

IR35 off-payroll working legislation: frequently asked questions

In this whitepaper we are going to answer some of the questions we've been getting asked as companies begin their preparations for April 2021.

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what is off-payroll working legislation?

Currently, in the private sector contractors who operate via their own personal service company make their own decision in respect of whether they are inside or outside of IR35 tax legislation. Those who decide they are outside IR35 believe they are effectively self-employed and in control of their work. They pay themselves dividends from the assignment income and therefore save significant amounts in tax and national insurance.

Those inside IR35 have most of the assignment income subject to PAYE taxes. From April 2021 hirers, your end clients, will be responsible for making the IR35 employment status decision and will therefore be liable for any wrong status decisions.



how do my clients ascertain whether an assignment is outside IR35?

After undertaking a worker audit, the first phase of any review is to look at the contract and working practices to see whether they are akin to a self-employed worker or an employee. It would be advisable to then see what decision the HMRC online tool, CEST, provides on an assignment. HMRC guidance says that if the information was input correctly, they will stand behind the decision made by the tool. There are independent reviews sometimes backed by insurance policies. These need to be looked at carefully to understand the supplier's motivation behind the review and whether the insurance policy is effective and does not bring them into the managed service company legislation, which has very severe consequences for the company and its directors.



what are your options for assignments caught by IR35?

Essentially your candidate needs to be engaged via a PAYE solution. Typically this takes the form of an engagement by an umbrella company or PEO.

In certain instances, the candidate wants to continue using their personal service company even though they are caught by IR35. If your end client allows this, as the fee payer you will be responsible for deducting the appropriate amount of tax and national insurance before paying the net amount to the candidate's limited company. It is very important to ensure you use a credible supplier so that liability does not fall back on your end clients.



what can we learn from the public sector rollout?

Off-payroll working legislation was brought into the public sector in April 2017. The vast majority of assignments were deemed by the public bodies to be caught by IR35 and therefore most workers began to pay tax under PAYE. HMRC, unsurprisingly, deemed the rollout a huge success.



about giant

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The logo for Giant, featuring the word "giant" in a stylized, outlined font. The letters are interconnected and have a 3D, blocky appearance.