

Focus on

IR35 and Off-payroll working

Are you ready for the changes in the Motor sector?

Changes to the employment tax intermediaries legislation – usually referred to as ‘IR35’ – will have ramifications across all sectors. This includes the Motor sector, wherever a business uses personal services provided through intermediaries. Businesses need to act now to ensure they are fully compliant with the new rules from 6 April 2021.

How will this affect our sector?

We anticipate that the new rules will not have a significant impact on the sector, but we have found that the engagement of delivery drivers and valeters, as well as some sales personnel needs careful consideration and review.

How does that apply to valeters?

Under the new rules Dealers need to assess their off-payroll workers and then issue a Status Determination Statement (SDS). An example of the Outside-of-Scope reasons to include in an SDS for valeters could be:

Personal Service:

- You have a genuine unrestricted right to provide a substitute worker at any point as we are engaging your business to provide services and not you as an individual.
- Your business would pay any substitute provided
- Your business may engage helpers to assist you as and when you see fit demonstrating a lack of requirement for personal service

Control & Direction:

- You are not subject to ongoing monitoring or supervision in your delivery of this engagement
- You will determine the tasks required to deliver this engagement and schedule them as you see fit in order to deliver the outcomes required by the deadlines.
- You will determine how to deliver this engagement and your working methods are up to you to determine

Financial Risk:

- You would be expected to correct defective work in your own time and at your own cost

Business on Own Account:

- You are providing multiple contracts for multiple different clients and the call on your time from this engagement makes this practical

If one of the responses from each of Personal Services and Control & Direction and Financial Risk areas apply then the HMRC online Check Employment Status for Tax (CEST) tool should show that IR35 does not apply.

What’s changing?

The use of Personal Service Company (PSC) intermediaries has long been a focus for HMRC, who consider there is a significant ‘tax gap’ as a result of these arrangements.

Existing IR35 rules require anyone providing services through a PSC to consider whether the arrangement with the end client would be an employment if the services were provided direct to the Dealer, and to operate PAYE where that is the case. However, from April 2021 these obligations will shift from PSCs to Dealers – meaning new admin and tax reporting burdens for many businesses.



Will this affect me as a Dealer?

This will depend on the size of your business. If you are a 'small company' (as defined by the Companies Act) the new rules won't apply to you. However, if you are medium or large-sized and you engage PSCs you will likely have new IR35 obligations from April 2021, subject to some other limited exemptions.

What are the new obligations for Dealers?

1. Review the employment status of everyone who supplies services to you through a PSC. You need to ask yourself "would that individual be my employee if there were no PSC involved?" If the answer to this is "yes" it's inside IR35.
2. Advise the PSC individual (and potentially other parties in the supply chain) of your decision, preferably giving the reasoning behind it. This must be in writing and is referred to as a 'Status Determination Statement' (SDS).
3. If the individual would otherwise be your employee and you also pay their PSC you will be required to operate PAYE on all payments made after 6 April 2021.

Can I just issue one blanket SDS that covers everyone?

This is not advisable. The legislation states that "reasonable care" must be taken by employers in conducting the reviews with each case being reviewed on its own merits. When similar rules were introduced in 2017 for the public sector the use of blanket determinations resulted in action by HMRC – who will likely take a similar view in the private sector.

What practical steps should I be aware of?

The IR35 rules are complex, so please do get in touch if there are specific issues we can help you with. There are key factors to consider – some of which could ease the burden:

- Have you identified all workers providing services to you through PSCs? Remember this may not be immediately obvious if the PSC supplies its services to you through another intermediary such as an agency.
- Do you qualify for the exemptions for Dealers who receive a "fully contracted out" service?

- Is it possible to make genuine changes to ways of working to take PSC arrangements outside IR35? Consider written contracts but also the reality of working practices
- Potential alternatives to the use of PSCs – such as employing the contractor individuals directly or using umbrella companies – must be fit for purpose for your business

Could the changes be delayed again?

Although the introduction of the IR35 private sector rules was postponed from April 2020 due to Covid-19, we consider a further delay is unlikely. It is therefore vital that Dealers are ready to implement the new rules from day one to address the potential labour supply, business continuity and compliance challenges that could arise.

What do I do now?

With the changes coming in to force from 6 April 2021 you need to check the status of off-payroll workers, ensure they are properly contracted and that IR35 or PAYE will be operated from April as appropriate, ensure that you have issued your SDS to the off-payroll workers and dealt with any queries or objections.

We can assist with any status reviews, processes, procedures and the provision or review of supporting documentation to ensure you are covered.

For more information please contact:



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