



HM Revenue  
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Off payroll working in the public sector  
(sometimes known as IR35)

# Overview

- New Rules – going to give an overview of the main points
- Guidance – Where, when and how to get help
- Myth busting – Frequently Asked Questions / Stuff the press get wrong
- Compliance – enabling and helping those who want to comply but also tackling those not complying to create level playing field
- Questions – Chance for you to ask questions / have your say

# Useful Background

- Government does not believe that an individual's decision to work through a company should necessarily affect the amount of tax that they pay when they are remunerated for their work
- Legislation to stop individuals reducing their tax bill by working through a limited company has been in place for more than 15 years
- Before the reform only around 10% of people who should comply with these rules actually did so
- Non-compliance is estimated to cost the Exchequer more than £700 million each year
- Changes do not introduce a new liability, but are designed to ensure that the current rules are applied as intended



# New Rules – Chapter 10, Part 2 ITEPA 2003

Chapter 8 Part 2 ITEPA 2003 (old IR35 rules) does not apply for engagements in the public sector:

Where:

- the worker's services are provided to a public authority (public authority as defined by reference to the FOI and FOISA Acts including their relevant schedules)
- the worker personally performs services or is under obligation to perform services for another person ("the client")
- the services are provided through an intermediary (typically a personal service company)
- the person provides those services to the client in a way that, but for the existence of the intermediary, the person would have been an employee of the client



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# New obligation to help the agency or third party

- If there is an agency or third party sending the worker to the public authority, the agency or third party has to operate the Chapter 10 rules
- FB 17 Chapter 10 Part 2 ITEPA 2003 requires the public authority client to tell the agency or third party if the public authority engagement is within the off-payroll working rules
- The public authority must exercise reasonable care
- The Check Employment Status for Tax (CEST) Service, IR35 Helpline, ESM guidance and Customer Relationship Manager (CRM) can help the public authority decide whether the rules apply. Not mandatory to use our guidance but most do.
- “Blanket decisions” can decide a particular group are similar – but must exercise reasonable care – based on sound reasoning.



# New rules - Consequences for the Fee-payer if rules apply

- If the rules apply, then the person paying the fee, the public authority, agency or third party, has to deduct tax and NICs (and if meeting threshold) pay the Apprenticeship Levy as if the worker were their employee
- Fee-payer has to report via Real Time Information
- Tax and NICs system operates exactly as for employee
- Only a tax obligation – so no SSP/ SMP, no auto-enrolment or occupational pension obligation on the agency
- Special rules for “offshore” payers – comes back up the line so you need to understand the supply chain.



# New rules – the tax and NICs

Operate Tax and NICs on the VAT exclusive fee

Can agree to allow expenses

Can exclude materials

Deems this amount to be employment income and earnings – account for it as if the person were an employee:

BR code initially – complete starter C declaration – HMRC can issue a code.

Account via Real Time Information reporting as if an employee – joins up to our systems.



# Impact on the worker's own company

Not double taxed because worker's own company gets a statutory amount equivalent to the deemed amount of employment income – it can set that against employment and dividend income from the company

Can continue to claim tax relief on pension contributions

Can claim SSP and SMP via own company



# Where the new legislation does not apply

- Contract would have been self-employed
- Agency or umbrella company employs the worker directly (no PSC)
- Whole service contracted out into private sector not involving worker providing services ( i.e. provision of a Health Care Centre (building, service, consumables, staff) – not staff for the Health Care Centre)



# NHS

- Hard to see hospital doctors and nurses not being subject to control and cannot be substituted. Would expect tool to give “employed outcome”
- GPs – (traditionally self-employed) depends on contractual arrangements - mixed picture – often comes down to financial risk and degree of control
- All office holders are inside the rules
- Some structures outside this reform – contracted out whole service to private sector providers
- Senior administrators – office holders



# Check Employment Status for Tax service (CEST)

- Replaced Employment Status Indicator tool
- Series of questions to help you decide if the contract is one that would have been employment or self-employment (inside or outside IR35)
- Will also tell you about employment status
- Now our main way of giving guidance
- Binding on HMRC if you use it for off-payroll and you have input in accordance with our guidance
- Developed with customers
- More than **450,000** uses to date
- 85% of the time it gives an answer (15% unable to determine)
- IR35 Helpline if you cannot get an answer **0300 123 2326** [ir35@hmrc.gov.uk](mailto:ir35@hmrc.gov.uk)



# Useful Publications

## Legislation

[http://www.legislation.gov.uk/ukpga/2017/10/pdfs/ukpga\\_20170010\\_en.pdf](http://www.legislation.gov.uk/ukpga/2017/10/pdfs/ukpga_20170010_en.pdf)

Schedule 1 Freedom of Information Act 2000 sets out the public authorities <http://www.legislation.gov.uk/ukpga/2000/36/contents>

HMRC has published guidance about the legislation here:

<https://www.gov.uk/guidance/ir35-find-out-if-it-applies>

<https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-for-fee-payers>

<https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-personal-service-companies>

<https://www.gov.uk/guidance/ir35-what-to-do-if-it-applies>

<https://www.gov.uk/guidance/how-to-calculate-the-deemed-employment-payment>

<https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation>



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# Myth busting

- Substitution clauses
- Professionals – control
- Financial risk – indemnity insurance
- Materials / financial risk – tools are not a laptop or stationery or a stethoscope
- Contracted out services
- Worker commits fraud
- Contractor loans / describing the fee for services as something else



# Marketed Schemes

- Major accountants and commentators not touching
- Intelligence – so aggressive we have been passed most
- Closely monitor
- The ones we are seeing look more like non-compliance than avoidance
- Compliance effort – this is a priority – current programme in health sector
- Clients obliged not to be involved – checking the supply chain / HMT Fines





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Questions - Thank you