

# IR35 – Preparing for the Changes

Course book



...market leaders for business training



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## Course book

This document contains the text of the PowerPoint displays that are used during the presentation of the course

### IR35 – Preparing for the Changes

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## Contents

Aims and objectives.....	2
The private sector roll-out.....	11
The ‘big stick’ approach.....	15
Step 1: Identify the affected population.....	17
Step 2: Status assessment.....	18
Using CEST .....	26
Step 3: Issuing the SDS.....	29
Step 4: Status Disagreement Process (SDP).....	32
Step 5: Payroll operation .....	33
Step 6: Ongoing monitoring .....	37
Action plan.....	39
Appendix 1 - IR35/Off-payroll working.....	42
Appendix 2 – Guidance .....	43
Appendix 3 – Off-payroll FAQs .....	44

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## Course structure

- Aims and objectives
- Slide presentation
- Discussion opportunities: agents and employers
- Preparation of action plan

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## ***Aims and objectives***

### **Is it really going to happen in April?**

- Legislation in Finance Act 2020 now has Royal Assent
- Government needs to level the playing field with the public sector to stop unfair competition and the talent drain
- It (really) needs the money from the tax and particularly employer's NI
- It warned business that there would have to be changes to the structure of the tax system to pay for COVID-19 legacy

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### **IR35/off-payroll**

- A press release from Inland Revenue in 1999
- End hirers/engagers must decide status of limited company contractors, freelancers and consultants
- Reversed in 2000 so limited company decides if they are 'caught' and pays deemed PAYE via their own company
  - This will continue for consultants working for small private sector engagers
- U-turn in April 2017 for public sector, all but small businesses in private sector April 2021
  - Called 'off-payrolling' so we have old IR35 and new off-payroll
- This is not about sole traders as they have no intermediary between engager and themselves



## Definitions

<b>Off-payroll</b>	HMRC's description of contractors they think ought to be 'on payroll'
<b>Engager</b>	An end client using off-payroll workers
<b>PSC</b> (Personal Service Company)	<ul style="list-style-type: none"><li>• Usually single director limited company offering specialist labour who invoices the engager for their services</li><li>• Can also be other intermediary such as a limited liability partnership where one partner/family receives 60% or more of the profits</li></ul>
<b>Fee payer</b>	<ul style="list-style-type: none"><li>• The entity who pays the PSC</li><li>• Could be an agency or engager</li></ul>
<b>CEST</b> (Check Employment Status for Tax)	HMRC's online tool for working out whether the IR35 rules apply
<b>Deemed employee</b>	A PSC director who is added to the payroll of the fee payer so their fees can be subjected to tax and NI
<b>SDS</b>	Status Determination Statement
<b>Small engager</b> (employer)	<ul style="list-style-type: none"><li>• In the private sector the rules don't apply to a business that is small<ul style="list-style-type: none"><li>– A company that doesn't need an audit is small</li></ul></li><li>• They can continue to use PSCs and pay them gross</li><li>• What is 'small' later as not all will qualify</li></ul>





## The intermediary landscape

- Why the growth in PSCs?
  - Protects engager from any issues about employment status
  - Cheaper than having them on payroll – no employer NICs, pensions, sick pay, holidays or benefits-in-kind
- Over 20 years since IR35 the aim to limit costs on both sides has led to...
  - Umbrella companies
  - Managed Service Companies
  - The loan charge/Employee Benefit Trusts
  - Use of agencies
- Now 900,000 PSCs

Which of these matter for off-payroll?

## The cost dynamic

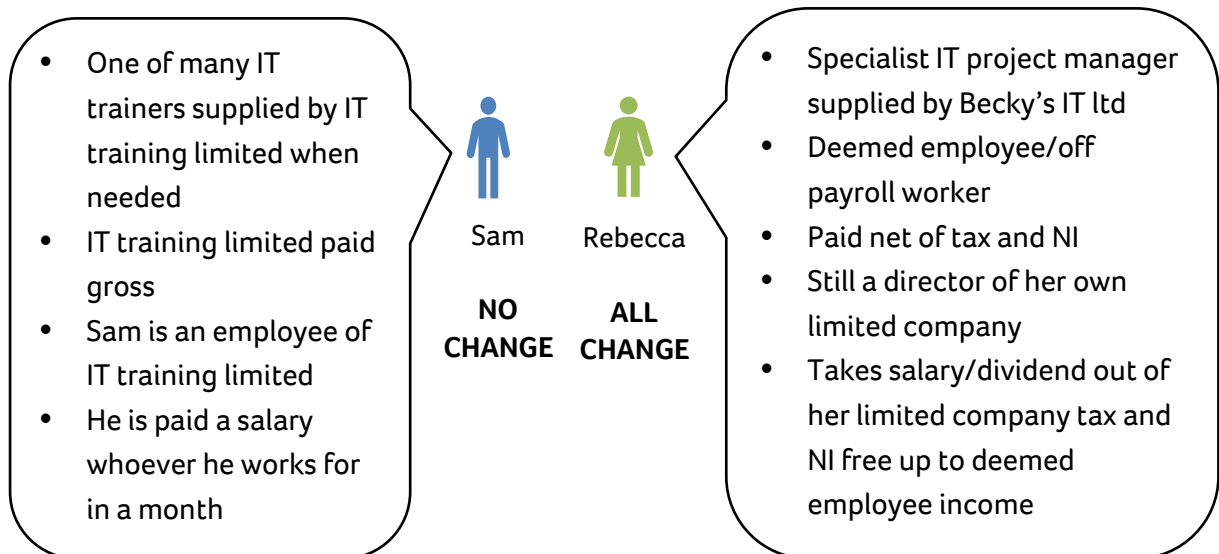
<b>Recruit fixed term employee</b>	<b>Engage limited company contractor</b>
<ul style="list-style-type: none"><li>• Taxed via PAYE</li><li>• Class 1 Employer's and employee's NI = 13.8%</li><li>• Subject to apprenticeship levy = 0.5%</li><li>• Right to be auto-enrolled = 3%</li><li>• Right to statutory payments/National Minimum Wage/holiday</li></ul>	<ul style="list-style-type: none"><li>• Taxed through Self Assessment</li><li>• Class 1 NI on any salary and Class 4 NI on profits</li><li>• No apprenticeship levy</li><li>• Contractor can offset expenses</li><li>• Provides own pension and statutory payments, not subject to NMW</li></ul>
<p><b>At least 17.3% extra costs</b></p>	<p><b>Paid gross and limited company decides on employment status</b></p>



## What's the problem as HMRC see it?

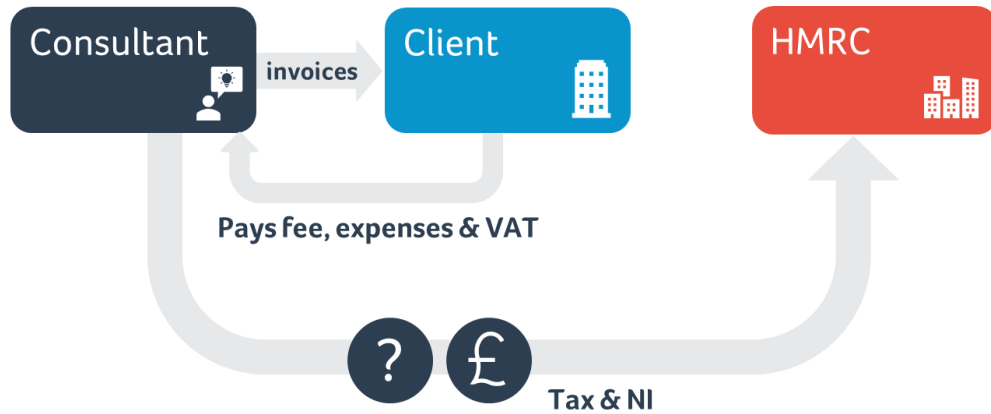
- HMRC don't have the resource to police IR35 by tackling 900,000 individual single director companies
- They say there is 90% non-compliance
- Poor recent track record of winning recent IR35 cases at tribunal: *Kaye Adams & Lorraine Kelly v Christa Ackroyd*
- The loss of employer's NI is unsustainable: £1bn by 2022/23
- 60,000 medium and large engagers affected

## Public sector now... Private sector 2021





**Private sector until 05.04.21**



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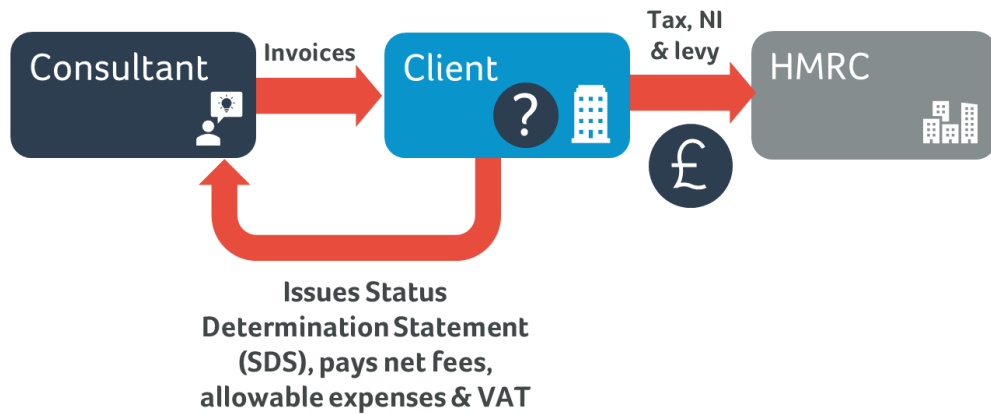
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**Private sector (not 'small') and public sector 06.04.21**



*NB For all work completed on, or after 6.4.21, if work completed before 6.4.21 invoice can be paid gross*

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## Timeline

- Public sector - April 2017
- Private sector 2021 confirmed March 2020
- Royal Assent to Finance Act July 2020
- New guidance due autumn 2020
- In force 6 April 2021 via Finance Act 2020

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## Public sector impact

- 76% of public sector bodies lost highly skilled contractors
- 46% of contractors demanded pay rise or would leave
- 71% of IT projects were delayed or scrapped
- 30% extra on costs for moving to deemed employee

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## What else have we learned?

- Finding out if you have PSCs – not easy
- Blanket assessments – illegal and inappropriate
- Role based assessments – contentious
- ‘No contractors’ rule – expensive & equal pay issues
- Adverts saying ‘inside/outside IR35’, how?
- VAT/finance system problems
- HR to payroll system problems
- HMRC don’t care about payroll angle and don’t understand payroll agents!

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## **The private sector roll-out**

### **Size: tips and traps**

- At the start of each tax year all private sector organisations will need to determine their size category in respect to the off-payroll working rules even if they use an agency
  - It is the engager’s size that matters not any agency used
  - Best practice to tell people you’re small – you will be popular!
- If you’re part of a group you can only be small if your parent is also small or it’s the first year of the group’s operation
- Any entity can’t be small if it
  - Was a PLC at any point in a financial year
  - Is involved in insurance, banking, finance or pensions

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### **Small engagers – incorporated e.g. limited company**

- An engager is always small for its first financial year
- Incorporated engager, if meet 2 of following 3 for two successive accounting years’, rules apply from start of tax year after Companies House reporting deadline
  - Your turnover not more than £10.2m (pro-rated if either financial year was not 12 months)
  - Your balance sheet in respect to your assets wasn’t more than £5.1m
  - Your average number of employees not more than 50
- You can check engager size on the Companies House website
- Guidance: [bit.ly/3n29jiv](https://bit.ly/3n29jiv)

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### Small engagers – unincorporated/sole traders

- Unincorporated engager - charity, trade union (who could also be an intermediary supplying the consultant), not for profit
- Only turnover matters, if it exceeds £10.2m then the tax year that starts at least 9 months after financial year end they're inside the rules
- If you don't have a financial year as you're a sole trader, if your turnover is over £10.2m! at the end of the calendar year you're in from the start of the next tax year

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### Examples

Entity	Key date for 2021/22	Effective tax year	Notes
Incorporated	Companies House deadline 31.3.21	2021/22	if not small for two successive years
Unincorporated	Year end is 5.7.20 or earlier	2021/22	Only most recent year considered to decide size
Sole trader	Turnover as at 31.12.20	2021/22	

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## Becoming small

- To become small, a medium or large **incorporated** engager must be small at the accounting year's reporting deadline, for two consecutive years then from start of next tax year is outside the rules
- To become small, a medium or large **unincorporated** engager where turnover drops below £10.2m for an accounting year that ends at least 9 months before the tax year start, is outside the rules from the start of the next tax year
- When an engager becomes small all SDS need to be reissued and withdrawn to move liability for rules to PSC, if SDS not issued engager must continue to withhold tax and NI
  - Template letter re adherence to IR35 instead:  
new ESM10011B: [bit.ly/34i5pdE](http://bit.ly/34i5pdE)

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## Becoming medium or large

- If a small incorporated engager is medium or large for two consecutive accounting year reporting deadlines, then from start of next tax year they are inside the rules
- A small unincorporated engager whose turnover exceeds £10.2m at the end of an accounting year that ends at least 9 months before the start of the tax year ie 5 July or earlier must operate the rules from the start of the next tax year
- An (individual) whose turnover exceeds £10.2m at the end of the calendar year is inside the rules from the start of the new tax year only applies if they supply someone else's personal service so they are an intermediary



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## What about CIS?

- Off payroll takes priority over Construction Industry Scheme (CIS)
- Will only affect subbies who are limited companies
  - Are labour-only subbies really self-employed?

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## *The 'big stick' approach*

### Transfer of liability

- As well as a standard PAYE penalty regime (no penalties for first 12 months, but...)
- If the engager fails in any part of his obligations
  - Assessing status with reasonable care
  - Issuing the SDS to the fee payer and workers
  - Responding to a query about their size within 45 days
  - Responding to an appeal within 45 days
- They can become liable for tax, both types of NI and the levy
- If an agency in the chain fails in its obligations...

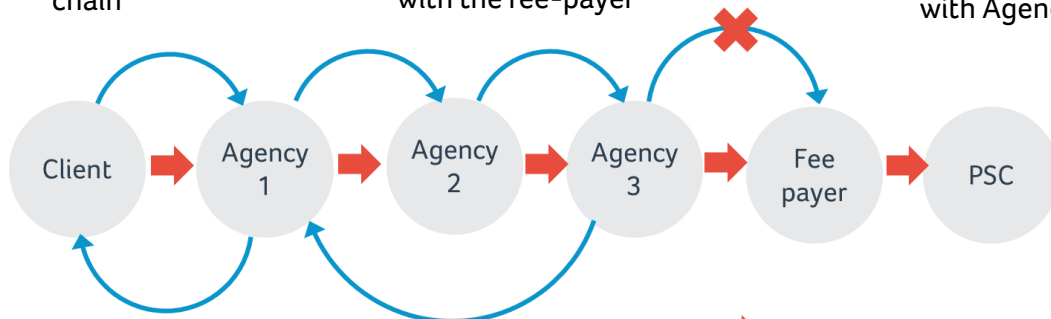


## Transfer of liability across the labour supply chain

1. Status determination flows down contractual chain

2. Agency 3 fails to share the status determination with the fee-payer

3. The liability initially sits with Agency 3



5. If HMRC fail to collect the liability from Agency 1, the liability finally transfers to the client

4. If HMRC fail to collect the liability from Agency 3, the liability transfers directly back to Agency 1

→ Contractual chain  
→ Proposed change

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## Step 2: Status assessment

### For tax...

- Employed
- Self-employed/ In business
  - Sole trader
  - Limited company
  - Partnership

### For employment law...

'Self-employed'	Worker	Employee
<ul style="list-style-type: none"> <li>• No employment rights from hirer/agency</li> <li>• Tax &amp; NI via Self Assessment, Corporation tax if Ltd company</li> </ul>	<ul style="list-style-type: none"> <li>• No 'service related' rights</li> <li>• Should be auto-enrolled</li> <li>• Must receive NMW</li> <li>• Count for Gender pay gap</li> <li>• Tax via PAYE &amp; NI if casual <i>worker</i> ie a description of an employment relationship, or via self-assessment if no mutuality or control</li> </ul>	<ul style="list-style-type: none"> <li>• Full day one &amp; service related employment rights</li> <li>• Should be auto-enrolled</li> <li>• Must receive NMW</li> <li>• Count for Gender pay gap</li> <li>• Tax via PAYE &amp; national insurance</li> </ul>

NMW = National Minimum Wage



## Employees & workers

<b>Employee / Worker</b>	<b>Day one rights</b> <ul style="list-style-type: none"><li>• NMW &amp; illegal deduction from wages protection</li><li>• Paid holiday, pensions</li><li>• SSP if average earnings high enough</li></ul>
<b>Employee</b>	<b>Service related rights</b> <ul style="list-style-type: none"><li>• Statutory leave from day one, pay after 26 weeks if average high enough</li><li>• Unfair dismissal protection from day one</li><li>• Redundancy pay after 2 years and notice after 1 month</li></ul>

## The status conundrum

- The financial incentive of avoiding employer's NI & the levy (14.3%) drives behaviour
- The individual/limited company isn't benefiting as much now that dividends are more highly taxed
- The 3 regulator risk
  - HMRC, Tribunals, The Pension Regulator
- There is no legal definition of self-employment





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## Carrying out a status assessment

- HR/legal view of contract
- Project manager's view of reality
- Worker's personal situation

*You must take 'reasonable care' in coming to an assessment. More later...*

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## Role-based assessments

- These can be appropriate in limited circumstances
- You must consider the PSC's individual circumstances
  - Other clients
  - In business on their own account, versus
  - Now has line management responsibly and has company benefits
- It is not compliant just to say all contracts are caught by the rules even if you're a risk averse engager
  - You could though just employ everyone on a fixed term contract but it's expensive and risky re equal pay

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## Words don't matter, actions do

- It doesn't matter what engagers call an arrangement
  - Zero hours, freelance, casual, it's how the work is carried out
  - You could be self-employed, employed or a worker with that title
- The way it is carried out affects the rights they receive and the tax/NI paid

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## Two contracts, different outcomes

- Contract of personal service (employee or worker) or contract for services (not personal) (invoice you)?
  - Importance of mutuality and control
  - 'Picture painting' (Hall v Lorimer 1993 [www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm7160](http://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm7160))
  - Employees are recruited, the self-employed tender for a contract

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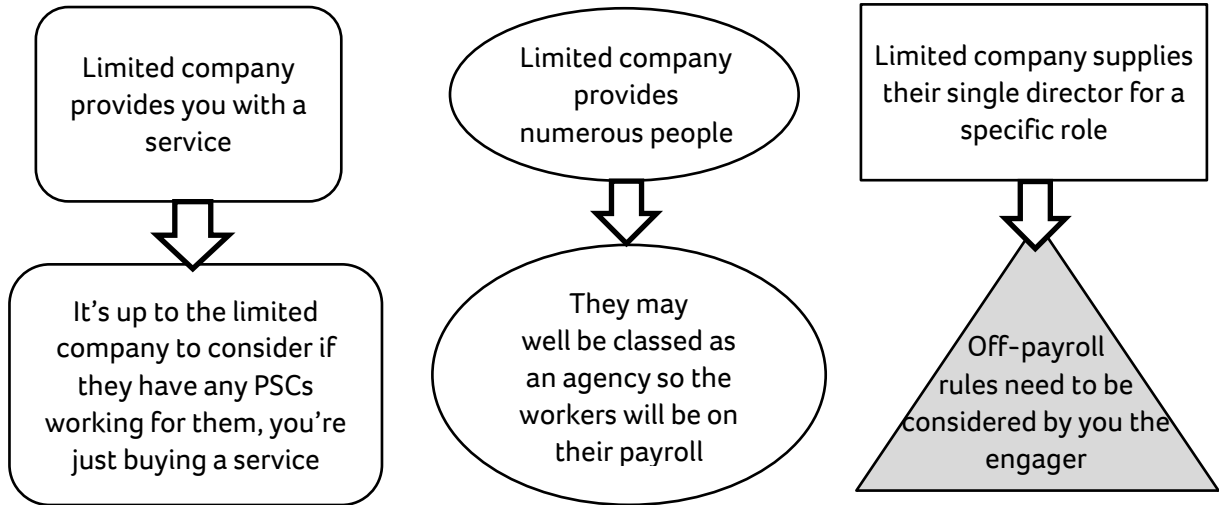
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**So let's explore 'service provision'**



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## What do engagers have to consider?

- Case law – tax, NI and employment law
- The facts relating to the way the work is carried out
- Any paperwork about the work
  - HMRC start by asking for the contract, then ask the client what happens practice ie is it a sham (*Autoclenz Ltd v Belcher 2011*)
- How the worker operates outside the client engagement
- If it's an office holder role
  - All fees for office holders must go through the payroll and have full suite of rights
  - Fees for projects could be considered under off-payroll rules

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- Have things changed during the life of the contract? Or even after a few weeks is it what the paperwork said?
  - Now line managing people
  - Now have company benefits
  - *JLJ Services Ltd v HMRC 2011*
- Just because I'm self-employed somewhere else or have other clients isn't sufficient

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## What does 'in business' look like?

- When did the limited company start?
- Do they have premises or an equipped home office? And do they work from there or just at the client's premises?
- Do they have business insurance?
- Are they VAT registered?
- Do they have a website/market themselves?
- Do they have any other contracts?
- Do they have employees?
- Have they ever used substitutes?
- If so, does the engager have to approve them?
- Have they ever suffered losses or bad debts?
- Have they ever had a previous HMRC status enquiry?

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## Working practices

- How did they get the contract? Was there an advert? Is there a job spec?
- Are they doing a 'business as usual' role for the engager? Hopefully it's at least a special project that no one else is doing as an employee in the same role
  - Has the project got a name and duration?
  - Will they be paid in stages as milestones are reached?
- Have they been an employee and are now a 'consultant'? Having a break in service isn't enough

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## Working practices

- Do they provide their own equipment or place to work?
  - Do they have flexibility over their hours/days?
  - Will they be managing any of the engager’s employees and as a line manager or project manager?
  - Who do they report to?
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## Employment v in business

Employment	In business
<ul style="list-style-type: none"><li>• Receipt of salary/statutory payments and/or benefits</li><li>• Being line-managed by an employee of the organisation</li><li>• Being subject to the engager’s rules and procedures</li><li>• Being told when to take holiday</li><li>• Being integrated into the engager’s business</li><li>• For example attending internal meetings and events<ul style="list-style-type: none"><li>– Wearing uniform</li><li>– Being provided with equipment</li><li>– Business cards, email signature</li></ul></li></ul>	<ul style="list-style-type: none"><li>▪ Paid per assignment</li><li>▪ Bears all financial risk</li><li>▪ Free to decide whether/how to do the jobs</li><li>▪ Pays their own tax, bears their own insurance and equipment costs</li><li>▪ Independent and autonomous</li><li>▪ Separate policies and processes for workers</li><li>▪ Performance concerns raised with agency</li></ul>

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**On balance...**

<b>Outside off-payrol</b>	<b>Inside off-payrol</b>
<ul style="list-style-type: none"><li>• Specialist role for a project with limited supervision, direction and control &amp; mutuality of obligation</li></ul>	<ul style="list-style-type: none"><li>• Permanent business as usual role</li><li>• Eg. Maternity cover</li></ul>

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**Using CEST**

**When and who should be using CEST?**

- You don't have to – but you must demonstrate reasonable care
- Workers, agencies or engagers can use it
- You need to do collaborative assessments
  - Involve HR, procurement and ideally the worker
- If you do the assessment before filling the role you will have to re-do it once you have a worker
  - HMRC say they will abide by the initial assessment
- Ideally re-do the assessment at least six monthly if it's a long engagement – suggest March and September and if working practices or worker's situation changes

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## CEST landing page

Use this service to find out if you, or a worker on a specific engagement, should be classed as employed or self-employed for tax purposes.

Use the check employment status for tax tool to:

- see if HMRC will treat you as employed or self-employed for tax purposes if you have or expect to have a work contract
- find out the employment status of a worker or an individual you engage or represent



There must be a [contract in place](#) to see whether the engagement is classed as employment or self-employment. The tool assumes there will be one in place.

Check HMRC [supporting guidance](#) for help using the tool.



This service is anonymous and will not store any information you enter, or the result given. You will be able to save and print your result for your own records.

### When to use the tool

Use the tool to check employment status when:

- you are hiring a worker directly
- you or the intermediary you work through accepts a new engagement with a client
- you are a public authority hiring a worker and paying for the services of a worker who works through an intermediary
- you are an agency or other third party supplying a worker who works for a public authority through an intermediary
- there has been a change to an existing contract or service agreement
- your worker disagrees with a determination you have provided them

Choose answers that best match the usual working practices of the engagement.

### Before you start

You will need to know:

- details of the contract
- the worker's responsibilities
- who decides what work needs doing
- who decides when, where and how the work is done
- how the worker will be paid
- if the engagement includes any corporate benefits or reimbursement for expenses



If you do not know who the worker is, the tool will not ask questions about the worker's circumstances. You will still get a determination that HMRC will stand by.

## Disclaimer

HMRC will stand by the result you get from this tool.

**This would not be the case if the information you have provided was checked and found to be inaccurate.**

- ❗ **HMRC will also not stand by results achieved through contrived arrangements, designed to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance, which can attract higher associated penalties.**

[clients](#)

[Employment Status Manual](#)

[Employment intermediaries: personal services and supervision, direction or control](#)

[Employment status guidance for employed or self-employed](#)

[Off-payroll working for agencies](#)

[+ 2 more](#)

Detailed guidance

[April 2020 changes to off-payroll working for clients](#)

[April 2020 changes to off-payroll working for intermediaries](#)

[Off-payroll working for agencies](#)

[Public sector off-payroll working for clients](#)

[Understanding off-payroll working \(IR35\)](#)

[+ 4 more](#)

Collection

[Employment status guidance for employed or self-employed](#)





## After the questions...

- A summary of what you've answered and options to change the answers
- Keep all the documents that led you to the answers
- Set up an SDS tracking system
  - Completed SDS,
  - Issued SDS, and
  - Disputed/withdrawn SDS

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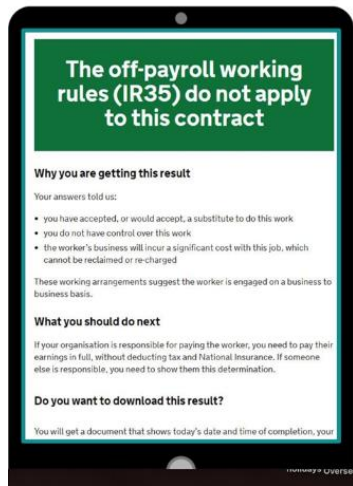
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## CEST confirmation page

You'll be able to personalise the PDF with worker's name and print it out to issue as an SDS



It will be dated and time stamped

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### Step 3: Issuing the SDS

#### Step 3 issue SDS

Inside off-payroll rules	Outside off-payroll rules
<ul style="list-style-type: none"><li>• SDS to worker – set deadline for appeal?</li><li>• SDS to first agency in chain if there is one/inform payroll team</li><li>• Agency passes on SDS upwards if more agencies in supply chain</li><li>• Final fee payer does withholding of tax/NI if they receive SDS</li></ul>	<ul style="list-style-type: none"><li>• Engager decides whether to issue SDS</li><li>• If they don't and HMRC finds worker is caught then engager picks up tax, and NI and levy</li><li>• <b>BEST PRACTICE: ISSUE ALL SDS!</b></li></ul>

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#### What if the fee-payer doesn't do withholding?

- Then if you've issued the SDS it's their problem if HMRC investigate, not yours – unless the agency fails to pay over?
- Record that you've issued and received a response to the SDS from the worker and fee payer
- The agency can't work from the worker's copy of the SDS, they must have their copy from you
- If the client can show reasonable care was taken when making the off-payroll determinations then responsibility for PAYE rests with the fee payer – even if the client got the status assessment wrong

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## **Step 4: Status Disagreement Process (SDP)**

### **SDP process – ‘Appeals’**

- Who will handle appeals? Appeals can be received before 6.4.21 but 45 days only begin then
- 45 days from engager receiving an appeal they must
  - Inform the worker/PSC and the fee payer that the SDS stands, or
  - Provide a new SDS with a new conclusion and confirm the previous SDS is withdrawn and effective date of new SDS
- Set a deadline for appeals with SDS?
- No requirement to respond at all after last payment made
- The worker or the fee payer can object to an inside ruling
  - Mid-contract if circumstances change

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### **SDP process**

- If an inside ruling is overturned the payroll will have to be reversed
  - Set the YTD values to zero on the next FPS to reduce your liabilities so you can repay PSC and yourselves & set their date of leaving to same as their start date
- Failure to respond makes the engager liable for the withholding (worker’s tax and NI too!) under transfer of liability rules

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## Discussion points

- What roles trouble you in your organisation that are filled by consultants?
- Will you just offer fixed term contracts?
- Any issues with office holders? NEDs, trustees, company secretary
- Who is going to be involved in the IR35 project?
- Have you got enough internal expertise on status? Will you use CEST?
- Who will handle appeals?
- What has your payroll agent told you?

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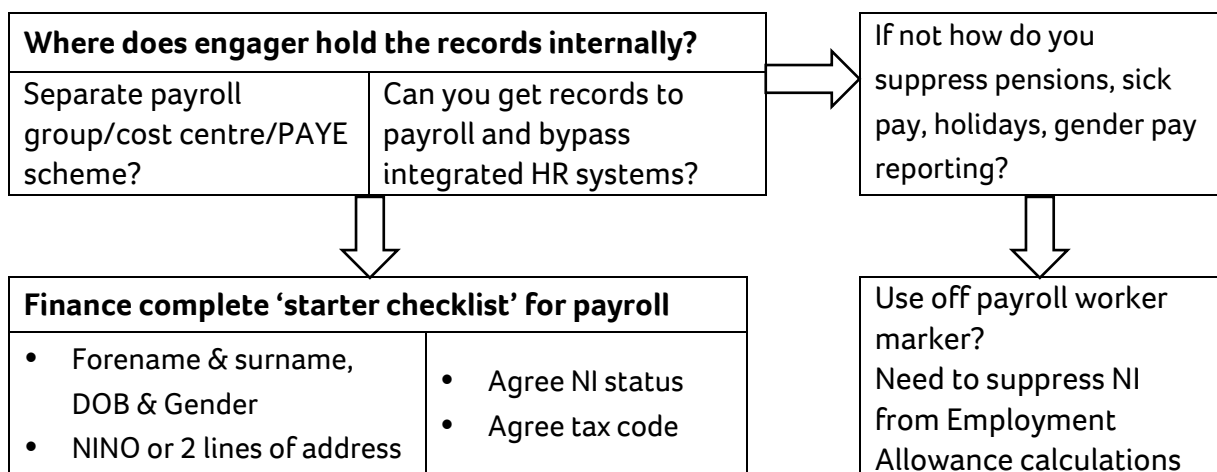
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## Step 5: Payroll operation

### What do payroll have to do?




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## What does fee payer's finance team have to do?

Finance receive invoice	
<p>Ensure contractor knows how/when payment will be made: <b>Payroll date v finance run?</b></p> <ol style="list-style-type: none"><li>1. Deduct VAT and qualifying expenses and pass only fees to payroll by payroll deadline, <b>or</b></li><li>2. Pass gross invoice amount to payroll by payroll deadline identifying non-taxable items</li></ol>	<ol style="list-style-type: none"><li>1a. Receive net payment amount back from payroll plus statement (payslip) and pay that + VAT, expenses, <b>or</b></li><li>1b. Finance pay just VAT and expenses and payroll pay fees</li><li>2. Payroll pay everything, finance send payslip or remittance advice</li></ol>

\*Doesn't have to be a payslip as not an employee as per Employment Rights Act

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## Payroll set up record

Personal details/ payments	
Forename & surname, DOB, Gender NINO or 2 lines of address	Taxable/non-taxable payments
<i>Personal not business address for tax residency purposes</i>	

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Tax and NI table letter	
Likely to be C and BR or OT/1	NI table letter as normal

↓

Additional information	
Set off payroll worker (OPW) marker	Start date (the date the contract commenced or 6.4.21)

## What is the 'salary' in the payroll?

- If engager has agreed "PAYE rate" ie after a notional deduction for employer NIC they must gross back up before calculating deemed payment in payroll
  - Eg if rate was £1,000 then negotiated to £900, £1000 is used in payroll and only excess over £100 can be taken off invoice as already reduced by £100







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## **Step 6: Ongoing monitoring**

### **Continuing compliance**

- Set up central process for control and issuing of SDS and handling disputes
- Embed a culture of all contracts being vetted by central point before engagement
- Monitor working practices and impact of circumstances change
  - Eg line management responsibility?
  - Limited company closed down?
- Six monthly status re-assessment

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### **Discussion points**

- Who/how to audit PSC population
- VAT/finance system issues?
- Project delays if contractors 'walk'
- Can you amend contracts to get them outside IR35?
- How to manage pay scales/overheads if contractors ask to go on to payroll as employees
- Increased costs for business
- How to staff future projects
- Set up processes on own payroll

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## Other issues

- No expenses can be claimed to client site as that is permanent workplace
- Online payslips for deemed employees – security access to our systems?
- Separate PAYE scheme? set levy allowance to zero
- Bulk invoices
  - Suggest that consultants always invoice on a monthly basis
- Returning deemed employee = new record and payroll ID

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- Employee and deemed employee simultaneously?
  - Two records one with marker set
- Circumstances change so contract now outside IR35?
- How often to review contracts
- Payment after leaving? Normal rules so OT/1
- Will HMRC go back retrospectively?
  - Commitment not to even if SDS issued for 6.4.20 saying inside rules

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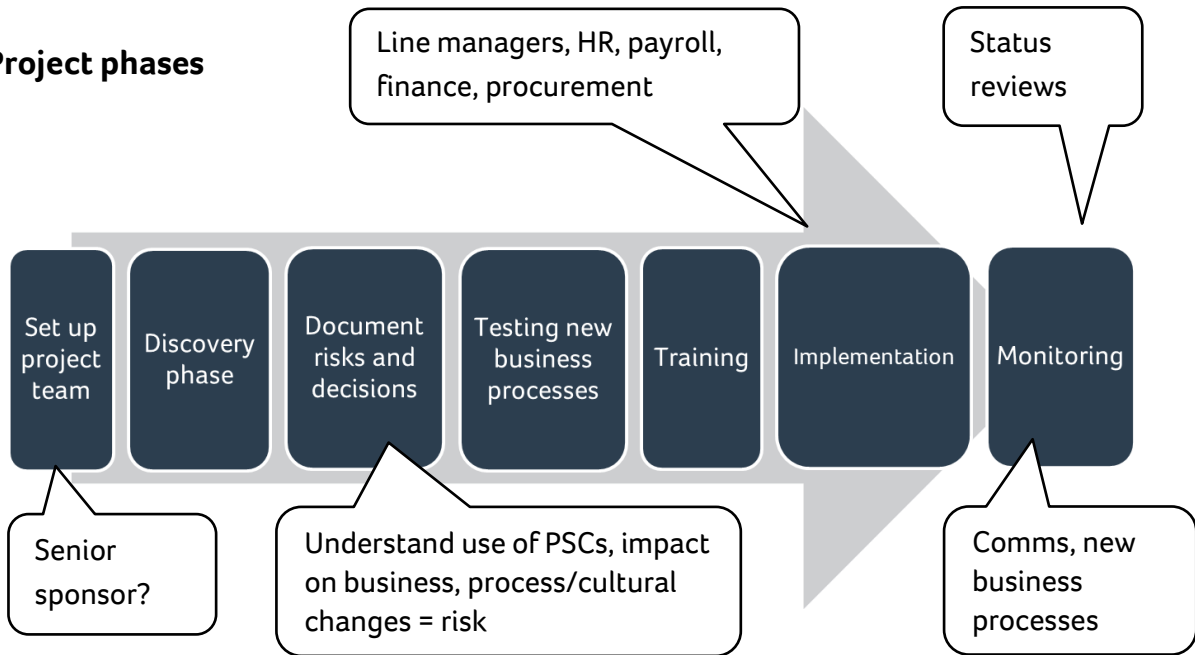
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## Action plan

### Project phases



### Resources

- HMRC off-payroll guidance hub
  - [www.gov.uk/topic/business-tax/ir35](http://www.gov.uk/topic/business-tax/ir35)
- Status manual on HMRC website 6.4.21 changes
  - [www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10000](http://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm10000)
- HMRC employment status helpline 0300 1232326



## What's the risk?

- Remember it's all about demonstrating 'reasonable care'
- HMRC have set out in guidance how to take 'reasonable care' [bit.ly/39N1WnU](https://bit.ly/39N1WnU)
  - Act in a way would be expected of a prudent and reasonable person in the engager's position. Case law has described it as 'taking steps expected of a prudent and reasonable person'
  - Higher degree of care expected from larger companies with more HR resource
  - Ignorance of the law is no excuse
  - Must carry out complete and thorough determination for each worker
  - Have documentary proof

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## Reasonable care... examples

- Advice from professional advisors
- Training for all relevant parties
- Robust HR & payroll processes
- Systems that identify worker cohort
- Checking and reviewing processes adopted by 3<sup>rd</sup> party engaged to do the status determination/withholding



- Blanket status determinations
- No training given to key personnel
- Failing to reconsider the status determination where there is a material change to the terms of engagement



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## What's the risk?

- Will HMRC raise enquiries against all workers deemed outside the rules if the engager doesn't take this seriously
- It will raise any HMRC Large Business Service engager's risk profile if not handled properly
- Time-consuming and costly negotiations with HMRC
- Distracting for consultants who should be project-focused
- Transfer of all liabilities, penalties and interest!

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## **Appendix 1 - IR35/Off-payroll working**

- Currently the public sector cannot use single director limited companies or partnerships without considering the employment status of the consultant, this will roll out to some of the private sector in April 2020
- From April 2020 small private sector businesses can carry on using single director limited companies or partnerships and pay them gross
- A small incorporated business is defined as one that, for two successive accounting periods has two out of three of the following
  - Turnover not more than £10.2m
  - Balance sheet not more than £5.1m
  - Average number of employees not more than 50
- A small unincorporated organisation is defined as one that at the end of the calendar year that precedes the start of the tax year has
  - Turnover of not more than £10.2m
- When a business is no longer small for two successive accounting periods the rules kick in from the start of the next tax year after the end of their accounting year. A business has to be small again for two years to be outside the rules from the start of the next tax year
- All affected businesses must assess whether if they stripped away the limited company or partnership the consultant/freelancer/contractor would have the same hallmarks as an employee
  - If Yes, they must issue a Status Determination Statement (SDS) before payment of the first invoice with reason why the rules apply to the consultant
    - Add the consultant to the payroll (agency's payroll if an agency is paying the consultant)
    - Deduct tax, NI, and apprenticeship levy from the invoiced fee
    - Pay this over to HMRC with employee deductions
    - Pay the net amount and any VAT to the consultant
    - Issue a P45 at the end of the contract and a P60 at the end of the year
    - DO NOT auto-enrol the consultant or offer any statutory payments or pay national minimum wage
  - If No, the business can choose whether to issue an SDS but if they don't and HMRC later decide they had made the wrong decision they will be liable for all the tax, NI and apprenticeship levy, not the contractor so it is best practice to issue Yes and No SDSs
- On receipt of the SDS the consultant or the fee-payer (agency) can appeal, and the business has 45 days to respond and uphold the decision or withdraw it, in the meantime withholding continues



## Appendix 2 – Guidance

### New guidance

April 2020 changes to off-payroll working for clients	<a href="https://www.gov.uk/guidance/april-2020-changes-to-off-payroll-working-for-clients">https://www.gov.uk/guidance/april-2020-changes-to-off-payroll-working-for-clients</a>
April 2020 changes to off-payroll working for intermediaries	<a href="https://www.gov.uk/guidance/april-2020-changes-to-off-payroll-working-for-intermediaries">https://www.gov.uk/guidance/april-2020-changes-to-off-payroll-working-for-intermediaries</a>
Off-payroll working for agencies	<a href="https://www.gov.uk/guidance/off-payroll-working-for-agencies">https://www.gov.uk/guidance/off-payroll-working-for-agencies</a>
Fee-payer responsibilities under the off-payroll working rules	<a href="https://www.gov.uk/guidance/fee-payer-responsibilities-under-the-off-payroll-working-rules">https://www.gov.uk/guidance/fee-payer-responsibilities-under-the-off-payroll-working-rules</a>

### Revised guidance

Prepare for changes to the off-payroll working rules (IR35)	<a href="https://www.gov.uk/guidance/prepare-for-changes-to-the-off-payroll-working-rules-ir35">https://www.gov.uk/guidance/prepare-for-changes-to-the-off-payroll-working-rules-ir35</a>
Working through an intermediary (IR35)	<a href="https://www.gov.uk/topic/business-tax/ir35">https://www.gov.uk/topic/business-tax/ir35</a>
Understanding off-payroll working (IR35)	<a href="https://www.gov.uk/guidance/understanding-off-payroll-working-ir35">https://www.gov.uk/guidance/understanding-off-payroll-working-ir35</a>
Public sector off-payroll working for clients	<a href="https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation">https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation</a>
Public sector off-payroll working for intermediaries	<a href="https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-personal-service-companies">https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-personal-service-companies</a>
Private sector off-payroll working rules for intermediaries	<a href="https://www.gov.uk/guidance/ir35-what-to-do-if-it-applies">https://www.gov.uk/guidance/ir35-what-to-do-if-it-applies</a>
Private sector off-payroll working for clients	<a href="https://www.gov.uk/guidance/private-sector-off-payroll-working-for-clients">https://www.gov.uk/guidance/private-sector-off-payroll-working-for-clients</a>
How to calculate the deemed employment payment	<a href="https://www.gov.uk/guidance/how-to-calculate-the-deemed-employment-payment">https://www.gov.uk/guidance/how-to-calculate-the-deemed-employment-payment</a>





## **Appendix 3 – Off-payroll FAQs**

### **Public sector**

1. In the public sector do we have to reissue SDSs for contractors next April?
  - Yes, if you have a fee payer who is not the engager as otherwise, they can argue they aren't the fee payer from 6.4.20
  - No, if you're the engager and fee payer as you just continue to do the withholding as you have been

### **Scope of the rules**

2. Do the rules apply to overseas clients?
  - Yes, if the work is done in the UK by a worker who is UK tax/NI resident

### **Payroll processes**

3. Does the deemed employee complete a deemed employee starter checklist even if they have a P45?
  - Yes, as HMRC expect them to have they have another job (with their own company) so they should all be put on BR and declaration C and BR will override the P45 code ie ignore the P45 and use the deemed employee checklist provided as a handout
4. What is the start date used?
  - 6.4.20 if the contract started prior to that date
  - The date that the contract commenced if after 6.4.20
5. If tax and NI has been deducted and it then emerges that an appeal has been withheld and the contract is outside IR35 what do we do?
  - If current year - reverse out the all the pay, tax and NI and recover the deductions from the next remittance and repay deductions to the PSC
  - If prior year, use EYU/YTD FPS to correct, recover deductions from current year and repay deductions to PSC
6. If circumstances change and contract is now not caught what do we do?
  - 'resign' deemed employee and provide a P45 then make future payments gross
7. If a payment is made in April for work done prior to 6.4.20 does it have to be under deduction if the contract would have been caught?
  - Yes
8. Do we use a business address or personal address for the contractor?
  - Always the personal address so HMRC can assess Welsh or Scottish tax residency
9. Can we claim the Employment Allowance against NI for deemed employees and does their NI count towards the £100K threshold?
  - NI for deemed employees can't be claimed against Employment Allowance and doesn't count in £100K Employment Allowance exclusion threshold.
10. Can the PSC claim employment allowance if it pays a real employee (including the director for non-deemed employment activities) more than the secondary threshold?
  - If the PSC has a second employee paid above the threshold then the PSC can claim the employment allowance in this scenario.



11. When the 'deemed employee' leaves and gets a P45, to cover their contract, what happens if they come back again in the same tax year in relation to their Payroll ID - would they be set up again as a new 'deemed employee' with a different payroll ID?
  - If the deemed employee leaves the client, then goes back at a later point in the year this would be classed as a new deemed employment. The National Insurance and PAYE Service will clearly show a start and end date indicating the employment has ceased
12. What would happen if you already had a part-time employee on the payroll and they also provide services and become a 'deemed employee'? Part of their work would be employed and part 'deemed employee'?
  - There would be two employment records with different payroll numbers, the record in respect of the deemed employment would have the off-payroll worker (OPW) indicator ticked
13. If we set the Off-payroll worker by accident against an actual employee can we just unset it the next time the employee is paid?
  - No, the marker is attached to the employment so cannot be removed after it has been set. If the marker is set the only solution is to resign the employee and reinstate them. Whilst it should not matter if they are not a student loan repayer as this is all the marker suppresses, HMRC aren't clear at this stage what else the marker might inhibit
14. It is though OK to set the marker at any time against the deemed employee's record it doesn't have to be on the first FPS

### Employment rights

15. Deemed employees aren't entitled by law to a payslip as they aren't covered by the Employment Rights Act 1996, but will we provide one as one will be produced by the software? Do we need to amend our payslips to include invoice numbers for example? If we have online payslips and we extend that to deemed employees does that provide them with access to company systems that we don't want them to have?
  - Will we go for paper payslips or not use payslip functionality and amend remittances – they must still get a P60 – do we have online P60s?

### Status checks

16. How often should we re-check a contract and the contractor's circumstances?
  - Best practice would suggest at least six monthly and at year end and
  - include in the contract that the contractor must notify the engager of material changes such as the contractor no longer having any other clients
17. Is using CEST enough to prove 'reasonable care' has been taken in working out status?
  - No, not if the answers are contrived to get an outcome, the due diligence done on the information entered into the service will also play a role
  - Yes, if answers are an accurate reflection of working practices of role and worker's own situation in terms of being in business on own account
  - For circumstances where there is a 'cannot determine' output reasonable care would also extend into what clients do after this point.



- Here is HMRC's general guidance on reasonable care:  
<https://www.gov.uk/guidance/reasonable-care-tax-returns-and-other-documents>

### **Contractor expenses**

18. Can contractors use the temp workplace rules to continue to claim travel expenses?
- No, not for contracts caught by IR35 each client site is a permanent workplace see <https://www.bailii.org/uk/cases/UKFTT/TC/2019/TC07307.html>
  - Travel to other sites would be an allowable expense
  - Yes, for contracts outside the rules

### **Outsourced services**

19. Do these rules apply outsourced services, like the people who clean our offices?
- No, not if you employ a company to provide a service for you, ie you don't care who turns up to do the cleaning each night as they're employees of the cleaning company
  - Yes, if you happen to engage a PSC as your cleaner

### **Agencies**

20. Can agencies who are fee payers say in their Ts and Cs that 'you the engager are liable for taxes, not us the fee payer?
- They can try, but the intermediaries' legislation will override this
21. Can agencies (or engagers) pass the employer's NI on to the deemed employee?
- No, the legislation that prohibits the collection of employers NIC (unless certain conditions apply i.e. except where sub-paragraph 2 of Part 3A Sch 1 SSCBA 1992 applies) can be found at 3A Sch 1 SSCBA 1992, it prohibits the direct or indirect recovery by employers from employees of employer's National Insurance Contributions, including employer's Class 1A NIC due on benefits in kind.

### **The impact on the contractor**

22. If there is no taxable income in the PSC as it is all non-taxable what happens to tax relief on any employee pension contributions?
- <https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm9090> refers. The contributions are paid over gross to the provider and tax relief is claimed via the SA return
23. What shows in the worker/director's personal tax account (PTA) in respect of both the monies received by the PSC from a fee-payer and any RTI submissions made by the PSC when paying out deemed employment income?
- The PTA should show two employments. One with the fee-payer as a deemed employment and a second with the PSC that the worker holds a directorship with. Income from this second employer should be shown as nil since no PAYE/NIC is deducted from the remuneration drawn.



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24. What does worker/director put in their SA return for deemed employment income and PSC income respectively and where?

- The deemed employment income, and associated deductions, will be that from the fee-payer. The PSC income can be recorded as a second / supplemental employment and reflect the income, if any, drawn from the PSC and returned through Box 58a of RTI

25. What does the contractor show in their accounts in respect to the tax and. NI withheld?  
These amounts should be shown as 'employment expenses'

**Gender Pay Gap reporting/CEO pay ratio reporting, ONS annual survey of hours and earnings**

26. Do we count deemed employees in our headcount?

- No, they aren't classed as workers or employees in this respect



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