



HM Revenue  
& Customs

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

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# Overview

- What are the rules – an overview of the main points
- CEST
- Guidance – How do you decide if the worker is within the scope of the off payroll rules
- Frequently Asked Questions



# 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



# 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



# Check Employment Status for Tax service (CEST)

[www.gov.uk/guidance/check-employment-status-for-tax](http://www.gov.uk/guidance/check-employment-status-for-tax)

- 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)



# How does the CEST tool work?

It is based on tax case law, deciding if you are taxed as an employee or taxed as self-employed depends on tax law rules. So the tool asks the kind of questions a judge (or tax inspector) might ask about the way you work, questions taken from case law, and then tells you if you are employed or self-employed for tax.

HMRC are so confident in it, that for purposes of the intermediaries legislation, providing people complete it in accordance with their guidance, HMRC will stand by the answer.

The timing of HMRC's launch of the service at the same time as law reforming the intermediaries legislation in the public sector means that critics of IR35 have lobbied hard against the new service



# What happens if I cannot determine a workers status using the CEST tool?

Need to step back and look at the overall picture.

After considering factors such as the 'right of control', substitution, financial risk, mutuality of obligation, provision of equipment am I able to make an informed judgement.

What status are workers who have a similar role?

If you are still not sure then contact HMRC.

HMRC has a helpline that is just for this issue.

IR35 Helpline 0300 123 2326



# How do you decide if the worker is within the scope of the off payroll rules

- Mutuality of obligation (Moo)
- Substitution clauses
- Right of control
- Financial risk – indemnity insurance
- Materials – tools are not a laptop or stationery
- Contracted out services
- Contractor loans / describing the fee for services as something else



# 'Mutuality of obligation' (Moo)

There is no 'mutuality of obligation' in my contract therefore I am self-employed.

It doesn't make me self-employed. There is 'mutuality of obligation'.

You are employed for a period of a shift or shifts in which you work and are paid for that. You are obliged to complete your shift yourself. All the ingredients of 'mutuality of obligation' necessary for a contract are present.



# Substitution

“I can send a substitute” .

Tax legislation Chapter 10 Part 2 ITEPA 2003 operates where an individual personally provides services to the client.

All agreements are personal between the client and the worker covering that named individual. Individuals are not allowed to send a substitute.

An agency being able to send a substitute of one worker engaged through a PSC for another worker on its books does not mean there is no requirement for a personal service.

Legislation is concerned with whether the WORKER sends a substitute.



# Right of control

Does the worker decide

What work they do?

When they do it?

Where they do it?

Or

How they do it?

If the answer is 'no' to most of these questions they are likely to be within the scope of the off payroll rules.





# Length of contract

I am self-employed as it is a short term contract. The duration of the contract does not make me employed or self-employed.



# Materials and equipment

Equipment – This refers to a large piece or pieces of equipment.

A laptop, stationery, clothing or even the car you get to your contracted place of work are not part of your equipment.



# Frequently Asked Questions

## **Would a screenshot of the CEST report show that a council has taken reasonable care?**

It will go a long way to doing so, although you need to have taken reasonable care, ensuring answers are accurate and in line with the guidance.

## **If the worker is an ‘office holder’, are they within the scope of the rules?**

Office holders are automatically deemed to be within the off payroll rules.



# Frequently Asked Questions

## **Does the off-payroll (IR35) legislation still apply to an individual who is self-employed/ working as a sole trader?**

Off-payroll (IR35) does not apply unless there is an intermediary e.g. a Personal Service Company (PSC) through which a person offers their services. It does not apply to self-employed individuals. This does not mean that you should not consider your employment status when agreeing a contract.

## **Is there a double charge for employers' National Insurance? The fee payer will pay and the PSC would also pay on the salary paid to the individual.**

No. If the PSC falls within the off-payroll rules then the public body, umbrella or agency deducts the employer's NI along with other taxes and pays the PSC a net amount. If the individual in the PSC is genuinely self-employed then there will be no PAYE, employee NI or employer's NI deducted.



# Common Statements

## **Public sector organisations have faced contractors walking out, and the subsequent delay of crucial projects**

HMRC has seen no evidence of significant impact on attrition rates of contractors working in the public sector

## **The CEST tool is hardly being used and often does not determine status**

The CEST service has been used more than 450,000 times already, and public sector organisations are using it routinely.

‘CEST provides a result in 85% of cases, and for the 15% of complex cases where a result is not provided, we have advisers available to talk through the issues.’



# 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>



# Any Further Questions?

