
WEBINAR FAQs

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What are the responsibilities of End-Hirers and Fee-Payers?	Under the legislation it is the responsibility of the End-Hirer to assess the IR35 Status of Off-Payroll Workers and communicate that determination, in the form of a Status Determination Statement to the Off-Payroll Worker and Fee-Payer. The Fee-Payer is the entity closest to the Off-Payroll Workers Limited Company and will be responsible for making deductions for PAYE and NIC's if the Off-Payroll Worker is deemed Inside IR35.
Would you recommend adding an IR35 clause to contracts when working with clients/suppliers?	All supplier contracts will need to be reviewed and updated in accordance with the new Off-Payroll Working Rules to set out each party's new responsibilities and outline the process for those off-payroll Workers Inside IR35 and those deemed Outside IR35.
Does it matter if we are paying the Limited Company directly (no agency involved)?	No, it just means that you will be the End-Hirer and the Fee-Payer and therefore responsible for undertaking the IR35 Assessment and ensuring deductions for PAYE and NIC's are applied before paying an Off-Payroll Worker who has been deemed Inside IR35.
How do I ensure I fall outside IR35 on all contracts?	Limited Company Contractors will not be able to ensure that they fall Outside IR35 on all contracts as it is the End-Hirers responsibility to undertake the assessment, however post April 2021 roles will be advertised on an Inside or Outside IR35 basis, therefore you can choose which roles to apply for.
We hire lots of self-employed people (musicians/media technicians) and they are not Ltd companies. Does IR35 apply?	If they are sole traders (non-incorporated) then no, the new Off-Payroll Working Rules will not apply however IR56 may apply which is similar legislation that came into effect in 2014.

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<p>What constitutes a small company?</p>	<p>The new rules will not apply to small companies as defined by the Companies Act:</p> <ul style="list-style-type: none"> • Annual Turnover of less than £10.2 million • Balance sheet total less than £5.1 million • Number of employees less than 50 <p>If an End-Hirer satisfies two of the above requirements, then the Off-Payroll Rules will not apply. This test needs to be applied to a group of companies not individual or smaller companies as part of a group of companies. In the End-Hirer is a Small Business, the Limited Company Contractor will remain responsible for determining the IR35 status.</p>
<p>How does the SDS fit with the CEST assessment - does the CEST supplement/inform this or is there a separate document that must be produced?</p>	<p>The Status Determination Statement is a document which confirms the status of the role along with supporting information around how this determination has been reached. The output from CEST constitutes an SDS but is limited in detail and there are well documented issues with the tool in general as it doesn't consider one of the key IR35 indicators (mutuality of obligation) and in some instances it is unable to reach a determination.</p>
<p>Where does IR35 stand for contractors working outside the UK for a UK company, do they still need to comply?</p>	<p>If the contractor is non-UK resident and outside the scope of UK tax, then the Off-Payroll Working rules will not apply. However, it is prudent to seek specialist advice in this area as the tax residency rules are complex.</p>
<p>Do SDS's need to be done via CEST or would products like IR35 Shield still show 'reasonable care' has been taken?</p>	<p>No, IR35 Assessments and SDS do not need to be produced by CEST and many organisations have opted not to use CEST due to concerns around reasonable care. There are numerous tools/services available to End-Hirers some of which have question marks around reasonable care as they are automated or require the Contractor to complete an IR35 questionnaire.</p>
<p>As CEST is online tool, it will give you instant decision. What are your turn around times for manual reviews? e.g 50 plus?</p>	<p>Typical SLA is between 24-72 hours, from being in receipt of all required information and we will always provide a determination, whereas CEST often states 'Unable to Determine'. We will also provide consultancy advice allowing more roles to be classified as Outside IR35.</p>
<p>Is the the determination based on the end client or the contractor?</p>	<p>It is the End-Hirers responsibility to undertake the assessment and demonstrate reasonable care in doing so.</p>
<p>IR35 has been delayed once because of the pandemic, am I right in thinking the chances of this legislation not going live this April are very minimal?</p>	<p>Yes, the legislation is due to come into effect in April 2021 and we have been given information which states this is very likely to happen.</p>

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What is your take on Statements Of Work which is being pushed as the best solution to get around IR35?	If done correctly then they are a legitimate and valid way of working. If it has been created as a way to solely get around the new Off-Payroll Working Rules, then that creates a risk for End-Hirers. Any new SoW arrangements that End-Hirers enter into should be reviewed in detail and treated with caution and any pre-existing SoW arrangements should also be reviewed to ensure it is truly a contracted-out service and each party is aware and comfortable with its new risk and obligations.
Just to be clear, if a contract passes the 3 tests outlined - employer has control, specific service from identified contractor, mutually obliged to work/pay - is that INSIDE IR35 or OUTSIDE?	If an Off-Payroll Worker is required to provide a personal service, is controlled over how, when and where they work and is obliged to do all tasks asked of it, then it is the role will be deemed Inside IR35.
How is best to prepare for IR35 prior to April 2021.	Start early and before the end of 2020. You will need to understand which Off-Payroll Workers fall Inside IR35 and those who are Outside IR35 well in advance of April 2021 and can only do so by undergoing an IR35 Audit. That will leave enough time to make adjustments to contracts, working practices and how Off-Payroll Workers are engaged before communicating determinations.
Has there been any notable changes to the legislation, following the postponement?	There are no major changes to the legislation following the postponement. The postponement however has allowed HMRC more time to produce and release guidance in relation to Statement of Works arrangements and Overseas Contractors/End-Hirers but the legislations remains largely the same.
What approach other organisations are taking to comply with IR3, are many businesses adopting blanket bans or determinations?	Blanket determinations do not constitute reasonable care and therefore if End-Hirers opt to take that approach, they are still exposed to paying PAYE, NIC's, penalties and interest, even if the tax has already been paid to HMRC by another business entity. Some organisations have chosen to not engage with Limited Companies but that does limit the type of people/contractors that the organisation can attract. Therefore the best approach is to review each role on its own merit.

IF YOU HAVE ANY FURTHER QUESTIONS OR WOULD LIKE TO
UNDERSTAND MORE ABOUT OUR SERVICES,
WE WOULD LOVE TO HEAR FROM YOU.



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