



## IR35 changes – April 2021

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### *FAQs on the changes to IR35*

From 6 April 2021, rules which apply to the public sector, now apply to the private sector.

#### **What is the background to the change?**

It is fairly commonplace for some individuals to provide services to a business via their own limited company.

The example often cited is the IT specialist who invoices their customer at the agreed day-rate. The individual may in some cases be happy to receive a favourable day-rate but with fewer workers rights (as would be case if they were an employee). The business paying them is also happy to have a relationship which can be terminated at short notice and save the cost of Employers NIC (13.8%) and auto enrolment pension contributions.

It has been a longstanding concern of the exchequer that there are many such relationships which are in fact disguised employments.

Since 2000 the rules known as “IR35” have created an obligation for companies which are in receipt of fees for a disguised employment to pay the PAYE and NIC.

#### **What is a disguised employment?**

A disguised employment is one where, if the intermediary were removed, the nature of the relationship would be one of employer and employee – the official legal distinction being whether the relationship is “a contract of service” (employee) as compared with a “contract for services” (contractor).

In April 2017 the government decided that, for organisations in the public sector, it would shift the obligation of assessing the correct tax status to the “end user” of the services (rather than the person receiving the fee) and impose the obligation to deduct PAYE and NIC on the person who pays them.

#### **What does this mean for my business?**

You may be required to determine the tax status of certain workers at specific times and to inform them or their agents of your conclusion and why. You will in many cases need to implement a new system to ensure this is done on time and that the proper records are kept.

In appropriate cases you may be required to deduct and account to HMRC for PAYE and NIC (and pay Employers NIC) in respect of payments for their services. It may therefore cost you more to use the services for some workers than it did before.

#### **Do I now need to account for PAYE and NIC every time I pay anyone for services?**

No. These changes are intended to capture relationships which are in the nature of an employment. Whether a relationship is caught is based on the considerable body of case law relating to taxation and employment status. It is not always easy to work this out.

## Do these rules apply to organisations of all sizes?

No. The rules do not apply to businesses and other organisations who are “small”.

The definition of small for this purpose is taken from the Companies Act which provides that you will be small if you satisfy at least two of the following three requirements in your most recent accounting period:

1. Annual turnover no greater than £10.2m;
2. Balance sheet total no greater than £5.1m; or
3. Average number of employees no greater than 50.

This is the same criteria used to determine whether a company is subject to an audit.

It is important to note that employees for this purpose includes your current employees plus the number of individuals who are caught by these new rules.

The new rules should not apply to you if your turnover is below £10.2m and your balance sheet total is less than £5.1m.

## We engage an agency to find and supply us with workers and we make payments to that agency. Are we affected?

Assuming you are not small, then yes. You will need to assess the employment status of each individual working via an intermediary. Where the rules apply (such as in example 1) you will need to inform the agency as to whether you consider the rules shall apply. This assessment and confirmation may be required each time a payment is made. The agency will be required to deduct PAYE and NIC from payments it makes.

## Examples

### Example 1

John is an accountant who works for his own company, John Limited. John Limited has one customer which is ABC Limited, which is also an accountancy firm.

ABC Limited pays John Limited for John’s time. John works a set number of hours each week for a daily rate agreed by the parties. He provides accountancy services to the clients of ABC Limited and it appears to those clients like John is an integrated member of the ABC team. He has ABC Limited business card, ABC email address and sits at the same desk each day.

John also attends the ABC Limited Christmas party and other social work activities.

**Conclusion:** It appears likely that ABC Limited will be required to account for PAYE and NIC on payments to John Limited from April 2021. Prior to April 2021 it appears that John Limited would have been required to account for PAYE and NIC on its income from ABC Limited (under the rules known as IR35).

### Example 2

John is an accountant who works for his own company, John Limited. John has a number of customers, one of which is DEF Limited. DEF Limited is an engineering business. DEF has its own financial department but it is going to be sold and therefore have asked John to review its cash flow forecast for a fixed price. John has no previous relationship with the business.

**Conclusion:** It appears unlikely that DEF Limited will be required to account for PAYE and NIC on payments it makes to John Limited from April 2021.

## Find out more

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