

ULTIMATE GUIDE TO



THE IR35 CHANGES

STOP PRESS:

The Government has announced that the IR35 tax changes are being postponed for one year until 6 April 2021!

In light of this, references to April 2020 in this Guide should be read as April 2021.

Are you ready for the IR35 changes?

In April 2020, the IR35 tax rules are changing, and it could affect your business.

In this guide, we'll take you through what IR35 is, when you need to know about it, what's changing in April, and – most importantly – how you can prepare now.



What is IR35?

IR35 is the name for HMRC's tax rules designed to make sure that contractors providing their services to clients through an intermediary company are taxed correctly (an intermediary company is usually the contractor's **personal service company (PSC)**, a limited company 100% owned by the contractor). You might have also heard IR35 referred to as the *off-payroll tax rules or intermediaries legislation*.

It all sounds a bit technical, but in a nutshell, if contractors work like employees of their clients, then IR35 says they should be taxed as if they actually were employees. That means they'll need to pay national insurance contributions (NICs) and income tax on their fees as if they were employee wages.

What's changing in April 2020?

Up until now, it's been the contractor's responsibility (through their PSC) to decide whether IR35 applies. If it does, it's also been their responsibility to pay the NICs and income tax due to HMRC.

From April 2020, if the client's a 'medium' or 'large' business, it will be their responsibility to work out whether IR35 applies and, if it does, to account to HMRC for the tax. A 'medium' or 'large' business has at least two of the following:

- an annual turnover of more than £10.2 million;
- a balance sheet of more than £5.1 million; and/or
- more than 50 employees.

How will the changes affect my business?

First thing's first, you only need to worry about IR35 if you're:

- a contractor (eg a freelancer) providing your services to a client through a PSC; or
- a 'medium' or 'large' business receiving those services.

If you're a small business, you don't need to worry; there'll be no changes to the way that you currently work with contractors.

You may also be affected if you're another business in the services supply chain (eg a recruitment agency supplying the contractor through their PSC), but larger supply chains are not covered in this article.

If you're a 'medium' or 'large' business:

The changes mean it will be your responsibility to work out if IR35 applies to your contractor. Once you've made your decision, you'll have to:

- pass on your determination (and your reasons for it) to the contractor;
- respond to any of the contractor's objections within 45 days; and
- if you decide that IR35 applies, deduct income tax and NICs from the fees you pay the contractor via your PAYE system.

If you're a contractor operating through a PSC:

The impending changes mean more risk and administrative hassle for businesses who engage contractors operating through PSCs, even if those contractors are truly self-employed. Beware that some businesses have already indicated that they will stop hiring contractors who work through PSCs altogether.

What should I do to prepare?

So, what does this mean for you now? Well that depends on whether you're the client or the contractor.

Are you the client?

If you receive services from a contractor and you're a 'medium' or 'large' business', you should start getting ready for the changes now by:

- Reviewing all of your contracts with consultants and freelancers to see if you think that IR35 should apply to them. Note that the new rules will only apply to payments made for services provided on or after 6 April 2020 and status determinations made prior to 6 April 2020 will remain valid following that date.
Tip: You'll need to make separate determinations for all of your different arrangements, even if they're with the same contractor!
- Keeping records of all the decisions you make and why.
Tip: If you think IR35 applies to any of your current contracts, you should consider how to factor in the additional tax payments that you'll need to make. This may mean terminating your existing contracts and entering into new ones where these costs are accounted for. Note that the new rules will only apply to payments made for services provided on or after 6 April 2020.
- Setting up procedures to make sure you'll be able to make determinations about new contractors, pass on your decisions to the contractors, respond to any objections within 45 days and keep your arrangements under review.
Tip: You'll be liable for any tax payable until you pass on your determination, so you need to be able to do this quickly.

Are you the contractor?

If you're a freelancer or consultant and you provide services to 'medium' or 'large' clients through a PSC, you should check your contracts and speak to your clients about whether or not IR35 applies. If your client decides that IR35 does apply to your contract with them, but you disagree, it could have a significant financial impact on you.

Tip: You have the right to challenge your client's determination, by writing to them with your reasons. They must respond within 45 days.



How do I work out whether IR35 applies?

Whether or not IR35 applies all comes down to the contractor's employment status; would they be the client's employee if they weren't working through the PSC? The more control the client has over the contractor and the way in which work is done, the more likely this is. You can work this out from looking at what the contract says and what the working relationship is like.

For example:

- How much control does the client have over how the work is done (eg the hours of work)?
- Does the contractor have to do the work personally (eg can they send a substitute)?
- Does the client have to offer work and/or does the contractor have to accept it?
- Who takes the financial risk (eg who provides any equipment needed)?

Need a hand? HMRC has a helpful [tool to check employment status for tax](#). HMRC has said it will stand by the result you get when you complete this questionnaire (provided you provide accurate and complete information) so make sure you keep a copy of the result for your records!