

# your guide to the IR35 changes in the private sector

## what is IR35?

IR35 is the common name given to the intermediaries legislation. That is the legislation governing the tax status of individuals who provide their services through an intermediary such as a limited company (commonly known as a **personal services company** or a '**PSC**').

## how does IR35 work?

IR35 applies where the intermediary is not deducting PAYE income tax or national insurance contributions from the payments to the individual. IR35 asks the question, "would the individual be an employee of the end user if the intermediary was removed from the contract?". If the answer is yes, the intermediary company is obliged to make a deemed payment calculation which has the effect of treating the income as employment income.

## what is changing in April 2021?

New legislation being introduced is changing how IR35 applies in the private sector. The most significant change being the shift of responsibility to clients (end users) to determine the tax status of PSCs' engagements. This means that clients will now determine if PSCs are in-scope or out of scope of IR35, and they will do this by issuing a **status determination statement or SDS**. If they don't do it or if they get it wrong, they may be liable for unpaid taxes owed by the PSCs.

## why is it this happening?

Similar changes have already been implemented in the public sector in 2017. HMRC have considered them a success and have established three primary objectives for changing the legislation in the private sector:

- provide a better framework for assessing employment status;
- ensure that two individuals doing the same job are paying the same levels of tax;
- adapt to a rapidly evolving flexible labour market and emerging business models.

## who is affected?

The legislation applies only to **medium or large businesses**. There's an exemption for clients who are **small businesses** which means meeting two or more of the following criteria (if not part of a larger group):

- Annual turnover is no more than £10.2 million
- Balance sheet total is no more than £5.1 million
- No more than 50 employees.

Where the client meets two or more of these criteria, responsibility for determining the IR35 status of an engagement remains with the PSC and the changes do not apply. The client in this case will not be liable for any of the PSCs unpaid taxes.

## what to do next?

If your company is not classed as a small business, you'll have to use reasonable care to issue a status determination statement, communicating to the worker and to the agency (Randstad) the employment status of the engagement the worker will be performing.

## how to issue a status determination statement?

HMRC released the 'Check Employment Status for Tax' (CEST) tool in March 2017 with the aim of supporting the determination of the employment status.

[Click here for more details](#)

To use the tool you'll need to know specific details about the engagement of the worker, such as:

- a) will you allow for someone else (a substitute) provided by the PSC to perform the work during this engagement?
- b) do you have the right to decide how the work is done?
- c) do you decide the schedule of working hours and the work location?

### what to do with the status determination statement?

Once you have a status determination statement, the next step is to communicate it to the agency (Randstad) and to the worker directly. Make sure you retain copies of these records for at least 6 years.

### what if the engagement of the PSC is in-scope of IR35?

If the engagement of a PSC is deemed to be in-scope of IR35, Randstad will offer the PSC the following options:

- worker to be payrolled by Randstad under a contract for services on a PAYE basis;
- worker to engage with an umbrella company on our own PSL;
- PSC to be payrolled as a limited company contractor but with PAYE and National Insurance deducted at source by Randstad.

### what if the PSC challenges your status determination statement?

If a PSC challenges your status determination statement, according to the law, you have 45 days to respond to the PSC with the reasons of your decision. This does not mean that you have to reconsider your position, but you have to provide the reasons as to how you have arrived to your decision.

### other tools to assist you with the status determination statement

There are several other tools available in the market to assist you with your status determination statement. We believe some of them which are provided by reputable companies in the industry are accurate and useful, but none of them are backed by the HMRC and can guarantee you the right outcome.

### short summary flow

