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Guide to understanding the reforms to the IR35 rules in the private sector

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What is IR35?

The off payroll working rules – commonly known as IR35 – were introduced in 2000 to crack down on the problem of tax avoidance through "disguised employment". Disguised employment is where a worker supplies their services to an end user client (**client**) via an intermediary (usually a personal service company controlled by the worker) to benefit from the tax treatment afforded to contractors, when, in fact, they are employees (or office holders) for tax purposes.

The IR35 rules sought to tackle this problem by requiring the intermediary to determine whether the worker would be deemed an employee (or an office holder) of the client for tax purposes if there was a hypothetical direct contract between them (the **status determination**). Where a worker *is* deemed to be an employee (or an office holder) for tax purposes, then the intermediary must tax the worker as an employee. This means they must operate payroll, deduct income tax and employee National Insurance Contributions (**NICs**) and pay employer NICs on the fees received for the worker's services.

Why are the IR35 rules changing?

The problem with the regime is that the responsibility for making the status determination rests with the intermediary. In practice, this means that the worker – with a vested interest in *not* being an employee (or an office holder) for tax purposes – is assessing his or her own tax status. The client in the equation has no role in the process and no potential liability.

A review by HMRC revealed that compliance was extremely low and tax avoidance was still commonplace. Accordingly, in 2017, the Government rolled out two key changes to the IR35 rules in the **public sector** which removed the intermediary's role in the process. First, responsibility for making the status determination shifted to the client. Second, if the worker was deemed to be an employee (or office holder) for tax purposes, the obligation to deduct income tax and employee NICs and to pay employer NICs shifted to the person immediately above the intermediary in the contractual chain (the **fee payer**).

BDBF can help businesses and contractors prepare for the new regime. Please contact Amanda Steadman or your usual BDBF contact for further advice.