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CLIENT GUIDANCE TO IR35 OFF-PAYROLL



CONTENTS

What is IR35?	<u>Page 3</u>
What does that mean for me?	<u>Page 3</u>
Small Company Exemption	<u>Page 4</u>
Location	<u>Page 4</u>
Duty to confirm size	<u>Page 5</u>
Groups	<u>Page 5</u>
Determining assignment status	<u>Page 6</u>
Taking reasonable care	<u>Page 7</u>
Status disagreement process	<u>Page 8</u>
'Inside IR35' status	<u>Page 8</u>
'Undetermined' assignment Status	<u>Page 9</u>
Key Criteria to determining status	<u>Page 10</u>
Disclaimer	<u>Page 11</u>



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WHAT IS IR35?

UK tax legislation designed to stop contractors & businesses from avoiding paying the appropriate tax.

Inside IR35 – means the contractor must pay the same tax as an employee (via an Umbrella Company).

Outside IR35 – means the contractor pays themselves a salary and withdraw dividends from their Limited Company.

WHAT DOES THAT MEAN FOR ME?

From April 2021 the responsibility for operating the off-payroll working rules moved from individual contractors to the end-client organisation, recruitment business or other third party engaging the contractor – referred to as the ‘fee payer’ in the legislation.

This change only affects medium and large private sector organisations with a UK connection as there is a ‘small company’ exemption.



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SMALL COMPANY EXEMPTION

If you are a 'small' company , the responsibility for making the status determination remains with the Limited Company contractor (PSC).

Your company qualifies as 'small' if two of the following conditions apply for two consecutive financial years:

- | | |
|------------------------|-----------------------------|
| 1. Annual turnover | Not more than £10.2 million |
| 2. Balance sheet total | Not more than £5.1 million |
| 3. Number of employees | Not more than 50 employees |

Small company exemption applies to the end client, not the Agency (fee-payer) or the PSC.

LOCATION

If you are a medium or large-sized private sector client and are based wholly overseas, with NO UK entity, the worker's limited company (PSC) will remain responsible for deciding the contractor's employment status and whether IR35 applies.



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DUTY TO CONFIRM SIZE

Agencies or PSC's can ask you to confirm your company size if they meet the following conditions:

- The worker personally performs, or is under an obligation to perform services for you;
- You are not a public authority; and
- The services are provided under arrangements involving a third party ('the intermediary;') and not under a contract directly between you and the worker

You must respond to size-related information requests for the relevant tax year within 45 days.

GROUPS

Where your company is part of a group, the size will be determined on your parent company.

You will qualify as 'small' in your first financial year following incorporation, even if you are part of a group. You will remain small until the beginning of the first tax year



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DETERMINING WHETHER AN ASSIGNMENT IS INSIDE OR OUTSIDE IR35

You should refer to the HMRC guidance and the employment status for tax (CEST) tool. Although much criticised, the tool does give you a good steer of the approach taken by HMRC and the indicators that they are looking for.

You must provide a Status Determination Statement to Next Phase, showing the outcome and the reasons for the outcome, if you do not want to be the 'Deemed Employer' with tax/NICs liability. We will email you a request to do this, with an additional form once you have instructed us to work on a role for you. We ask that this is done as soon as possible to ensure we approach the right candidates for the role and that we issue the correct contracts to all parties.

Legally, however, this must be done by the date of the first chain payment to be made by you for the PSC's services.

'Reasonable care' must be taken in coming to this decision.

During an assignment you need to regularly check the existing determination to ensure it remains accurate – this is an indicator of taking reasonable care.



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TAKE 'REASONABLE CARE' FOR OUTSIDE IR35 ASSIGNMENTS

When you make the status determination that an assignment is 'outside IR35', you will need to feel comfortable that 'reasonable care' was taken during the decision making and that the decision itself is reasonable. In the event that HMRC finds your 'outside IR35' determination to be incorrect, the liability will sit with the fee payer (typically the recruitment business). If you do not exercise reasonable care however, you will be liable as the deemed employer.

The liability will pass down the supply chain once each party fulfils its obligations to pass the status determination statement to the next party in the chain. The fee payer is likely to do its own reasonable due diligence on your status determination to consider whether its in line with the likely factual reality of the assignment and that it is not a contrived arrangement. The fee payer is not compelled to abide by your status determination statement



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STATUS DISAGREEMENT PROCESS

The worker or deemed employer can make representations that the status is incorrect at any time up to when the final chain payment is being made for an engagement. You must give a statement to the worker or the deemed employer (depending on who made the representation) that either SDS is correct with reasons or give a new SDS, stating the date from which you consider that the conclusion in the new SDS became correct and stating that the previous SDS is withdrawn. The deemed employer is deemed to have received the reply from the person above it in the chain of supply.

You have 45 days beginning with the date you receive the representations to respond.

‘INSIDE IR35’ ASSIGNMENTS

If you determine that an assignment is ‘inside IR35’, the only payment options for the contractor, with Next Phase are:

Umbrella Company (outsourced employer)

As the umbrella company employs the worker directly, the off-payroll working rules do not apply.

All the Umbrella companies on Next Phase’s ASL undergo rigorous compliance checks and are members of APSCo and or FSCA accredited.



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‘UNDETERMINED’ ASSIGNMENT STATUS

If the IR35 status of the assignment is unclear, you will need to get more information in respect of the working practises and redo any assessment. It is possible that some minor changes to working practices could give a clearer result. You should agree on an approach with your MSP or Next Phase Recruitment to minimise the number of status determinations that are challenged.



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KEY CRITERIA TO DETERMINING STATUS

SUBSTITUTION

For a substitution to be considered valid, the right to supply a substitute must be a genuine one. This means that you must agree to it in practice, the contractor must pay for the substitute, and it should be an unfettered right. An unfettered right of substitution means that you must accept a substitute if the initial contractor is unavailable.

CONTROL AND DIRECTION

Both the written contract and working practices must show that you had no influence over how the contractor performs their services.

FINANCIAL RISK

Contractors who do not take any financial risk, for example don't have to rectify poor quality services at their own cost, are more likely to be 'deemed employees' for tax purposes.

MUTUALITY OF OBLIGATION

It is an obligation between the parties to provide and accept work.



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DISCLAIMER

This document is intended to provide general information only and does not constitute advice. It is not an exhaustive and complete reference document on this subject.

Next Phase can take no responsibility or liability for the use of or reliance on the information contained within this document and you should always take separate professional advice.