

Employment and IR35 Status Summary Guide

FOR INTERNAL USE ONLY – DO NOT SEND TO CONTRACTORS

In 2000 the Government felt it was losing significant amounts of revenue through the use of PSC's (Personal Service Companies), therefore they introduced legislation known as IR35/Employment Status. This legislation required the worker's own company to make a deemed earnings payment at year end, of tax and NIC on earnings where, (using the employment status test), there would have been an employer / employee relationship. However, it did not work as intended, and many contractors using PSC's either ignored the rules or used advisors to create contracts that would circumvent the rules.

In April 2017, these rules were changed, and Public Bodies were made responsible for determining the tax status of a worker/engagement, and were made accountable for operating PAYE / NI if an intermediary is used who is effectively working as an employee / office holder.

To ensure the authority is fully compliant with HMRC's tax and NI regulations, assessments are to be carried out to obtain the correct Employment/IR35 status. By determining the correct 'status' (employment or self-employment), the correct means of payment can be established for the service rendered; either via Payroll for those deemed employees, or process the invoice through Creditors (Accounts Payable) if deemed self-employed.

Under the legislation, these assessments are to be completed before the work is agreed or carried out. This gives the worker the chance to decide if they wish to continue with the offer of work, if the engagement has been deemed as 'Employed for Tax Purposes,' and payment is subject to PAYE / NI deductions.

Failure to comply with IR35 and Employment Status legislation is a Corporate Criminal Offence. HMRC will take action against authorities if they fail to pay the correct amount of tax, either through deliberate evasion or contrived employment assessments.

The consequences of the above if HMRC are successful in prosecuting are:

- Unlimited fines as well as;
 - Minimum penalty for voluntary disclosure 30% of contract
 - Minimum penalty for prompted disclosure 50% of contract
 - Penalty for non-compliance deemed to be deliberate and concealed 100% of contract
- HMRC can go back 20 years to recover unpaid tax as a result
- Public record of the conviction
- Significant reputational damage and adverse publicity
- The Authority's tax status would be reassessed from low risk to high risk resulting in regular inspections.

In order for Caerphilly County Borough Council to comply with HMRC's legislation, two eforms have been developed; The Contractor eForm and The Engager eForm. Both eforms capture all of the necessary information required for the OIAs team to complete HMRC's online 'Check Employment Status for Tax' (CEST) tool. The CEST tool determines if the off-payroll rules (IR35) apply, or if the work is classed as employed or self-employed for tax purposes. It is extremely important that the Contractor and Engager eforms are completed as accurately as possible, and before the engagement is agreed or carried out to ensure the correct HMRC result is determined.

For further information please visit <https://www.gov.uk/government/organisations/hm-revenue-customs>