made in respect of all contractors identified as being within scope (Step 1 above). Note that the determination can be made ahead of 6 April 2021, so long as the information remains correct at that date.

Her Majesty's Revenue and Customs (HMRC) has created an online tool, Check Employment Status for Tax (CEST, available [here](#)), to assist end-users in carrying out the status determinations.

CEST can be completed on an anonymous basis, and, while there is no obligation to use CEST in order to make the status determination, it is recommended because, if completed accurately and kept updated, HMRC will be bound by the outcome generated.

End-users are also required to provide a status determination statement to the consultant.

STEP 3: CONSIDER FEE ARRANGEMENTS

If the outcome of the status determination is that the arrangements are “deemed employment,” then the end-user will be responsible for deducting income tax and employee National Insurance contributions (NICs) at source through the Pay As You Earn system from the contractor's fees and will be required to pay employer NICs on top of the contractor's fees.

Organisations should therefore consider this additional cost when negotiating consultancy fees (including any administrative costs of setting the individual up on payroll), and they may also need to consider terminating arrangements that are no longer financially viable.

STEP 4: REVIEW CONTRACTS

Regardless of the outcome of the status determination test, all organisations should review current contractor contracts to ensure that they offer adequate protection going forward. HMRC may later disagree with the end-user's status determination (if CEST has not been used), or the deemed employment status may change during the course of the engagement. Therefore, appropriate protection should be built into all consultancy agreements, for example, by including a provision that the engagement may be terminated if later determined to be deemed employment by the end-user or HMRC.

Additionally, although deemed employment status under IR35 ultimately depends on the reality of the relationship between the parties rather than the terms of the consultancy agreement, an appropriately drafted agreement can help to demonstrate that IR35 should not apply. Examples include clauses that provide for the contractor to achieve certain deliverables, as opposed to devoting a certain amount of time to provision of the services, and clauses that provide the end-user with an unfettered right of substitution.

There is still time to properly prepare for IR35, and by following the above steps, businesses should be in good shape for when IR35 finally comes into force.

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