



## IR35 Reforms

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020 890 36 330  
info@dnsaccountants.co.uk



[www.dnsaccountants.co.uk](http://www.dnsaccountants.co.uk)



Pacific House, 382 Kenton Road,  
Harrow, Middlesex, HA3 8DP

## IR35 Reforms Overview

From April 2017 there are changes to the way the current intermediaries legislation (known as IR35) is applied to off-payroll working in the public sector. Where the rules apply, contractors who work in the public sector through a Personal Service Company (PSC) will pay employment taxes in a similar way to employees.

According to the new reform the responsibility and liability for deciding if IR35 applies, shifts from the contractor's PSC to the public authority (or party paying the contractor – including consultancies or direct work) the worker is supplying their services to. If the public authority decides that the contractor is inside IR35, the fee-payer (the public authority, agency, or other third party paying the PSC) will be responsible for deducting the associated Income Tax and NICs from the PSC's fee and paying them to HMRC.

## Do these changes apply to me?

The new reform applies when the services of a contractor are provided through a PSC to a 'public authority'. Even if a contractor is working through a private consultancy providing services to a public sector authority, should immediately seek advice to understand if they may be affected.

A public authority means a public authority for the purposes of the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002. This covers government departments and their executive agencies, many companies owned or controlled by the public sector, universities, local authorities, parish councils and the National Health Service.

## Some examples of public sector bodies are:

- Government departments, executive agencies and non-departmental public bodies
- NHS
- Police and re authorities
- Local authorities
- Devolved administrations
- Educational establishments including universities
- BBC
- Channel 4
- Bank of England

For further information, please visit [here](#).

## The changes do not affect:

- Workers who only provide their services to private sector organisations
- Fully-contracted out services delivered in the public sector
- Where an agency directly employs a worker and it operates PAYE

## When will the new reform start to apply?

The changes will apply for all assignments being carried out from April 2017, including those that commence before this date. It will also apply to any payments made after the 5th April 2017, even if the work was completed prior to this date.

## How will limited company contractors be affected?

There is some concern that, faced with a new and significant risk, agencies will simply force contractors either inside IR35 or to work through an umbrella company. Ultimately this could mean a lot less take home pay (up to 20%) for contractors and probably a lot less good contractors in the public sector. If the public sector and the agencies take a practical approach to the rules, all contractors genuinely trading outside IR35 should not be affected.

## What a contractor should do in light of the new reforms?

As an initial step the contractor should speak to its agency/client about their compliance plans on the new changes. It is important to undertake a proper assessment of IR35 status to determine the tax treatment of payments. HMRC is due to launch a new comprehensive IR35 digital tool to assess the status by end of February. If the contractor is deemed outside IR35 by the agency, then no further action is required. If considered within IR35:

### Renegotiate Contract

The contractor should possibly renegotiate the contract and working practices to be compliant with the IR35 legislation. If the agency/client declines the request and contractor decides to continue with the public sector client, IPSE has advised they should arrange for a completely new, properly worded contract to be in force from 6th April 2017 to avoid retrospective enquiry. Not merely an extension of the current contract or a side-letter changing the current contract.

## PAYE/Umbrella Solution

Further there is a possibility that the agency/public sector authority might not be comfortable with the use of PSC and there may be no financial benefit to operating via a limited company. In this case the most flexible option is an Umbrella Solution. If you are looking for employment rights and benefits than a PAYE solution is a better option.

## Negotiate a Better PAY

The new changes can reduce your take home by up to 20%. In order to compensate for the loss due to additional taxes the contractor should negotiate for a pay rise with the agency/client.

## Get Paid before 6th April 2017

In any case the contractor should ensure that all invoices are paid before 6th April 2017. For somebody on 30-day payment terms, invoices should go before 6th March 2017 to avoid falling foul of the new tax rules. If the contractor decides to switch to an alternate solution such as an umbrella, they should also make provisions to dissolve their existing limited company.

## Will the previous contracts be affected? Is there a possibility of retrospective investigation from HMRC?

HMRC has not ruled out investigating public sector contractors retrospectively. There is a risk that if the assignment is caught by IR35 under the new reforms when it was previously not, then the entire history of public sector assignments will be probed under IR35.

## Are there any other important changes?

From April 2017, a 5% deduction currently allowed to Personal Service Companies (PSC's) falling within IR35 for "notional expenses" will no longer be available in the public sector.

## Where can contractors find more information on the changes?

More details can be found in the technical note published by HMRC titled 'Off-payroll working in the public sector: reform of the intermediaries legislation'. This can be accessed on [www.gov.uk](http://www.gov.uk) If you are a contractor working in the public sector and would like to know more about what these changes mean, or to discuss the appropriate solution, please contact your account manager.

If you want to know more about DNS or IR35 Reforms, get in touch with us at

**020 890 36 330**

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020 890 36 330



[info@dnsaccountants.co.uk](mailto:info@dnsaccountants.co.uk)



[www.dnsaccountants.co.uk](http://www.dnsaccountants.co.uk)



HEAD OFFICE: DNS Accountants, Pacific House, 382 Kenton Road, Harrow, Middlesex, HA3 8DP