

OFF-PAYROLL WORKING

ARE YOU GETTING IR35 RIGHT AND ARE YOU READY FOR AN HMRC INSPECTION?



Private and public sector employers have been obliged to operate the Off-Payroll Working rules for IR35 for several years now. As a reminder, HMRC expect all medium and large-sized private businesses and public sector organisations to have implemented robust practices, processes, and policies to assess the tax status of all Off-Payroll Workers, issue Status Determination Statements (SDS) to each worker and deduct PAYE and NIC where appropriate.

We have seen increased compliance activity from HMRC with information gathering through Employer Compliance and BRR+ reviews, changes to the Employment Status Manual, new 14 sections of guidance to help businesses understand what HMRC considers good practice and updates to HMRC’s CEST tool reflecting recent case law. All this indicates HMRC are gearing up for IR35 and wider off payroll labour inspections. We saw a similar approach in the public sector: after relatively low enforcement activity in the first couple of years, there were suddenly several high-profile cases with substantial PAYE/NIC arrears.

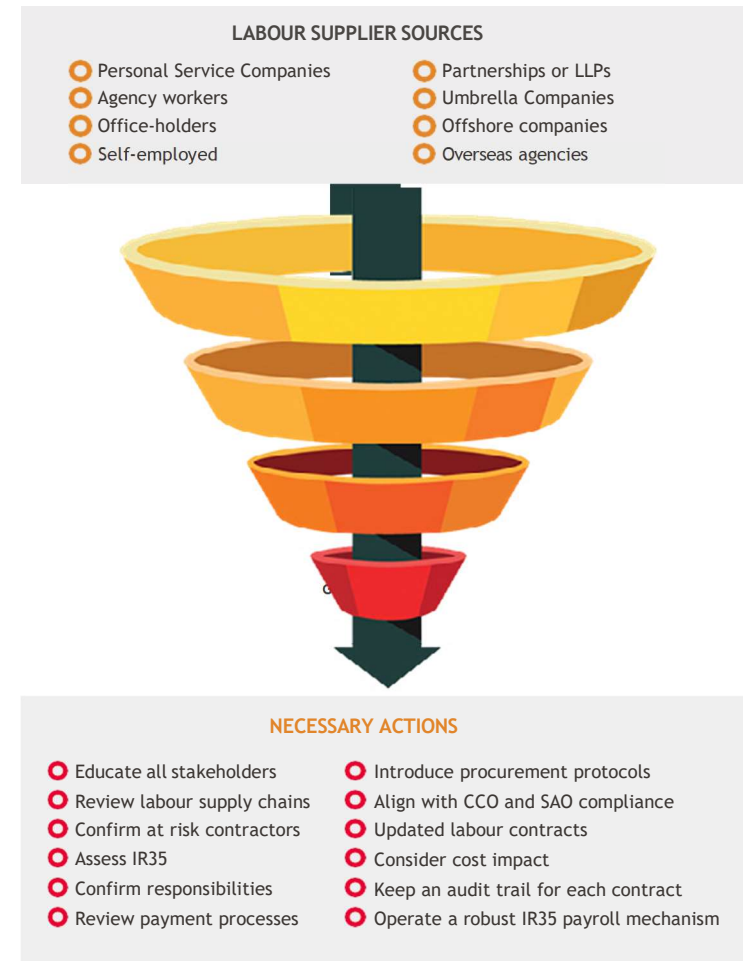
WHO IS AFFECTED?

Organisations which directly or indirectly engage workers who are paid off-payroll, usually via a personal service company (PSC) arrangement. However, you may be outside these rules if you are classified as ‘small’ for the purposes of legislation. The time of ‘light touch’ penalties for non-compliance has passed - so now is the time to review your approach.

OBLIGATIONS FOR BUSINESSES

HMRC will expect your organisation to have implemented a robust methodology to identify all PSCs (whether engaged directly or indirectly via third parties), assess their IR35 status and, if required, apply PAYE/NIC deductions for any deemed employment arrangements. In all instances before payment to a contractor is made, you must ensure an IR35 status review has taken place, and a status determination statement (SDS) has been communicated correctly to the labour supply chain. In addition, you must be able to track the assessments made and deal with any disagreements by the worker within a 45-day deadline.

Finally, you must have undertaken a robust due diligence exercise to support any decision that a procured supplier falls outside these rules on the grounds that no personal service is supplied - this can be difficult to evidence.





CAN YOU ANSWER YES TO THE FOLLOWING?

- ▶ Are you prepared for an HMRC inspection?
- ▶ Does your process demonstrate that reasonable care has been taken in all areas of the process, including comprehensive policies?
- ▶ Have you implemented process maps to adhere to the business's governance obligations?
- ▶ Are your staff suitably trained to understand the nuances of employment status on how to interpret HMRC's CEST tool?
- ▶ Have you implemented suitable due diligence processes to deal with all supplier contracts with PSCs including out-sourced services?
- ▶ Do you have sufficient processes in place to ensure that only bona fide Umbrella companies are used and contractual terms are robust?
- ▶ Is sufficient evidence retained to demonstrate how the contractual and actual terms of engagement reflect your conclusions?
- ▶ Are you carrying out periodic reviews and incorporating the process into your internal audit programme?
- ▶ If you are contemplating any business financing or potential transactions, are you sure IR35 weaknesses won't affect proceedings?

Learn more on Off-Payroll Labour [here](#).

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