



IR35 update

New rules for contractors and Off-Payroll Workers (OPW)

HM Revenue & Customs (HMRC) continued focus on employment status, especially where the individuals work through a personal service company, will benefit from new rules from 6 April 2020. The responsibility for assessing whether the IR35 rules apply to contractors, moves away from the contractor and over to the engaging business who must issue an employment status determination.

What is off-payroll working (IR35)?

A worker is involved in off-payroll working when they work for a client through their own intermediary, often a Personal Service Company (PSC), but would be an employee if they were providing their services directly.

The IR35 rules are in place to make sure that where an individual would have been an employee if they were providing their services directly, they pay broadly the same tax and National Insurance Contributions (NIC) as an employee. They should not be able to avail of tax advantages simply by placing an intermediary between themselves and the end client.

Update in the rules

Currently in the private sector, the worker providing services through their own intermediary is responsible for deciding if the IR35 rules apply.

However, this is due to change from April 2020 for medium and large sized private sector clients, who will become responsible for deciding if the IR35 rules apply. Where they decide the IR35 rules apply they will have to collect PAYE and NIC through the payroll on payments made to the affected population of contractors.

What action needs to be taken?

The IR35 rules can be difficult to navigate. Businesses will need to have processes in place to:

- identify and then monitor each OPW;
- assess the employment status of each OPW;
- where required operate payroll and deducted income tax and NIC; and
- keep all relevant records and decisions.

Businesses must now manage the tax risk effectively to ensure their exposure is managed with minimal impact on the business. HMRC will levy penalties if businesses cannot provide these assessments.

The challenges

- increased costs of engagement and exposure to potential penalties;
- practical difficulties in identifying OPW's and assessing whether PAYE shall be applied to their payments;
- potential for a loss of skills and talent;
- a minefield of case law and guidance; and
- increased scrutiny from HMRC.

How Grant Thornton can help

We can assist in identifying the population of OPW's within an organisation, allowing businesses to assess the potential past, present and future risks.

Grant Thornton has developed a digital tool to help you with your new obligations arising from the changes in the rules. Our platform can identify OPW and assess their employment status. Although HMRC has developed their own tool to help businesses (Check Employment Status for TAX (CEST)), this has its limitations and has not stood up to scrutiny in the First Tier Tribunals.

We can advise on how to report such income, should the engagement be deemed to be employment, rather than self-employment and provide appropriate communication to the affected stakeholders with details of the actions required.

We can also provide guidance on processes to be implemented to better track these engagements and to reassess them going forward.

Contacts



Jane Lee
Manager
T +44 (0)28 9587 2314
E jane.lee@ie.gt.com



Naomi Little
Executive
T +44 (0)28 9587 2310
E naomi.little@ie.gt.com

 grantthorntoni.com

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