IR35 changes delayed to April 2021

V1. 19 March 2020

What's happened?

On 17 March 2020 the government announced a delay (not cancellation) to the IR35 private sector changes until April 2021as a response to the challenging economic environment due to Coronavirus. This means the current rules in both the public and private sectors will continue to apply up to and including 5 April 2021.

So, what happens now??

If your client is a private sector client, it does not have to do anything about IR35 at the moment. Up to and including 5 April 2021 the contractor's personal service company (PSC) remains responsible for assessing IR35 and for making tax and national insurance deductions themselves. You can continue to pay the PSC gross. You won't be liable for the PSC's failure to comply with the IR35 unless, under existing legislation such as the Criminal Finance Act 2017, it can be shown that you are involved in the facilitation of tax evasion.

When the changes do come in, some clients will be exempt, but for the purposes of applying the current rules, you do not have to think about which private sector clients may or may not be exempt. You'll still need to think about this when preparing for the 2021 roll-out (see section *REC Support Plan 2020/21*).

If the client is a public authority, the rules which took effect in April 2017 remain in place. The client must decide whether an engagement is "inside IR35" or "outside IR35". The public authority must give a Status Determination Statement (SDS) to the next party in the chain and each party must pass the SDS down the supply chain until it reaches the fee-payer (the party which will pay the PSC). If the public authority determines that the engagement is:

- "inside IR35" then the fee-payer must deduct tax and national insurance and employers' national insurance is also due. They may also need to account to HMRC for the Apprenticeship Levy if their PAYE bill goes over £3 million per annum.

- "outside IR35" then the fee-payer can continue to pay the PSC gross. The PSC remains responsible for its own tax affairs.

What should agencies do if private sector clients have already decided that an engagement is "inside IR35"?

Even without the delay, the obligation to provide a SDS would not have legally kicked in until 6 April 2020. However, clients and agencies have been working hard to get SDSs in place before that date and get the correct contracts in place. So, what happens those SDSs now?

- *From a legal perspective* -
  - the rules aren't changing (until 2021) so the obligation to provide a SDS will not apply for the time being. Equally, the fee-payer obligation to deduct tax and national insurance will not come into effect. So, even where a client has determined with reasonable care that an engagement would be inside IR35 there is no obligation on the fee-payer to make any deductions before paying the PSC.
  - if the client was correct in its determination you might expect the PSC to come to the same inside IR35 decision. But whether the PSC considers the engagement to be "inside" or "outside" IR35 is a matter for the PSC - neither the client, the fee-payer nor the agency have any obligations regarding status determinations or deductions until the rules come onto effect on 6 April 2021.
- *From HMRC's perspective* - HMRC told us on 18 March that SDSs made in anticipation of the rules changing on 6 April 2020 will have no standing. Contractors working in the private sector remain responsible for managing IR35 until April 2021. HMRC confirmed they will not consider any SDSs made if they open an investigation into a contractor in the meantime. They said that they will release a statement on this as soon as possible.

So, some contractors may choose to continue to work through their PSCs (if they haven't already been closed down). Agencies and clients can agree to this if they wish. The agency can continue to pay the PSC gross and will not be liable for their failure to comply with the IR35 unless, under existing legislation such as the Criminal Finance Act 2017, it can be shown that they are involved in the facilitation of tax evasion.

NOTE: Whilst agencies want to help their contractors, contractors must get their own legal advice regarding their tax status.

What happens to blanket decisions not to engage PSCs?

As far back as September 2019 some businesses, particularly in the financial services sector, decided not to allow contractors to work through PSCs past a certain date. They may have lost contractors or those contractors are now on PAYE or some may have taken a permanent role with the client.

Where those contractors have already been moved to PAYE, whether agency or via an umbrella, it will be interesting to see what clients do. They may continue with their ban on PSCs, or may decide to allow those contractors to work through their PSCs again until the changes in 2021. Some contractors may choose to stay on PAYE - that will depend on whether, despite the lost income, they decide it is more beneficial to be entitled to worker rights such as sick pay and holiday pay.

HMRC compliance activity in 2020/ 21

HMRC will continue with their existing compliance activities. The REC is concerned that compliant agencies may be disadvantaged where others in the supply chain do not themselves act compliantly. We have stressed to HMRC that they must remind businesses what schemes they already deem to be non-compliant so that they are not used in the coming year- HMRC Spotlights show what schemes HMRC have already determined do not comply with the law.

Meanwhile we recommend that members continue to do full and proper due diligence on all intermediaries that they use. If an arrangement looks too good to be true for the contractor, it probably is. Members can use checklist 7A when engaging with an umbrella company (or a CIS intermediary) or checklist 7B when engaging with a PSC. (Note: these were updated to reflect the proposed April 2020 changes. The questions are all still relevant but we will update the references to "April 2020" to "April 2021" as soon as possible).

What contracts should agencies use for now?

Agencies can continue to use the contracts they currently have with clients and contractors.

REC Legal has been working on new contracts to reflect the changes prior to the delay. We also decided to consolidate a number of contracts so that you could reduce the number of contracts you issue to clients.

We still see real value in these contracts and so we will release them in the coming months. This will allow you to manage the transition to the new contracts at your own pace. We will then update contracts in time for the April 2021 changes. For the time being, see the table below for the list of existing contracts to use and in what circumstances.

Client type	Inside IR35 Opted out of the Conduct Regulations	Inside IR35 Not opted out of the Conduct Regulations	Outside IR35 Opted out of the Conduct Regulations	Outside IR35 Not opted out of the Conduct Regulations
Private sector (or public sector but working through an umbrella company)	Client - contract 5 Limited company - contract 6	Client - contract 7 Limited company – contract 8	Client - contract 9 Limited company – contract 10	Client - contract 11 Limited company – contract 12
Public sector (where the contractor works through their own PSC)	Client - contract 5A Limited company – contract 6A	Client - contract 7A Limited company – contract 8A	Client - contract 9A c Limited company – contract 10A	Client - contract 11A Limited company – contract 12A

All the contracts listed above are available from the Template Terms and Conditions Library.

Other legal changes from 6 April 2020

All other legal changes due to come into effect on 6 April 2020 will still come into effect. Those changes include:

- The requirement to give a key information document to all work-seekers
- Changes to written statements of particulars
- The repeal of regulations 10 and 11 of the Agency Workers Regulations 2010 (effectively repealing Swedish derogation/ pay between assignments contracts)
- The holiday pay reference period increasing from 12 to 52 weeks.

These changes have come as a result of the government's Good Work Plan. For full details please see the GWP hub. See also the REC Template Document Library for new or updated documents. You can access all of our resources for the April 2020 changes via our treasure map.

REC support throughout 2020/ 21

This is a delay but not a cancellation of the changes. We know you have a huge amount to deal with at the moment but it is important to remember that you and your clients will still have to implement the IR35 changes in time for April 2021. We'll support you through the changes in the coming year.

We will update our other written materials as quickly as possible to reflect this delay. We will publish updated materials on the IR35 hub and the IR35 section of the legal guide.

From May 2019 to mid-March 2020 we delivered 32 seminars across the UK. We are now working on our support package for the 2020/ 21 – in particular we will think about how else we might use digital technology to deliver support to you. We will update you when we have more detail on this.