From 6 April 2020, medium and large-sized private sector clients will be responsible for deciding if the 'off-payroll rules' apply in relation to workers who provide their services to an end client through an intermediary (e.g. a personal service company). This will bring medium and large-sized private sector clients in line with public sector clients, who have needed to make this determination since 6 April 2017.

What is IR35?

IR35 refers to off-payroll working rules, which are particular tax-avoidance rules that apply where a worker provides their services to an end client through an intermediary.

IR35 refers to the anti-avoidance tax legislation that applies where an individual worker provides services to an end client through an intermediary, such as a personal service company (PSC) or a partnership, in circumstances where the individual would if they were contracted directly:

- for income tax purposes, be regarded as an employee or an office-holder of the client; and
- for National Insurance contributions (NICs) purposes, be regarded as in employed earner's employment by the client.

What is changing on 6 April 2020?
Currently, in the private sector, it is the intermediary’s responsibility to decide an individual’s employment status for tax and national insurance purposes. However, from 6 April 2020, medium and large-sized private sector clients will be responsible for deciding if the off-payroll rules apply. This will bring medium and large-sized private sector clients in line with public sector clients, who have needed to make this determination since 6 April 2017.

If the off-payroll rules do apply, the fee-payer (often, but not always the end client) will deduct income tax and National Insurance Contributions (NICs) at source before making the payment over to the intermediary for the individual’s services.

For more information on the background to this change, and for what constitutes a large or medium-sized company please visit our insight [IR35 private sector reform: get ready for April changes](#).

**If the off-payroll working rules apply, will the end client have to automatically enrol the individuals into a workplace pension scheme?**

This is unlikely. The substantive change in April 2020 is that instead of the individual contractor (via their personal services company) having responsibility for determining their own employment status for tax purposes, the responsibility for making that determination shifts to the client orhirer.

In theory therefore, assuming the individual’s determination of their tax status was correct, nothing should really change other than the determination will now come from the client/hirer.

Furthermore, the off-payroll working rules determine an individual’s employment status for tax purposes, but not employment purposes. If a medium or large-sized organisation determines that an individual is a worker to whom the off-payroll working rules apply, it does not therefore follow that they are a worker of employee of the client for employment purposes and in respect of workplace pension reform. The intermediary may well remain the individual's employer responsible for their holiday and sickness benefits as well as their pension contributions.

There is no direct link between employment status for employment law rights and employment status for tax purposes.

This is supported by the HMRC guidance and government comments to date.

**So as the client / hirer we don't need to worry**
about potential pension costs as a result of the rules changing around IR35?

Not quite. HMRC is yet to publish its full guidance on how this will all work in practice.

Clients who use the services of contractors supplied via an intermediary will be much more heavily involved in determining the employment status of those contractors for tax purposes.

There is theoretically therefore a heightened risk that contractors could then challenge their employment status on an employment as well as a tax level. No single test applies to determining an individual's employment status under both the tax and employment case law - it is a multi-factorial test.

However, the tax status would be one of a number of factors to be taken into account. Were an individual to successfully argue that they were a 'worker' or 'employee' of the end client for employment legislation purposes, then the end client could be on the hook for certain employment and pension costs in respect of that individual, including backdated contributions. The cost of providing pension benefits could be significant if this were the outcome.

Additionally some clients/hirers may seek to renegotiate the arrangements they have with contractors, making them direct hires for example so they don't need to issue status determinations. Where clients /hirers do this, they should be aware of the pension consequences of doing so and the fact that automatic enrolment obligations would then apply to them as the employer of the individual in question.

What should clients do to prepare?

Clients should consider the potential pensions outcomes of the preparation and due diligence and contract reviews they are doing to prepare for the changes in April 2020 more widely.

As set out above, clients who are considering hiring contractors directly as a result of the changes, and negotiating pay and benefits as a way of managing the changes should ensure they are fully aware of any pension implications of the action they are taking.

Finally, in the event that IR35 discussions open up wider discussions or disputes about employment status from an employment law perspective (rather than a tax perspective), organisations should be aware that in settling any such disputes, legislation on automatic enrolment prevents the employer from contracting out of their workplace pension reform obligations. Again, this is therefore an area that would need to be handled with care.
More information

This Insight provides information on the pension specific considerations around the changes to IR35 in April. For more information on the changes more generally and the tax and employment position please visit our other IR35 Insights:

- IR35 - What's new and what to do
- IR35 private sector reform: technical consultation launched
- IR35 private sector reform: get ready for April changes.

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