



The way ahead

IR35: Changes to off-payroll working

The IR35, or “off-payroll working”, rules require that contractors and freelancers who work like employees, but through their own company, broadly pay the same income tax and National Insurance as other employees.

From 6 April 2020, the IR35 rules are changing and medium and large-sized private sector organisations will have significant new responsibilities.

Where a worker personally performs services for such organisations and those services are provided through an intermediary (such as the worker’s personal services company), the organisation must:

- decide whether the worker would be regarded as an employee for income tax purposes, if the services were provided directly by the worker to the organisation
- communicate this decision to the worker and the organisation which the organisation contracts with for the worker’s services
- adopt a process to address any status disputes

If the organisation pays the intermediary directly, it must also deduct and pay employment taxes to HMRC. IR35 non-compliance may result in the organisation incurring tax liabilities where it is not already liable.

How we can help

Examples of the types of support that we provide to clients include:

Stakeholder communications	Support with communicating the changes to the management team, stakeholders, current contractors and agencies
Audit	Assistance with all aspects of an internal audit of individuals currently engaged, including checklist of relevant factors
IR35 status determination	Advice on the risk profile of individuals engaged and likelihood of IR35 rules applying to different roles and engagements
Employment status	Assessing the separate risk of contractors having employment rights, such as unfair dismissal
Current contracts	Advice on existing contractual terms, including potential to amend or terminate
New contracts	Advice on new contractual terms, including drafting indemnities
Internal policies and processes	Review existing processes for the supply of labour and propose changes, including new template policies and documents
Supply chains	Risk assess labour supply chains and advise on contractual terms including indemnities and information sharing
Future engagements	Strategic advice on ongoing use of contractor roles or redesign of supply models and how to apply to future engagements
Training	Staff training on key IR35 changes, including making status determinations

What we do for clients

We have significant experience of advising clients across all sectors on their IR35 projects. We have a dedicated IR35 Working Group, consisting of specialist lawyers (including Employment, Tax and Commercial Contracts specialists, together with dedicated professional support lawyers) working across all our UK offices.

While each client is different, we can help with: implementing a new off-payroll working policy; training staff to understand the new responsibilities and risks; auditing existing contractor arrangements to determine whether deemed employment status exists; putting in place a suite of documents and processes to deal with IR35 (such as the status determination statement and status disagreement process) and, reviewing supplier and other contracts to address IR35 compliance and risk.

Our recent work in this area includes assisting:

- a large insurance firm with its IR35 project, including preparation of a bespoke audit questionnaire and preparation of a presentation pack for key internal stakeholders
- a leisure sector organisation on a review of their existing contractors and design of status determination and appeal processes and standard template
- a leading retailer on the amendment of their commercial 'master vendor' agreement to anticipate IR35
- a global construction company on the update of its recruitment services agreement with a leading staffing company
- a FTSE 100 company on its commercial framework agreements for specialist contractors
- a large UK pension fund on the application of IR35 and strategic advice on risk from a tax, operational delivery and employment status perspective

For further information, please contact:



Mark Hammerton
Partner

T: + 44 161 831 8444
M: + 44 739 228 1276
markhammerton@eversheds-sutherland.com



Kelly Holmes
Partner

T: + 44 121 232 1234
M: +44 792 057 6455
kellyholmes@eversheds-sutherland.com



Amanda Dodsworth
Legal Director

T: +44 113 200 4007
M: +44 739 325 4346
amandadodsworth@eversheds-sutherland.com

eversheds-sutherland.com