



# *TAXbite – Off-payroll working (or IR35): an overview*

ICAEW TAX FACULTY

# *What is off-payroll working?*

- For UK **tax** and National Insurance Contribution purposes, an individual may be engaged as
  - An employee
  - A self-employed contractor
- For UK **employment law** purposes, an individual may be engaged as
  - An employee
  - A worker
  - A self-employed contractor

# *Employed versus self-employed*

Imagine Steve, an IT specialist. He is offered some work with X Ltd and has options

1. Take on employment with X Ltd and earn a salary of £48,000 per annum
2. Offer his services to X Ltd for £48,000, which he would invoice over a year, as a self employed consultant

- Steve's take home pay will differ depending on which he chooses
- The cost to X Ltd will differ depending on which route is chosen

Note. In reality, important to consider employment law and other issues too

## *Employed versus self-employed – tax rates 2019/20*

	Steve	X Ltd
Steve, employee	Income tax 20%      £7,098 Employees' NIC 12%   £4,724 Total deductions <b>£11,822</b>	Employers' NIC 13.8% <b>£5,433</b>
Steve, self employed	Income tax 20%      £7,098 Employees' NIC Class 2 £3 per week    £156 Class 4 9%              £3,543 Total deductions <b>£10,797</b>	Nil

uses

- The cost to X Ltd will differ depending on which route is chosen
- Important to consider employment law issues too

# *Employed versus self-employed- how do you know?*

- Tax law dictates whether a person must be taken on as an employee or self employed
- Rules?
  - Not in statute
  - Rely on case law
  - Consider, eg, control, substitution, financial risk
  - Check employment status for tax (CEST) tool
- What if Steve and X Ltd think he is self employed but are wrong?
  - HMRC will look to X Ltd for the extra tax and NIC due

## *Solution? ‘Steve the company’*

	Steve	X Ltd
Steve, employee	Income tax 20% Employees’ NIC 12%	Employers’ NIC 13.8%
Steve, self employed	Income tax 20% Employees’ NIC 9%	Nil
Steve works through a personal service co: Steve Ltd	Corporation tax 19% Employers NIC 13.8% on salary Dividend and/or salary	Nil

# *What is IR35?*

- Anti-avoidance legislation
- Used to ensure an individual's earnings are taxed correctly
- Individuals may prefer/or be asked to work through an intermediary (eg, their own company rather than take on a role of employment
- The off-payroll working rules (also known as the 'IR35 rules') ensure HMRC gets the same amount of tax whether the individual is working through their own intermediary company or directly on payroll.

# *So why does IR35 matter?*

- Preferential tax treatment
  - Income tax
  - National insurance
- HMRC seeks to address this through the IR35 charge
  - Look at the contract between the individual's intermediary company and the engager
    - More akin to one of employment – individual is deemed to be an employee of the engager for tax purposes



## *Knowing when the rules apply*

- A number of factors to take into account
- Case law
- HMRC “check employment status for tax” test (CEST) -  
<https://www.gov.uk/guidance/check-employment-status-for-tax>
- Supervision, direction and control –  
<https://tinyurl.com/SDCguidance>

# *The current landscape*

- Until April 2017 it had always been the case that the individual would assess whether their contract was inside IR35 or not
- From April 2017, the off-payroll working rules were changed in the **public sector**
  - Known as “off-payroll rules”
  - The responsibility to assess the employment status of the individual now rests with the engager ie, the public sector body (Ministry of Defence or NHS, for example)
  - The person closest to the intermediary must account for the additional taxes due, ie the intermediary company will be paid net of income tax and national insurance (like an employee)
- From April 2020 the operation of off-payroll working for large/medium engagers in the private sector will change to be in line with the public sector
  - Responsibility for determining employment status will move up to the end client/engager
  - The person closest to the intermediary must make payment through a payroll. ie the intermediary company will be paid net of income tax and national insurance (like an employee)

# *Get ready for April 2020*

- An exemption will be available for “small engagers”
- Prepare now for April 2020
  - How many contractors do you engage?
  - How many operate through a limited company?
  - What are your staffing requirements going forward?
  - Contract reviews – engage with IR35 specialists
  - Use CEST

## *Further support*

- [www.icaew.com/ir35](http://www.icaew.com/ir35)
- TAXguide 10/18 IR35 contract reviews
- TAXguide 14/19 employment intermediaries
  
- Future webinars [www.icaew.com/taxfacevents](http://www.icaew.com/taxfacevents)

# *Thank you for watching*

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