

IR35 OFF PAYROLL



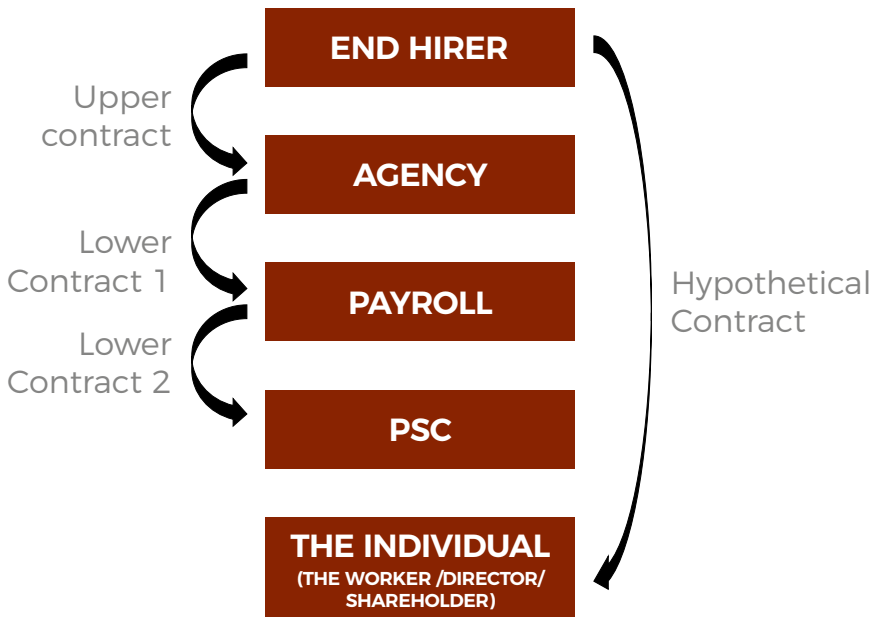
ship shape

What is IR35?

- “IR35” - release number 35 from Inland Revenue in 1999. Now referred to as ‘intermediaries legislation’ or ‘off payroll’
- Workers operating through single person Limited Companies (PSCs) enjoy higher take-home pay (lower tax on dividends) and End Hirers avoid Employee costs (e.g. ErNI)
- IR35 is tax legislation that is designed to combat tax avoidance by workers supplying their services to clients via an intermediary, such as a Limited Company, but who would be an employee if the intermediary was not used. Such workers are called ‘disguised employees’ by HMRC
- Previously (and currently within the private sector) each single person Limited Companies is responsible for assessing if their contract is inside or outside IR35

Rules For PSCs In The Public Sector

IR35 acknowledges there is no direct contract between the End Client and the individual however seeks to determine what the hypothetical contract would be if that relationship were to exist (in the absence of any intermediary).



New IR35 Rules For PSCs In The Public Sector

Legislation

- Contractor (and advisors) determine whether the relationship is a contract for service or disguised employment
- Prove a lack of Personal Service, Mutuality of Obligation, right of Control
- Contract must be a true reflection of actual working conditions
- The PSC is responsible for any unpaid tax and NI not the engager / End Hirer
- 2014 - HMRC revealed that it believed that only 10% of PSC's that should apply the legislation actually do so
- Cost of non compliance set to increase from £700 million in 2017/18 to £1.2 billion in 2022/23
- Number of PSC's increased from 250,000 in 2000 to over 1 Million in 2015

Off-Payroll Updates

- Moving the responsibility for deciding the “Off-Payroll” rules to the public authority or End Hirers
- Chain payment to the intermediary with the fee payer being the lowest person in the chain
- IR35 status decision removed from the PSC
- The End Hirer or Public Sector body must inform the intermediary if caught by IR35 or not
- Decision must be notified before the start of the contract
- Written requests must be replied to within 31 days
- Failure to comply – the End Hirer becomes liable

IR35 For PSCs

Personal Service

- Individual is required to provide the service personally
- Individual is not able to send a substitute
- Outside IR35 contract to contain – right to provide a substitute (not offer), PSC to remain in the contractual chain, PSC is responsible for any handover
- Agency or Client has the right to refuse a substitute on the grounds of skill, experience, qualification and maybe security but no more

Mutuality of Obligation - MOO

- Refers to the obligation of an employer to provide work and pay for it, together with the obligation of the employer to personally do the work
- Mutuality within the engagement - Expectation that the engagement is seen through to the end
- Ideally the obligation exists, ongoing and within the contract. Reference MBF Design Service Ltd vs HMRC (2011)

Control

- The 'what', the 'where', the 'when', the 'how'
- The HMRC would like to argue the importance of the 'what', the 'where', the 'when' but project-based work at an office in a specific time frame is common place
- The 'how' needs to be free from client control - responsible for the method of the performance of services as stated in the contract must be managed by the PSC

Application in the Private Sector

Confirmed for April 2020

Why IR35 reform will be rolled out:

- HMRC estimates the public sector reform has raised £410 million
- HMRC research suggests that there has been no negative impact on; recruitment into the public sector, administration burden, cost of contracts, loss of workers
- Check Employment Status for Tax service (CEST) is up to the job giving an answer in 85% of cases
- Figures released by the Treasury estimate the change is set to bring in a peak of nearly £1.2 billion in 2020-21. It drops in the years following, with an estimated low of £595 million in 2021-22 as “taxpayers shift their tax structure to mitigate tax changes”
- Between 2020 and 2024, in total the reform will still bring in £3.1 billion for the Treasury

Inside or Outside IR35?

Contracts

- No contractual terms to suggest control
- Ensure all contracts in the chain comply, along with the understanding of the working practices outside of IR35
- Contractor contracts to show risk, end dates, fixed price, project based assignments

Disguised Employment

- Contractors to be treated differently to employees (flexible working, PSC provides own training, rectifying work at PSC cost, financial and legal risk)

Substitution

- Not only having the contractual ability for the PSC to supply a substitute but actually accept them and documenting proof of this

PSC Due Diligence

What does a PSC need to do to support a claim outside IR35?

- Contract reviews
- Ensure the client and agency support IR35 status
- Provide and document that the PSC is not an extension of the company's employees
- Provide and accept differentiation of employees
- Additional work, additional contracts
- Pay for public liability insurance
- Pay for your own training
- Work for multiple clients
- Advertise your business and services

Check Employment Status for Tax (CEST)

Use the HMRC online tool to check whether

- Intermediaries legislation (known as IR35) applies to an engagement
- Off-payroll working in the public sector rules apply to a public sector engagement
- A worker should pay tax through PAYE for an engagement

The HMRC will stand by these results unless there is evidence of deliberate non-compliance

IR35

A Simple Test

- Does the PSC have to do the work themselves?
- Do they work contracted hours?
- Does the client have the right to move their task, location, working practices?
- Does the client have control over the how, when and where?
- Do they get paid overtime or bonus?
- Are they treated like an employee?

If the answer is YES –

IR35 is likely to apply

- Can the PSC provide a substitute?
- Do they provide their own equipment?
- Are they responsible for their own training and industry accreditation?
- Does the PSC work for multiple clients?
- Does PSC fix their work in their own time at their own expense?
- Is the PSC in control of the how, when and where?
- Do they have commercial or legal risk?

If the answer is YES –

IR35 is not likely to apply

Ship Shape Solutions

- Ship Shape can offer advice to all Agencies / End Hirers and contractors on the best payment method
- Low cost Ship Shape Accounting services
- Ship Shape Accounting offers IR35 Flex free Umbrella payroll when the contract is deemed to be inside IR35
- Low cost Umbrella services
- PAYE outsourcing for Agencies and End Hirers who may see increased employment responsibilities



ship shape

020 7706 5200

www.shipshapepay.com

www.shipshapeaccounting.com